

PENNSYLVANIA'S NEW "STATE CONSTRUCTION NOTICES DIRECTORY" AND THE IMPLEMENTATION OF SIGNIFICANT CHANGES TO PENNSYLVANIA'S MECHANICS' LIEN LAW

Date: 27 February 2017

Construction and Engineering Alert

By: William D. Wickard, Erin D. Fleury

INTRODUCTION

Important changes to Pennsylvania's Mechanics' Lien Law recently took effect on December 31, 2016, with the launch of an online State Construction Notices Directory. [1] These amendments to the Mechanics' Lien Law (which were passed by the Pennsylvania legislature in 2014) modify the process and deadlines applicable to subcontractors, contractors and owners with respect to mechanics' liens on projects costing over \$1.5 million. In short, these amendments require subcontractors to comply with an earlier lien notice requirement by providing a "Notice of Furnishing" within 45 days of beginning work or providing materials if the owner has filed a "Notice of Commencement" to the online directory with respect to a "searchable project" prior to commencement of work on the project. [2]

THE NOTICE OF COMMENCEMENT

In order to trigger this new process, the project owner, or its agent, must file the Notice of Commencement before any work on the project begins.

The Notice of Commencement shall be filed to the online directory and must include:

1. The name, address, and e-mail address of the contractor;
2. The name and location of the searchable project;
3. The county in which the searchable project is located;
4. The legal description of the property upon which improvements are being made, including the tax identification number of each parcel;
5. The name, address, and e-mail address of the owner of record of the property;
6. If applicable, the name, address, and e-mail address of a surety that has issued performance and payment bonds, as well as the numbers of any such bonds; and

7. The unique identifying number assigned by the state directory at the time of filing. [3]

An owner also has an obligation to make reasonable efforts to ensure that a copy of the Notice of Commencement remains posted at the project site. The owner and contractor must further ensure that the Notice of Commencement is included as part of any contracts with subcontractors. Also, any such contract must include the following statutory warning informing the subcontractor that its failure to file a Notice of Furnishing could result in a forfeiture of its lien rights:

A subcontractor that fails to file a Notice of Furnishing on the Department of General Services publicly accessible Internet website as required by the act of August 24, 1963 (P.L. 1175, No. 497), known as the Mechanics' Lien Law of 1963, may forfeit the right to file a mechanics lien. It is unlawful for a searchable project owner, searchable project owner's agent, contractor or subcontractor to request, suggest, encourage or require that a subcontractor not file the required notice as required by the Mechanics' Lien Law of 1963.[4]

The statute also makes it illegal to "suggest, request, encourage or require" a subcontractor to refrain from filing a Notice of Furnishing "as a condition of entering into, continuing, receiving or maintaining a contract for work or furnishing of materials on a searchable project." [5]

THE NOTICE OF FURNISHING

If an owner files a Notice of Commencement, subcontractors who wish to protect their lien rights must use the online directory to file a Notice of Furnishing within 45 days of beginning their work or first providing materials to the job site. The statute sets forth the form that a Notice of Furnishing must follow and also mandates that it contain:

8. A general description of the labor or materials furnished;
9. The name and address of the person supplying such services or materials;
10. The name and address of the person that contracted for the services or materials; and,
11. A description sufficient to identify the searchable project, based on the description in the Notice of Commencement. [6]

Absent a showing of fault on the part of the project owner or contractor, a subcontractor's failure to file a Notice of Furnishing within 45 days of beginning work will result in the loss of its lien rights. [7]

RECOMMENDATIONS AND CONCLUSION

It is crucial for owners, contractors, and subcontractors to understand how the amendments to Pennsylvania's Mechanics' Lien Law might affect their rights and obligations. In order to avoid forfeiting lien rights, subcontractors must determine for each new project whether a Notice of Commencement has been filed and, if so,

file a timely Notice of Furnishing. Also, owners need to understand these changes so they can decide at the outset of a project whether to file a Notice of Commencement. If the owner decides to file a Notice of Commencement, it must ensure that its construction contract complies with and implements the new requirements. The owner may be able to bar a significant amount of mechanics' liens on its project by following the requirements of the new amendments. Contractors also must understand these new changes so they can properly deal with the new requirements in both their contracts with owners and subcontractors. All parties should consult with counsel during the contract drafting stage to ensure proper requirements are in place for invoking the benefits of the new amendments to the Mechanics' Lien Law.

Notes:

[1] See *Pennsylvania State Construction Notices Directory*, PA.gov, <https://apps.pa.gov/Scnd/> (last visited Feb. 22, 2017).

[2] "'Searchable project' means a project consisting of the erection and construction, or alteration or repair, of an improvement costing a minimum of one million five hundred thousand dollars (\$1,500,000)." 49 Pa. Stat. Ann. at § 1201(18).

[3] *Id.* at § 1501.3(a).

[4] *Id.* at § 1501.2

[5] *Id.* at § 1501.6(a).

[6] *Id.* at § 1501.3(b).

[7] There are also new informational-only notices, the Notice of Completion and Notice of Nonpayment, that can be filed by owners or subcontractors, respectively, which are optional and do not affect any legal rights. See *id.* at § 1501.4. However, these notices could prove quite beneficial if parties make use of them, making it easier to share and obtain information regarding the work and payment statuses for projects.

KEY CONTACTS



WILLIAM D. WICKARD
OF COUNSEL
PITTSBURGH
+1.412.355.8389
WILLIAM.WICKARD@KLGATES.COM



ERIN D. FLEURY
ASSOCIATE
PITTSBURGH
+1.412.355.7425
ERIN.FLEURY@KLGATES.COM

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