

# Construction Law Alert

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## Upcoming Changes to the Mechanics' Lien Law

by Patrick R. Kingsley

**T**here are some significant changes to the Mechanics' Lien Law that are set to go into effect on the last day of this year. These amendments were signed into law on Oct. 14, 2014, and significantly change the process for advancing and perfecting a mechanics' lien.

The amendments require the creation of a "State Construction Notices Directory," set to be operational by Dec. 31, 2016, unless the Department of General Services can provide sufficient reason to postpone the implementation date. The directory applies to any construction project involving a cost of \$1.5 million or more.

Once the system is up and running, the owner of a project qualifying for the directory may file what is known as a "Notice of Commencement" with the directory. In addition to filing the Notice of Commencement, the owner is required to conspicuously post the Notice of Commencement at the project site before physical work commences, and ensure that the project remains posted. An owner is not obligated to register a project. If an owner fails to register a project in the database, then the extra protections offered by these amendments to project owners do not apply.

The Notice of Commencement must contain the following information:

- The name, address and email address of the contractor.
- The name and location of the project.
- The county in which the project is located.
- The legal description of the property, including all tax identification numbers.
- The name, address and email address of the project owner.
- The name, address and email address of any surety backing the project.
- The unique identifying number that is assigned to the Notice of Commencement.

A subcontractor that performs work or provides materials to a project registered on the State Construction Notices Directory must file what is known as a "Notice of Furnishing" within 45 days after first performing work at the job site or first providing materials to the job site. The Notice of Furnishing must contain the following:

- A general description of the labor or materials.
- The name and address of the person supplying the services or items.
- The name and address of the person who contracted for the services or items.
- A description sufficient to identify the project.
- The statute provides a form template for this Notice of Furnishing.

A subcontractor that fails to file a Notice of Furnishing forfeits the right to file a lien

claim. Compliance with this new process is thus essential for a subcontractor to perfect its entitlement to the protections offered by the mechanics' lien statute.

The statute requires that both the owner and the contractor make reasonable efforts to ensure that the Notice of Commencement is made part of contract documents provided to all subcontractors awarded work on the project. It is unclear whether this provision requires that the owners and contractors simply provide a copy of the Notice of Commencement to subcontractors or that they take the formal step of incorporating the Notice of Commencement by reference into the contract documents. Out of an abundance of caution, it is suggested that owners and contractors do both to ensure compliance with the law.

The statute also requires that a contract for a project qualifying for registration within the State Construction Notices Directory include the following written notice that failure to file a Notice of Furnishing might result in the loss of 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 mechanic's 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.



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The amendments preclude any owner, contractor or subcontractor from suggesting or requiring that a subcontractor not file a notice of furnishing. Violation of this prohibition has three consequences. First, the subcontractor has the right to file a lien if it can prove that the failure to file the Notice of Furnishing was the result of the prohibited conduct. Second, such conduct gives the subcontractor a separate affirmative civil cause of action, including the statutory right to actual damages, reasonable attorneys' fees and court costs. Third, commission of the prohibited act is a criminal offense and constitutes a misdemeanor of the second degree.

There are two other optional notices created by the amendments. The amendments also allow for a project owner to file a Notice of Completion in the directory within 45 days of the completion of the work. Subcontractors who have not received full payment are also entitled to file a Notice of Nonpayment in the directory. However, neither of these notices is required, and neither appears to have any legal consequence. ■

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