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Pennsylvania Mechanics' Lien Statute: An Overview and Update

By Patrick R. Kingsley

Pennsylvania, like most states, affords a specific protection to certain construction professionals in their commercial disputes that is unavailable in most other commercial transactions. This protection was historically granted by the Pennsylvania Mechanics' Lien Law of 1963 (the Lien Law). The Lien Law permitted a lien, which is in the nature of a security interest, to be filed against property for the payment of all debts more than $500 due to a contractor or subcontractor for labor or materials furnished on a private building construction project. A lien filed on a property became an encumbrance on the owner's interest in the property and continued until a notice of satisfaction of lien was filed with the Prothonotary.[1]

On June 29, 2006, Gov. Rendell signed House Bill 1637, PN 4229, amending the Lien Law and expanding the scope of lien rights for contractors throughout the Commonwealth of Pennsylvania. The bill, now known as Act 52 of 2006 (Act 52), took effect on Jan.1, 2007. This new law substantially changes the legal landscape for mechanics' liens and the protection available for contractors and subcontractors. These include:

- the definition of "subcontractor" is expanded to include claimants who have a contract with a subcontractor (other than a materialman) in direct privity with the contractor (i.e., a "second-tier" subcontractor);[2]
- a contractor on residential projects can no longer waive lien rights on behalf of its subcontractors; such rights can be waived only by the subcontractors themselves, and on residential projects where the total contract price exceeds $1 million; in order for the waiver to be effective, the contractor must also provide a bond guaranteeing payment to the subcontractor;[3]
- the waiver of lien rights on commercial buildings is now valid only if given "in consideration for payment . . . and only to the extent that such payment is actually received" or if a bond is posted in the case of a subcontractor;[4] and
- the time within which a claim must be filed with the court after notice of the claim has been given to the owner and the contractor was extended from four to six months.[5]

Standing to File a Lien

The right to lien is available to general contractors as well as their direct subcontractors and suppliers. Under the new version of the Lien Law, the

definition of the term "subcontractor" has been expanded to include one who is working on a project "by contract with the contractor, or pursuant to a contract with a subcontractor."[6] Thus, pursuant to Act 52, even "second-tier" subcontractors or suppliers, who do not have a contractual relationship with the general contractor, have lien rights as long as they have a contractual relationship with a "first-tier" subcontractor. However, the law specifically provides that a subcontractor to a materialman is not eligible to file a mechanics' lien, even though the materialman would be eligible itself. Therefore, only a sub-subcontractor to a labor subcontractor is eligible.

Lien rights are generally available only for private projects. Mechanics' liens cannot be filed against property where the labor or materials are furnished for a purely public purpose.[7]

The Lien Law generally applies only to work done on improvements to real property such as structures. Thus, it will not apply to demolition or earth works unaccompanied by the erection, construction, alteration or repair of a building or other identifiable structure.[8]

Waiver of Lien Rights

Perhaps the most significant change caused by Act 52 is that it significantly limits the circumstances under which lien rights can be waived. Under the pre-amendment version of the Lien Law, the generally accepted practice was that a prime contractor could provide a waiver of its right to file a mechanics' lien, both on its own behalf and on behalf of its subcontractors, to the owner at or before the commencement of work. If an owner and a general contractor entered into what is often referred to as a "no-lien agreement" and properly filed it with the Prothonotary before work was commenced, such an agreement would effectively waive not only the general contractor's lien rights, but all subcontractors' and suppliers' lien rights as well.[9] By doing so, owners could insulate themselves from any lien claims that might later arise from either the contractor or its subcontractors. The 1996 amendment has significantly changed this practice.

Now, on residential projects, the contractor can no longer waive lien rights on behalf of its subcontractors. Only the subcontractor itself may waive its own right to file a lien claim. Such a waiver must be by a written instrument signed by the subcontractor.[10] The subcontractor can validly waive its lien rights only if, in addition to a signed waiver, one or both of two conditions is met: (1) the contract price is less than $1 million; and/or (2) a payment bond guaranteeing payment to the subcontractor is posted.[11]

On commercial building projects, the new Lien Law has eliminated the owner's ability to obtain lien waivers from the contractor in advance. The Lien Law provides that "a waiver by a contractor of lien rights is against public policy, unlawful and void unless given in consideration for payment for the work or materials provided and only to the extent that such payment is actually received."[12] For subcontractors on commercial buildings, the Lien Law declares a waiver void unless payment is received for the work or materials provided or unless the contractor has posted a payment bond guaranteeing payment to the subcontractors.[13]

Prosecuting a Lien Claim

A mechanics' lien claim is not self-enforcing, nor does it automatically compel payment. Instead, an aggrieved contractor or subcontractor must file a complaint to enforce the lien and bring the claim to judgment. The complaint must be filed within two years after the lien is filed.[14]

Additionally, a claimant must obtain a judgment on the lien within five years from the date of filing the lien. If the claimant fails to file the complaint within two years from the initial filing or fails to obtain a verdict and judgment within five years from the initial filing, the claim is void.[15] The lien claim is not an exclusive remedy and nothing precludes a contractor or subcontractor from suing the owner for breach of contract while simultaneously prosecuting the lien claim.[16]

Under the previous version of the Lien Law, a subcontractor was required to provide preliminary notice of a claim for nonpayment to the owner on or before the date of the completion of his work.[17] If the subcontractor remained unpaid, the subcontractor next had to serve formal notice on the owner of the subcontractor's intention to file a claim at least 30 days before the claim was filed.[18] The amendment to the Lien Law deleted the preliminary-notice requirement and now requires only formal notice by a claimant to the owner of his intent to file a claim at least 30 days in advance of the filing.[19]

Once notice has been properly served, the claimant must file the claim with the Prothonotary within six months after the completion of his work.[20] The claimant previously had to file within four months. Completion of the work generally

occurs as of the performance of the last of the labor or delivery of the last of the materials required under the contract at issue, whichever occurs last.[21] Note that the 30-day advance-notice-of-filing requirement means that the subcontractor cannot wait until the very end of the six-month period to file the claim. Affirmative action in the form of advance notice must be submitted within five months or the subsequent claim will be barred.

[1] 49 P.S. §1704.
[2] 49 P.S. §1201(5).
[3] 49 P.S. §1401(a)(2)(ii) and §1401(b)(2).
[4] 49 P.S. §1401(b)(2).
[5] 49 P.S. §1502(a)(1).
[6] 49 P.S. 1201(5).
[7] *See e.g.*, *Empire Excavating Co. v. Luzerne County Housing Auth.*, 449 A.2d 60, (Pa. Super, 1982) (public housing authority's provision of its property for use as low-income housing served purely public purpose and was exempt from strictures of the Lien Law); but *see American Seating Co. v. City of Philadelphia*, 256 A.2d 599, 601 (Pa. 1969) (where municipality acted as absentee landlord entrusting management and control of premises to private tenants, municipality served in proprietary and quasi-private function, thereby losing "public purpose exception" under the Lien Law).
[8] *See e.g.*, *King's Oak Liquidators v. Bala Cynwyd Hotel Assocs.*, 7 Pa. D. & C.4th 634 (C.P. 1990), *aff'd*, 592 A.2d 102 (Pa. Super. 1991) (demolition not proper subject of a mechanics' lien claim); *Parkhill v. Hendricks*, 53 Pa. Super. 9 (1912) (grading and sodding of lawn not proper subject of mechanics' lien claim); *G.R. Frank & Sons, Inc. v. Kutner*, 71 Pa. D. & C.2d 501 (Pa. Com. Pl. 1975) (installation of tennis court not proper subject of mechanics' lien claim).
[9] 49 P.S. §1402.
[10] 49 P.S. §1401(a)(2)(i).
[11] 49 P.S. §1401(a)(2)(ii).
[12] 49 P.S. §1401(b)(1).
[13] 49 P.S. §1401(b)(2). For non-residential projects where the contractor has posted a bond guaranteeing payment to the subcontractors for all labor and materials provided, preemptive lien waivers may still be filed with the Prothonotary with respect to the claims of such subcontractors pursuant to 49 P.S. §1402.
[14] 49 P.S. §1701(b).
[15] 49 P.S. § 1701(d).
[16] 49 P.S. 1702.
[17] *See* 49 P.S. §1501(a) (repealed).
[18] 49 P.S. §1501(b) (now §1501(b)1)).
[19] 49 P.S. §1501(b).
[20] 49 P.S. §1502(a)(1).
[21] 49 P.S. §1502(a)(1).

About the Author

A partner in the firm's Litigation Practice Group, Patrick Kingsley has handled construction matters for more than 15 years.

Mr. Kingsley represents owners, contractors, subcontractors, sureties, insurance companies, design professionals and manufacturers of construction products. He handles claims relating to delay, acceleration, unforeseen site conditions, lost productivity, defective workmanship, design errors, as well as payment and performance bond claims.

Mr. Kingsley has tried cases throughout the United States before juries, judges, arbitration panels and referees. He has handled complex construction and surety matters involving construction projects all over the world, including a surety claim involving the largest building ever built in Saudi Arabia.

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