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New 2009 Amendments to Pennsylvania's Mechanics Lien Law – Residential Subcontractors and Suppliers Beware

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For the second time in three years, Pennsylvania's Mechanics Lien Law of 1963 (the "Lien Law") is about to be amended. These new amendments will become effective on October 11, 2009, and the people that will be affected most by these amendments are subcontractors and suppliers working on large residential construction projects.

In June of 2006, Pennsylvania amended its outdated Lien Law to make it more difficult, if not impossible, for owners and general contractors to waive subcontractor and supplier lien rights on commercial construction projects and large residential projects. The 2006 amendments, however, did allow the long standing practice of lien waivers (also referred to as stipulations against liens) to continue with respect to smaller residential construction projects that were deemed to involve "residential property."

Under the 2006 amendments, which became effective January 1, 2007, a residential project was deemed to involve "residential property" if the building in question was intended for residential occupancy and the total amount of the construction contract between the owner and the general contractor was \$1 million or less. Projects that were deemed to involve "residential property" were exempt for the 2006 amendment that declared advance lien waivers void as a matter of public policy, and the effect of this exception was to allow stipulations against liens to continue to be filed, and be valid, with respect to most single family home construction, improvement and repair projects. Excluded from the protection of this exception, however, were large residential construction projects, such as mansions, "Mc-Mansions" and residential townhouse and condominium projects, where the contract price exceeded \$1 million.

The 2009 amendments will change the definition of "residential property." The \$1 million cap is being eliminated and a project will now be considered to involve "residential property," and thus subject to effective lien waivers, if the property is intended for residential use and the building in question is three stories or less (excluding the basement).

Any subcontractors or suppliers that are presently working on or selling to residential projects that consist of one-, two-, or three-story residential townhouse or condominium projects, or very expensive single family homes, and are concerned about getting paid for their work or materials should seek legal counsel as to their lien rights as soon as possible. Whether the 2009 amendments will apply to projects that are in progress prior to the effective date of these amendments can only be made on a case-by-case basis.

The good news is that the 2009 amendments will strengthen the gains won by subcontractors and suppliers to commercial construction projects as a result of the 2006 amendments. There was an adverse court ruling in 2009 that threatened to eliminate the gains made by these subcontractors and suppliers, however the 2009 amendments will effectively overrule this decision.

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