



“IMPORTANT CHANGES TO THE PENNSYLVANIA MECHANICS’ LIEN LAW”

There are several new changes to the Mechanics’ Lien Law that went into effect on January 1, 2017. The new law sets forth a series of “Notices” that, if ignored, could result in a significant forfeiture of rights. The Department of General Services created a website to serve as a standardized statewide system for filing construction notices. The website, known as the “State Construction Notices Directory”, can be found at www.scnd.pa.gov. The directory was intended to become operational by December 31, 2016. According to the website, the directory provides “Searchable Project Owners or their agents, contractors and subcontractors with a convenient online platform to access, register and file construction notices on Searchable Projects.”

The new law sets forth four types of “notices” to be filed on the State Construction Notices Directory: (1) Notice of Commencement, (2) Notice of Furnishing, (3) Notice of Completion, and (4) Notice of Nonpayment. The notices

are filed in “stages”, and the failure to file a notice in a timely manner can result in the forfeiture of a contractor’s right to file a mechanics’ lien.

STEP 1: NOTICE OF COMMENCEMENT

The new law states that “Prior to the commencement of labor, work or the furnishing of materials for a searchable project that may give rise to a mechanics’ lien under this act, the searchable project owner or agent of the searchable project owner may file a Notice of Commencement with the directory.” Therefore, the Project Owner should have the Notice of Commencement filed before any work is done by the subcontractor. Once the Notice of Commencement is filed and an identifying number is issued, the Project Owner must conspicuously post a copy of the Notice of Commencement at the site of the project before any physical work begins and must include the identifying number. The Notice of Commencement should remain posted at the project site until completion of the project.

It is important to know that the Project Owner “may” file the Notice of Commencement and is not required to do so. If the Project Owner does not file a Notice of Commencement, then the subcontractor would not need to take any further action in filing the “Notice of Furnishing” (explained below). However, if the Project Owner does file a Notice of Commencement, the subcontractor would be required to file a Notice of Furnishing. Therefore, it is crucial for a subcontractor to determine whether or not a Notice of Commencement was filed

for any project it works on. How can a subcontractor determine if a Notice of Commencement has been filed?

1. Create an account on the State Construction Notices Directory website and search for the project prior to doing any work or supplying materials;
2. The law requires the Project Owner to make “reasonable efforts” to ensure that the Notice of Commencement is made part of the contract documents provided to all subcontractors awarded work on a searchable project. Therefore, the subcontractor should be informed of the Notice of Commencement in the contract documents;
3. The Project Owner is required to post a copy of the Notice of Commencement at the site of the project before any work begins. The Notice of Commencement must remain at the project site for the duration of the project. Therefore, the subcontractor should make it a practice to look for the Notice of Commencement at the project site.
4. The subcontractor can always ask the General Contractor and others involved in the project if a Notice of Commencement has been filed, however, the first three recommendations should be followed in the event the subcontractor is provided with incorrect information.

STEP 2: NOTICE OF FURNISHING

In the event the Project Owner files a Notice of Commencement, the contractors and subcontractors ***MUST*** file a Notice of Furnishing with the directory within forty-five (45) days of beginning work or supplying materials to the project. The Notice of Furnishing must set forth the following:

1. A general description of the labor or materials furnished;
2. Full name and address of the person supplying the services or items;

3. Full name and address of the person that contracted for the services or items;
4. A description sufficient to identify the searchable project, based on the description in the Notice of Commencement.

The Notice of Furnishing should be substantially in the following form:

NOTICE OF FURNISHING

To:

- *(Name of searchable project owner)*
- *(Address of searchable project owner)*
- *(Notice of Commencement Number)*

Please take notice that the undersigned is performing certain work or labor or furnishing certain materials (provide a description of the labor and materials) to (Name and address of other contracting party) in connection with the improvement to the real property located at (provide address). The labor, work or materials were performed or furnished first, or will be furnished first, on (provide date).

(Name and Address of Lien Claimant)

(Address of Signing Party)

(Date)

The Notice of Furnishing will be defective if it does not provide the necessary information set forth under the new law. Most importantly, the new law states that “a subcontractor that fails to substantially comply with this section [to file the appropriate Notice of Furnishing] forfeits the right to file a lien claim.”

Therefore, in the event a subcontractor is hired to do work on a “searchable project” under the directory (meaning the Project Owner filed a Notice of Commencement), the burden falls on the subcontractor to follow the law and file a

Notice of Furnishing within forty-five (45) days from the start of its work. If the subcontractor does not file the Notice of Furnishing appropriately, it will not be able to file a lien claim in the future.

STEP 3: NOTICE OF COMPLETION

Within forty-five (45) days after actual completion of work on a searchable project, the Project Owner *MAY* file a Notice of Completion with the directory. The Notice is then transmitted via the directory to all subcontractors who filed a Notice of Furnishing.

STEP 4: NOTICE OF NONPAYMENT

If a subcontractor was not paid for its work on a searchable project, the subcontractor *MAY* file a Notice of Nonpayment with the directory. The Project Owner is then given notice of the Notice of Nonpayment. **HOWEVER**, the law states that this Notice of Nonpayment is strictly “for informational purposes only.” This notice is not mandatory, and the failure of the subcontractor to file a Notice of Nonpayment should not be construed to affect or limit their rights under the new law.

The subcontractor must still go through the same formal procedures set forth under the “old” law to file a mechanics’ lien and collect payment. Filing a Notice

of Nonpayment does not relieve the subcontractor from going through the formal collection process.

SUMMARY:

The new law requires subcontractors to remain vigilant in one respect: the subcontractor **MUST** determine whether or not a Project Owner filed a Notice of Commencement with the directory. Failure to comply with the new law could have significant consequences. If you have any questions or need assistance with complying with the new Mechanics' Lien law, please contact Smigel, Anderson & Sacks at 717-234-2401.