



FROM: DAVIS BUCCO
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RE: Amendments to Pennsylvania Mechanics Lien Law

Pennsylvania has enacted changes to the Pennsylvania Mechanic's Lien Law (the "Act") which may impact your business. The new changes are intended to create a more structured notice procedure by creating a searchable electronic central repository where notices will be filed. A primary purpose is to provide Owners and General Contractors with the ability to determine whether Subcontractors, Second-tier Subcontractors and Suppliers have received payment before issuing final payment.

WHAT ARE THE AMENDMENTS?

The new amendments direct the Department of General Services to create the State Construction Notices Directory (the "Directory") as a standardized statewide system for filing construction notices. The Directory's standardized system applies to projects having an initial contract value of at least \$1.5 million. If an owner chooses to register a searchable project with the directory, notices will be searchable by owner, contractor, property address, and a unique identifying number.

NOTICES

The Act provides for four (4) types of notices which may be filed with the State Construction Notices Directory:

- (1) Notice of Commencement by the owner or its agent;
- (2) Notice of Furnishing by subcontractor;
- (3) Notice of Completion by an owner or general; and
- (4) Notice of Nonpayment by a subcontractor.

The notice requirements are very specific and can be found in the provisions of the Act amendments¹.

¹ <http://www.legis.state.pa.us/cfdocs/legis/li/uconsCheck.cfm?yr=2014&sessInd=0&act=142>
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Notice of Commencement

Prior to commencement of labor or furnishing of materials for a project, the owner or agent of the project, who wishes to take advantage of the Act **may** file a Notice of Commencement with the Directory. The filing of a Notice of Commencement is optional, however doing so then requires subcontractors to file notices to preserve their lien rights. The Notice of Commencement must contain the following:

1. The name, address, and email address of the contractor;
2. The name, location, and county in which the searchable project is located;
3. Legal description of the property, including tax ID number;
4. Name, address and email address of the searchable project owner; and
5. If a bonded project, name, address, and email address of a surety that has issued performance and payment bonds (and bond numbers).

The project owner shall also conspicuously post a copy of the Notice of Commencement at the site and make reasonable efforts to ensure that the Notice of Commencement is made part of the contract documents provided to all subcontractors awarded work.

The Notice of Commencement is a critical step under the amendments. If an owner elects to file one, then the subcontractors and suppliers are obligated to file a “Notice of Furnishing” in order to preserve their rights.

Notice of Furnishing

If the owners file a “Notice of Commencement” then any subcontractor, sub-subcontractor, or supplier (“potential lien claimant”) **must** file a “Notice of Furnishing” with the Directory within forty-five (45) days after first performing work or services or providing materials. Any potential lien claimant who fails to file a Notice of Furnishing forfeits the right to file a mechanic’s lien claim.

The Notice of Furnishing must contain the following:

1. A general description of labor or materials furnished;
2. The name and address of the person providing the labor or materials;
3. The name and address of the person who contracted for the labor or materials; and
4. A description of the searchable project based on the description in the notice of commencement.



A subcontractor that fails to file a Notice of Furnishing on the Department of General Services publicly accessible website as required by the Act may forfeit the right to file a mechanics lien. A potential lien claimant on a Searchable Project has no obligation to file a Notice of Furnishing and will not forfeit lien rights **unless** a Notice of Commencement has been filed and posted in accordance with the new 49 P.S. §1501.3(b). However, filing a Notice of Furnishing does not relieve the potential lien claimant of the need to file an actual lien claim or to comply with the other code requirements for preserving lien rights.

The amendments protect subcontractors and suppliers from attempts to discourage use of the Directory. It is a violation of the statute to suggest, request, encourage, or require a subcontractor not to file a notice of furnishing. An aggrieved subcontractor may sue to recover actual damages caused by the violation, and the court may award reasonable attorney fees and court costs

Notice of Completion

A project owner has the option of also filing a “Notice of Completion” within forty-five (45) days of the actual completion of work on the project. This Notice of Completion is optional and has no impact on the lien rights of potential lien claimants. The Notice of Completion will be transmitted via the Directory to all potential lien claimants who have filed Notices of Furnishing.

Notice of Nonpayment

A potential lien claimant also has the option of filing a “Notice of Nonpayment” for informational purposes only. This Notice of Nonpayment is optional, and does not impact the lien rights of potential lien claimants. The statute makes clear that the filing of a notice of nonpayment does not satisfy other written notice requirements.

The new amendments require that a contract for a searchable project **must** include written notice that failure to file a “Notice of Furnishing” will result in the loss of lien rights. The act provides the following notice language:

These amendments will go into effect December 31, 2016. DGS will be putting a link on its website on December 29 to provide instruction and guidance in using the new directory. For more information about compliance with the new changes, or to discuss how the Act may affect your business going forward, please contact our office.

Very truly yours,

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