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NEW CHANGES IN THE PENNSYLVANIA MECHANIC'S LIEN LAW

Effective January 1, 2007, Pennsylvania Mechanic's Lien Law of 1963, 49 Pa.C.S.A. § 1101, et seq. (the "PA Lien Law") will undergo significant changes to afford greater protections to various contractors. More parties will now be able to file a mechanic's lien claim. The PA Lien Law will now permit third-tier contractors or sub-subcontractors and suppliers to subcontractors to file mechanic's liens. The new amendment has also extended the permissible time to file a mechanic's lien. The PA Lien Law has extended the time to file a valid lien to six (6) months, an extension of two (2) months.

The notice provisions or requirements by subcontractors, and now sub-subcontractors and suppliers to subcontractors, have also been amended. The preliminary notice requirement in cases of alteration and repair work has been totally eliminated. The formal notice requirement by subcontractors, sub-subcontractors and suppliers to subcontractors, however, remains in effect and must be provided in a timely manner to maintain valid mechanic's lien rights.

Furthermore, while lien waivers will be valid with respect to most residential construction projects, the PA Lien Law has made blanket lien waivers, or lien waivers provided prior to the commencement of work, on commercial projects invalid and against public policy in almost all circumstances. The exception, however, is if a payment bond is provided by the general contractor, which typically

cost approximately one (1) percent of the total project cost, a blanket lien waiver can be valid on a project. As before, lien waivers will be valid and effective if they are exchanged in consideration for payment for work, services, materials or equipment actually provided and only to the extent payment is actually received.

Lastly, contrary to prior law, a mortgage company or lender will now have priority over a mechanic's lien when it comes to who gets paid first. This change has been openly welcomed by mortgage providers and may result in more open construction lending.

The new changes in the PA Lien Law will have several practical effects. As stated above, the amendments afford greater protections to contractors, subcontractors and now sub-subcontractors and suppliers to subcontractors. The amendments, however, will add pressure to owners/developers to obtain payment bonds. While obtaining payment bonds will afford more protections against mechanic's liens, it will likely result in an increased cost passed down to all involved. The owners/developers will also look to their general contractors for more protections including obtaining lien waivers or releases upon payments to subcontractors, sub-contractors and suppliers to subcontractors. However, this will be logistically difficult and will likely not occur regularly in the field.

If you have any questions about this law, or how it may impact your business, please feel free to contact Stanley R. Gentile, Esquire of Archer & Greiner's Construction Group at 856-354-2309 or via e-mail at sgentile@archerlaw.com.