

PENNSYLVANIA MECHANICS' LIEN LAW AMENDMENTS

In 2006, the Pennsylvania legislature amended the Pennsylvania Mechanics' Lien Law of 1963 (the "Mechanics' Lien Law"), making the first substantial modifications to the Mechanics' Lien Law in over forty years.

We reported that in the 2006 amendments to the Mechanics' Lien Law pre-emptive waivers of lien rights were generally prohibited. However, the right to file a pre-emptive waiver of liens was preserved in connection with "residential building" projects where the contract for construction of the "residential building" was \$1,000,000 or less. Of course, this created problems for developers, lenders and title companies, since many "residential building" projects involved public improvements work as well as "revolving construction loans" in excess of \$1,000,000.

On August 11, 2009, Governor Edward Rendell signed Act 34 (Senate Bill 563) which becomes effective October 10, 2009, extending pre-emptive waivers of mechanics' liens to all "residential property." "Residential property" means "property on which there is or will be constructed a residential building not more than three stories in height, not including any basement level, regardless of whether any portion of that basement is at grade level, or which is zoned or otherwise approved for a residential development on which there is or will be constructed a residential building not more than three stories in height, not including any basement level, regardless of whether any portion of that basement is at grade level, planned residential development or agricultural use, or for which a residential subdivision or land development plan or planned residential development plan has received preliminary, tentative or final approval on which there is or will be constructed a residential building..."

Therefore, lenders and the developers are once again able to file effective waivers of mechanics' liens on a pre-emptive basis in Pennsylvania for residences and residential development projects meeting the definition of "residential property." This will not include multi-story (more than three stories) condominium projects involving more than \$1,000,000.

We believe the net effect of this most recent amendment to the Pennsylvania Mechanics' Lien Law will give more protection to lenders, developers and title insurance companies but will cause contractors, subcontractors, sub-subcontractors and material suppliers to be at greater risk in connection with residential projects where pre-emptive waivers of mechanics' liens have been filed of record.

Please don't hesitate to contact Michael J. Clement, Esq. or Jason J. Herron, Esq., or the attorney with whom you regularly conduct business in our office, if you have any questions regarding this matter.