

[Alerts and Updates]

Déjà Vu: Pennsylvania Re-Amends Its Lien Law to Again Permit Broad Waivers of Lien Rights on Residential Property Projects

August 20, 2009

The passage of amendments in 2006 to the Pennsylvania Mechanics' Lien Law of 1963 (the "Lien Law") was a focus of considerable discussion. For the first time in 43 years, the Pennsylvania legislature revisited the statute and made substantive modifications. At the core of these changes was a shift in lien policy to restrict significantly the previous ability to obtain up-front waivers of lien rights from contractors and subcontractors before even one shovel of dirt was turned.

While waivers were more restricted in commercial-building circles following the amendments, some limitation was imposed on future up-front waivers obtained on "residential building" projects. Under the 2006 amendments to the Lien Law, up-front waivers of lien rights were still permitted, except when the primary contract for construction of the "residential building" was equal to or in excess of \$1 million.

For many residential building projects, conditions remained the same as under the 1963 iteration of the Lien Law—at least as they pertained to the subject of up-front waivers of liens. However, it appears that dissatisfaction arose in certain residential construction circles, resulting in additional legislative efforts and the passage of Act 34 (Senate Bill 563), signed into law by Governor Edward Rendell on August 11, 2009. Act 34, effective on October 10, 2009, once again expands the option of up-front waivers to a much broader category of "residential property" projects. Instead of being defined by a monetary parameter, Act 34 states that up-front waivers of lien are now permitted on "residential property," meaning "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 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 not more than three stories in height, not including any basement level, regardless of whether any portion of that basement is at grade level. . . ."

Therefore, the ability to obtain broad up-front waivers of lien has once again expanded in Pennsylvania for residences and residential development projects. While large-scale multistory (more than three) condominium projects are not included in this up-front waiver allowance, a multitude of other projects will now receive treatment similar to the waiver procedures available under the Lien Law (pre-2006 amendments).

This most-recent amendment to the Lien Law will place more contractors, subcontractors, sub-subcontractors and material suppliers at risk of nonpayment for services rendered on residential property projects without the recourse of lien rights. As such, Act 34, as currently enacted and set to go into effect, may be viewed by some as a nostalgic return to past practices, as opposed to a meaningful step toward the future.

For Further Information

If you have any questions regarding this Alert or would like more information, please contact [Edward B. Gentilcore](#), any [member](#) of the [Construction Group](#) or the attorney in the firm with whom you are regularly in contact.