

## ALERTS AND UPDATES

### Design Professionals May File Mechanic's Liens in Massachusetts

February 18, 2011

Massachusetts has joined the minority of states extending mechanic's lien rights to architects, engineers and other project professionals. Signed into law by Mass. Gov. Deval Patrick on January 5, 2011, and effective on July 1, 2011, the new law allows design professionals, project managers and program managers to pursue a mechanic's lien in the event of nonpayment for their services. Steps to enforce a lien are similar to those taken by contractors and subcontractor. Key elements of the law include:

- The lien is enforced by recording a notice of contract and a statement of account in the local registry of deeds. Deadlines are similar to those imposed on contractors: within 60 days after recording a notice of substantial completion (which rarely happens) or within 90 days of last providing professional services, whichever is earlier.
- Liens of lower-tier consultants are limited by the amount due to the prime consultant at the time notice of the lien is provided to the property owner.
- Lower-tier consultants, in order to pursue a lien claim, must have been approved in writing by the property owner.
- In the event of a distribution after a property sale to satisfy more than one lien, contractor and subcontractor lien claimants are to be satisfied before distributions to designer lien claimants.
- Similar to lien notices by subcontractors and vendors, designer lien notices will likely result in a construction lender's refusing to fund further advances on the loan—*i.e.*, the lender is not required to fund over a designer's lien notice.

The new law was [promoted by the Boston Society of Architects and American Institute of Architects / Massachusetts](#), and was reportedly negotiated by subcontractor and lender groups at the table. Proponents of the law have told the construction community that, when placing liens, they would become "the canary in the coal mine" for the benefit of contractors and subcontractors, and that may be the situation. However, an owner-architect dispute leading to a lien claim by the architect may also stop the flow of construction funds, potentially adding a new wrinkle to the process. That may give rise to issues in implementing the new lien rights.

#### For Further Information

If you have any questions about the information addressed in this *Alert*, please contact [Stan Martin](#), any [member](#) of the [Construction Group](#) or the attorney in the firm with whom you are regularly in contact.

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