



[The Cloud Dissipates \(a bit\)](#)



Remember HB 1265 that I [discussed here at Musings](#) back on February 6, 2012? Well, thanks to the efforts of the AGC of Virginia among other groups affected by the bill, it has been amended and a [substitute proposed](#).

My thoughts on the latest changes? It is a good start, but adds an extra, and unnecessary, notice requirement for Virginia home builders that will only add to the cost of doing business.

First, the good.

- The latest changes limit the additional notice requirements to one and two family residences.
- The latest changes require that either a mechanic's lien agent or the mailing address for the owner be listed on the building permit so that contractors don't have to guess where to send their notices.

Now, the issues I have with the change:

- Under the amended bill, not only do residential contractors and suppliers in Virginia need to determine who the mechanic's lien agent might be [regardless of the words on the building permit](#), a residential contractor now has two notices to file. The first has been there all along, i. e. the notice to the mechanic's lien agent (MLA) within 30 days of starting work or posting of building permit. The second is a notice to either the owner or MLA 30 days prior to filing a lien.
- What if payment is not past due or there is a payment between the time of notice and the time of lien filing? Does this cause issues? Does the notice have to be redone to match the lien amount?
- This effectively puts residential builders on a 60 day (instead of a 90 day) lien clock.
- This second notice is just another obstacle for builders to overcome to enforce their lien rights. It adds no additional notice to the owner or MLA who already knew that work was being performed and that a lien could be filed. Additionally, while the first of the two notices can be filed *only with the MLA and only if an MLA is named in the permit (or at the local building official's office)*, this second

notice goes to either the owner or MLA depending on what is on the building permit. Such inconsistencies are the fodder of lawsuits.

As you can see, this bill is still very much in flux. The latest substitute was proposed only 4 days after my last blog post on the subject so this is likely not the final bill which will be voted on during the 2012 General Assembly session. I just wanted to keep you updated on its progress. As always, whenever there is an eventual change in the law, consult with an experienced [Virginia construction lawyer](#) to help you react properly to that change.

What do you think? Do you agree? Disagree? Agree, but for other reasons? If so, please comment below or [contact me](#) with your thoughts.

Image via [Wikipedia](#).

Please check out my [Construction Law Musings Blog](#) for more on Virginia construction law and other topics.