



## It's Baaack! The Mechanic's Lien Cloud Returns



Remember during last year's Virginia General Assembly session when [a bill relating to notice and residential projects was introduced](#)? Remember when we thought that it was [killed through inaction](#)? Well, like the zombies from [The Walking Dead](#), the bill has resurfaced in essentially the same form as that which was [presented to the Virginia Senate](#) last session.

Not to be dissuaded by a mere lack of action, Delegate Purkey reintroduced

[House Bill 1436](#) for this session.

The major change to the current Va. Code Section 43-4.01 (similar in every way to the bill the Senate passed over in 2012) reads:

*Any person intending to perfect a lien under this title against a one-family or two-family residential dwelling unit shall notify the mechanics' lien agent or, if no mechanics' lien agent has been designated, the owner at least 30 days prior to filing a memorandum of lien. Such notice shall be addressed to the mechanics' lien agent, if designated, named on the permit or amended permit, or to the owner at the address listed on the building permit. Such notice shall be sent by registered or certified mail and shall contain (i) the name, mailing address, and telephone number of the person sending such notice; (ii) the building permit number on the building permit; (iii) a description of the property as shown on the building permit; (iv) a statement that the person sending such notice intends to file a lien on the property; and (v) the amount for which the person sending such notice intends to file a memorandum of lien.*

Just like last years bill, this one has the following issues:

- 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 and particularly suppliers and subcontractors 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.
  - Finally, what about confusion from homeowners that receive these notices before they have any idea that a payment issue *may* be forthcoming. Most homeowners do not know that these notices (which will have to be filed by every subcontractor and supplier as a matter of course) are not liens. This confusion can and likely will cause a crimp in the payments to a general contractor (and by extension the subs and suppliers) as homeowners try to figure out what is going on.

In short, the bill is does little to help the situation and is fraught with potential disaster.

Please let me know your thoughts. As a [construction attorney](#) here in Virginia, these are the issues I see. I'd enjoy hearing the Virginia construction communities perspective by comment at Construction Law Musings.

Image via [Wikipedia](#).

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