

Title Alert 2014-09

July 18, 2014

Amendment to Pennsylvania's Mechanics' Lien Law

Purpose: To advise of a recently enacted amendment to the Mechanics' Lien Law.

Background: In 2006, the Pennsylvania Legislature passed, and the governor signed into law, what became known as Act 52 of 2006 which made sweeping changes to the Mechanics' Lien Law of 1963¹, including a section that subordinated mechanics' liens to the lien of an open-end construction mortgage "the proceeds of which are used to pay all or part of the cost of completing erection, construction, alteration or repair of the mortgaged premises secured by the open-end mortgage." On May 9, 2012, the Pennsylvania Superior Court decided a case in which it held that provision to mean that a mechanics' lien would be subordinate to an open-end mortgage only if all of the proceeds from the mortgage were used to pay the cost of completing erection, construction, alteration and repair of the mortgaged premises secured by the open-end mortgage.²

Partly in response to the Kessler decision, the Legislature passed Senate Bill 145 which, upon the Governor signing it on July 9, 2014, became Act 117 of 2014 ("Act 117"). Act 117 further amends the Mechanics' Lien Law by (1) quantifying the amount of loan proceeds that must be attributed to construction costs for an open-end construction mortgage to have priority over mechanics' liens, (2) defining "costs of construction" as it applies to use of proceeds of an open-end construction mortgage, and (3) adding a provision protecting owners of residential property against liens of subcontractors if the owner has paid the full contract price to the general contractor. The amendments take effect on September 7, 2014.

Advisory: Following are the pertinent amendments to the Mechanics' Lien Law that take effect on September 7, 2014:

- Section 1508(c)(2) was amended to state: "(c) Any lien obtained under this act by a contractor or subcontractor shall be subordinate to the following: (2) An open-end mortgage as defined in 42 Pa.C.S. §8143(f) (relating to open-end mortgages) where at least sixty percent (60%) of the proceeds are intended to pay or are used to pay all or part of the costs of construction."
- Section 1201 was amended to add a definition for "costs of construction" which includes all costs, expenses and reimbursements pertaining to construction, including off-site improvements and government impact fees, as well as other construction-related costs such as real estate taxes, insurance, survey fees, payment of prior liens or mortgages, and closing costs.

¹ 49 P.S. §1101, et seq.

² Commerce Bank/Harrisburg, N.A. v. Kessler, 46 A.3d 724 (Pa. Super. 2012)

- Section 1301(b) was added which states, in pertinent part: "A subcontractor does not have the right to a lien with respect to an improvement to a residential property if: (1) the owner or tenant paid the full contract price to the contractor; (2) the property is or is intended to be used as the residence of the owner or subsequent to occupation by the owner, a tenant of the owner; and (3) the residential property is a single townhouse or a building that consists of one or two dwelling units used, intended or designed to be built, used, rented or leased for living purposes. . . ."
- Section 1510(f) was also added which provides the ability of an owner or tenant of a residential property to discharge a mechanics' lien filed against the property by a subcontractor upon proof that the owner or tenant paid the full contract amount to the general contractor, or to reduce the amount of the mechanics' lien claim to the unpaid amount of the contract price.

If you have any questions, please feel free to contact us.

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