

To Our Clients and Friends:

Special Notice Requirements for Mechanic's Liens on Residential Dwelling Units in Virginia

General contractors, subcontractors and vendors performing labor on, or furnishing materials to, one- and two-family residential dwelling units in Virginia should be aware of the special notice requirements contained in Section 43-4.01 of the Virginia Code.

**Notice to Mechanic's Lien Agent**

Section 43-4.01 requires all persons entitled to claim a mechanic's lien with respect to work performed on or materials supplied to a one- or two- family residential dwelling unit, except those claiming a lien under Section 43-3(b) (i.e., persons providing labor or materials for site development improvements or for streets, stormwater facilities, sanitary sewers or water lines for the purpose of providing access or service to the individual lots in a development or condominium units), to notify the mechanic's lien agent, if one has been so designated on the building permit by the real estate owner. The notice must be furnished to the mechanic's lien agent (a) within thirty (30) days of the first date that the person performs labor or furnishes materials to or for the building or structure or (b) within thirty (30) days from the date the permit is issued, if such labor or materials are first performed or furnished prior to the issuance of the permit.

**Effect of Failure to Notify Mechanic's Lien Agent**

Failure to give notice within the appropriate thirty- (30) day period acts as a complete bar to a person claiming a mechanic's lien, filing a memorandum of mechanic's lien or otherwise perfecting and enforcing a mechanic's lien; however, one who fails to give notice within the appropriate thirty- (30) day period *may nonetheless claim a mechanic's lien, file a memorandum of mechanic's lien or otherwise perfect and enforce a mechanic's lien provided that the lien is limited to labor performed or materials furnished on or after the date notice is given to the mechanic's lien agent.*

**The Lien Claimant's Responsibilities**

The lien claimant is responsible for determining the existence of the mechanic's lien agent. A mechanic's lien claimant is not free to disregard the notification requirement with regard to the mechanic's lien agent simply because a building permit is not posted on the residential dwelling unit at the time he first performs labor or furnishes materials. It is the lien claimant's responsibility to determine, from appropriate authorities, whether a building permit which designates a mechanic's lien agent, in fact, has been issued and the date on which it was issued.

### **Exceptions to Notification Requirement**

No person is required to notify the mechanic's lien agent where (a) a memorandum of mechanic's lien is recorded prior to the issuance of the building permit, (b) the building permit does not designate a mechanic's lien agent, or (c) a mechanic's lien claimant is claiming a lien under Section 43-3(b).

### **Cumulative Remedies**

Keep in mind, however, that the pursuit of a mechanic's lien does not foreclose attempts to collect the debt owed through other common law remedies, such as a suit on the contract to recover a personal judgment, or suit on a payment bond. The remedies afforded by the mechanic's lien statutes are cumulative in nature and should not be considered to be in lieu of any other legal or equitable remedies. Although statutory mechanic's lien remedies and the other common law remedies available to the contractor may be pursued simultaneously, the contractor can have only one satisfaction of his debt.

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