

A Primer on Preliminary Notice of Mechanics' Liens

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Most contractors, subcontractors, and suppliers know that lien claims have strict deadlines, typically measured from the last date of work. But did you know that some states also require preliminary notice of lien rights upfront, at the first time of furnishing labor or materials? In 2017, Pennsylvania created an online registry known as the Construction Notices Directory that allows owners to register private projects that exceed \$1.5 million. If a project is registered, all subcontractors and suppliers must file a Notice of Furnishing within 45 days of first providing labor or materials to the project; otherwise, the lien right will be lost. Recently, more owners have been registering projects. Thus, prompting the questions: Do other states have similar early notice requirements for preserving lien claims? And what steps should be taken in Pennsylvania when dealing with the Directory?

Other States' Lien Claim Process and Notice Requirements

Pennsylvania's requirement for a preliminary notice at the start of work (only when a project is registered on the Directory) is atypical in the Mid-Atlantic. Neither Maryland, Delaware, the District of Columbia, nor New Jersey require any similar preliminary notice at the start of work. The only other Mid-Atlantic state with a similar requirement is Virginia, which requires a preliminary notice to be issued within 30 days of commencing work on a one- or two-family residential dwelling if the owner has identified a Mechanics' Lien Agent in the building permit. Preliminary notices at the commencement of work are more prevalent in other regions of the country; for example, California requires a preliminary notice to be issued within 20 days of first furnishing labor or material to the project.

The point is that while preliminary notice requirements are atypical in the Mid-Atlantic, they are required in other parts of the country. It has become more popular for owners to utilize the Pennsylvania Construction Notices Directory. Thus, it is best to stay current on preliminary notice requirements if working in multiple jurisdictions.

Practical Tips for Handling Pennsylvania's Construction Notices Directory

If a prime contractor works directly with the owner, recognize that it is ultimately the owner's choice on whether to register the project. If the owner elects to register the project, a Notice of Commencement is filed on the Directory, and that document should become part of the Contract Documents. The best practice is to also identify in the special conditions of the contract the Directory listing. The Notice of Commencement must be posted at the project site. Additionally, statutorily mandated language must be included in all contracts that provide notice that a failure to file a Notice of Furnishing will result in a waiver of the lien claim. The notice of furnishing is only required to be filed by subcontractors and suppliers.

For subcontractors, closely review the Contract Documents to identify any indication of the project being registered. It is also recommended to include in internal standard processes that the Directory be searched at the time of signing the subcontract and also at the time of commencing work. The Notice of Furnishing can be filed prior to starting work; thus, there is no need to

wait or delay in properly filing the document.

Properly noticing mechanics' lien claims and preserving rights can be a complicated area of construction law. The best practice is to have sound internal protocols and trusted counsel for troubleshooting. Offit Kurman construction attorneys are available to advise and counsel contractors, construction managers, design-builders, design professionals, subcontractors, developers, and design professionals on construction contracts, risk, and project disputes.