



Is the Mechanic's Lien or Bond Waiver Clause in Your Contract Enforceable in Virginia?

By: W. Alexander Burnett

07.23.2015

A new Virginia law invalidates any mechanic's lien or payment bond waiver signed before work has commenced.

The Governor recently signed new legislation into law, effective July 1, 2015, that invalidates waivers of subcontractors', sub-subcontractors' and suppliers' mechanic's lien and payment bond rights if executed before the waiving lien claimant has begun furnishing labor or materials to the project. In the past, it has been common in Virginia to see contracts between general contractors and subcontractors or other lower tiered subcontractors and suppliers that waived mechanic's lien or bond claims before the project was even underway. Generally, these types of prospective lien waivers could be enforced in Virginia so long as the mechanic's lien was either expressly and unambiguously waived or waived by clear implication. This new legislation puts an end to that practice.

Importantly, this new law does not prohibit the waiver of mechanic's lien and bond rights signed after the lien claimant provides labor, services or materials. In other words, it does not affect the common practice of requiring contractors to execute lien and bond waiver forms in exchange for payment for services and materials provided through the date of payment. For a link to the specific language that was added to the mechanic's lien and payment bond statutes, [click here](#).

This new legislation's scope, however, is limited, and there are some key scenarios that are not affected by this new law.

- First, the prohibition does not apply to general contractors. Contracts between owners and general contractors, therefore, can still waive a general contractor's mechanic's lien and bond rights before the project has even started.
- Second, the statute does not apply retroactively. In any contract entered into before July 1, 2015, waivers of lien and bond rights may still be enforceable (to the extent they were valid and

enforceable to begin with).

- Third, the new law does not address subordination of mechanic's lien rights to a deed of trust. While it is unclear what affect, if any, this law has on subordination agreements, theoretically a provision that subordinated mechanic's lien rights to a lender's deed of trust may be enforceable.
- Fourth, this law does not affect the validity of a mechanic's lien or bond waiver after the lien claimant has begun providing labor or materials. Theoretically, a general contractor could require subcontractors to waive future lien or bond rights after the lien claimant has started work on the project. As discussed above, this law clearly does not prohibit the exchange of a lien waiver for payment of money for labor or materials through the date of the payment.
- Fifth, this new legislation does not otherwise affect the mechanic's lien or bond enforcement rules. All other timeframes and requirements for mechanic's liens and bond claims remain the same.

If you're a general contractor, the language in your form subcontracts and your mechanic's lien waiver and release forms may be outdated. If you're a subcontractor, you may have mechanic's lien and payment bond rights. Please contact me or another member of the Williams Mullen Construction Practice Group if you have questions about this new law.

¹ VNB Mortgage Corp. v. Lone Star Indus., 215 Va. 366 (1974); see also McMerit Construction Company v. Knightsbridge Development Co., 235 Va. 368, 367 S.E.2d 512 (1988) (stating that a waiver, whether express or implied, must be established by clear and convincing evidence).

Related People

- W. Alexander Burnett ? 804.420.6481 ? aburnett@williamsmullen.com

Related Services

- Construction
- Real Estate
- Banking & Finance
- Financial Services
- Community Banks
- Project Finance