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## Waivers of Mechanics' Liens

Tim Briggs, of our office, as you know, is a state legislator. Tim has been staying on top of Senate Bill 563, dealing with waivers of mechanics' liens. Tim advised me on Tuesday, August 11, that the bill is on the Governor's desk for signature. It will become law if the governor signs it, or if he does nothing for ten days. The only down side is if the Governor vetoes this bill during the ten day period, which he is not expected to do. Assuming that this is going to happen, I thought I would get word out so that everybody knows what is happening.

The new law defines residential property as property on which a residential building will be built, not more than three stories in height not including any basement level, regardless of whether any portion of that basement is at grade level. A contractor or a subcontractor may waive his right to file a mechanics' lien on residential property.

The law goes back to the old rule that a written contract between the owner and a contractor, or a separate written instrument signed by the contractor which provides that no claim shall be filed by anyone, shall be binding. In order to be binding against a subcontractor, there must be proof of actual notice to the subcontractor for any labor or materials before any labor or materials are furnished. One way of establishing actual notice is by filing in the prothonotary's office the contract or a separate waiver of liens, indexed in the name of the contractor as defendant and the owner as plaintiff, and also in the name of the contractor as plaintiff and the owner as defendant. This is the way the law used to be.

The waiver can be filed and effective if it is filed prior if it is filed

- a) prior to the commencement of work upon the ground, or
- b) within ten days after the execution of the principal contract between the owner and contractor, or
- c) not less than ten days prior to the contractor with the claimant's subcontractor.

What this means is that, if you are in the middle of a job and you haven't hired the carpet subcontractor or kitchen subcontractor, you can file a waiver and it will be binding on them so long as it is filed ten days prior to their contract.

The Act will not take effect for sixty days, but this is certainly going to provide a lot of relief to builders, buyers, and title companies who have been struggling with this mechanics' lien issue.

As always, if you have questions, do not hesitate to contact me or a member of our **real estate law team**.

**For more information, please contact Edmund Mullin at 215-661-0400 or [EMullin@HRMML.com](mailto:EMullin@HRMML.com)**