



- Bruce Titus
- Steve Annino
- Robert Flinn
- Robert Beagan
- Mark Graham
- Andy Felice
- Mathew Ravencraft
- Maureen Carr
- Alison Mullins
- Matt Baker

Announcement

Six Rees Broome attorneys have been named "best in construction law" by The National Law Journal.

2015 Legislative Update Mechanic's Lien Releases and Waivers in Virginia

By Andy Felice

In the most recent legislative session, the Virginia General Assembly passed, and the Governor signed, SB 891, a bill which amended VA Code §43-3(C) providing that a subcontractor, lower-tier subcontractor or material supplier may not waive or diminish his lien rights in a contract in advance of furnishing any labor, services or materials and any such waiver executed prior to the performance of work is null and void. Prior language in the statute provided that any right to file or enforce a mechanic's lien "may be waived in whole or in part at any time." Hence, the modification made is quite substantial. An amendment designed to include general contractors within the scope of this provision was defeated. The amendment became effective on July 1, 2015.



Congratulations to Steve
Annino, Bob Beagan,
Maureen Carr, Andy Felice,
Bob Flinn and Bruce Titus !

Issue Highlights

- 2015 Legislative Update -
Mechanic's Lien Releases and
Waivers in Virginia
- Subcontractors Be Aware - District
of Columbia Mechanic's Lien
Recordation Requirements
- "Fixing" the Virginia Public
Procurement Act
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The impact of this amendment may be far reaching as many form subcontracts include blanket releases of mechanic's lien rights *prior to* the subcontractor's performance of work. Those provisions in the subcontracts will now be considered void. Note, however, it still may be possible for subcontractors to waive and release *future* mechanic's lien rights on a project through broad language contained in progress payment release forms executed *after* work has commenced. Thus, subcontractors, like all claimants, must be aware of and take action to protect their statutory lien rights at all times during their involvement on a project.

The sponsor of the original bill, Senator Chap Petersen, has indicated that in the next session he plans to introduce legislation to extend this protection to general contractors.

Maryland has long had a statutory prohibition on executory lien waivers. (Md. Code, Real Prop., § 9-113) However, the District of Columbia lien law does not have such a provision. Thus, broad lien waiver provisions found in contracts governed by District of Columbia law will generally be enforced. Always read your contracts!

Subcontractors Be Aware - District of Columbia Mechanic's Lien Recordation Requirements

By Andy Felice

It has long been a challenge to simply record a Notice of Mechanic's Lien with the District of Columbia Recorder of Deeds office. Recently, that task got even tougher for subcontractors who operate outside of the District of Columbia (i.e., out-of-state subcontractors whose principal place of business is in Maryland or Virginia) but who performed work on projects in the District and wish to avail themselves of the protection of the District of Columbia lien law.

Before accepting a Notice of Mechanic's Lien for recordation the Recorder of Deeds (ROD) office now requires (in addition to other various documents) proof that the subcontractor holds a District of Columbia business license. However, the District of Columbia Department of Consumer and Regulatory Affairs (DCRA) does not issue "subcontractor business licenses" but does issue business licenses for contractors and home improvement contractors.

Recently, the DCRA refused to issue a Basic Business License to a subcontractor (which presumably would satisfy the ROD and allow a mechanic's lien to be recorded). Instead, the DCRA insisted that the subcontractor apply for and obtain a *contractor* business license even though the subcontractor was not conducting business as a "contractor". Applying for a contractor's license is more involved than obtaining a Basic Business License. As a result, subcontractors have been obtaining *contractor* licenses in the District of Columbia simply to allow them to record their Notice of Mechanic's Lien in the District of Columbia. Since it is more time consuming to obtain a contractor's license, this new requirement could impact a claimant's ability to file its Notice of Mechanic's Lien if he or she is running up against a mechanic's lien filing deadline.



“Fixing” the Virginia Public Procurement Act

By Andy Felice

During this past session, the Virginia General Assembly passed HB 1628 which the Governor signed fixing what many in the construction industry saw as an incorrect decision rendered by the Fourth Circuit in the 2014 case, *Carnell Construction Corporation v. Danville Redevelopment & Housing Authority*. In *Carnell Construction*, the Fourth Circuit ruled that VA Code §2.2-4309 (which provided that public contracts may not include a provision allowing fixed-priced contracts to be increased by more than 25% or \$50,000, whichever is larger, without the written approval of the Governor or his designee) also applied to construction claims brought by a contractor on a public project. Essentially, the Federal Court ruled that the existing statute could be read as placing a limitation on the size of the claims which could be sought by contractors on public projects. The swift amendment of §2.2-4309 now makes it clear that the contractual limitation on change orders “shall not limit the amount a party to a public contract may claim or recover against a public body.”

About the Authors

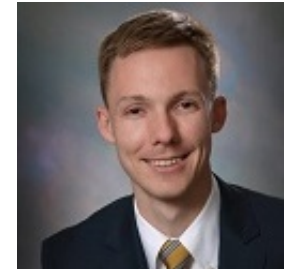
Andrew N. Felice

Andy is a shareholder at Rees Broome, PC, with more than 25 years of experience representing clients in a variety of construction-related matters. Andy can be contacted at 703-790-1911 or afelice@reesbroome.com.

Profile

MATT BAKER

Matt focuses his practice in the areas of construction law and commercial litigation and has represented clients across Virginia, Maryland, and Washington, D.C. He has represented general contractors, subcontractors, and homeowners in a variety of matters including construction defects, real property, and business tort cases. He also handles matters involving mechanic's liens, contract disputes, and condemnation proceedings. Matt works with clients to negotiate and litigate claims and strives to deliver representation that is effective and efficient.



Prior to joining Reese Broome, Matt defended individuals and businesses against claims for property damage and serious personal injury and counseled clients regarding insurance law and coverage. Matt received his J.D. from Washington and Lee University School of Law where he was Editor-In-Chief of the Washington and Lee Journal of Energy, Climate, and the Environment and a member of the Moot Court Executive Board. After law school, Matt clerked for the Hon. Victor V. Ludwig in Virginia's 25th Judicial Circuit.

Matt works out of Rees Broome's Tysons Corner and Leesburg offices and is a resident of Fairfax, Virginia where he is an active member of the local bar association. Matt enjoys hiking and the outdoors, and is currently training for the Richmond Marathon.

Professional Credentials

- B.S./B.A. Bob Jones University, 2009
- J.D. Washington and Lee University School of Law, 2012
- Admitted to practice in: Virginia, Maryland, and the District of Columbia
- Member, Construction and Public Contracts Law Section, Virginia State Bar
- Member, Fairfax Bar Association
- Member, Virginia Association of Defense Attorneys

Publications

- *Leveraging Indemnification Provisions in the Context of Construction Defect Litigation*
 - *Defending Virginia Consumer Protection Act Claims*
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