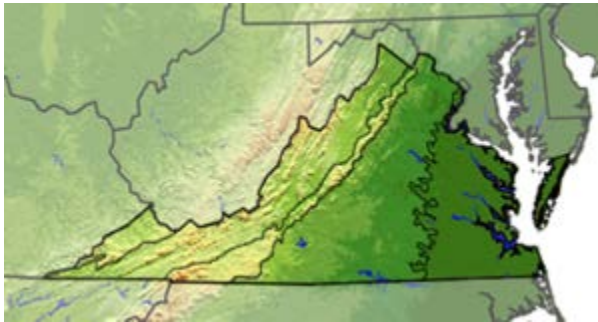




## [Reminder: Don't Waive Your Mechanic's Lien Rights \(or Bond Rights For That Matter\)](#)



Here at Construction Law Musings, I have discussed [mechanic's liens](#) and [bond claims](#) and how these types of payment protections interact with construction contracts. Throughout these many posts, I have emphasized both the [technical and picky nature](#) of mechanic's liens in Virginia and the fact that the [contract is king](#) in Virginia. If

you add these two concepts together, there is the risk that a subcontractor or supplier in Virginia could inadvertently waive its mechanic's lien rights.

How can this happen when the mechanic's lien is a creature of statute and not contract? The answer is easily. As a [construction lawyer](#) that represents subcontractors on a regular, if not exclusive, basis, I am seeing more and more contracts that contain unequivocal language stating that a subcontractor is either waiving its lien rights, subordinating those lien rights to any prior deeds of trust, or both. In today's shaky construction economy, such provisions are almost becoming a standard part of most general contracts. Furthermore, such contractual provisions are enforceable in the Commonwealth of Virginia (unlike in some other states).

In short, if you needed another reason to make sure that you (and preferably your attorney) review your construction contracts, here's another big reason.

On the other hand, your Miller and Little Miller Act payment bond rights are not as easily waived. Per these statutes, a subcontractor or supplier cannot waive it's rights before the labor and materials are provided. However, *after the labor and/or materials have been provided*, these rights can be waived in writing. While this does not happen in the regular course of a construction project, I can foresee more attempts to have such waivers signed as General Contractors and other bond principals attempt to pass on more risk to those "below" them on the payment chain in reaction to the tight bid market.

What are your thoughts? Do these provisions and waivers apply in your state and are you seeing more of them? Let me know by e-mail or comment.

Image via [Wikipedia](#)

*Please check out my [Construction Law Musings Blog](#) for more on Virginia construction law and other topics.*