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Maryland's Trust Fund Statute: Recent Developments

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In addition to the rights available to an unpaid subcontractor under the mechanics' lien law, subcontractors enjoy the protection of the Maryland Trust Fund Statute.

The Trust Fund Statute has two elements. First, the statute mandates that monies paid by an owner to a contractor, or by an owner or contractor to a subcontractor, for work done by subcontractors on a building, be held in trust for the subcontractors. Second, the statute provides that an officer, director or managing agent of a contractor or subcontractor who has discretion over or control of the money held in trust is a trustee for the purpose of paying the money to the subcontractors who are entitled to receive it.

A contractor or subcontractor holding money in trust is not required to keep this money in a separate bank account, and the mere commingling of money does not constitute a violation of the Trust Fund Statute. Rather, a violation of the Trust Fund Statute occurs when a contractor or subcontractor fails to pay the subcontractor to whom the money is owed.

The Trust Fund Statute does not apply to the construction and sale of a single family residential home, or to a home improvement contract by a licensed contractor. The Trust Fund Statute states that an individual officer, director or managing agent of any contractor or subcontractor who "knowingly" retains or uses the money held in trust for any purpose other than to pay those subcontractors for whom the monies are held "shall be personally liable to any person damaged by the action." While in most situations, the victim of a Trust Fund Statute violation — and the party seeking to recover damages — is the unpaid subcontractor, the owner or contractor that paid the money that was supposed to be held in trust can also bring a claim for a violation of the Trust Fund Statute.

This was the situation in the 2008 case of *Walter v. Atlantic Builders Group*, Inc., which is the first Maryland decision finding an individual personally liable under the Trust Fund Statute.

In *Walter*, general contractor Atlantic Builders sought relief under the Trust Fund Statute against the managing agent of its subcontractor, United Aluminum, which had been terminated for default. After the termination,

Atlantic Builders dealt directly with, and paid, various sub-subcontractors of United Aluminum, who were owed money by United Aluminum. agent, who received funds from Atlantic Builders which were to be paid to lower-tier subcontractors, but failed to use some of those funds for their intended purpose. The Court held that the evidence presented at trial was sufficient to show that the managing agent had violated the Trust Fund Statute by having actual knowledge of the money flow, thereby satisfying the statutory requirement that the liable party "knowingly" retain or use the money that was to be held in trust.

Recipients of funds to be used to pay subcontractors should be mindful of their responsibilities under the Trust Fund Statute, and contractors and subcontractors damaged by non-payment should consider the provisions of the Trust Fund Statute as affording a potential avenue of relief.

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