

[A Cloud on the Horizon for Mechanic's Lien Claimants in Virginia?](#)



As any of you that read this construction law blog realize, the Virginia [mechanic's lien statute](#) is near and dear to my heart. Because of the already [picky and statute driven nature](#) of these powerful but detail oriented tools of collection, any change to the statute must be considered for its practical effect on the Virginia construction industry. [HB 1265](#), introduced and out of committee for consideration during the 2012 Virginia General Assembly session, is just such a potential change. The

operative language of the bill would amend [the basic filing and notice provisions](#) for a mechanic's lien in Virginia to add the following:

At least 60 days prior to filing a memorandum of lien pursuant to this section, a lien claimant shall send a copy of the memorandum and written notice of the lien claimant's intention to file the memorandum by certified mail, return receipt requested, to the owner of the property at the owner's last known address. After the expiration of this 60-day period, the lien claimant may file a memorandum of lien. The lien claimant shall also file with the clerk a copy of the written notice sent to the property owner and certify that such notice was sent. The clerk shall not accept or record any memorandum of lien filed prior to the expiration of this 60-day period or that is not accompanied by a copy of the notice sent to the property owner.

In short, the proposed amendment would place yet another hurdle in front of a potential mechanic's lien claimant in the form of the necessity of a notice to the owner of the property *60 days prior to the date of recording a memorandum of lien*. This notice would have to be sent certified, return receipt and contain a certification of mailing. The notice would also have to be filed with the Clerk of the Virginia Circuit in which the property is located. Furthermore, unlike the provisions of the statute that require notice to a mechanic's lien agent in the residential setting only to protect residential homeowners that do not deal with contractors on a regular basis, this amendment does not make any distinction between commercial and residential projects.

While I really do try and keep this blog apolitical, I feel the need to voice my opinion on the practical consequences I see for my friends and clients in the Virginia construction industry.

My thoughts? This bill puts an undue burden on both the Circuit Court Clerks and the construction professionals that at times need to file liens to protect their ability to collect for work properly performed. Given that many construction contract payment terms require payment within 30 days, the amendment would force contractors and subcontractors to perform title searches, hire [attorneys](#), and file notices of intent to lien on even the smoothest of projects, potentially prior to their entitlement to payment, in order to avoid running up against the 90-day recording deadline.

This would increase the administrative and cost burden on all in the construction payment chain and turn a tool usually used as a last resort into one that, should the amendment pass, would require routine notices of intent to lien prior to any chance for negotiation before having to create a cloud on the title of the property with the business consequences on contractor and owner alike. The potential souring of good business relationships because of statutory mandates (no one wants to have a lien recorded against their property) is yet another reason I don't like this bill. Of course this analysis does not even begin to take into account the potential burden on the great clerks of court that will have an additional paperwork burden beyond what they already carry.

While I fully understand the clear intent of this bill to protect owners and give them the ability to deal with potential liens prior to their recording (particularly in the present economy), this bill goes much too far in doing so in my opinion (along with the opinions of the [AGC of Virginia](#) and the [Virginia ABC](#)). The noble goal is outweighed by the administrative, economic, and governmental burden it imposes.

As always, these are just my opinions. What to you think? Do you agree? Disagree? Agree, but for other reasons? If so, please comment below or [contact me](#) with your thoughts.

Image via [Wikipedia](#)

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