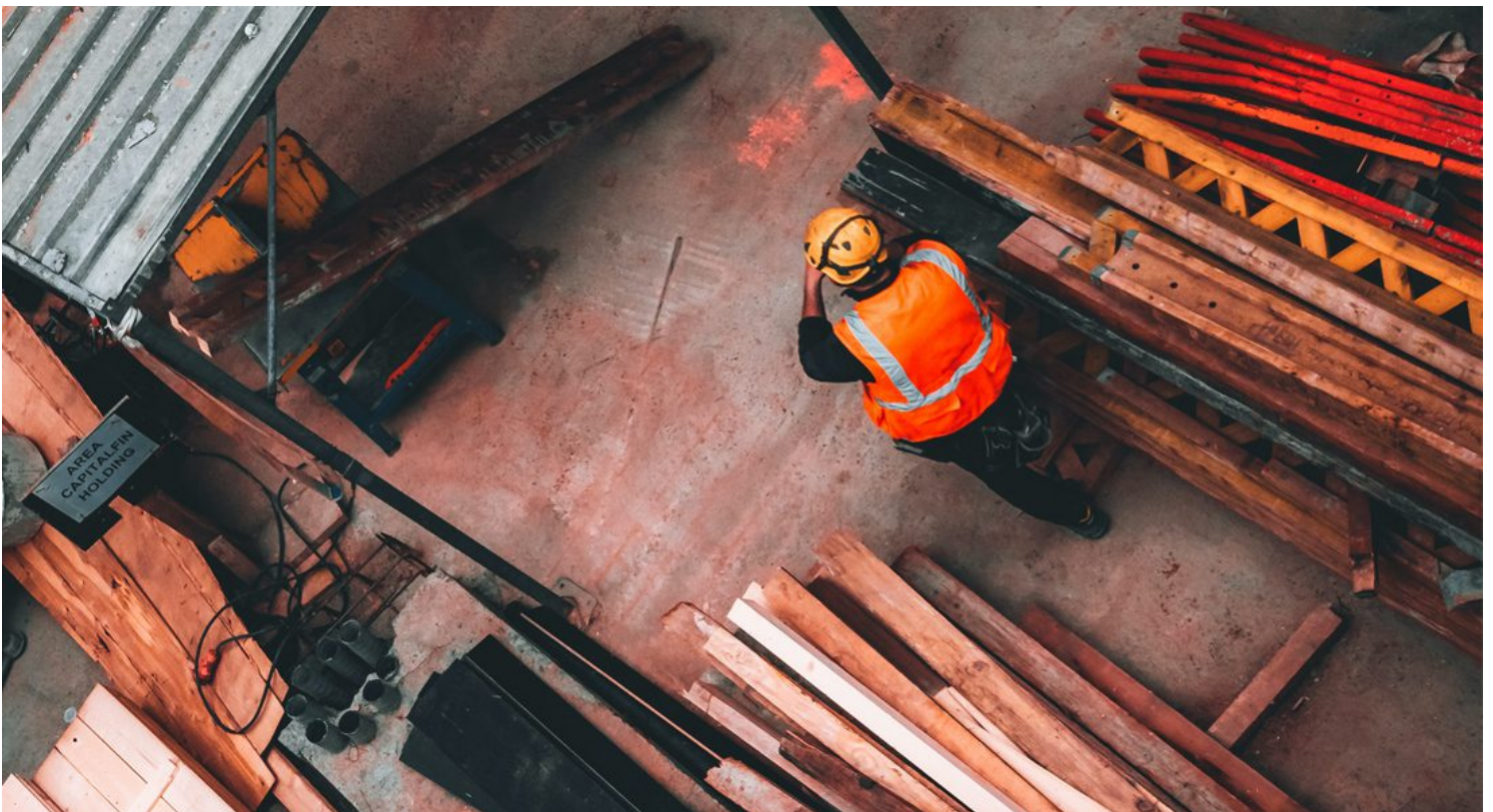


NEWS & INSIGHTS

Mixed-use projects and the Pennsylvania Contractor and Subcontractor Payment Act

[INSIGHTSLEGAL UPDATE](#)

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The Pennsylvania Contractor and Subcontractor Payment Act (CASPA) generally applies to all private construction projects in the state of Pennsylvania. CASPA is a prompt payment law with teeth: If a contractor or subcontractor is the substantially prevailing party in seeking payment on a construction contract, it is entitled to recover attorneys' fees, interest and penalties. There are a few exceptions where CASPA does not apply to private construction projects, and a common exception is residential construction — both new home construction and renovations.

CASPA does not apply when the “improvements to real property... consists of six or fewer residential units.” This has led to some confusion as to whether CASPA applies to mixed-use projects, such as urban projects where a single building under construction might include a variety of commercial units and a few residential units.

The Pennsylvania Superior Court opined in July 2021 that CASPA applies to mixed-use construction projects

On July 20, 2021, the Pennsylvania Superior Court held that CASPA indeed applies to a mixed-use project, even if it includes six or fewer residential units as part of the project. In *El-Gharbaoui v. Ajayi*, the contractor built a multi-use project that included a church, day-care facility and *two residential apartments*. The superior court held that “CASPA applies to construction contracts except those contracts involving public works projects and construction contracts for the improvement to real property consisting **solely** of six or fewer residential units under construction simultaneously.” In other words, the residential exception to CASPA only applies if the project is exclusively residential construction of six or fewer units. If there is any mixed-use aspect, it is likely covered by CASPA.

The appellate court’s decision is in accord with most practitioners’ opinion of CASPA. When a contractor is engaged in a multi-use project, it is usually a rather sizeable project, and the commercial aspects of the project tend to differentiate it significantly from a residential project. Nevertheless, this was the first appellate decision addressing this specific issue. Contractors can now take comfort knowing that the mixed-use projects that carry significant risk also include the protections afforded under CASPA.

Saxton & Stump attorneys [Ron Pollock](#), and [Matt Chabal](#) are available to advise on CASPA claims, Prompt Payment Act claims, mechanics’ lien claims, bond claims, and various types of construction disputes and payment claims that arise on construction projects.

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