

NEWS & INSIGHTS

Handling Payment Claim Deadlines on Construction Projects in Maryland, Pennsylvania, and Washington, D.C.

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Most construction companies know that deadlines exist for payment claims on construction projects. These deadlines can be complex, depending on the circumstances and location of the project. Maryland, Pennsylvania, and Washington, D.C., each have different deadlines and procedures.

Maryland Deadlines

In Maryland, mechanics' lien claims must be filed within 180 days (six months) of the last date of furnishing labor or material to the project. But if it is a subcontractor filing, then, notice of the intent to lien must be served on the owner within 120 days (four months) of the last date of furnishing labor or material.

Maryland is more broad than most states as to lien rights. Theoretically, *any* lower tier subcontractor or supplier has lien rights, no matter how far down the line. Also, architects, engineers and design professionals may have lien rights.

Similar to most jurisdictions, typically, in Maryland, a payment bond claimant will have one year to file its bond claim lawsuit. However, if the claimant does not have a direct contract with the principal on the bond, it must give notice to the principal within 90 days of last furnishing labor or materials. Typically, the principal on the bond is the prime contractor, so the 90-day notice is often required for second tier subcontractors or lower to pursue bond claims. These deadlines and procedures for bond claims are also typical for Pennsylvania and Washington, D.C.

In Maryland, the outermost backstop statute of limitations for a breach of contract action is three years. But recognize that construction contracts or public projects might dictate preconditions, notice requirements, or shorter deadlines for pursuing all claims.

Pennsylvania Deadlines

From a simplistic starting point, both Maryland and Pennsylvania require lien claims to be filed within six months of the last date of furnishing labor or materials to the project. But in Pennsylvania, a subcontractor must notice the intent to lien 30 days before filing, which gives an outermost deadline of approximately five months to notice the intent to lien.

Pennsylvania's similarities to Maryland lien law end at that point. In Pennsylvania, the owner has the right to utilize the Pennsylvania Construction Notices Directory, which requires anyone furnishing labor or materials to post a "notice of furnishing" to the public online directory within 45 days of first providing labor or materials. Pennsylvania also allows, in certain circumstances, the advance waiver of lien rights. Care must be taken in negotiating and understanding the directory, lien rights and waivers at the time the construction contract is entered.

In Pennsylvania, second tier subcontractors are the lowest level tier that can file. Third tier subcontractors do not have lien rights. Unlike Maryland, design professionals working in Pennsylvania typically do not have lien rights.

Pennsylvania's ultimate backstop deadline is a breach of contract action, which has a statute of limitations deadline of four years. But recognize that construction contracts or public projects might dictate preconditions, notice requirements, or shorter deadlines for pursuing all claims.

Washington, D.C. Deadlines

D.C. has a much different approach and procedure for mechanics' liens. First, the notice of lien claim must be filed in the D.C. Recorder of Deeds within 90 days. It is unclear whether the 90-day deadline is the end of the entire project, or the last date of the claimant's furnishing of labor and material. Cautious claimants tend to file their lien notice within 90 days of last performing their work, to be safe.

D.C. limits lien claim rights to the prime contractor and direct first tier subcontractors/suppliers. Second tier subcontractors do not have lien rights.

D.C.'s ultimate backstop deadline is a breach of contract action, which has a statute of limitations of three years. But recognize that construction contracts or public projects might dictate preconditions, notice requirements, or shorter deadlines for pursuing all claims.

Practical Considerations

A higher level of scrutiny and business discipline is especially proper when the owner or higher-tiered contractors are of questionable credit risk. If the work is still in progress, then, the deadlines tied to last date of furnishing labor/material will not have been triggered. But once the work is completed, any old account can become stale quickly. Once the work stops – for whatever reason, whether due to completing work or a suspension in work, planned or unplanned – any remaining invoices should be promptly submitted. Careful, prudent management of the project finances should evaluate payment claims once the work has stopped and the account is 45 days aged. At that point, options should be evaluated and a strategy decided upon. Otherwise, the claimant risks losing its rights to file mechanics' liens or payment bond claims.

Saxton & Stump's construction law attorneys are available to advise contractors, subcontractors, construction managers, suppliers, owners, and design professionals on construction contracts, project delivery methods, and construction disputes.

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