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November 10, 2008

Jere J. Crean
Schlumberger Technology Corporation
100 Gillingham Lane
Mail Drop 100/18
Sugarland, TX 77478

Re: Petroleum Equipment Supplies Association—Pennsylvania
Lien Law

Dear Jere,

The following and the attached is an update on Pennsylvania's "New Mechanics Lien Law" ("New Law"). The New Law went into effect on January 7, 2007 and contains major changes which increase the ability of general contractors, subcontractors, material suppliers and laborers to protect their interests through mechanic's liens.

The New Law protects contractors, subcontractors and sub-subcontractors by limiting the circumstances in which an owner may obtain a waiver of mechanic's liens prior to the time the contractor/subcontractor/sub-subcontractor is actually paid. The New Law treats subcontractors and sub-subcontracts equally. Under the New Law, an express waiver given by a contractor/subcontractor in a construction contract or otherwise is now, with few exceptions, unenforceable in non-residential construction projects in Pennsylvania. The one exception is for residential contractor contracts with a total contract price less than \$1 Million.

Under the New Law, a contractor now has 180 days from the time the contractor/subcontractor completes work on the site to file his lien. While Section 1501 (49 P.S. § 1501) of the New Law carries over from the previous Act the requirement that a subcontractor give the contractor thirty (30) days notice of the subcontractor's intent to file a mechanics lien, an alternative filing procedure has been added by the New Law under Section 1506 (49 P.S. §

1506). Section 1506 allows a contractor, subcontractor or supplier to file a mechanics lien by the filing of a "Rule" (the Pennsylvania equivalent of a notice or complaint) with the Prothonotary (the Pennsylvania equivalent of the Clerk) within the six month period.

Under the New Law (see 49 P.S. § 1506), unpaid contractors, subcontractors and material suppliers will be able to go directly to the courthouse and file a lien against the property without the advanced warning to the general contractor or owners. If the contractor or subcontractor initially files a "notice" (see 49 P.S. § 1506(a)), then the contractor or subcontractor must file his claim within thirty days or forever be barred from doing so.

A claim should provide not less than the following:

1. The name of the Claimant;
2. Status, whether the claimant is a contractor or subcontractor;
3. The name and address of the owner of the property or if the claimant is a subcontractor, the name and address of the contractor against whom the claim is made;
4. The date of the commencement and completion of the work for which the claim is being made;
5. If the claim is filed by a subcontractor against the owner, the name of the person/entity with whom the subcontractor contracted;
6. If the claim is filed by a subcontractor under 49 P.S. § 1501, the date on which a preliminary notice of intent to file was given;
7. The date on which Formal Notice of the claim was given;
8. Character of the services, labor or material supplied and the charges therefore;
9. The amount claimed to be due and owing; and
10. A description of the improvement to the property if such is necessary to help identify the work performed.

The changes to Pennsylvania's Mechanics' Lien Laws are generally "contractor friendly." However, the new law does make mechanics' liens subordinate to: (a) purchase money mortgage existing on the property as of the date of the contractor's/subcontractor's work on the property; (b) open-ended

mortgages, the proceeds of which are used to pay some or all of the costs of completing the project secured by the open-ended mortgage.

For your edification, we have attached the following:

A. Sample forms:

1. Subcontractor's Formal Notice of Intention to file Mechanic's Lien (49 P.S. §1501(b)).
2. Mechanic's Lien Claim (49 P.S. §1503).
3. Apportioned Mechanic's Lien Claim (49 P.S. §1503).
4. Notice of Filing a Mechanic's Lien (49 P.S. §1502 (a) (2)).
5. Affidavit of Service of Notice (49 P.S. §1502 (a) (2)).
6. Complaint to Enforce Mechanic's Lien (49 P.S. §1506)

B. Key portions of the Pennsylvania's Mechanics' Lien Laws:

1. 49 P.S. §1201
2. 49 P.S. §1301
3. 49 P.S. §1303
4. 49 P.S. §1501
5. 49 P.S. §1502
6. 49 P.S. §1503
7. 49 P.S. §1504
8. 49 P.S. §1505
9. 49 P.S. §1506
10. 49 P.S. §1507
11. 49 P.S. §1508
12. 49 P.S. §1509
13. 49 P.S. §1601
14. 49 P.S. §1602
15. 49 P.S. §1603
16. 49 P.S. §1604
17. 49 P.S. §1701
18. 49 P.S. §1702
19. 49 P.S. §1703
20. 49 P.S. §1704
21. 49 P.S. §1705
22. 49 P.S. §1706
23. Pa. Rule 400, Rules of Civil Procedure
24. Pa. Rule 1018.1 Rules of Civil Procedure
25. Pa. Rule 1652, Rules of Civil Procedure
26. Pa. Rule 1653, Rules of Civil Procedure

- 27. Pa. Rule 1654, Rules of Civil Procedure
- 28. Pa. Rule 1656, Rules of Civil Procedure

Sincerely,



C. Warren Trainor

CWT:mta

Attachments

Subcontractor's Formal Notice to Owner of Intent to File Mechanic's Lien
(49 P.S. §1501(b))

Certified Mail Return Receipt Requested

Addressee (Contractor/Owner)

Re: (Description of Property)

Dear _____,

Pursuant to contract dated _____, 20____, by and between (Contractor/Owner) and the (Creditor/Claimant) services in the nature of (description of services) were provided at (project location). As a result of our services which were completed on _____, 20____, the amount of \$_____ due and owing (Claimant/Creditor), all as more fully set forth on the attached copy of our Mechanic's Lien, the original of which we intend to file with the Prothonotary of _____ County, Pennsylvania.

This letter with the enclosure constitutes our formal notice of intent to file such lien claim.

Sincerely,

(Contractor/Subcontractor)

5. The amount claimed to be due is \$_____, together with lawful interest from the [date when payment was due]. The claimant has no note or other collateral security for the claim.

6. The services/improvements to the property claimed to be subject to the lien are _____[describe services performed or provided which gives rise to the claim].

Respectfully Submitted,

[Attorney for] Claimant

VERIFICATION

I, _____, am the
_____ of _____ and am duly
authorized to make this Verification on behalf of _____.

I have read the foregoing Mechanics Lien Claim and state that the averments of
fact contained therein are true and correct to the best of my knowledge,
information and belief. This verification is made subject to 18 Pa. Cons. Stat. §
4904 relating to unsworn falsification to authorities.

Dated: _____

5. The amount claimed to be due Claimant for work performed in _____ County, Pennsylvania is \$_____, together with lawful interest from the [date when payment was due]. The Claimant has no note or other collateral security for the claim.

6. The services/improvements to the properties claimed to be subject to the lien are _____[describe services performed or provided on each property which gives rise to the claim].

Respectfully Submitted,

[Attorney for] Claimant

[NOTE, IF THE MULTIPLE SERVICES WERE PERFORMED IN DIFFERENT COUNTIES, A MECHANIC'S LIEN MUST BE FILED IN EACH COUNTY WHERE THE SERVICES WERE PERFORMED.]

VERIFICATION

I, _____, am the
_____ of _____ and am duly
authorized to make this Verification on behalf of _____.

I have read the foregoing Complaint and state that the averments of fact
contained therein are true and correct to the best of my knowledge, information
and belief. This verification is made subject to 18 Pa. Cons. Stat. § 4904
relating to unsworn falsification to authorities.

Dated: _____

NOTICE OF FILING OF CLAIM
(49 P.S. § 1502(a)(2))

IN THE COURT OF COMMON PLEAS
OF _____ COUNTY, PENNSYLVANIA

CLAIMANT :
 :
v. :
 :
(CONTRACTOR/OWNER) : NO.

NOTICE OF CLAIM

TO: John Jones
800 Main Street
Anywhere, Pennsylvania

Please be advised that on (supply date) there was filed in the Court of Common Pleas of
Someplace County as of _____ Term _____, No. _____, a Mechanic's Lien¹ Claim, a
true and correct copy of which is attached hereto.

Attorney for Claimant

¹ **NOTE:** Attachment of the filed claim is not required, but is a prudent practice.

Complaint Upon Mechanics' Lien Claim
(Pa. R.C.W.P. 81656)

_____,
Plaintiff
v.
_____,
Defendant

:
:
:
:
:
:
:
:

IN THE COURT OF COMMON
PLEAS OF _____
COUNTY
_____ TERM,
_____ (year)
CIVIL ACTION
MECHANICS' LIEN

COMPLAINT

1. Plaintiff _____ is a _____ (*insert nature of entity*) with an address at _____, _____ and is authorized to do business in the Commonwealth of Pennsylvania.

2. Defendant _____ is a _____ (*insert nature of entity*) with an address at _____, _____.

3. The general contractor with whom Plaintiff subcontracted in connection with this claim is _____, a _____ (*insert nature of entity*), with offices at _____, _____.

4. Plaintiff filed a Mechanic's Lien Claim on _____ (*date*), in the Court of Common Pleas of _____ County, as of _____ Term _____ (*year*), No. _____, a copy of which is attached as Exhibit "A".

5. The amount of Plaintiff's claim is \$_____.

WHEREFORE, Plaintiff demands judgment against the Defendant in the sum of \$_____, with interest from _____ (*date of completion of services*), and costs.

Attorney for Plaintiff

VERIFICATION

I, _____, am the
_____ of _____ and am duly
authorized to make this Verification on behalf of _____.

I have read the foregoing Complaint and state that the averments of fact
contained therein are true and correct to the best of my knowledge, information
and belief. This verification is made subject to 18 Pa. Cons. Stat. § 4904
relating to unsworn falsification to authorities.

Dated: _____

49 P.S. § 1201

PENNSYLVANIA STATUTES, ANNOTATED BY LEXISNEXIS(R)

THIS DOCUMENT IS CURRENT THROUGH 2008 ACTS 1-18, 43, AND 44
TITLES 73 AND 74 CURRENT THROUGH ACTS 1-26, 43, AND 44
*** OCTOBER 3, 2008 ANNOTATION SERVICE ***

PENNSYLVANIA STATUTES
TITLE 49. MECHANICS' LIENS
CHAPTER 6. MECHANICS' LIEN LAW OF 1963
ARTICLE II. DEFINITIONS

49 P.S. § 1201 (2008)

§ 1201. Definitions

The following words, terms and phrases when used in this act shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) "IMPROVEMENT" includes any building, structure or other improvement of whatsoever kind or character erected or constructed on land, together with the fixtures and other personal property used in fitting up and equipping the same for the purpose for which it is intended.

(2) "PROPERTY" means the improvement, the land covered thereby and the lot or curtilage appurtenant thereto belonging to the same legal or equitable owner reasonably needed for the general purposes thereof and forming a part of a single business or residential plant.

(3) "OWNER" means an owner in fee, a tenant for life or years or one having any other estate in or title to property.

(4) "CONTRACTOR" means one who, by contract with the owner, express or implied, erects, constructs, alters or repairs an improvement or any part thereof or furnishes labor, skill or superintendence thereto; or supplies or hauls materials, fixtures, machinery or equipment reasonably necessary for and actually used therein; or any or all of the foregoing, whether as superintendent, builder or materialman. The term also includes an architect or engineer who, by contract with the owner, express or implied, in addition to the preparation of drawings, specifications and contract documents also superintends or supervises any such erection, construction, alteration or repair.

(5) "SUBCONTRACTOR" means one who, by contract with the contractor, or pursuant to a contract with a subcontractor in direct privity of a contract with a contractor, express or implied, erects, constructs, alters or repairs an improvement or any part thereof; or furnishes labor, skill or superintendence thereto; or supplies or hauls materials, fixtures, machinery or equipment reasonably necessary for and actually used therein; or any or all of the foregoing, whether as superintendent, builder or materialman. The term does not include an architect or engineer who contracts with a contractor or subcontractor, or a person who contracts with a materialman or a person who contracts with a subcontractor not in direct privity of a contract with a contractor.

(6) "CLAIMANT" means a contractor or subcontractor who has filed or may file a claim under this act for a lien against property.

(7) "MATERIALS" means building materials and supplies of all kinds, and also includes fixtures, machinery and equipment reasonably necessary to and incorporated into the improvement.

(8) "COMPLETION OF THE WORK" means performance of the last of the labor or delivery of the last of the materials required by the terms of the claimant's contract or agreement, whichever last occurs.

(9) "LABOR" includes the furnishing of skill or superintendence.

(10) "ERECTION AND CONSTRUCTION" means the erection and construction of a new improvement or of a substantial addition to an existing improvement or any adaptation of an existing improvement rendering the same fit for a new or distinct use and effecting a material change in the interior or exterior thereof.

(11) "ALTERATION AND REPAIR" means any alteration or repair of an existing improvement which does not constitute erection or construction as defined herein.

(12) "ERECTION, CONSTRUCTION, ALTERATION OR REPAIR" includes:

(a) Demolition, removal of improvements, excavation, grading, filling, paving and landscaping, when such work is incidental to the erection, construction, alteration or repair;

(b) Initial fitting up and equipping of the improvement with fixtures, machinery and equipment suitable to the purposes for which the erection, construction, alteration or repair was intended; and

(c) Furnishing, excavating for, laying, relaying, stringing and restringing rails, ties, pipes, poles and wires, whether on the property improved or upon other property, in order to supply services to the improvement.

(13) "PROTHONOTARY" means the prothonotary of the court or courts of common pleas of the county or counties in which the improvement is situate.

(14) "RESIDENTIAL BUILDING" means property on which there is a residential building, or which is zoned or otherwise approved for residential development, planned development or agricultural use, or for which a residential subdivision plan or planned residential development plan has received preliminary, tentative or final approval pursuant to the act of July 31, 1968 (P.L. 805, No. 247), known as the "Pennsylvania Municipalities Planning Code."

49 P.S. § 1301

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ARTICLE III. RIGHT TO LIEN

49 P.S. § 1301 (2008)

§ 1301. Right to lien; amount

Every improvement and the estate or title of the owner in the property shall be subject to a lien, to be perfected as herein provided, for the payment of all debts due by the owner to the contractor or by the contractor to any of his subcontractors for labor or materials furnished in the erection or construction, or the alteration or repair of the improvement, provided that the amount of the claim, other than amounts determined by apportionment under section 306(b) of this act, shall exceed five hundred dollars (\$ 500).

49 P.S. § 1303

PENNSYLVANIA STATUTES, ANNOTATED BY LEXISNEXIS(R)

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ARTICLE III. RIGHT TO LIEN

49 P.S. § 1303 (2008)

§ 1303. Lien not allowed in certain cases

(a) Persons other than contractors or subcontractors. No lien shall be allowed in favor of any person other than a contractor or subcontractor, as defined herein, even though such person furnishes labor or materials to an improvement.

(b) Public purpose. No lien shall be allowed for labor or materials furnished for a purely public purpose.

(c) Conveyance prior to lien. If the property by conveyed in good faith and for a valuable consideration prior to the filing of a claim for alterations or repairs, the lien shall be wholly lost.

(d) Leasehold premises. No lien shall be allowed against the estate of an owner in fee by reason of any consent given by such owner to a tenant to improve the leased premises unless it shall appear in writing signed by such owner that the erection, construction, alteration or repair was in fact for the immediate use and benefit of the owner.

(e) Security interests. No lien shall be allowed for that portion of a debt representing the contract price of any materials against which the claimant holds or has claimed a security interest under the Pennsylvania Uniform Commercial Code or to which he has reserved title or the right to reacquire title.

49 P.S. § 1501

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ARTICLE V. FILING AND PERFECTING CLAIM; DISCHARGE OF LIEN

49 P.S. § 1501 (2008)

§ 1501. Formal notice by subcontractor as condition precedent

(a), (b) Deleted by 2006, June 29, P.L. 210, No. 52, § 3, effective Jan. 1, 2007.

(B.1) TIME PERIOD OF FORMAL NOTICE. No claim by a subcontractor, whether for erection or construction or for alterations or repairs, shall be valid unless, at least thirty (30) days before the same is filed, he shall have given to the owner a formal written notice of his intention to file a claim, except that such notice shall not be required where the claim is filed pursuant to a rule to do so as provided by section 506

(c) CONTENTS OF FORMAL NOTICE. The formal notice shall state:

- (1) the name of the party claimant;
- (2) the name of the person with whom he contracted;
- (3) the amount claimed to be due;
- (4) the general nature and character of the labor or materials furnished;
- (5) the date of completion of the work for which his claim is made;
- (6) a brief description sufficient to identify the property claimed to be subject to the lien.

(d) SERVICE OF NOTICE. The notice provided by this section may be served by first class, registered or certified mail on the owner or his agent or by an adult in the same manner as a writ of summons in assumpsit, or if service cannot be so made then by posting upon a conspicuous public part of the improvement.

49 P.S. § 1502

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ARTICLE V. FILING AND PERFECTING CLAIM; DISCHARGE OF LIEN

49 P.S. § 1502 (2008)

§ 1502. Filing and notice of filing of claim

(a) PERFECTION OF LIEN. To perfect a lien, every claimant must:

(1) file a claim with the prothonotary as provided by this act within six (6) months after the completion of his work; and

(2) serve written notice of such filing upon the owner within one (1) month after filing, giving the court, term and number and date of filing of the claim. An affidavit of service of notice, or the acceptance of service, shall be filed within twenty (20) days after service setting forth the date and manner of service. Failure to serve such notice or to file the affidavit or acceptance of service within the times specified shall be sufficient ground for striking off the claim.

(b) VENUE; PROPERTY IN MORE THAN ONE COUNTY. Where the improvement is located in more than one county, the claim may be filed in any one or more of said counties, but shall be effective only as to the part of the property in the county in which it has been filed.

(c) MANNER OF SERVICE. Service of the notice of filing of claim shall be made by an adult in the same manner as a writ of summons in assumpsit, or if service cannot be so made then by posting upon a conspicuous public part of the improvement.

49 P.S. § 1503

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49 P.S. § 1503 (2008)

§ 1503. Contents of claim

The claim shall state:

- (1) the name of the party claimant, and whether he files as contractor or subcontractor;
- (2) the name and address of the owner or reputed owner;
- (3) the date of completion of the claimant's work;
- (4) if filed by a subcontractor, the name of the person with whom he contracted, and the dates on which preliminary notice, if required, and of formal notice of intention to file a claim was given;
- (5) if filed by a contractor under a contract or contracts for an agreed sum, an identification of the contract and a general statement of the kind and character of the labor or materials furnished;
- (6) in all other cases than that set forth in clause (5) of this section, a detailed statement of the kind and character of the labor or materials furnished, or both, and the prices charged for each thereof;
- (7) the amount or sum claimed to be due; and
- (8) such description of the improvement and of the property claimed to be subject to the lien as may be reasonably necessary to identify them.

49 P.S. § 1504

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49 P.S. § 1504 (2008)

§ 1504. Amendment of claim

A claim may be amended from time to time without prejudice to intervening rights by agreement of the parties or by leave of court, except that no amendment shall be permitted after the time for filing a claim has expired which undertakes to:

- (1) substitute a different property than that described in the claim; or
- (2) substitute a different party with whom the claimant contracted; or
- (3) increase the aggregate amount of the claim.

49 P.S. § 1505

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49 P.S. § 1505 (2008)

§ 1505. Procedure for contesting claim; preliminary objections

Any party may preliminarily object to a claim upon a showing of exemption or immunity of the property from lien, or for lack of conformity with this act. The court shall determine all preliminary objections. If an issue of fact is raised in such objections, the court may take evidence by deposition or otherwise. If the filing of an amended claim is allowed, the court shall fix the time within which it shall be filed. Failure to file an objection preliminarily shall not constitute a waiver of the right to raise the same as a defense in subsequent proceedings.

49 P.S. § 1506

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49 P.S. § 1506 (2008)

§ 1506. Rule to file claim

(a) Entry of rule; effect. At any time after the completion of the work by a subcontractor, any owner or contractor may file a rule or rules, as of course, in the court in which said claim may be filed; requiring the party named therein to file his claim within thirty (30) days after notice of said rule or be forever barred from so doing. The rule shall be entered by the prothonotary upon the judgment index and in the mechanics' lien docket. Failure to file a claim within the time specified shall operate to wholly defeat the right to do so. If a claim be filed, it shall be entered as of the court, term and number of the rule to file the same.

(b) Effect of claim filed by subcontractor. Where a claim is filed by a subcontractor in response to such rule, the owner may give written notice thereof to the contractor in the manner set forth by section 602 of this act, and upon the giving of such notice the owner may avail himself of the remedies provided by sections 601 and 604 of this act and the contractor shall be subject to the duties set forth by section 603 of this act.

49 P.S. § 1507

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49 P.S. § 1507 (2008)

§ 1507. Indexing claims, et cetera

The prothonotary shall enter the claim, verdict and judgment upon the judgment index and mechanics' lien docket against the owner. When a claim, verdict or judgment is stricken, reversed or satisfied, or the name of a defendant is stricken, or an action upon the claim to reduce it to judgment is discontinued, or judgment is entered thereon in favor of the defendant, a note shall be made on the judgment index.

49 P.S. § 1508

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49 P.S. § 1508 (2008)

§ 1508. Priority of lien

The lien of a claim filed under this act shall take effect and have priority as follows:

(a) Except as set forth in subsection (c), in the case of the erection or construction of an improvement, as of the date of the visible commencement upon the ground of the work of erecting or constructing the improvement.

(b) Except as set forth in subsection (c), in the case of the alteration or repair of an improvement, as of the date of the filing of the claim.

(c) Any lien obtained under this act by a contractor or subcontractor shall be subordinate to the following:

(1) A purchase money mortgage as defined in 42 Pa.C.S. § 8141(1) (relating to time from which liens have priority).

(2) An open-end mortgage as defined in 42 Pa.C.S. § 8143(f) (relating to open-end mortgages), the proceeds of which are used to pay all or part of the cost of completing erection, construction, alteration or repair of the mortgaged premises secured by the open-end mortgage.

49 P.S. § 1509

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49 P.S. § 1509 (2008)

§ 1509. Effect of forfeiture of leasehold

The lien of every claim shall bind only the interest of the party named as owner of the property at the time of the contract or acquired subsequently by him, but no forfeiture or surrender of a leasehold, or tenancy, whether before or after the filing of the claim, shall operate to prejudice its lien against the fixtures, machinery or other similar property.

49 P.S. § 1601

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ARTICLE VI. DUTIES AND REMEDIES OF OWNER AND CONTRACTOR ON NOTICE OF
INTENTION TO FILE OR ON FILING OF CLAIM BY SUBCONTRACTOR

49 P.S. § 1601 (2008)

§ 1601. Owner's right to retain funds of contractor

An owner who has been served with a notice of intention to file or a notice of the filing of a claim by a subcontractor may retain out of any moneys due or to become due to the contractor named therein, a sum sufficient to protect the owner from loss until such time as the claim is finally settled, released, defeated or discharged.

49 P.S. § 1602

PENNSYLVANIA STATUTES, ANNOTATED BY LEXISNEXIS(R)

THIS DOCUMENT IS CURRENT THROUGH 2008 ACTS 1-18, 43, AND 44
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INTENTION TO FILE OR ON FILING OF CLAIM BY SUBCONTRACTOR

49 P.S. § 1602 (2008)

§ 1602. Notice to contractor of claim

(a) An owner served with a notice as provided by section 601 may, and if he has retained any funds due the contractor shall, give written notice thereof to the contractor named.

(b) The notice shall state:

(1) the name of the subcontractor, the amount of the claim and the amount withheld, if any, by the owner;

(2) that unless the contractor within thirty (30) days from service of the notice settles, undertakes to defend, or secures against the claim as provided by section 603, the owner may avail himself of the remedies provided by section 604.

(c) The notice may be given by the owner or his agent to the contractor personally, or to the contractor's manager, executive or principal officer or other agent, or if none of these persons can be found, by sending a copy of the notice by first class, registered or certified mail to the contractor at his last known office address.

49 P.S. § 1603

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49 P.S. § 1603 (2008)

§ 1603. Contractor's duties on receipt of notice

Upon service of the notice provided by section 602, the contractor shall within thirty (30) days from the contractor's receipt of notice:

- (1) settle or discharge the claim of the subcontractor and furnish to the owner a written copy of a waiver, release or satisfaction thereof, signed by the claimant; or
- (2) agree in writing to undertake to defend against said claim, and if the owner has not retained sufficient funds to protect him against loss, furnish the owner additional approved security to protect the owner from loss in the event the defense should be abandoned by the contractor or should not prevail; or
- (3) furnish to the owner approved security in an amount sufficient to protect the owner from loss on account of said claim.

49 P.S. § 1604

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49 P.S. § 1604 (2008)

§ 1604. Additional remedies of owner

Should the contractor fail to settle, discharge or defend or secure against the claim, as provided by this act, the owner may:

(1) pay the claim of the subcontractor, upon which payment the owner shall be subrogated to the rights of the subcontractor against the contractor together with any instrument or other collateral security held by the subcontractor for the payment thereof; or

(2) undertake a defense against said claim in which case the contractor shall be liable to the owner for all costs, expenses and charges incurred in such defense, including reasonable attorneys' fees, whether said defense be successful or not, but the undertaking of such defense shall not affect the right of the owner to retain funds of the contractor under section 601 until the subcontractor's claim is finally defeated or discharged.

49 P.S. § 1701

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ARTICLE VII. JUDGMENT; EXECUTION; REVIVAL

49 P.S. § 1701 (2008)

§ 1701. Procedure to obtain judgment

(a) Practice and Procedure. The practice and procedure to obtain judgment upon a claim filed shall be governed by the Rules of Civil Procedure promulgated by the Supreme Court.

(b) Time for Commencing Action. An action to obtain judgment upon a claim filed shall be commenced within two (2) years from the date of filing unless the time be extended in writing by the owner.

(c) Venue; Property in More Than One County. Where a claim has been filed in more than one county as provided by section 502(b), proceedings to obtain judgment upon all the claims may be commenced in any of the counties and the judgment shall be res adjudicata as to the merits of the claims properly filed in the other counties. The judgment may be transferred to such other county by filing of record a certified copy of the docket entries in the action and a certification of the judgment and amount, if any. The prothonotary of the court to which the judgment has been transferred shall forthwith index it upon the judgment index and enter it upon the **mechanics' lien** docket.

(d) Limitation on Time of Obtaining Judgment. A verdict must be recovered or judgment entered within five (5) years from the date of filing of the claim. Final judgment must be entered on a verdict within five (5) years. If a claim is not prosecuted to verdict or judgment, as provided above, the claim shall be wholly lost: Provided, however, That in either case, if a complaint has been or shall be filed in the cause and if the cause has been or shall be at issue, all time theretofore or thereafter consumed in the presentation and disposition of all motions and petitions of defendants, substituted defendants and intervenors in the cause, and in any appeal or appeals from any order in the cause, from the date of perfection of such appeal to the date of return of the certiorari from the appellate court to the court of common pleas, shall be excluded in the computation of the five (5) year period herein provided.

(e) Defense to Action on Claim. A setoff arising from the same transaction or occurrence from which the claim arose may be pleaded but may not be made the basis of a counterclaim.

49 P.S. § 1702

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ARTICLE VII. JUDGMENT; EXECUTION; REVIVAL

49 P.S. § 1702 (2008)

§ 1702. Effect of judgment on right to personal action

Nothing in this act shall alter or affect the right of a claimant to proceed in any other manner for the collection of his debt.

49 P.S. § 1703

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49 P.S. § 1703 (2008)

§ 1703. Appeal from judgment

From any judgment, order or decree entered by the court of common pleas under the provisions of this act or from any refusal to open a judgment entered by default, an appeal may be taken.

49 P.S. § 1704

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49 P.S. § 1704 (2008)

§ 1704. Satisfaction of claims; penalty for failure to satisfy

If shall be the duty of a claimant upon payment, satisfaction or other discharge of the claim, verdict or judgment to enter satisfaction thereof upon the record upon payment of the costs of same. Upon failure to do so within thirty (30) days after a written request to satisfy, the court upon petition of any party in interest may order the claim, verdict or judgment satisfied and the claimant shall be subject to a penalty in favor of the party aggrieved in such sum as the court in the petition proceedings shall determine to be just, but not exceeding the amount of the claim.

49 P.S. § 1705

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ARTICLE VII. JUDGMENT; EXECUTION; REVIVAL

49 P.S. § 1705 (2008)

§ 1705. Revival of judgment

Judgment upon a claim shall be revived within each recurring five-year period. The practice and procedure to revive judgment shall be governed by the Judgment Lien Law of 1947, as now in force or hereafter amended, and the Rules of Civil Procedure promulgated by the Supreme Court, but the lien of the revived judgment shall, as in the case of the original judgment, be limited to the lien property.

49 P.S. § 1706

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49 P.S. § 1706 (2008)

§ 1706. Execution upon judgment

(a) Judgment Essential to Execution. No execution shall issue against the property subject to a claim except after judgment shall have been obtained upon the claim, and within five (5) years from the date of such judgment or a revival thereof.

(b) Conformity to Rules of Civil Procedure. The practice and procedure relating to execution shall be governed by the Pennsylvania Rules of Civil Procedure relating to execution.

(c) Division of Tract. Where only a part of a single tract is subject to the lien of a mechanic's claim, and such part cannot be sold without prejudice or injury to the whole, the court on petition of the owner, claimant or any person in interest may order the entire tract sold and shall equitably distribute the proceeds of sale according to the relative value of the part bound by and that free of the claim. The court may determine the matter itself and for that purpose may receive evidence by deposition or otherwise, or may appoint an auditor to hear the evidence and report to the court.

Pa. R.C.P. No. 400

PENNSYLVANIA RULES OF COURT, ANNOTATED BY LEXISNEXIS(R)

* THIS DOCUMENT IS CURRENT THROUGH AMENDMENTS RECEIVED JUNE 26, 2008 *
*** SEPTEMBER 29, 2008 ANNOTATION SERVICE ***

PENNSYLVANIA RULES OF CIVIL PROCEDURE
SERVICE OF ORIGINAL PROCESS AND OTHER LEGAL PAPERS
PART I. SERVICE OF ORIGINAL PROCESS
SUBPART A. SERVICE GENERALLY

Pa. R.C.P. No. 400 (2008)

Rule 400. Person to Make Service

(a) Except as provided in subdivisions (b) and (c) and in Rules 400.1 and 1930.4, original process shall be served within the Commonwealth only by the sheriff.

(b) In addition to service by the sheriff, original process may be served also by a competent adult in the following actions:

(1) civil action in which the complaint includes a request for injunctive relief under Rule 1531, perpetuation of testimony under Rule 1532 or appointment of a receiver under Rule 1533,

(2) partition, and

(3) declaratory judgment when declaratory relief is the only relief sought.

Note: See Rule 76 for the definition of "competent adult".

Service of original process in domestic relations matters is governed by Rule 1930.4.

(c) When the sheriff is a party to the action, original process shall be served by the coroner or other officer authorized by law to perform the duties of coroner.

(d) If service is to be made by the sheriff in a county other than the county in which the action was commenced, the sheriff of the county where service may be made shall be deputized for that purpose by the sheriff of the county where the action was commenced.

Pa. R.C.P. No. 1018.1

PENNSYLVANIA RULES OF COURT, ANNOTATED BY LEXISNEXIS(R)

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PENNSYLVANIA RULES OF CIVIL PROCEDURE
ACTIONS
CIVIL ACTION
PLEADINGS

Pa. R.C.P. No. 1018.1 (2008)

Rule 1018.1. Notice to Defend. Form

(a) Every complaint filed by a plaintiff and every complaint filed by a defendant against an additional defendant shall begin with a notice to defend in substantially the form set forth in subdivision (b). No other notice to plead to a complaint shall be required.

(b)

[CAPTION] NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

#TABLE#

(Name)

(Address)

(Telephone Number)

Note:: The above notice does not change any of the rules relating to

the pleading of objections and defenses.

This rule applies to all complaints including those where service is by publication. For the mandatory content of the publication in such cases see Rule 430(b).

When a defendant is served outside the United States, Rule 1026(b) provides a sixty-day period for pleading.

(c) Each court shall by local rule designate the officer, organization, agency or person to be named in the notice from whom information can be obtained.

(d) A court may by local rule require the notice to be repeated in one or more designated languages other than English.

Pa. R.C.P. No. 1652

PENNSYLVANIA RULES OF COURT, ANNOTATED BY LEXISNEXIS(R)

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PENNSYLVANIA RULES OF CIVIL PROCEDURE
ACTIONS UPON **MECHANICS' LIENS**

Pa. R.C.P. No. 1652 (2008)

Rule 1652. Venue

(a) The action shall be commenced in and only in the county in which the claim has been filed.

(b) Where the property liened is located in more than one county and claims have been filed in more than one county, the action may be brought in any such county.

Note: Subdivision (b) parallels Section 701(c) of the **Mechanics' Lien** Law of 1963, 49 P.S. § 1701(c).

Pa. R.C.P. No. 1653

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PENNSYLVANIA RULES OF CIVIL PROCEDURE
ACTIONS UPON **MECHANICS' LIENS**

Pa. R.C.P. No. 1653 (2008)

Rule 1653. Commencement of Action

An action shall be commenced by filing with the prothonotary

- (a) a complaint, or
- (b) an agreement for an amicable action.

Pa. R.C.P. No. 1654

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PENNSYLVANIA RULES OF CIVIL PROCEDURE
ACTIONS UPON **MECHANICS' LIENS**

Pa. R.C.P. No. 1654 (2008)

Rule 1654. Defendant

(a) The plaintiff shall name as defendant the owner named in the claim and the owner, if known, at the time the action is commenced.

(b) If the last owner of record prior to the commencement of the action has died, the plaintiff shall name as a defendant the personal representative, heir or devisee of such owner, if known.

Note: For definition of owner see Section 201(3) of **Mechanics' Lien** Law of 1963, 49 P.S. § 1201(3).

Pa. R.C.P. No. 1656

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PENNSYLVANIA RULES OF CIVIL PROCEDURE
ACTIONS UPON **MECHANICS' LIENS**

Pa. R.C.P. No. 1656 (2008)

Rule 1656. The Complaint

The plaintiff shall set forth in the complaint

(1) the name and address of each party to the action and if the action is commenced by a subcontractor, the name and address of the contractor;

(2) the court and number and the date of the filing of the claim and a copy thereof as an exhibit;

(3) a demand for judgment.