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**Please Release Me, Let Me Go:
Has the Time Finally Come for bonding Off the Release of Mechanic's Liens in West Virginia?**

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West Virginia, like all other states, provides a mechanism for contractors, subcontractors, and others providing labor or materials on a parcel of property to ensure that they are paid for the labor or material they provide: the mechanic's lien. State law sets out the procedures under which these various parties may perfect and protect their lien rights.

While West Virginia law does provide a remedy for those supplying labor or materials on a project, it does have a few quirks not found in the statutes of surrounding states. In particular, West Virginia's law regarding the release of mechanic's liens is considerably different than its neighbors. This difference reduces the flexibility of construction companies, contractors, and subcontractors and fails to fully protect the rights of property owners. Moreover, many property owners or general contractors, particularly out-of-state parties that may be unfamiliar with West Virginia law, may be unaware of these nuances. These state-specific provisions could have large repercussions with respect to the rights and potential liability of the parties once a lien is filed on the property.

One such provision particular to West Virginia is the remedy available to property owners and other affected parties once a lien has been filed. The law of most states provides that once a lien has been filed on a parcel of property the property owner, general contractor, or other affected party may file an adequate bond with the appropriate court, thereby releasing the lien from the property. The laborer or materialman's right to recover the sums owed is still preserved via the bond, but the property at issue is now unencumbered. West Virginia law, however, does not provide for a bond to release mechanic's liens. Rather, cash payment into the court is the only current mechanism to release mechanic's liens under West Virginia law, short of satisfaction of the lien itself.

The "bonding off" of the lien is the approach taken by every single state surrounding West Virginia. For example, Virginia uses this approach. Kentucky also permits the "bonding off" of lien liability, but with a bond "double the amount of the lien claimed." Ohio permits the

release of the lien predicated upon court approval of “a bond, cash deposit, ... or other reasonable security” in the “amount of the claim secured by the lien” if the amount at issue is five thousand dollars or less, and an amount “one and one half the amount of the claim” for sums at issue above five thousand dollars. Maryland permits a bond in an amount set by the court. Pennsylvania permits the option of a cash deposit with the court, “approved security” for double the amount claimed, or a lesser security amount approved by the court to release the lien.

West Virginia, unlike the other five states surrounding it, does not provide a “bond-off” option with respect to mechanic’s liens. Whether West Virginia were to permit bonds at an amount double the lien claim, or an amount fixed by a court, minor changes to West Virginia’s lien law can bring the state in line with its neighbors by allowing bonds to release mechanic’s liens while still protecting the parties asserting the liens.

West Virginia law currently provides for no such “bonding off” of the lien at issue and instead mandates that “an amount equal to the sum set out as due in the notice of lien” be deposited with court in order for the lien to be released. While the ultimate bond amount needed to release the lien would vary from project to project, it would normally be substantially less than the amount of the entire lien. Depending upon the size of the project and lien amount at issue, mandating that a project owner or other affected party come up with the entire disputed amount under the lien could create a real economic hardship and cause a parcel of property to be encumbered for years pending the resolution of any lien dispute. The “bonding off” provisions of other states recognize this fact and permit bonds to be issued to protect both the project owner’s property and those claiming sums for work or materials on the property.

Another interesting quirk under West Virginia’s lien law of which many project owners and other affected parties may not be aware and often fail to take advantage of is the Code’s provision regarding the recording of the construction contract. West Virginia law provides that a project owner may limit his or her liability to the contract amount by recording a copy of the contract, along with a valid bond by the general contractor for the contract amount, with the proper court. This affords the project owner a limitation of liability, which offers some protections. However, this provision requires the cooperation of the general contractor in securing the bond and does not provide project owners the unfettered discretion in obtaining their own bond to release the liens.

The procedures used by neighboring states to “bond off” of mechanic’s liens protects the property of the project owner, yet still protects the interests of those providing labor or materials on a parcel of property by utilizing a commercially appropriate practice of securing debt or potential debt through adequate bonds. West Virginia’s current system requiring the deposit of the full disputed amount into the court in order to release a mechanic’s lien can and should be modified to bring West Virginia up to date with current commercial practices by permitting the same type of “bonding off” of mechanic’s liens as is permitted in all of our neighboring states. Until that time, project owners and other affected parties, with respect to

construction projects in West Virginia, need to be aware of the fact that they may be required to come up with one hundred percent of the lien amount in order to have the lien released and not just the fraction required in other states should a dispute regarding payment for labor or materials on the project arise.

At a time when the legislature has been taking steps to create a Business Court in West Virginia, a small step in revising West Virginia's current lien law can quickly and effectively put West Virginia in line with its neighbors in following modern commercial practices regarding construction and mechanic's liens. Updating West Virginia's lien laws will give construction companies, contractors, and subcontractors added flexibility while continuing to ensure adequate security for those asserting liens.

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