

# SHERRARD GERMAN & KELLY, P.C.

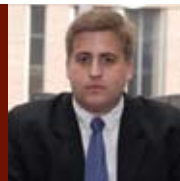
ATTORNEYS AT LAW



Report from Counsel - Insights and Developments in the Law

## Significant Amendments to Pennsylvania's Mechanic's Lien Laws Have Potential to Impact Many

Matt A.  
Jarrell



Several recent amendments to the Pennsylvania Mechanic's Lien law stand to change dramatically the way real property owners, contractors, developers and lending institutions handle the risk that a mechanic's lien could be filed with respect to construction or repairs performed on real property. The amendments, passed as part of Act 52 of 2006 (the "Act") which became effective January 1, 2007, render most types of lien waivers unenforceable; expand the class of persons who are permitted to file mechanic's liens; eliminate critical notice requirements; change the lien priority of mechanic's liens; and extend the period of time within which a contractor or subcontractor is permitted to file a mechanic's lien. The changes mean that owners, developers, lenders, and buyers of real property need to look at their current practices to ensure compliance with the new rules and to protect themselves against the possibility of a mechanic's lien.

For many, the most significant change to the Mechanic's Lien Law concerns the Act's sweeping, almost total prohibition on advance lien waiver agreements. Particularly in commercial settings, where the owner or developer needed the ability to give comfort to a lender or a buyer that a mechanic's lien would not be filed after closing on the loan or sale, waiver by a contractor of his ability to file a lien had become standard practice in Pennsylvania. Not anymore. The Act states that

advance lien waivers are against public policy, unlawful and void. Accordingly, lenders, buyers, and the title insurers who serve them have to address the lingering possibility that a mechanic's lien relating back to the commencement of the lien filer's work on the project is going to sneak ahead of them in the line of priority.

Some of the other changes to the law amplify that discomfort. The Act expands the class of persons entitled to file mechanic's liens to include subcontractors who contract with subcontractors, or sub-subcontractors. Consequently, an owner has mechanic's lien exposure with respect to the general contractor and his subcontractors, plus the subcontractors of the subcontractors. And each of these contractors, subcontractors, and sub-subcontractors have six months after the completion of work (fixing the date of completion itself can be a tricky question) to file a mechanic's lien, an increase from the four months provided in the Mechanic's Lien Law before the Act.

The Act eliminates the former obligation of subcontractors who provide repairs or alterations to send to the owner preliminary written notice of the completion of work and intent to file a mechanic's lien if not paid. Though the Act does not affect the requirement that a subcontractor give notice of intent to file a mechanic's lien thirty days prior to filing, the now stricken

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## Eighth Year for HEARTH Sponsorship

Sherrard, German & Kelly, P.C. was a Gold Sponsor for HEARTH and its 12th Annual Golf Outing on June 18th at Sewickley Heights Golf Club. HEARTH is a non-profit entity that runs Benedictine Place in the North Hills, a transitional housing program for homeless women and children providing a continuum of care that empowers participants to become independent and economically self-sufficient. The focus of Benedictine Place is to provide a safe place for families to live along with necessary support to enable mothers to complete educational or training programs, all while parenting their children and maintaining jobs. In the past few years, HEARTH has helped over 143 families and more than 250 children in their efforts to transition from homelessness to self-sufficiency.



Sherrard, German & Kelly, P.C. attorney Eric C. Springer has been on the HEARTH board for the past 8 years and has served in numerous positions including serving on its Finance, Executive, Community Housing Development, Board Development and Golf Committees. He has served as the Chairman of the Golf Committee for the past 3 years.



## Significant Amendments

to Pennsylvania's Mechanic's Lien Laws Have Potential to Impact Many ... *continued*

requirement of a preliminary notice gave the owner and any prospective take out lender an opportunity to become aware of a potential lien issue. It is generally believed that owners will withhold funds from the contractor or otherwise require proof of payment to the subcontractor, by way of periodic lien waivers for work performed to date (remember, prospective mechanic's lien waivers are generally ineffective). The preliminary notice requirement gave the owner and contractor the opportunity to protect against a mechanic's lien if the preliminary notice was given and a defense to the mechanic's lien in the event the subcontractor's failed to provide the notice. Eliminating the preliminary notice takes away both a valuable vehicle to be alerted to the potential of a mechanic's lien, and an opportunity to address a bad situation before it gets worse.

The Act benefits some lenders by subordinating mechanic's liens to purchase money mortgages and open-end construction mortgages regardless when construction begins. That change will relieve the concern of these lenders of a mechanic's lien that would have related back to the commencement of construction. However, the Act provides no protection to construction loan take-out lenders or other lenders. These lenders remain subject to the possible loss of lien priority for a period of up to six months after closing on the loan, for work done prior to the refinancing. This possibility of a so-called "cloud on title" appearing after closing on the sale

or financing, will change the practices of title insurers, which had been long standing immediately prior to the Act.

Our discussions with title insurers indicate that without the assurance of lien waivers, a significant new underwriting concern arises, complicating the insurers' grant of affirmative coverage against mechanic's liens. Developers and other owners of real property need to anticipate the problem. Without such title insurance coverage, owners, lenders, and buyers will have to look elsewhere for some other form of comfort that the contractors, subcontractors, and sub-subcontractors will get paid (such as a contractual indemnity from the contractor or a payment bond from a third party). Otherwise, they will have to sweat out the lien exposure period for each of the subcontractors and sub-subcontractors. To protect themselves, owners, lenders, and buyers are going to have to work closely with counsel, contractors and title insurers to close as much of the risk gap as possible (assuming they still want to do the deal in the first place).

On the other hand, laborers and suppliers who had no rights under the previous mechanic's lien law must be aware that they could fall into the newly protected class of sub-subcontractors and should take steps to protect any rights afforded them. All potential filers need to understand that the Act affects both the class of people who can file a lien (the Act expands the class) and the priority of such liens (in

some cases, the Act limits the priority).

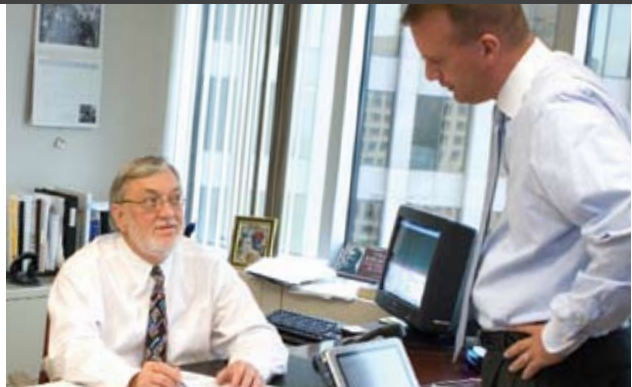
We expect the legislature and the courts will soon begin to try to smooth out the Act's rougher edges. The immediate and significant changes of the Act must, however, be acknowledged. Parties affected by the legislation need promptly to re-examine and potentially modify their practices to comply with the new amendments, and should consider how to take advantage of opportunities for or to protect themselves against the filing of mechanic's liens.

The author wishes to acknowledge the helpful collaboration and comments of Joseph W. Huber of Chicago Title Insurance Company in the preparation of this article.

Author, Matt A. Jarrell, is a Senior Associate and member of the Firm's Financial Services, Corporate Services and Litigation Services Groups. He focuses a significant portion of his practice on the mineral title, contract negotiation and dispute resolution, litigation and credit recovery needs of natural resource companies and natural resource industry contractors. Mr. Jarrell also represents numerous financial institutions in a variety of sophisticated credit recovery and workout contexts.

1) Two exceptions to the general prohibition: (1) where a subcontractor chooses to waive his rights after the contractor has posted a performance bond guaranteeing payment for labor and materials provided by the subcontractor, and (2) where a subcontractor waives his right to file a lien claim only when the work is performed on a residential building and the total contract price is less than one million dollars (\$1,000,000). It is not clear what constitutes a "residential building" or whether the \$1,000,000 threshold could be met by aggregating smaller contracts, such as a number of contracts for the improvement of several lots within one plan.

2) Possibly, depending on the facts, relating back to a date that is prior to the recording of a purchase money or open-ended construction mortgage.



Jennifer R. Andrade

## Associate Announcement

Jennifer Andrade, an Associate in the Firm's Civil Litigation Practice Group was a speaker at the Latino Law Day on April 13, 2007, held at the University of Pittsburgh School of Law - an event designed to promote and expose young Latino high school students to the legal profession.

Jennifer Andrade was selected for the ACBA's Young Lawyers' Division Bar Leadership Initiative (2007-2008 class). Ms. Andrade was also confirmed by Pittsburgh City Council as a member of the Pittsburgh Human Relations Commission for a four-year term.

## Announcement

Sherrard German & Kelly, P.C. is pleased to announce that a group of four attorneys who specialize in insurance coverage matters has joined the firm. They are Stanley J. Lehman and Karen Y. Bonvalot, who come to the firm as shareholders and directors, and Erin E. Milliken and Samuel J. Toney, IV, who are associates.

All four were previously with Buchanan Ingersoll & Rooney PC, Pittsburgh's third-largest law firm. Earlier they were with the firm of Klett Rooney Libber & Schorling PC, which merged with Buchanan Ingersoll in July 2006.

Mr. Lehman's practice focuses on insur-

ance coverage and related matters as well as tax, estates, trusts and corporate matters.

Ms. Bonvalot is an active litigator practicing in the areas of insurance defense as well as litigation issues faced by local universities. Her practice also includes litigation involving family and closely held business disputes.

Ms. Milliken and Mr. Toney represent insurance carriers in coverage matters primarily involving policies issued to mutual funds, investment companies, banks, fiduciaries, directors and officers and various professionals.

## Junior League of Pittsburgh

Sherrard, German & Kelly, P.C. was a sponsor of the Junior League of Pittsburgh's Show House this year. All the proceeds benefitted KaBoom!, an organization with which the Junior League of Pittsburgh is partnering to build playgrounds in kid-rich, playground-poor communities in the region.

## Financial Industries Network Event Sponsorship

Sherrard German & Kelly, P.C. was a Platinum Sponsor of the Financial Industries Network Event on June 28th titled "Small and Mid-Size Business Valuation Issues." Speakers at the Event included Mark M. Gleason, Managing Director of Gleason & Associates, P.C., James B. Hankins, Jr., of the Business Valuation/Litigation Support Services Group of Alpern Rosenthal, Joseph J. Evans, a partner of Hill, Barth & King, LLC, and Melissa A. Bizyak, Senior Manager-Business Valuation Services of Grossman, Yanak & Ford, LLP. The Financial Industries Network is a non-profit organization of executives and other senior-level managers from a variety of regional companies and banking and finance-related industries, as well as accountants, investment advisors, securities brokers, tax consultants, business consultants, attorneys and other professionals. The group meets quarterly to network and discuss issues involving corporate and personal finance. The firm has been involved with the Financial Industries Network for many years and Sherrard German & Kelly, P.C. attorney Eric C. Springer has served as a Board Member for the past 8 years and is the current President.

**Counseling businesses and individuals in the following areas:**

**Business Services:**

- Business formation and structure
- Mergers, acquisitions, reorganizations, sales and consolidations
- Commercial real estate transactions
- Financial transactions
- Contract preparation
- Labor and employment matters
- Employee benefits
- Tax planning and counseling
- Intellectual property protection, licensing and technology transfer

**Bank Services**

- Retail financial services
- Commercial, industrial and real estate lending
- Commercial credit recovery
- Consumer collection

**Individual Services**

- Residential real estate transactions
- Tax issues
- Estate planning
- Drafting of wills and trust agreements
- Probate and estate and trust administration
- Estate tax issues

**Litigation Services**

- Commercial Litigation
- Bankruptcy
- Contract disputes
- Personal injury
- Employment disputes
- Estate and trust litigation services

## Du-Co Ceramics Company Acquires Assets of Saxonburg Ceramics, Inc.

Sherrard, German & Kelly, P.C. represented Du-Co Ceramics Company in its acquisition of its major competitor, Saxonburg Ceramics, both headquartered in Saxonburg, Pennsylvania. Du-Co Ceramics acquired certain assets of the 83 year old Saxonburg Ceramics, including its manufacturing facility in Monroe, North Carolina.

Du-Co Ceramics Company is a leading producer of precision ceramic components at work in a myriad of places, from household appliances to industrial heating applications.

With a more diverse range of materials, enhanced production capabilities, excellent reputation as a leading producer of precision ceramic components and a proven commitment to its customers, Du-Co Ceramics increased its position to be the provider of choice in a global marketplace. Sherrard, German & Kelly, P.C. attorney, Eric C. Springer, was lead counsel in the acquisition for his client, along with Susan J. Messer and Jennifer R. Applegate. We congratulate Du-Co on the completion of this important transaction.



Edward G.  
Rice

### Shareholder Announcement

Shareholder Edward G. Rice has been selected to appear in the 2007-2008 edition of the Marquis Who's Who in American Law. Mr. Rice is a member of the firm's Financial Services and Corporate practice groups.

### JDRF Rainbow Gala Sponsorship

Sherrard, German & Kelly, P.C. was a Silver Sponsor for this year's Rainbow Gala benefiting the Juvenile Diabetes Research Foundation on April 21, 2007. Robert D. German is the former Chairman of the International Board of Directors. The Rainbow Gala raised a record-breaking \$1.1 million from the Event.