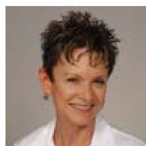
Construction Industry Contacts



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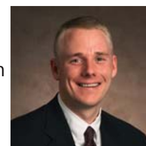

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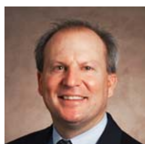

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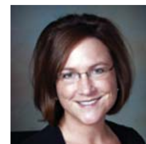

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Court Clarifies Deadline For Serving Pre-Lien Notice

by Michael R. Pacewicz, Director

It's probably safe to say that most subcontractors and property developers in Oklahoma are familiar with at least some aspects of the state's mechanics' lien statutes. It's also probably safe to say that those statutes are hardly a model of clarity. A new decision from the Oklahoma Court of Civil Appeals, however, aims to eliminate confusion over the subcontractor's deadline for providing to the property owner the pre-lien notice required by Section 143.6 of Title 12 of the Oklahoma Statutes.

Section 143.6 states that a subcontractor must send a pre-lien notice to the original contractor and the property owner before filing a mechanics' lien with the county clerk. The section says that the subcontractor must send the pre-lien notice "no later than seventy-five (75) days after supply of material, labor, or equipment." The question in *Jones v. Purcell Investments, LLC,* was whether the subcontractor must send the pre-lien notice within 75 days after the first date it supplied materials or labor, or within 75 days after the last date the material or labor were supplied.

The Court of Appeals, after reviewing the history and purpose of the mechanics' lien laws, determined that the subcontractor must send the notice within 75 days after the last date that it supplied the material or labor. This is consistent with the requirement that the lien itself be filed within 90 days after the last date on which the subcontractor supplied labor or materials.

Subcontractors and developers should not underestimate the importance of the pre-lien notice. A subcontractor's failure to comply with the requirements of Section 143.6 makes any portion of a lien claim for which no pre-lien notice was sent unenforceable. Similarly, a subcontractor who fails to send the pre-lien within 75 days of the last date on which the labor or materials were provided will be unable to enforce a lien related to such labor or materials even if the lien statement itself is filed within the 90-day deadline.

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Relocation Assistance Required In Connection With Federally-Funded Projects

by Wendee D. Grady, Associate

When planning redevelopment projects involving the use of federal funds, developers must be mindful of regulations governing the relocation of individuals and businesses. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (the "URA") establishes minimum standards with which developers must comply when acquiring and rehabilitating real property when federal funds are used for any phase of the project. "Federal funds" includes such sources as HOME funds.

The goals of the URA are to provide uniform, fair and equitable treatment of persons whose real property is acquired or who are displaced in connection with federally-funded projects. The URA is designed to encourage real property acquisition by agreement rather than by coercion, and to lessen the emotional and financial impact of displacement while ensuring decent replacement housing for displaced persons.

The URA affects federally-funded projects from the beginning of the project, requiring early planning and budgeting on the part of the developer. For example, certain notices must be provided to the owners of real property to be acquired for a project before a purchase contract is signed. Failure to timely provide such notices could result in the owner's ability to renegotiate or even cancel the purchase contract.

Certain notices must also be provided to displaced individuals and businesses. Displaced tenants must be provided a minimum 90-days' notice before being required to vacate, and developers (or the owners of the real property to be acquired) cannot rely on contract law or state landlord-tenant law to circumvent this requirement. Thus, even if a tenant is on a month-to-month lease, the developer cannot avoid providing relocation assistance by giving the tenant thirty days notice to terminate the tenancy. Additionally, developers must provide advisory services and make payments to eligible displaced individuals and businesses, which in the case of displaced businesses can easily amount to $20,000 or more for each. Moreover, state and local law can provide additional requirements with which developers must comply. It is not difficult to see how these requirements can add substantially to a project's schedule and budget.

The U.S. Department of Transportation (the lead federal agency for the URA) and other federal government agencies provide a great amount of guidance and resources through publications which are available online (*e.g.* www.fhwa.dot.gov/realestate/ua/index.htm) in an attempt to make compliance with the URA regulations a little less complicated, but anyone trying to understand relocation assistance under the URA will soon come face-to-face with the complexity and intricacy of the URA. In order to ensure compliance with the URA and to avoid jeopardizing the use of federal funds, developers should consult legal counsel during the planning phases of any project which may involve the URA.

Featured Attorney

Michael R. Laird, Director

Michael Laird is an experienced transaction lawyer concentrating his practice in commercial real estate, project development, finance, construction and leasing. Mr. Laird has represented developers, commercial and institutional lenders, investors, contractors, architects and others involved in the commercial real estate industry. He also advises hospitality industry and healthcare clients, has experience in environmental law, gaming industry matters and Indian law, and has been involved with the development of both traditional and alternative energy generation facilities.

EPA's New Construction Stormwater Rule Effective on Feb. 1

by LeAnne Burnett, Director

The new federal stormwater rule impacts nearly every construction and development project in the U.S. It imposes a phased-in (over 4 years) enforceable numeric limit on stormwater discharges from large construction sites, requires monitoring to ensure compliance with the numeric limit, and requires the implementation of a range of erosion and sediment controls and pollution prevention measures to sites over 1 acre.

The rule prohibits discharges from a variety of activities, including concrete washout, stucco and paint washout, wastewater from other construction materials, soaps or solvents used in vehicle/equipment washing.

The rule sets a numeric effluent limit for turbidity (cloudiness) for large construction sites (those that will disturb ten acres or more at one time). The rationale is that turbidity is an "indicator pollutant," and controlling turbidity also controls the discharge of other pollutants such as metals or nutrients from construction sites.

t is expected that this rule will be incorporated into Oklahoma's Administrative Code, and possibly into municipal codes as well. Stormwater programs are delegated to the Department of Environmental Quality, and then further delegated in some instances to municipalities. Oklahoma City, for example, has a stormwater group.

Brownfields Conference

Crowe & Dunlevy Sponsors 2010 Oklahoma Brownfields Conference

Brownfield properties are properties that have lost value because of real or perceived environmental contamination. The 2010 Oklahoma Brownfields Conference will explore the environmental, economic, and social benefits of Brownfields redevelopment; present up-to-date information about technical and regulatory considerations and financial incentives; and share Brownfields success stories in Oklahoma. Brownfields' resources such as financial incentives and liability protection can be very important economic development tools for local governments, regional planning agencies, nonprofits, and the private sector. Attendees will have the opportunity to Meet many key public and private sector leaders and experience one of Oklahoma City's greatest Brownfields successes, the Skirvin Hilton Hotel.

Crowe & Dunlevy is proud to be a sponsor of the conference, which will be held at the Skirvin Hilton Hotel in Downtown Oklahoma City, April 28-29, 2010. For more information please visit the conference website at www.oklahomabrownfields.com.

Our Practice

Crowe & Dunlevy's Construction Law Practice Group provides a comprehensive array of legal services to businesses engaged in the construction, real estate and related industries. Members of the practice group have extensive experience advising and assisting clients in all phases of real estate development and construction, from property acquisition through groundbreaking, applicable permitting, and project completion. The practice group's litigation team has successfully represented developers, contractors and builders in both state and federal court and with regulatory agencies. In addition to working with buyers and sellers, our real estate specialists frequently assist property owners in achieving and maintaining compliance with federal and state laws and regulations, including consideration of Brownfields development and voluntary cleanup programs for environmentally challenged properties.

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