

## PENNSYLVANIA LEGAL UPDATE

### SUMMER 2006 ISSUE

#### MECHANICS' LIENS IN PENNSYLVANIA

##### What Is a Mechanics' Lien?

Home buyers and construction contractors often hear the term “mechanics’ lien” and probably have a limited understanding of exactly what it is. A mechanics’ lien is a construction or building repair debt that has attached to real estate. The real estate cannot be sold or transferred to a new owner unless the debt is paid in full or unless the new owner agrees to accept the real estate with the attached debt.

Since virtually no new owners are willing to take on the debts of the prior owners, a mechanics’ lien must be paid off, at the latest, at the time of sale of the property. Mechanics’ liens have the ability to jump to the head of the line of liens on a property, even ahead of the first lien mortgage.

##### The Background

Although contemporary usage of the term “mechanic” implies a worker who uses or works on a machine, just about any contractor or subcontractor involved in construction qualifies to file a mechanics’ lien if he or she completes work and is not paid. Mechanics’ liens arose in the law to level the playing field between construction workers and property owners. Construction workers invest their time, effort, and materials in buildings and repairs located on land owned by someone else. An owner who refuses to pay has the upper hand, since the work has been completed and the property is now in the control of the owner.

Enter the mechanics' lien. The law gives the worker a powerful response by providing the opportunity for the worker to file a lien in the case of nonpayment. An unpaid builder, plumber, electrician, or material supplier who is owed more than \$500 can file a mechanics' lien in the courthouse. He or she simply has to give the property owner notice and file a fairly simple document announcing the lien. The lien attaches to the real estate where the work was done or where materials were supplied.

If properly filed, a mechanics' lien for new construction dates back to the day when "visible commencement" of the work began. Liens for repairs and alterations are effective only from the date of the filing of the lien.

#### The Details

But mechanics' liens are quirky. Contractors have only four months from their last day on the job to file the lien. The lien attaches to the property described on the document filed. If the contractor does not clearly and accurately describe the property, the lien will not attach. If the lien document is not promptly and properly served on the owner, the lien fails.

Because mortgage lenders live in dread of mechanics' liens, they are very careful to require that contractors sign broad waivers of liens prior to starting any new construction. The waiver does not only apply to the general contractor. If properly filed and indexed at the courthouse, the mechanics' lien waiver also prevents the filing of any mechanics' liens by all subcontractors.

If you are purchasing a home that has not yet been constructed, your lender will want to be sure that construction does not commence until the general contractor signs and files a mechanics' lien waiver. Even lot-clearing, grading, and excavation can give rise to liens, and both lenders and title insurance companies can insist that all work start only after your mortgage is signed and recorded in the courthouse, and that a

mechanics' lien waiver be filed.

If you are a construction contractor or subcontractor, you should regularly expect to be asked to sign a waiver of liens as a condition of your customers' entitlement to borrow mortgage money and to purchase title insurance. When doing business with an owner who is not borrowing to finance a home-improvement project, you should consider refusing to sign a waiver of mechanics' liens. When no lender or title insurer is involved in the transaction, a contractor should do his or her best to preserve the entitlement to file a mechanics' lien, since it is a powerful tool to secure full and final payment.

#### REPORT ACCIDENTS TO PROTECT YOUR INSURANCE CLAIM

"Underinsured" motorist coverage is insurance that you purchase from your own insurance company to pay for your losses if you are injured by someone who does not have enough of his or her own liability insurance to pay for all of the injuries you may suffer. "Uninsured" motorist coverage is insurance that you purchase to pay for your own losses if you are injured by an uninsured driver or by a hit-and-run driver.

Recently, a Pennsylvania highway worker was frustrated to find that she lost her entitlement to make a claim for uninsured motorist benefits because she did not report the accident to the police. The worker was injured when she was forced to jump out of the way of an unidentified vehicle while working as a flagger on the highway. She promptly reported the incident to her employer and to the insurance company, faxing the insurance company a copy of the written report that she filled out for her employer. The insurance company later denied the claim on the grounds that its policy and Pennsylvania law both require that all uninsured motorist accidents must be reported to the police.

The Pennsylvania court acknowledged that the insurance company was correct. Both the policy and the Pennsylvania automobile insurance laws require that persons who are injured or who make any claims for uninsured motorist benefits must report the accident to the insurance company within 30 days and also must report the accident to the police “or proper governmental authority” as soon as possible.

Unless you make a prompt police report, you will lose any claims you have for uninsured motorist benefits. Remember that your uninsured motorist coverage pays you for claims you have against individuals without any insurance and also for claims you have against a phantom driver who injures you and flees the scene. If a negligent driver cannot produce reliable written evidence of current insurance coverage, assume that he or she has none and treat the incident as one involving an uninsured driver.

Unless your injuries prevent you from waiting at the accident scene, you should do so, even if it seems unnecessary or annoying. Reporting the accident after leaving the scene could be deemed untimely. If no police are available to come to the scene, you should go to the police department if possible. If your injuries prevent you from staying at the scene, take all the steps you can to be sure someone else reports the incident to the police for you. Furthermore, since the law does not define any other “proper governmental authority,” it is wisest to report such incidents only to the police and to be sure to make arrangements to get a copy of the police report.

## LIABILITY FOR THE CARELESS DRIVING OF OTHERS

Are owners of cars liable when they loan their cars to someone who then drives negligently? Are husbands liable for the careless driving of their wives? Mothers for their sons? What if the negligent driver is drunk or does not have a valid driver’s license?

## Duty of Care

While most people feel morally obliged to look out for the safety and welfare of others, the law has for centuries embraced the fundamental premise that the mere knowledge of a dangerous situation, even by one who has the ability to intervene, is not sufficient to create a legal duty to act. Before a person can be held legally liable for another person's injuries, the law looks for a reason why a duty of care may be imposed. Without a legal duty of care, no legal liability for negligence exists.

Husbands, wives, sons, and daughters may share their lives and their households, but they do not share liability for each other's negligent driving. Even if a parent or spouse has given another family member permission to use a car, and even if the parent or spouse is the title owner of the car, and even if the car is on a policy of insurance with other family cars in the parent's or spouse's name, the parent or spouse has no automatic liability for the unexpected negligence of the driver. Similarly, loaning a car to a friend does not make you liable for the friend's unexpected negligent driving. Drivers themselves are liable for their careless driving.

Car owners or family members *can* be held liable if they negligently loan a car to someone when they have a specific reason to know that the other person may drive carelessly. Handing the keys to your intoxicated son or making your car available to your spouse for an evening of illegal drag racing are obvious examples of negligent entrustment. If you carelessly ignore any facts which clearly tell you that a friend or family member is not in the proper physical condition to drive or has specific intentions to drive dangerously, you can be held liable.

In addition, serving alcohol to minors is a crime and is a sure route to exposing yourself to liability to others. Anyone who knowingly serves alcohol to a driver under the age of 21 is liable to persons injured by

the minor's negligence while driving under the influence of alcohol.

While parents are not held directly responsible for their child's negligent driving, parents do have some financial responsibility to contribute toward a damages award against their child. If damages are awarded to the injured claimant in a suit against a minor child, the minor's custodial parent or parents are responsible for paying a maximum of \$1,000 per injured person or \$2,500 per incident. Any damages awarded against a minor over these amounts cannot be collected against the child's parents.

### Passenger Liability

The liability of passengers is limited. Merely being present in a car with a negligent driver is not enough to make a passenger liable to others. Even riding with an intoxicated person does not make a passenger liable to others who may be injured by the dangerous driving of the driver. A passenger is liable to others only if he or she actually assists or encourages the driver to engage in unsafe behavior. Encouraging a driver to speed, or supplying a driver with drugs or alcohol while he or she is driving, can make a passenger liable to other injured persons.

Passengers are held somewhat responsible for ensuring their own safety. When a passenger knows or has reason to know that the driver may be intoxicated or otherwise unfit to drive, the passenger may be unable to recover damages for his or her own injuries. A passenger who rides with an intoxicated driver may suffer a reduction or complete elimination of the right to damages, since riding with an impaired driver may constitute assumption of the risk or contributory negligence. Central to the inquiry is whether the passenger was actually aware of the dangers.

If you loan a car to someone whom you know to be unlicensed or to be unfit or unlikely to drive safely, you can be held criminally liable. The Pennsylvania Motor Vehicle Code prescribes fines and

sanctions for such careless conduct. Liability for damages to others in civil lawsuits is part of the criminal sanction—if you violate the Motor Vehicle Code by loaning a car to someone who is unlicensed or unfit, you are responsible for the injuries caused to others.

If you are injured by a negligent driver, consider promptly investigating the circumstances of his or her driving. You may be able to pursue an award of damages against someone other than the careless driver.

#### RESTAURANT HAS NO DUTY TO PROVIDE MEDICAL RESCUE

A Pennsylvania man recently sued a restaurant after he choked on a piece of chicken and was not rescued or treated by any of the restaurant employees. The patron was able to walk and speak but had difficulty breathing. The restaurant's employees first tried to have the patron drink water and then summoned an ambulance.

The patron had to undergo emergency surgery to treat a tear in his esophagus. He later sued the restaurant and claimed that, since restaurant owners should expect that patrons may choke on food, owners should train their staff in performing the Heimlich maneuver and in the administration of general emergency treatment for people who are choking.

The Pennsylvania court dismissed the case, finding that restaurants cannot be expected to keep their staffs trained in emergency medical treatment. The court ruled that a restaurant whose employees are on notice that a customer is in distress and in need of emergency medical attention has a legal duty to come to the assistance of that customer. However, a restaurant does not have a duty to provide medical training to

its food service personnel or medical rescue services to its customers who become ill or injured. A restaurant meets its legal duty to a customer in distress when it summons medical assistance within a reasonable time.

### TAKE ME OUT TO THE BALL GAME

Spectators at baseball games assume the risk of a variety of injuries—balls and even bats sometimes hit fans and can cause serious injuries. A Philadelphia Phillies fan recently tried to get around the law of assumption of the risk, but he struck out when the Pennsylvania Superior Court threw his case out.

The spectator suffered serious eye and head injuries when he was hit by a ball thrown into the stands by a Phillies center fielder. The center fielder intentionally tossed the ball at the end of an inning, to serve as a souvenir for a lucky fan. Unfortunately, no fan caught the ball, and the injured spectator sued, claiming that, while he assumed the risks associated with the play of the game, he did not assume the risk of being hit by a ball intentionally thrown into the stands.

The court disagreed. Because professional baseball fans routinely arrive early for batting practice in hopes of retrieving an errant baseball as a souvenir, and because fans routinely battle to retrieve balls landing in the stands via home runs or foul balls, the court found that many risks occur at baseball games in connection with souvenir balls. The court also observed that both outfielders and infielders are known to toss caught balls to fans at the end of an inning.

Pennsylvania law provides that even first-time attendees at sporting events are presumed to know the customary risks that arise from sitting in the stands. Those risks are not confined to events that take

place during game play, but include just about anything that can happen at a sporting event.