

# Real Estate & Construction Law Update

PUBLISHED ON

**January 1, 2020**

---

## TABLE OF CONTENTS

[Death and Residential Leases: What Landlords Need to Know](#)

[AIA Design-Build Update: New Forms with an Old Twist](#)

[Pennsylvania Combats Lien Claims with New e-Directory](#)

[Reassessment Update](#)

### **Death and Residential Leases: What Landlords Need to Know**

By: Brian A. Korman

A new state law has created a much-needed shift in the state's landlord/tenant law for residential leases that real estate professionals need to be familiar with.

Act 116 of 2016, commonly referred to as the "Tenant Death Law," allows a personal representative to terminate a residential lease between a tenant who has died during the lease term and that person's former landlord. This amendment went into effect January 1, and refines the uncertainty after the death of a renter, giving important rights to the deceased's personal representative.

The new law gives the deceased renter's personal representative the right to terminate the lease on behalf of the tenant without penalty. This right to terminate requires a two-week notice period after which the representative can end the residential lease following certain events such as the removal of the tenant's personal property from the rented unit. This new law applies only to single-tenant residential leases.

Lawmakers believe this solution protects families of the deceased from extreme landlord billing practices and provides protections for landlords who are left with abandoned personal property.

One important note: The tenant's estate remains on the hook for rent and any other debt accrued before the lease is terminated. The estate also remains liable for any damage caused to the rental property and any expenses the landlord incurred as a direct result of the tenant's death. However, the estate will not be liable for any damages or penalties stemming from a breach for terminating the lease during the lease term - as long as the personal representative follows the two-week notice rule.

It remains imperative that all residential landlords stay up to date on the important shifts in landlord/tenant law. For more information on the impact of Act 116 or to discuss landlord/tenant-related issues, feel free to reach out to the Real Estate Group at Barley Snyder.

[Back To Top](#)

## **AIA Design-Build Update: New Forms with an Old Twist**

By: Maria Di Stravolo Elliott

Related Practice Area: Real Estate

Related Industry: Construction

The latest update on design-build contract documents from the American Institute of Architects (AIA) establishes a two-phase work agreement, with the design and construction phases and the costs and fees associated with each phase separated into two distinct documents.

Previously, the 2004 AIA A141 Design Build contract documents required you to establish the contract sum before completing the design phase, which could be difficult to do.

The new 2014 edition came down at the end of 2015. AIA typically updates its series of construction documents every 10 years.

Design-build contract documents are used whenever an owner hires one company to do both the design and the construction work, whether it is new construction or a renovation project. The "design-builder" is typically a general contractor that subcontracts or consults with an architect to do the design work.

The major change in the A141 Owner-Design Builder Agreement is the documents (and the work for the project) are done in two phases. First, the parties agree to the general terms and conditions and set the parameters and fees for the design work in the main agreement. Second, the parties establish pricing for the project once the design plans are complete. The new A141 documents are similar to the "Construction Manager as Constructor" documents where the parties establish fees for pre-construction services in the main agreement, then agree to a contract sum once the design plans have been finalized.

In that sense, the 2014 version of the Design-Build documents harken back to the 1997 AIA 191 Design Build Part I and Part II format. The 2014 design-build documents step away from the 2004 version, with the pricing arrangement for the entire project established up front even with incomplete design plans. This move makes sense since it would be difficult to establish a contract sum without having completed project design plans and specification.

Some additional changes in the 2014 A141 compared to the 2004 version:

- **Standard Form Agreement between owner and design-builder:** Lays out the owner's criteria for the project, such as the budget, design requirements, physical characteristics, milestone dates, general terms and conditions and other initial standards.
- **Exhibit A - Design-Build Amendment:** Establishes the contract sum for the project, but excludes the fees for work performed before signing the amendment, such as the design work. The contract sum could either be stipulated sum, cost of work plus design-builder's fee, or cost of work plus design-builder's fee with a guaranteed maximum price. The amendment also covers the terms for progress payments, final payments and the substantial completion date. This new exhibit also lists the design-builder's superintendent, key personnel, consultants and subcontractors.

- Exhibit B - Insurance and Bonds: The equivalent to Exhibit C of the 2004 version. Other than that, there are no substantive changes compared to the 2004 version.
- Exhibit C - Sustainability: A new document to the A141 Design-Build documents and has provisions relating to sustainability. It references sustainable programs such as LEED, Green Globes, Energy Star, so use this document if an owner wants to incorporate these sustainable programs into the project.

Hopefully, this new 2014 version will make it easier for the design-builder to manage the project in stages rather than predicting upfront the fees and costs without having first completed the design plans for the project. If you need assistance to review the updated AIA Design-build documents, feel free to contact one of our attorneys in our Construction Law Group.

[Back To Top](#)

## **Pennsylvania Combats Lien Claims with New e-Directory**

By: Abby Medin Tucker

It may have taken years, but the now-operational electronic directory of state construction notices could reduce the number of lien claims against a commercial construction project.

Launched in December, the "Pennsylvania State Construction Notices Directory" for mechanic's liens is designed to assist property owners in determining what potential subcontractor lien claims might be filed against a project. The directory implements the 2014 mechanic's lien legislation that may reduce the number of lien claims filed against a project.

The 2014 legislation establishes a procedure for owners and subcontractors to file notices of certain actions taken against large construction projects. The directory is only applicable for projects valued at \$1.5 million or more. Owners of qualifying projects or their agents may file a Notice of Commencement for a project, which then becomes searchable in the directory.

The Notice of Commencement must be filed before construction commences on the project. This notice provides information about the construction project, the project contractor and the address or legal description of the project's property. Subcontractors may then file Notices of Furnishing indicating the work, services, or materials that they provided for the project. Subcontractors may also file Notices of Nonpayment if they have not been paid for their services. The directory collects this information in a single, searchable electronic depository.

Neither property owners nor subcontractors are required to file notices in the directory, but there are incentives for filing, since a key provision in the legislation gives owners a new defense to mechanic's liens. Under the law, subcontractors forfeit the right to file a mechanic's lien claim if they fail to file a Notice of Furnishing on a project listed in the directory within specific timelines. To give fair notice to contractors and subcontractor, the new law does require the project owner to (1) include a statement in all the contracts and subcontracts for that project that the failure of a contractor or subcontractor to file a Notice of Furnishing will result in the loss of lien rights and (2) post the Notice of Commencement at the project site until completion of the project. If an owner fails to file the Notice of

Commencement prior to the start of work on a qualifying project, or fails to post hard copies of the notice in accordance with the law, then subcontractors similarly have no obligation to file a Notice of Furnishing.

If a project is listed in the directory, subcontractors must file the Notices of Furnishing within 45 days after first performing work on the project and must list:

- A general description of the labor or materials furnished
- The full name and address of the person supplying the services or materials
- The full name and address of the person who contracted for the services of materials
- A description of the project sufficiently identifying it based on the Notice of Commencement

Subcontractors should carefully search the directory for any project they work on to determine whether they need to file a Notice of Furnishing so that they do not inadvertently waive their rights to file a mechanic's lien. The electronic database will list and email copies of any Notices of Furnishing to the owner. Once a project is complete, the project owner may then file a Notice of Completion.

The Pennsylvania State Construction Notices Directory website allows you to create an account and watch a video tutorial on how to use the new system. For more information on the directory or on the Pennsylvania Mechanic's Lien Law generally, contact one of the attorneys in Barley Snyder's Real Estate or Construction groups.

[Back To Top](#)

## **Reassessment Update**

Related Practice Area: Real Estate

DON'T FORGET: Lancaster County is about to undertake its first property tax reassessment in more than a decade, and all property owners need to be aware of how it will affect them. Barley Snyder's real estate attorneys already have been helping clients with the reassessment process and will have updates on the process and its deadlines in the coming weeks. For more information, visit the county's reassessment page or get in touch with any of the attorneys in Barley Snyder's Real Estate Practice Group.

[Back To Top](#)