

## CONTRACTOR ALERT

Contractor Alert is a joint publication by this Contractor and the Law Offices of Richard M. Sissman, Esquire, located at 1485 Chain Bridge Road, Suite 105, McLean, VA 22101. This newsletter is designed to give general information on the matters covered. Space limitation prevents exhaustive treatment or analysis of this topic. This newsletter is not intended to substitute for advice on specific legal problems. If you are interested in receiving a complimentary issue or to be placed on our mailing list, contact Richard M. Sissman, Esquire. We welcome and appreciate your suggestions for future article topics.

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### MARYLAND MECHANIC'S LIEN EXCEPTION FOR SINGLE-FAMILY HOME APPLIES TO IMPROVEMENTS

The exception in the mechanics' lien law for single-family dwellings "erected on" the owner's property applies to home improvements as well as new construction, the Court of Special Appeals held in a 2-1 decision published in November 2000.

The relevant distinction is between the landowner's single-family residence and commercial buildings, not between different types of residential construction, the majority said.

"The stated purpose behind [the exception] was to protect the family and limit exposure of personal residences as opposed to commercial enterprises, to avoid subjecting homeowners to liability for double payment, and to shift the risk of loss from the homeowner to the subcontractor, who is in a better position to protect itself," Judge Arrie W. Davis wrote for the court (emphasis in original).

The rationale was especially important in the current case, since the subcontractor had worked with the defaulting contractor on at least eight other contracts and knew it had a history of late payments, yesterday's opinion stated.

A narrow construction of the exception would be "inconsistent with the policy considerations behind the homeowners' exception should be narrowly construed to protect the intended beneficiaries of the mechanics' lien law; those who furnish labor and materials in construction.

Kenney posited that the single-family exception, which limits the homeowners' liability to the amount due on the underlying contract, could just have easily been intended to benefit the new-home construction industry; or, "it may be simply a matter of legislative oversight or imprecise drafting," he wrote. "Obviously, we cannot know for sure, but I do not believe it to be necessary that we do."

The suit involved a \$150,000 addition to a home in Owings Mills. The general contractor, Timberwood Construction, abandoned the work in 1998. The owners, Robert S. and Elizabeth P. Brennen, incurred an extra \$9,000 to complete the project.

The subcontractor, Ridge Heating Air Conditioning and Plumbing, Inc., sued Timberwood and also filed a mechanics' lien against the property. The Brennens invoked the single-family dwelling exception and denied that any money was due on the Timberwood contract.

Ridge argued that the exception, RP 9-104(f)(3), did not apply because the project was an improvement rather than new construction. The Statute reads as follows: Notwithstanding any other provision of this section to the contrary, the lien of the subcontractor against a single-family dwelling being erected on the land of the owner for his own residence shall not exceed the amount by which the owner is indebted under the contract at the time the notice is given.

But the majority held that the facts were indistinguishable from the 1990 case of *Grubb v. Abbott*, in which the Court of Special Appeals held that the exception applied to an in-law apartment.

"There simply is no plausible rationale to support a distinction between *Grubb*...and the instant case, which also involves an addition to the personal residence of appellees," Davis wrote.

If you should have any further questions, please call Mr. Sissman at 703-903-9646 in Virginia.