



Hard Facts

Newsletter

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Changes to Virginia Mechanic's Lien and Bond Statutes in 2012

By James D. Fullerton, [Fullerton Law Offices](#)



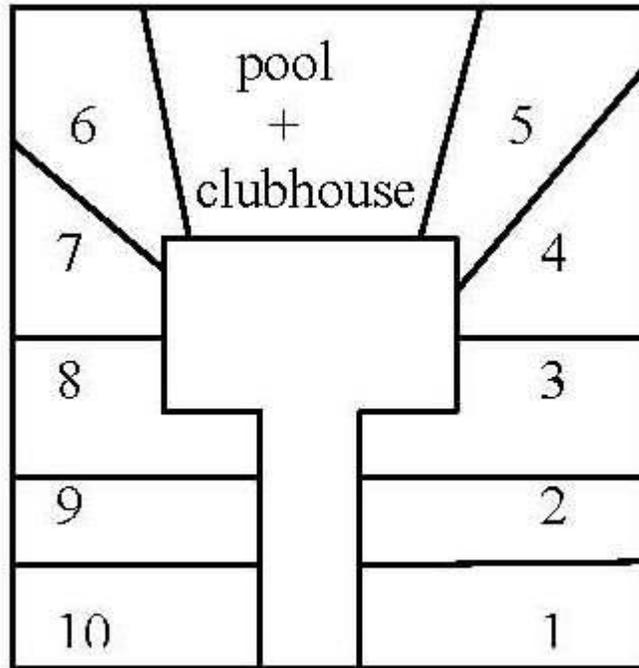
Jim Fullerton

House Bill #928 Virginia Code § 43-3(B) of Mechanic's Lien Statute

Virginia Code § 43-3(B) solved many allocation problems for contractors supplying "site development improvements" to serve an entire subdivision, such as streets, storm or sanitary sewer or waterlines. Each lot in the subdivision bears an equal amount of the lien for any improvement that serves all the lots in the subdivision.

There has always been some uncertainty concerning the definition of a "lot." Modern subdivisions usually have parcels of land known as common areas and it was uncertain whether these parcels are considered "lots" for allocation purposes. The safest course was to allocate to this common area parcel the same as one would allocate to all other "lots," even though it resulted in an unhelpful lien on the common area, so that some part of the claim was lost. This was preferable, however, to the risk of a court ruling the entire lien invalid because the contractor overburdened all of the lots because of the failure to allocate part of the labor and materials to the common area. Court rulings have been inconsistent. In the graphic below, the lien claimant would probably lien each lot, including the clubhouse pool lot, for one eleventh (1/11) of the unpaid contract balance.

House Bill #928 has passed the House and the Senate and the Governor is expected to enact this bill into law, effective July 1, 2012. House Bill #928 excludes from the allocation computations "parcels of land within the development which are common area, or which are being developed for the benefit of the development as a whole and not for resale." Assuming House Bill #928 is signed by the Governor, the lien claimant in the graphic below can confidently lien each home lot, for one tenth (1/10) of the unpaid contract balance.



House Bill #928 will also clarify that contractors are entitled to lien rights under Virginia Code § 43-3(B) for traffic signalization, and installation of electric, gas, cable, or other utilities, for the benefit of the development.

In order to get the benefits of § 43-3(B), the claimant must also "prior to the sale of such lot" file a Memorandum of Disclosure with the court clerk, setting forth a full disclosure of the nature of the lien to be claimed, the amount claimed against each lot...and a description of the development." There has also been confusion whether a subdivision developer sale of a lot to a builder would cut off contractor lien rights or if only a "consumer sale" to a homeowner would cut off contractor lien rights. The industry did attempt to get an amendment to § 43-3(B) specifically identifying a homeowner sale, but this change was deleted from the final House Bill #928. However, the Bill as passed does still say that "in the event that payments are made to the contractor without designating to which lot the payments are to be applied, the payments shall be deemed to apply to any lot previously sold by the developer such that the remaining lots continue to bear liability" for the unpaid contract balance. This gives some help to contractors for sold lots.

House Bill #1265 Virginia Code § 43-4 of Mechanic's Lien Statute

Other proposed changes to the Virginia Mechanic's Lien Statute were defeated, at least for this year. The original Virginia House of Delegates Bill #1265 required any mechanic's lien claimant on any commercial or residential project in the state to provide notice sixty (60) days before filing a mechanic's lien. As later approved by the House of Delegates, Bill #1265 required any mechanic's lien claimant only on a one- or two-family residential project to provide notice thirty (30) days before filing a mechanic's lien. Either version of this Bill would have significantly impacted mechanic's lien rights of contractors or suppliers. The mechanic's lien itself must be filed as soon as 90 days after the claimant's last supply of labor or material on the project. If a "pre-lien" notice was required 30 or 60 days before that, then a claimant would have to take legal action 30 or 60 days after delivery to preserve lien rights. This would often require contractors and suppliers to take legal action before payment was contractually due. Most contractors and suppliers would not do

this and the result would be loss of lien rights.

It looked like this bill would pass in some form, but the Senate Courts and Justice Committee passed over Bill #1265 for the 2012 session. This was a testament to the active involvement by members of the construction industry. However, the industry can expect that this issue will return in some form next year.

House Bill #945 Virginia Code § 2.2-4337) of Virginia Procurement Act

The Virginia Procurement Act applies to all construction projects by the state, counties, cities and their agencies, such as the Virginia Department of Transportation (VDOT), state universities and all county school boards. Virginia Code § 2.2-4337 requires bid, performance and payment bonds for most construction contracts in excess of \$500,000, but requires bonding for all transportation-related projects exceeding \$250,000.

There has been a push to increase the contract amount for transportation-related projects that would not require bonding. Many small, family owned, or minority contractors have difficulty getting bonds and this makes it difficult for them to get VDOT contracts. On the other hand, unbonded projects mean more risk for the subcontractors and suppliers on such projects, resulting in fewer subcontractors and suppliers willing to work on such projects or requiring higher prices to cover the risk. The state does also lose performance security and takes on greater risk of default by unbonded contractors.

House Bill #945 was a compromise that has now passed the House and the Senate and the Governor is expected to enact this bill into law, effective July 1, 2012. This bill raises the contract amount for which bonds are required on transportation-related projects funded by the Commonwealth from \$250,000 to \$350,000 but goes on to say that the payment and performance bond can only be waived in projects of less than \$350,000 if there is evidence that a surety company has declined an application from the contractor for a bond.

Association & Member News

President's Message



Don E. Wagner
2012-2013 PCAV President

Many thanks to immediate Past President **Don Anger** (Americast) for his invaluable service to the PCAV and the precast industry. This was Don's second time as President. He was one of the founders of the PCAV 20-plus years ago and his leadership has been one of the key success factors in helping to establish the Association's reputation within the industry. I also want to recognize **Marie Derby** (Essroc Cement) for another year directing the planning and arrangements for the Annual Meeting and making it a success. Thanks again, Marie! Finally, thanks to our Managing Consultant **Mark Singer** (Advocates

of Virginia), for his continued professional representation and the administrative support his firm provides to PCAV.

PCAV delivered on a key aspect of its mission statement during its Annual Meeting at Wintergreen in May with the attendance of leading members of the Virginia Department of Transportation's management team, including Commissioner Gregory Whirley and Chief Engineer Mal Kerley. As the Commissioner described the precarious financial condition of VDOT's long-term sustainable funding, I could not help but question how many citizens of Virginia actually realize that infrastructure improvements could come to a halt in a few short years unless something is done. Let's help the Commissioner get the word out! Tell your friends, your kids, your neighbors and anyone else who will listen. Ask your local representatives to support rebuilding and maintaining our infrastructure. Long-term sustainable funding is a factor that is critical to the growth of our industry.

The economy may be weaker than a few years ago, but PCAV is growing stronger and has strengthened its relationships with VDOT and major Virginia municipalities. These relationships are a testament to the hard work of many of our members who have volunteered their time on the behalf of PCAV. A strong industry association, one that represents the unified voice of the precast industry, is a powerful tool to promote each of our businesses. By volunteering to serve as an officer, chair of a committee, or help with a promotional event, you are making contacts and learning new skills that benefit the PCAV, your company, and yourself. Thanks to all of you who have contributed during the last few years. I am counting on your future support.

In the coming year we would like to see some new faces on our committees. If you are ready to realize the benefits of working with others in PCAV, please let me know. Over the coming weeks I will be contacting as many association members as possible for their ideas on how PCAV can best benefit their company and the industry. With your assistance, I aspire to establish an updated set of goals for the PCAV that will help promote and grow the precast industry in future years. Thanks for your support and I look forward to working with you all in the coming year.

Annual Meeting Receives Rave Reviews **By Marie Derby, [Essroc Cement](#)**

The PCAV held its Annual Meeting on May 9-10, 2012 at the Wintergreen Resort, beginning as usual with a golf tournament. Thankfully, the rain held off until just the last few holes.

And the winners are...

First place team

Jimmy George (Insteel), Mark Singer (Advocates of VA), Ed Plucinski (Hanson) and Mike Barg (Rinker Materials)

Second place team

Nick Talley (MA Industries), Chris Speck (Oldcastle) and Scott Crumpler (Americast)

Longest Drive on #5 was Willie Clark (Oldcastle)

Longest Putt on #18 was Mike Barg (Rinker Materials)

Following the tournament, the group moved inside for the reception and dinner. VDOT Commissioner Greg Whirley and VDOT Chief Engineer Mal Kerley along with other VDOT guests joined our members for the evening events. Our partnership is growing and

developing with VDOT and we are very fortunate to have had such good attendance on both days from VDOT.



Greg Whirley

Our meeting the second day began with beautiful spring weather and featured speeches by Commissioner Whirley, Mal Kerley and Jim Fullerton, the PCAV's legal counsel. The speeches covered our economic conditions, reviewed VDOT's six-year plan and provided comments of hope for our industry to rebound in the upcoming years.



Mal Kerley

Outgoing President Don Anger concluded the meeting prior to our group lunch. Thanks to Don for all of his work and dedication in his role as president the past two years.

We would also like to sincerely thank all of our sponsors. Their support is greatly appreciated.

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- Boral Material Technologies
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- Essroc Cement
- Haarup North America
- Insteel Wire Products
- JEPCO Sales
- M A Industries
- Martin Marietta
- Press Seal Gasket
- Rinker Materials
- Spillman Company

- Trelleborg Pipe Seals

The comments for the entire meeting were very positive. Results from the surveys conclude that we will return to Wintergreen and its clean mountain air in May 2013. Please stay tuned for the dates.

The Annual Meeting Committee thanks you for your continued support.

Marie Derby
Don Anger
Brad Meyers
Weldon Mitchell

Managing Consultant's Report



Mark Singer
PCAV Managing Consultant

The Precast Concrete Association of Virginia continues to be active and effective in a number of areas in support of our mission to "promote the growth of the precast concrete industry." That means keeping our members abreast of issues of importance to their businesses, as well as reaching out to external audiences to educate users and specifiers about the many benefits of precast products.

Over the last few months PCAV representatives have made presentations to numerous groups in support of this effort. More than 200 attendees participated in recent sessions in Northern Virginia dealing with proper pipe installation and post-installation pipe inspection. PCAV also worked with the City of Virginia Beach as they considered revisions to their Public Works Design Standards Manual. And on the regulatory front, the PCAV continues to represent its members' interests by engaging a consultant to provide industry input and recommendations as the state goes about revising regulations dealing with the General VPDES Permit Requirements for Concrete Products Facilities. Special thanks to **Hank Gottschalk** (Hanson) for heading up many of these training sessions and to **David Holsinger** (Americast) for serving as the PCAV liaison on the VPDES Permit process.

Marketing Committee Chairman **Randy Partin** (Hanson) has also been a busy fellow as he traveled to such shows as the Virginia Concrete Conference and the Virginia Transportation Construction Alliance Conference to showcase PCAV members and products.

PCAV also hosted another highly informative and valuable joint meeting with VDOT representatives in March, and another meeting is scheduled for September. These meetings provide an invaluable opportunity for PCAV members and key VDOT personnel to interact and discuss areas of common interest and to flesh out potentially problematic issues before they become problems.

PCAV members are just returning from another successful annual conference in Wintergreen which included timely and engaging presentations by both the VDOT Commissioner and Chief Engineer. PCAV legal counsel **Jim Fullerton** also provided the membership with a review of recent important changes made to Virginia's Mechanics Lien laws (see above article). During the conference the membership elected new officers for the coming year. Congrats to **Don Wagner** (Hanson), **Mimi Coles** (Permatile), and **Craig Whitten** (EJ) for being elected President, Vice President and Secretary/Treasurer respectively. Outgoing President **Don Anger** (Americast) was also recognized and thanked for his many contributions during his two years as president.

We want to welcome **Ed Pennypacker** (Concrete Sealants) as a new associate representative on the board, and to thank outgoing board member **Ed Wiles** (Roanoke Cement) and wish him all the best. Everyone in the PCAV wishes Ed a speedy recovery from his recent illness. Last but not least, kudos to **Marie Derby** (Essroc) and her Annual Conference Committee for putting together another great annual meeting.

Finally, PCAV would like to recognize and welcome our two newest members into the association: **Haarup North America** and **Giant Cement Company**. We thank them for their support and look forward to a long and productive relationship.

PCAV Officers & Directors

PCAV Officers

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Don Wagner

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Mimi Rainero Coles

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Brad Meyers

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Ed Pennypacker

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General Counsel

James D. Fullerton

[Fullerton & Associates](#)

Managing Consultant

Mark I. Singer

[Advocates of Virginia](#)

Calendar

September 18, 2012
 PCAV/VDOT Joint Mtng
 The Place at Innsbrook
 Richmond, VA

October 3-7, 2012
 NCPA Annual Meeting
 New Orleans, LA

PCAV Members

Producer Members	City, State	Telephone
Americast	Ashland & Harrisonburg, VA; Martinsburg, WV	804-798-6068
Hanson Pipe & Precast	Richmond, Roanoke, Manassas, VA	804-233-5471
Nansemond Pre-cast Concrete Co. Inc.	Suffolk, VA	757-538-2761
Oldcastle Precast	Fredricksburg, VA	540-898-6300
Permatile Concrete Products Co.	Bristol, VA	276-669-5332
Rinker Materials	Frederick, MD	301-698-7373
Smith-Midland Corporation	Midland, VA	540-439-3266
Associate Members		
A.L. Patterson	Fairless Hills, PA	267-974-8341
A-LOK Products, Inc.	Tullytown, PA	800-988-7837 800-822-2565
American Step Company	Griffin, GA	800-988-7837
BASF Corp.	Beechwood, OH	610-212-5577
Boral Material Technologies	Reidsville, NC	336-274-1140
Capitol Foundry of Virginia Inc.	Virginia Beach, VA	757-427-9431
Columbia Machine, Inc.	Vancouver, WA	360-694-1501
CONAC Concrete Accessories	Norcross, GA	770-417-1110
Concrete Sealants, Inc.	Tipp City, OH	610-948-7867 800-332-7325
East Jordan Ironworks, Inc.	Richmond, VA	804-513-0674
Essroc Cement	Laneview, VA	800-624-8986
Fullerton & Knowles, P.C.	Clifton, VA	703-818-2600
Giant Cement Company	Summerville, SC	843-851-9898

Grace Construction Products	Westminister, MD	540-220-8159
Haarup North America	Portland, OR	503-954-1718
Hamilton Form Co.	Fort Worth, TX	817-590-2111
Hamilton Kent, LLC	Toronto, ON & Boxford, MA	978-376-9965
Holcim Cement	Haggerstown & Ijamsville, MD	301-739-1150 443-472-6542
Insteel Wire Products	Mount Airy, NC	800-791-4108
Kaufman Products, Inc.	Baltimore, MD	800-637-6372
LaFarge North America	Chesapeake, VA	757-545-2481
Lehigh Cement Co.	Union Bridge, MD	800-462-9071
M.A. Industries, Inc.	Peachtree City, GA	800-241-8250
Martin Marietta Aggregates	Richmond, VA	804-674-9517
Meadow Burke Products	Lorton, VA	571-294-4049
Press-Seal Gasket Corp.	Ft. Wayne, IN	260-436-0521
Roanoke Cement Co.	Mechanicsville, VA	504-798-3251
Spillman Co.	Columbus, OH	800-443-6767
Swope & Associates	Charles City, VA	804-829-5551
TEKA North America	Chesapeake, VA	757-558-8846
Trelleborg Engineered Systems	Mount Airy, MD	800-626-2180
U.S. Foundry & Manufacturing Corp.	Brown Summit, NC	800-527-8380
Universal Polymer & Rubber, Ltd.	Middlefield, OH	800-782-2375
Universal Sales	Hendersonville, NC	828-891-4412
Virginia Contractor Supply	Manassas, VA	301-988-4900
Vulcan Construction Materials	Manassas, VA	703-368-2060
Government Members		
City of Chesapeake	Chesapeake, VA	757-382-6101



Mission Statement

The Precast Concrete Association of Virginia is dedicated to the growth of the precast concrete industry. We pursue that purpose by educating and partnering with specifiers, installers and end users on the advantages and proper utilization of our products and systems. The association will represent its members in the Commonwealth of Virginia.

Precast Concrete Association of Virginia

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