DISTRICT OF COLUMBIA

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I. MECHANIC'S LIEN BASICS

A. Requirements

A contractor desiring to enforce a lien shall record in the land records (the property records maintained by the Office of the Recorder of Deeds of the District of Columbia) a notice of intent that identifies the property subject to the lien and states the amount due or to become due to the contractor.[1] The notice of intent shall be recorded within 90 days after the earlier of the completion or termination of the project.[2] If the notice of intent is not recorded in the land records within 90 days after the earlier of the completion or termination of the project, the contractor's lien shall terminate upon the expiration of the 90-day period.[3]

Any contractor who timely records a notice of intent must send to the owner, by certified mail to the current address (or the last known address) of the owner, a copy of the notice within 5 business days after the date of its recordation in the land records.[4] If the certified mail is returned to the contractor unclaimed or undelivered, the contractor must post a copy of the recorded notice of intent at or on the affected real property in a location generally visible from some entry point to the real property.[5]

The notice of intent shall include, *inter alia*, the following: (1) the name and address of the contractor or the contractor's registered agent; (2) the name and address of the owner or the owner's registered agent; (3) the name of the party against whom interest a lien is claimed and the amount claimed, less any credit for payments received up to and including the date of the notice of intent; (4) a description of the work done, including the dates that work was commenced and completed; (5) a description of the material furnished, including the dates that material was first and last delivered; and (6) a legal description and, to the extent available, a street address of the real property.[6] Additional requirements exist when the contractor is an entity organized under the laws of the District of Columbia or is doing business in the District of Columbia,[7] or if the contractor is an individual or an entity organized under laws other than those of the District of Columbia, and is not doing business in the District of Columbia within the meaning of applicable District laws but is required to be licensed by a governmental entity.[8]

Subcontractor's liens similarly require the same notice as a contractor's lien, but with additional requirements.[9] These additional requirements include serving notice upon the owner of the property.[10]

B. Enforcement and Foreclosure

The proceeding to enforce a mechanic's lien shall be a bill in equity, which shall contain a brief statement of the contract on which the claim is founded, the amount due thereon, the time when the notice was filed with the Recorder of Deeds, and a copy thereof served on the owner or his agent, if so served, and the time when the building or the work thereon was completed, with a description of the premises and other material facts; and shall pray that the owner's interest in the premises be sold and the proceeds of sale applied to the satisfaction of the lien.[11]

If such suit be brought by any person entitled, other than the principal contractor, the latter shall be made a party defendant, as well as all other persons who may have filed notices of liens. All or any number of persons having liens on the same property may join in one suit, their respective claims being distinctively stated in separate paragraphs. If several suits are brought by different claimants and are pending at the same time, the court may order them to be consolidated.[12]

Any person with a lien and who has recorded a valid notice of intent shall only enforce the lien by:

> a) Filing suit under §40-303.08 to enforce the lien at anytime within 180 days after the date that the notice of intent is recorded in the land records;[13] and
>
> b) Recording, within 10 days of filing suit, a notice of pendency of action in accordance with §42-1207(b) in the land records.[14]

Failure to file suit within the 180-day period or to file timely a notice of pendency of action shall terminate the lien.[15]

If the right of the complainant or of any of the parties to the suit to the lien is established, the court shall decree a sale of the land and premises or the estate and interest therein of the person who, as owner, contracted for the erection, repair, improvement of, or addition to the building.[16]

C. Ability to Waive and Limitations on Lien Rights

A contractor or subcontractor may waive its right to file a mechanic's lien by express agreement, even when it was bargained for after the original contract was made.[17] The right to file a lien may also be waived by implication. In some cases, a waiver has been found by accepting real security for payment of work being done, as the contractor was clearly not relying on his right to file a mechanic's lien.[18] The right to file a mechanic's lien is individual to each contractor, and it may not be waived by a third party.[19]

If the original contractor and its subcontractors have filed notices of liens, the subcontractor will be satisfied first out of the proceeds of sale, but not in excess of the amount due him, and the balance, if any, of said amount shall be paid to the contractor.[20]

If one, or some only, of the persons employed under the original contractor shall have served notice on the owner, before payments made by him to the original contractor, said party or parties shall be entitled to priority of satisfaction out of said proceeds to the amount of such payments; but, subject to this provision, if the proceeds of sale, after paying there out the costs of the suit, shall be insufficient to satisfy the liens of said parties employed under the original contractor, the said proceeds shall be distributed ratably among them to the extent of the payments accruing to the original contractor subsequently to the service of notice on the owner by said parties.[21]

II. PUBLIC PROJECT CLAIMS

The District of Columbia has established an Office of Public-Private Partnerships.[22] The Office is "responsible for facilitating the development, solicitation, evaluation, award, delivery, and oversight of public-private partnerships that involve a public entity in the District,"[23] and has the power to promulgate rules and regulations in order to carry out its enumerated powers.[24]

A. State and Local Public Work

Contractors working on public contracts must post performance and payment bonds if the amount of the contract is greater than $25,000.[25] The amount of the performance bond is to be the amount that the Mayor of the District of Columbia deems adequate for the protection of the District.[26] The amount of the payment bond differs based upon the total value of the contract: (1) for a contract worth less than $1,000,000, no more than 50% of the contract's value; for a contract worth between $1,000,000 and $5,000,000, no more than 40% of the contract's value; and (3) for a contract worth over $5,000,000, no more than $2,500,000.[27]

A project is subject to the Davis-Bacon act, which guarantees construction workers a certain minimum rate of pay, if the project qualifies as "public work."[28] "To qualify as a public work, a project must possess at least one of the following two characteristics: (i) public funding for the project's construction or (ii) government ownership or operation of the completed facility, as with a public highway or public park."[29]

1. Notice and Enforcement

Any person who supplies work or materials under a public contract may make a claim on the bond posted by the general contractor.[30] The person or entity entitled to claim such payment must notify the contractor within 90 days of the last day on which they supplied materials or labor of the amount they intend to claim.[31]

B. Claims to Public Funds

Contractors may assert claims against the District of Columbia for amounts they are due under public contracts.[32] Claims must be submitted to the representative of the District of Columbia who executed the contract on behalf of the District, and that representative is obligated to issue a decision within 120 days.[33] If no decision is made within 120 days, the claim is considered to have been denied.[34]

Within 90 days of the day on which a claim is denied – including the "constructive denial" if the claim is not decided upon within 120 days – a contractor may appeal to the Contract Appeal Board.[35] If aggrieved by the decision of the Board, either party may appeal the decision within 120 days of its issuance.[36] A contractor must, however, exhaust its remedies before the Contract Appeal Board before seeking any relief in the court system.[37]

III. STATUTES OF LIMITATION AND REPOSE

A. Statutes of Limitation and Limitations on Application of Statutes

1. For the recovery of damages for an injury to real or personal property - three years. [38]

2. Statute of limitations on a simple contract, expressed or implied - three years.[39]

3. Contract for sale under UCC - four years, but can be reduced by the terms of contract to not less than one year; cannot be extended by the contract.[40]

B. Statutes of Repose and Limitations on Application of Statutes

An action to recover damages resulting from the defective or unsafe condition of an improvement to real property, and for such contribution and indemnity, will be barred unless the injury occurs within the ten year period beginning on the date the improvement was substantially completed.[41] An improvement to real property is considered substantially completed when it is first used, or it is first available for use after having been completed in accordance with the contract or agreement covering the improvement, including any agreed changes to the contract or agreement, whichever occurs first.[42]

IV. PRE-SUIT NOTICE OF CLAIM AND OPPORTUNITY TO CURE

There are no statutory requirements in the District of Columbia for a claimant to provide the opportunity to cure with respect to improvements to realty; however, such a requirement may be included in the contract itself. A thorough analysis of the contract documents should be performed in each case to determine whether a Claimant is required to provide the opportunity to cure.

V. INSURANCE COVERAGE AND ALLOCATION ISSUES

A. General Coverage Issues

In the District of Columbia, insurance policies are construed according to contract principles.[43] As such, if the terms are unambiguous, no extrinsic evidence is necessary.[44] Since ambiguities in contracts are typically construed against the drafter, the insurer is assumed to have drafted the policy and any ambiguous terms will be construed against the insurer.[45]

Under a typical liability policy, an insurer has a duty to both provide the insured with a defense and to indemnify the insured for a judgment up to policy limits.[46] The duty to defend depends on whether the alleged facts bring the claim within the insurance policy, and the duty to indemnify depends on the ultimate truth of those facts.[47]

Generally, insurance policies do not cover the insured's economic loss stemming from contractual liability for defective workmanship.

B. Trigger of Coverage

The District of Columbia has adopted the manifestation trigger as a general rule, which states that property damage occurs at the time the damage is discovered or when it has manifested.[48] The District of Columbia also recognizes an exception to this general rule when the damage to the property can be characterized as "continuous or progressive."[49] In continuous and progressive situations the initial damage occurred (i.e., was evident during the policy period) and further damage occurred afterward.[50]

C. Allocation Among Insurers

Where there are two applicable insurance policies, one policy containing a *pro rata* "other insurance" clause and the other an excess "other insurance" clause, provisions of each will be interpreted to give effect to the intent of the contracting parties.[51] The application of this rule will probably result in the excess clause being given full effect.[52] The insurance company including a *pro rata* clause in its policy will be required to shoulder the loss up to its policy limit.[53] In some instances, it may be impossible to reconcile the two clauses or to give effect to the intent of the contracting parties (e.g. where the applicable portions of the two "other insurance" clauses are identical excess clauses) and the court will almost always require the insurers to apportion the liability.[54]

D. Issues with Additional Insurance

The District of Columbia has expressly declined to address whether certificates of insurance may establish a contractor as an additional insured.[55] The Court of Appeals has nevertheless implied that an insurer's endorsement of a certificate of insurance that names a contractor as an additional insured may later preclude the insurer from arguing that the contractor was not, in fact, an additional insured.[56]

VI. CONTRACTUAL INDEMNIFICATION

The District of Columbia has no statutory provision voiding indemnity contracts for construction. Such clauses have been upheld by the District of Columbia Court of Appeals on more than one occasion.[57]

The general rule is that indemnity provisions are permissible; however, such provisions "should not be construed to permit an indemnitee to recover for his [or her] own negligence unless the court is firmly convinced that such an interpretation reflects the intention of the parties."[58] This is a diversion from the usual rules of contract interpretation.[59] Further, indemnification clauses are generally interpreted narrowly against the party seeking indemnification.[60] Although questions of ambiguity in contracts are usually handed to the jury for determination, ambiguity in an indemnifying clause which purports to indemnify the negligence of the indemnitee, is, as a matter of law, void.[61]

The District of Columbia Court of Appeals' decisions in this area turn on the Court's interpretation of the indemnity clause in the contract. In *W.M. Schlosser Co., Inc. v. Maryland Drywall Co., Inc.*, and in *Grunley Constr. Co., Inc. v. Conway Corp.*, the language stated, essentially, that the subcontractor shall indemnify the general contractor and owner from all liability arising out of the execution of the work in the contract.[62] Although there was no reference specifically to whose liability was to be indemnified, the broad language was interpreted not to be ambiguous, but simply all encompassing.[63] Thus, the indemnitee's liability fell within the broad language and was subject to indemnification.[64]

In *Rivers & Bryan, Inc. v. HBE Corp*., the contractor brought a claim of indemnity against the subcontractor for injuries caused on the work site in relation to work being performed on the contract.[65] The indemnity clause stated that the subcontractor would hold the contractor harmless from all damages or loss resulting from the subcontractor's failure to observe OSHA requirements.[66] In a note following the indemnity clause, there was written "subcontractor is not responsible for others who are not in conformance with OSHA."[67] The Court found ambiguity in the addition to the printed language of the contract and found that it was unclear whether the word "others" applied to the contractor or referred only to other subcontractors.[68] Thus, the Court held that the clause could not be upheld.[69]

In *District of Columbia v. Royal*, the Court held that the government was not entitled to indemnification from the contractor based on an indemnity clause.[70] The Court stated that before it could uphold an indemnity clause it must be "firmly convinced that such an interpretation reflects the intention of the parties."[71] The Court held that the indemnity clause clearly covered the contractor's own negligence; however, it could not be stretched to encompass the government's negligence as well.[72] Consequently it denied the government's claim for indemnity from the contractor.[73]

In certain limited circumstances, "in the absence of an express contractual duty to indemnify, a right to indemnity exists where a duty to indemnify may be implied out of the relationship between the parties to prevent a result which is unjust."[74] Most pertinently to construction cases, the District of Columbia Court of Appeals has held that "a third party who

has been sued by an employee may pursue a claim against the employer—who has already settled with the employee under worker's compensation—for implied indemnity, when the indemnity claim rests on an independent duty the employer owes to the third party arising out of a 'special relationship' between them, but not a relationship arising merely 'on account of' the employee's accident."[75]

VII. CONTINGENT PAYMENT AGREEMENTS

A. Enforceability

Under D.C. law, a "pay if paid" provision establishes a valid condition precedent, it will be enforced.[76] There has not yet been a D.C. case which defines the treatment of a "pay when paid" clause.

B. Requirements

A "pay if paid" provision will be enforced if it is phrased to show that it is intended to be a condition precedent to payment.[77] Even if the clause is explicit, it will not be enforced if a contractor voluntarily lessens the amount of payment he receives.[78] This will be considered a breach of the contract, and the subcontractor will nevertheless be owed the money payable under the contract.[79] For example, in *Urban Masonry Corp. v. N & N Contractors, Inc*., a subcontractor's contract contained a "pay if paid" clause.[80] The contractor settled with his client for a lesser amount than was owed under the contract.[81] The contractor argued the condition precedent—being paid—had not been completely fulfilled, and he was not required to pay the subcontractor.[82] The D.C. Court of Appeals disagreed; the contractor had been paid, even if it was a lesser amount that originally bargained for.[83] The Court also noted that even if the settlement had not constituted payment, the contractor would have breached the contract by frustrating the fulfillment of the condition precedent.[84]

VIII. SCOPE OF DAMAGE RECOVERY

A. Personal Injury Damages vs. Construction Defect Damages

Under D.C. Code §12-301, an action for the recovery of real or personal property must be brought within three years from the time the injury is discovered.[85] Under D.C. Code §16-2702, an action for the recovery of wrongful death must be brought within two years after the death.[86]

In the context of construction defect damages the injured party must be placed in the same position as if there had been no breach.[87] If the construction is incomplete, the injured party is entitled to reasonable costs of completion as long as that does not create unreasonable economic waste.[88] Additionally, the injured party is entitled to the value of the loss of the use, if the building was being constructed for use.[89] However, the injured party cannot recover more than he would have paid or more than he was damaged.[90]

B. Attorney's Fees Shifting and Limitations on Recovery

The District of Columbia follows the "American Rule" that attorney's fees are ordinarily not recoverable.[91] The District of Columbia also recognizes as an exception to the "American Rule" the wrongful involvement in litigation doctrine.[92]

C. Consequential Damages

An injured party is entitled to compensation for losses, which are the natural consequence and proximate result of the defendant's tort or breach of contract.[93] Tortious injuries, however, need only be within the risk created by the defendant's action, whereas contract damages must be foreseeable.[94] Where there is a breach of contract before the contractor starts work, the contractor is entitled to recover his lost profits due to the breach, which are measured by the contract price less the cost he would have incurred had the contractual obligation been completed.[95]

D. Delay and Disruption Damages

Delay damages are compensable either as part of lost profits or reimbursement for costs.[96]

E. Economic Loss Doctrine

The District of Columbia adheres to the economic loss doctrine, "which prohibits claims of negligence where a claimant seeks to recover purely economic losses sustained as a result of an interruption in commerce caused by a third party."[97] However, the United States District Court for the District of Columbia has noted an exception to this doctrine, holding "[w]hile it is true that a plaintiff is typically barred from recovering in tort for purely economic loss, this doctrine does not apply where there is a special relationship between the parties."[98]

F. Interest

Both pre and post-judgment interest are allowed in the District of Columbia.[99] Pre-judgment interest is generally regarded as merely another element of damages.[100] Interest is not allowable as part of punitive damages except as additional punishment.[101]

G. Punitive Damages

Punitive damages are available in the District of Columbia upon proof that the defendant's tortious act was aggravated by "evil motive, actual malice, deliberate violence or oppression."[102] Punitive damages must be supported by clear and convincing evidence that the tortious act was accompanied by conduct and a state of mind evincing malice or its equivalent.[103] Punitive damages may be awarded only if it the evidence demonstrates that the tort committed by the defendant was aggravated by egregious conduct and a state of mind that justifies punitive damages.[104] Notwithstanding the availability of punitive damages, they are disfavored under District of Columbia law.[105]

H. Liquidated Damages

Liquidated damages clauses are enforceable in the District of Columbia unless they are determined to be an unenforceable penalty.[106] Generally, damages clauses will be enforced unless they are "demonstrably unreasonable," i.e., unless the amount of the damages is in no way reasonably related to the damages foreseeable at the time the contract is entered into.[107] However, the Court of Appeals has noted that"[l]iquidated damages clauses in contracts deserve special scrutiny," and that such clauses will be viewed "with a gimlet eye."[108] The party challenging the enforceability of the clause has the burden to establish that it is a penalty.[109] "[W]here a liquidated damages provision is disproportionate to the level of damages reasonably foreseeable at the time of the making of the contract, it will be void as a penalty."[110]

IX. CASE LAW AND LEGISLATION UPDATE

There have not been any major construction specific legal developments in the past year in the District of Columbia. There has been no movement by the D.C. Council regarding last year's bill that would require soundproofing standards for new residential construction in proximity to entertainment and music venues in the District.

The bill was introduced in March 2021 and titled the "Harmonious Living Amendment Act of 2021" designed to address tensions between residents and those in the arts and performance community including concert venues and street music and would add additional requirements for residential builders in D.C. In April 2021 it was referred to the Committee on Business and Economic Development but has stalled there, though not believed to be dead as yet.

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[1] D.C. CODE § 40-301.02(a)(1).
[2] *Id*.
[3] *Id*.
[4] *Id.* at (a)(2).
[5] *Id*.
[6] *Id.* at (b)(1)–(6).
[7] *Id.* at (b)(7)(A).
[8] *Id.* at (b)(7)(B).
[9] D.C. CODE § 40.303.01.
[10] D.C. CODE § 40.303.03.
[11] D.C. CODE § 40.303.08.
[12] *Id*.
[13] D.C. CODE § 40.303.13(a)(1)(A).
[14] *Id.* at (a)(1)(B).
[15] *Id.* at § (a)(2).
[16] D.C. CODE § 40.303.09.
[17] *Kidwell & Kidwell, Inc. v. W.T. Galliher & Bro., Inc.*, 282 A.2d 575, 578 (D.C. 1971).
[18] *Grant v. Strong*, 85 U.S. 623, 625–26 (1973).
[19] *Battista v. Horton, Myers & Raymond*, 128 F.2d 29, 31 (D.C. Cir. 1942).
[20] D.C. CODE § 40.303.10.
[21] D.C. CODE § 40.303.11.
[22] D.C. CODE § 2-272.01(a).
[23] *Id.* at § 2-272.01(b)(1).

[24] *Id.* at § 2-274.01.
[25] D.C. CODE § 2-201.01.
[26] *Id.*
[27] *Id.*
[28] *District of Columbia v. Dep't of Labor*, 819 F.3d 444, 445 (D.C. Cir. 2016).
[29] *Id.* at 446.
[30] D.C. CODE § 2-201.02(a).
[31] *Id.*
[32] D.C. CODE § 2-359.08(a).
[33] *Id.* at § 2-359.08(a), (b).
[34] *Id.* at § 2-359.08(c).
[35] *Id.* at § 2-360.04(a).
[36] *Id.* at § 2-360.05(a).
[37] *Davis & Assocs. v. Williams*, 892 A.2d 1144, 1150-51 (D.C. 2006).
[38] D.C. CODE § 12-301(3).
[39] D.C. CODE § 12-301(7).
[40] D.C. CODE § 28:2-725.
[41] D.C. CODE § 12-310(a)(1)(B).
[42] *Id.* at (a)(2)(A)–(B). This limitation does not apply to actions based on expressed or implied contracts. *Id.* at (b)(1).
[43] *Stevens v. United Gen. Title Ins. Co.* 801 A.2d 61, 66 (D.C. 2002).
[44] *Id.*
[45] *Meade v. Prudential Ins. Co. of Am.*, 477 A.2d 726, 728 (D.C. 1984).
[46] *Salus Corp. v. Continental Cas. Co.*, 478 A.2d 1067, 1069–70 (D.C. 1984)
[47] *Id.*
[48] *Wrecking Corp. of Am., Virginia, Inc. v. Insur. Co. of North Am.*, 574 A.2d 1348, 1350 (D.C. 1990).
[49] *Id*.
[50] *Id*.
[51] *Jones v. Medox, Inc.*, 430 A.2d 488, 493–94 (D.C. 1981).
[52] *Id*.
[53] *Id*.
[54] *Id*.
[55] *Greycoat Hanover F Street Ltd. P'ship v. Liberty Mut. Ins. Co.*, 657 A.2d 764, 767 n.2 (D.C. 1995).
[56] *See id.* (citing *Strain Poultry Farms v. American Southern Insurance Co.,* 128 Ga. App. 600, 197 S.E.2d 498, 500 (1973)).
[57] *See Grunley Constr. Co., Inc. v. Conway Corp.*, 676 A.2d 477, 478 (D.C. 1996); *W.M. Schlosser Co., Inc. v. Maryland Drywall Co., Inc.*, 673 A.2d 647, 653 (D.C. 1996). Although this appears to be a slight shift in the law from prior decisions. *See Rivers & Bryan, Inc. v. HBE Corp.*, 628 A.2d 631, 634 (D.C. 1993); *District of Columbia v. Royal*, 465 A.2d 367, 369 (D.C. 1983). The law in the District of Columbia has been interpreted to uphold such clauses in the past. *Gen. Heating Eng'g. Co. v. District of Columbia*, 301 F.2d 549, 551 (D.C. Cir. 1962).
[58] *Schlosser*, 673 A.2d at 653 (quoting *United States v. Seckinger*, 397 U.S. 203, 211 (1970)).
[59] *Rivers & Bryan*, 628 A.2d at 635.
[60] *Hensel Phelps Constr. Co. v. Cooper Carry, Inc.*, 210 F. Supp. 3d 192, 198 (D.D.C. 2016), aff'd, 861 F.3d 267 (D.C. Cir. 2017)
[61] *Id*.
[62] *Schlosser*, 673 A.2d at 653; *Grunley*, 676 A.2d at 478.
[63] *Schlosser* 673 A.2d at 654; *Grunley* 676 A.2d at 478.
[64] *Id*.
[65] 628 A.2d at 631.
[66] *Id*. at 634.
[67] *Id*.
[68] *Id*. at 635.
[69] *Id*. at 636–37.
[70] 465 A.2d 367 (D.C. 1983).
[71] *Id*. at 368.

[72] *Id*. at 369–70.
[73] *Id*. at 370.
[74] *Parker v. John Moriarty & Assocs.*, 249 F. Supp. 3d 507, 512–13 (D.D.C. 2017).
[75] *Id.*
[76] *Urban Masonry Corp. v. N & N Contractors, Inc.,* 676 A.2d 26, 36 (D.C. 1996)
[77] *Id.*
[78] *Id.*
[79] *Id.*
[80] *Id.*
[81] *Id.*
[82] *Id.*
[83] *Id.*
[84] *Id.*
[85] D.C. CODE § 12-301 (2)–(3).
[86] D.C. CODE § 16-2702.
[87] *Fleming v. Twine*, 58 A.2d 498, 499–500 (D.C. 1948).
[88] *Id.*
[89] *Id.*
[90] *Id.*
[91] *Jung v. Jung*, 844 A.2d 1099, 1107 (D.C. 2004) (citing *In re Antioch Univ.*, 482 A.2d 133, 136 (D.C.1984)). However, attorney fees can be awarded in certain circumstances, such as where authorized by contract (*Urban Masonry Corp. v. N & N Contractors, Inc*., 676 A.2d 26 (D.C. 1996)); where authorized by statute (D.C. CODE § 28-3901, et seq. (Consumer Protection Procedures Act)); or where permitted by rule for discovery violations (*Lowery v. Glassman*, 908 A.2d 30 (D.C. 2006)).
[92] *Taylor v. Tellez*, 610 A.2d 252, 255–56 (D.C. 1992) (citing *Dalo v. Kivitz*, 596 A.2d 35, 37 (D.C. 1991)) (where attorney's fees may be awarded to clients who have been forced into litigation by their attorney's malpractice).
[93] *Boiseau v. Morrissette*, 78 A.2d 777, 780 (D.C. 1951); *Murphy v. O'Donnell*, 63 A.2d 340, 342 (D.C. 1948).
[94] *Bay General Industries, Inc. v. Johnson*, 418 A.2d 1050, 1056 (D.C. 1980).
[95] *Bergman v. Parker*, 216 A.2d 581, 583–84 (D.C. 1966).
[96] *District Concrete Co., Inc. v. Bernstein Concrete Corp.*, 418 A.2d 1030, 1038 (D.C. 1980).
[97] *Whitt v. Am. Prop. Constr., P.C.*, 157 A.3d 196, 204 (D.C. 2017).
[98] *Id.* at 7 n.4.
[99] D.C. CODE §15-109 and *Schwartz v. Schwartz*, 723 A.2d 841, 844–45 (D.C. 1998).
[100] *Schwartz*, 723 A.2d at 844–45.
[101] *Id*; *see also Riss & Co. v. Feldman*, 79 A.2d 566 (D.C. Mun. App. 1951).
[102] *Columbia First Bank v. Ferguson*, 665 A.2d 650, 657 (D.C. 1995).
[103] *Fred A. Smith Management Co. v. Cerpe*, 957 A.2d 907, 914 (D.C. 2008).
[104] *Railan v. Katyal*, 766 A.2d 998, 1012 (D.C. 2001).
[105] *Krippen v. Ford Motor Co.*, 546 F.2d 993, 1002 (D.C. Cir. 1976).
[106] *Burns v. Hanover Ins. Co.*, 454 A.2d 325, 327 (D.C. 1982).
[107] *S. Brook Purll, Inc. v. Vailes*, 850 A.2d 1135, 1138 (D.C. 2004) (quoting *Christacos v. Blackie's House of Beef,* 583 A.2d 191, 197 (D.C.1990)).
[108] *Falconi-Sachs v. LPF Senate Square, LLC*, 142 A.3d 550, 557 (D.C. 2016).
[109] *S. Brook Purll, Inc.*, 850 A.2d at 1138.
[110] *Falconi-Sachs*, 142 A.3d at 557.