

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## SENATE BILL

No. 726 Session of  
2007INTRODUCED BY BROWNE, WONDERLING, GREENLEAF, BOSCOLA, M. WHITE,  
FOLMER, ROBBINS, TOMLINSON, WAUGH AND ORIE, APRIL 9, 2007

AS AMENDED ON THIRD CONSIDERATION, JUNE 13, 2007

## AN ACT

1 Amending the act of August 24, 1963 (P.L.1175, No.497), entitled  
2 "An act to codify, amend, revise and consolidate the laws  
3 relating to mechanics' liens," further providing for  
4 definitions ~~and~~, for waiver of lien by claimant, FOR RIGHT TO <—  
5 LIMIT CLAIMS TO UNPAID BALANCE OF CONTRACT PRICE AND FOR  
6 PRIORITY OF LIEN.

7 The General Assembly of the Commonwealth of Pennsylvania  
8 hereby enacts as follows:

9 Section 1. ~~Section 201(14) and section 401~~ SECTIONS 201(14), <—  
10 401, 405 AND 508 of the act of August 24, 1963 (P.L.1175,  
11 No.497), known as the Mechanics' Lien Law of 1963, amended June  
12 29, 2006 (P.L.210, No.52), are amended to read:

13 Section 201. Definitions.--The following words, terms and  
14 phrases when used in this act shall have the meaning ascribed to  
15 them in this section, except where the context clearly indicates  
16 a different meaning:

17 \* \* \*

18 (14) "Residential [building] property" means property on  
19 which there is or will be constructed a residential building not  
20 more than three stories in height, not including any basement

1 level, regardless of whether any portion of that basement is at  
2 grade level, or which is zoned or otherwise approved for  
3 residential development on which there is or will be constructed  
4 a residential building not more than three stories in height,  
5 not including any basement level, regardless of whether any  
6 portion of that basement is at grade level, planned residential  
7 development or agricultural use, or for which a residential  
8 subdivision or land development plan or planned residential  
9 development plan has received preliminary, tentative or final  
10 approval on which there is or will be constructed a residential  
11 building not more than three stories in height, not including  
12 any basement level, regardless of whether any portion of that  
13 basement is at grade level, pursuant to the act of July 31, 1968  
14 (P.L.805, No.247), known as the "Pennsylvania Municipalities  
15 Planning Code."

16 Section 401. Waiver of Lien by Claimant.--

17 (a) Residential [Buildings] Property.

18 [(1)] A contractor or subcontractor may waive his right to  
19 file a claim against residential property [for the erection,  
20 construction, alteration or repair of a residential building, in  
21 which the total contract price between the owner and the  
22 contractor is less than one million dollars (\$1,000,000),] by a  
23 written instrument signed by him or by any conduct which  
24 operates equitably to estop such contractor from filing a claim.

25 [(2) (i) A subcontractor may waive his right to file a  
26 claim against property for the erection, construction,  
27 alteration or repair of a residential building, in which the  
28 total contract price between the owner and the contractor is  
29 less than one million dollars (\$1,000,000), by a written  
30 instrument signed by him or by any conduct which operates

1 equitably to estop him from filing a claim.

2 (ii) A subcontractor may waive his right to file a claim  
3 against the property, irrespective of the contract price between  
4 the owner and the contractor, of a residential building by a  
5 written instrument signed by him or by any conduct which  
6 operates equitably to estop him from filing a claim, provided  
7 the contractor has posted a bond guaranteeing payment for labor  
8 and materials provided by subcontractors.]

9 (b) Nonresidential Buildings.

10 (1) Except as provided in subsection [(a)(1)] (a), a waiver  
11 by a contractor of lien rights is against public policy,  
12 unlawful and void unless given in consideration for payment for  
13 the work, services, materials or equipment provided and only to  
14 the extent that such payment is actually received.

15 (2) Except as provided in subsection [(a)(2)] (a), a waiver  
16 by a subcontractor of lien rights is against public policy,  
17 unlawful and void, unless given in consideration for payment for  
18 the work, services, materials or equipment provided and only to  
19 the extent that such payment is actually received, or unless the  
20 contractor has posted a bond guaranteeing payment for labor and  
21 materials provided by subcontractors.

22 SECTION 405. [RIGHT OF OWNER TO LIMIT CLAIMS TO UNPAID  
23 BALANCE OF CONTRACT PRICE.--WHERE THE CLAIMS OF SUBCONTRACTORS  
24 EXCEED IN THE AGGREGATE THE UNPAID BALANCE OF THE CONTRACT PRICE  
25 SPECIFIED IN THE CONTRACT BETWEEN THE OWNER AND THE CONTRACTOR,  
26 THEN IF THE SUBCONTRACTOR HAS ACTUAL NOTICE OF THE TOTAL AMOUNT  
27 OF SAID CONTRACT PRICE AND OF ITS PROVISIONS FOR THE TIME OR  
28 TIMES FOR PAYMENT THEREOF BEFORE ANY LABOR OR MATERIALS WERE  
29 FURNISHED BY HIM, OR IF SUCH CONTRACT OR THE PERTINENT  
30 PROVISIONS THEREOF WERE FILED IN THE OFFICE OF THE PROTHONOTARY

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1 IN THE TIME AND MANNER PROVIDED IN SECTION 402, EACH CLAIM  
2 SHALL, UPON APPLICATION OF THE OWNER, BE LIMITED TO ITS PRO-RATA  
3 SHARE OF THE CONTRACT PRICE REMAINING UNPAID, OR WHICH SHOULD  
4 HAVE REMAINED UNPAID, WHICHEVER IS GREATEST IN AMOUNT AT THE  
5 TIME NOTICE OF INTENTION TO FILE A CLAIM WAS FIRST GIVEN TO THE  
6 OWNER, SUCH NOTICE INURING TO THE BENEFIT OF ALL CLAIMANTS.]  
7 RIGHT TO LIMIT CLAIMS TO UNPAID BALANCE OF CONTRACT PRICE.--

8 (A) CONTRACTOR. THE MAXIMUM AMOUNT FOR WHICH AN INTEREST IN  
9 REAL PROPERTY MAY BE SUBJECT TO A LIEN UNDER THIS ACT FOR ONE OR  
10 MORE LIEN CLAIMS FILED PURSUANT TO THIS ACT SHALL NOT BE GREATER  
11 THAN THE PRICE OF THE CONTRACT BETWEEN THE OWNER AND THE  
12 CONTRACTOR LESS THE AMOUNT OF PAYMENTS MADE BY THE OWNER TO THE  
13 CONTRACTOR OR TO ANOTHER LIEN CLAIMANT PRIOR TO RECEIPT BY THE  
14 OWNER OF A NOTICE OF INTENTION TO FILE A LIEN CLAIM PURSUANT TO  
15 SECTION 501.

16 (B) SUBCONTRACTORS.

17 (1) IN THE CASE OF A LIEN CLAIM FILED BY A SUBCONTRACTOR IN  
18 PRIVITY OF CONTRACT WITH THE CONTRACTOR, THE MAXIMUM AMOUNT FOR  
19 WHICH AN INTEREST IN REAL PROPERTY MAY BE SUBJECT TO A LIEN  
20 UNDER THIS ACT FOR ONE OR MORE LIEN CLAIMS FILED UNDER THIS ACT  
21 SHALL NOT BE GREATER THAN THE LESSER OF:

22 (I) THE AMOUNT PROVIDED IN SUBSECTION (A); OR

23 (II) THE PRICE OF THE CONTRACT BETWEEN THE CONTRACTOR AND  
24 SUBCONTRACTOR LESS THE AMOUNT OF PAYMENTS, IF ANY, JUSTIFIABLY  
25 MADE PRIOR TO RECEIPT BY THE CONTRACTOR OF A COPY OF A NOTICE OF  
26 INTENTION TO FILE A CLAIM BY THE CONTRACTOR TO THE SUBCONTRACTOR  
27 OR TO ANOTHER LIEN CLAIMANT IN PRIVITY OF CONTRACT WITH THE  
28 SUBCONTRACTOR.

29 (2) IN THE CASE OF A LIEN CLAIM FILED BY A PARTY OF PRIVITY  
30 IN CONTRACT WITH A SUBCONTRACTOR, THE MAXIMUM AMOUNT FOR WHICH

1 AN INTEREST IN REAL PROPERTY MAY BE SUBJECT TO A LIEN UNDER THIS  
2 ACT FOR ONE OR MORE LIEN CLAIMS FILED UNDER THIS ACT SHALL NOT  
3 BE GREATER THAN THE LESSER OF:

4 (I) THE AMOUNT PROVIDED IN SUBSECTION (A); OR

5 (II) THE PRICE OF THE CONTRACT BETWEEN THE CONTRACTOR AND  
6 SUBCONTRACTOR WITH WHOM THE PARTY HAS CONTRACTED, LESS THE  
7 AMOUNT OF PAYMENTS JUSTIFIABLY MADE, IF ANY, PRIOR TO RECEIPT BY  
8 THE CONTRACTOR OF A COPY OF THE NOTICE OF INTENTION TO FILE A  
9 CLAIM TO THE SUBCONTRACTOR OR TO ANOTHER LIEN CLAIMANT; OR

10 (III) THE PRICE OF THE CONTRACT BETWEEN THE SUBCONTRACTOR  
11 AND THE PARTY LESS THE AMOUNT OF PAYMENTS JUSTIFIABLY MADE, IF  
12 ANY, BY THE SUBCONTRACTOR TO THE PARTY.

13 (C) BREACH. FOR PURPOSES OF DETERMINING THE MAXIMUM AMOUNT  
14 FOR WHICH AN INTEREST IN REAL PROPERTY MAY BE SUBJECT TO A LIEN  
15 IN THE EVENT THAT A CONTRACTOR OR SUBCONTRACTOR IS IN BREACH  
16 UNDER THE TERMS OF A CONTRACT TO WHICH IT IS A PARTY, THE PRICE  
17 OF THE CONTRACT SHALL BE DEEMED TO HAVE BEEN REDUCED BY THE  
18 DAMAGES INCURRED BY THE NONBREACHING PARTY TO THE CONTRACT AS A  
19 RESULT OF THE BREACH.

20 (D) FOR PURPOSES OF THIS SECTION.

21 (1) THE TERM "PRICE OF THE CONTRACT" SHALL INCLUDE AMOUNTS  
22 DUE FOR LABOR OR MATERIAL WHICH ARE FURNISHED AS A RESULT OF:

23 (I) A CONTRACT;

24 (II) A WRITTEN AMENDMENT TO A CONTRACT; OR

25 (III) ANY CHANGE ORDER OR OTHER DIRECTIVE FOR LABOR OR  
26 MATERIALS IN ADDITION TO THE SCOPE OF WORK UNDER AN INITIAL  
27 CONTRACT, PROVIDED THAT THE LIEN CLAIMANT HAS NOTIFIED THE PARTY  
28 WITH WHOM IT IS IN PRIVITY OF CONTRACT WITHIN SEVEN (7) DAYS OF  
29 THE RECEIPT OF THE CHANGE ORDER OR OTHER DIRECTIVE THAT THE  
30 FURNISHING IS ALLEGED TO BE IN ADDITION TO THE SCOPE OF WORK

1 UNDER THE CONTRACT; OR

2 (2) IN THE CASE OF A SUPPLIER, "PRICE OF THE CONTRACT"  
3 INCLUDES A DELIVERY OR ORDER SLIP SIGNED BY THE OWNER,  
4 CONTRACTOR OR SUBCONTRACTOR, OR AN AUTHORIZED AGENT OF ANY OF  
5 THEM.

6 (3) "PRICE OF THE CONTRACT" DOES NOT INCLUDE AN AGREEMENT  
7 PREDOMINANTLY INTENDED TO REDUCE THE CREDIT RISK OF A PARTY,  
8 INCLUDING A JOINT CHECK ARRANGEMENT, PAYMENT GUARANTEE OR  
9 SIMILAR CREDIT AGREEMENT.

10 SECTION 508. PRIORITY OF LIEN.--THE LIEN OF A CLAIM FILED  
11 UNDER THIS ACT SHALL TAKE EFFECT AND HAVE PRIORITY AS FOLLOWS:

12 (A) EXCEPT AS SET FORTH IN SUBSECTION (C), IN THE CASE OF  
13 THE ERECTION OR CONSTRUCTION OF AN IMPROVEMENT, AS OF THE DATE  
14 OF THE VISIBLE COMMENCEMENT UPON THE GROUND OF THE WORK OF  
15 ERECTING OR CONSTRUCTING THE IMPROVEMENT.

16 (B) EXCEPT AS SET FORTH IN SUBSECTION (C), IN THE CASE OF  
17 THE ALTERATION OR REPAIR OF AN IMPROVEMENT, AS OF THE DATE OF  
18 THE FILING OF THE CLAIM.

19 (C) ANY LIEN OBTAINED UNDER THIS ACT BY A CONTRACTOR OR  
20 SUBCONTRACTOR SHALL BE SUBORDINATE TO THE FOLLOWING:

21 (1) A PURCHASE MONEY MORTGAGE AS DEFINED IN 42 PA.C.S. §  
22 8141(1) (RELATING TO TIME FROM WHICH LIENS HAVE PRIORITY).

23 (2) AN OPEN-END MORTGAGE AS DEFINED IN 42 PA.C.S. § 8143(F)  
24 (RELATING TO OPEN-END MORTGAGES), THE PROCEEDS OF WHICH ARE USED  
25 TO PAY ALL OR PART OF THE COST OF COMPLETING ERECTION,  
26 CONSTRUCTION, ALTERATION OR REPAIR OF THE MORTGAGED PREMISES  
27 SECURED BY THE OPEN-END MORTGAGE[.] OR TO SECURE CERTAIN  
28 ADVANCES UNDER 42 PA.C.S. § 8144 (RELATING TO MORTGAGES TO  
29 SECURE CERTAIN ADVANCES).

30 (3) ANY SUBSTITUTION, REFINANCE OR MODIFICATION OF A

1 MORTGAGE REFERRED TO UNDER PARAGRAPHS (1) AND (2).

2       Section 2. This act shall take effect in 60 days.