
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2794 Session of
1990

INTRODUCED BY CALTAGIRONE, HALUSKA, COY, NOYE, JAROLIN, O'BRIEN,
VAN HORNE, MORRIS, STABACK, MAIALE, JOHNSON, WOGAN AND FARGO,
JUNE 29, 1990

REFERRED TO COMMITTEE ON JUDICIARY, JUNE 29, 1990

AN ACT

1 Amending Title 49 (Mechanics' Liens) of the Pennsylvania
2 Consolidated Statutes, adding provisions relating to
3 mechanics' liens; and making repeals.

4 TABLE OF CONTENTS

5 TITLE 49

6 MECHANICS' LIENS

7 Chapter 1. Preliminary Provisions

8 § 101. Short title of title.

9 § 102. Definitions.

10 § 103. Interpretation of title.

11 Chapter 3. Existence and Effect of Lien

12 § 301. Right to lien.

13 § 302. Lien not allowed in certain cases.

14 § 303. Presumption as to use of materials, supplies and
15 equipment.

16 § 304. Consolidation or apportionment of claims.

17 § 305. Notice to owner by subcontractor or materialman.

18 § 306. Time lien takes effect.

1 § 307. Duration of lien.
2 § 308. Order to file claim.
3 § 309. Limitations on waiver of lien.
4 § 310. Effect of credit or collateral on waiver.
5 § 311. Right of subcontractor or materialman to rescind
6 contract.
7 § 312. Effect of contract not made in good faith.
8 § 313. Property bound by lien.
9 § 314. Discharge of lien.
10 § 315. Excessive property included in claim.
11 § 316. Removal of improvement subject to lien.
12 Chapter 5. Recording
13 § 501. Filing of claim and notice of filing.
14 § 502. Contents of claim.
15 § 503. Amendment of claim.
16 § 504. Preliminary objections to claim.
17 § 505. Entries on judgment index and lien docket.
18 § 506. Recording notice of payment bond.
19 Chapter 7. Remedies of Owner Against Contractor
20 § 701. Right to retain funds of contractor.
21 § 702. Notice to contractor of claim.
22 § 703. Duty of contractor on receipt of notice.
23 § 704. Additional remedies of owner.
24 Chapter 9. Enforcement of Lien
25 § 901. Proceedings to obtain judgment.
26 § 902. Duty of claimant on satisfaction of claim.
27 § 903. Revival of judgment.
28 § 904. Execution upon judgment.
29 The General Assembly of the Commonwealth of Pennsylvania
30 hereby enacts as follows:

1 Section 1. Title 49 of the Pennsylvania Consolidated
2 Statutes is amended by adding chapters to read:

3 TITLE 49

4 MECHANICS' LIENS

5 Chapter

6 1. Preliminary Provisions

7 3. Existence and Effect of Lien

8 5. Recording

9 7. Remedies of Owner Against Contractor

10 9. Enforcement of Lien

11 CHAPTER 1

12 PRELIMINARY PROVISIONS

13 Sec.

14 101. Short title of title.

15 102. Definitions.

16 103. Interpretation of title.

17 § 101. Short title of title.

18 This title shall be known and may be cited as the Mechanics'
19 Lien Law.

20 § 102. Definitions.

21 Subject to additional definitions contained in subsequent
22 provisions of this title which are applicable to specific
23 provisions of this title, the following words and phrases when
24 used in this title shall have the meanings given to them in this
25 section unless the context clearly indicates otherwise:

26 "Alteration and repair." Any alteration or repair of an
27 existing improvement which does not constitute erection and
28 construction as defined in this section.

29 "Claimant." A contractor, subcontractor or materialman who
30 has filed or may file a claim under this title for a lien

1 against property.

2 "Completion of the work." Performance of the last of the
3 labor or delivery of the last of the materials required by the
4 terms of the contract or agreement of the claimant, whichever
5 last occurs.

6 "Contractor." One who, by contract with the owner, express
7 or implied, erects, constructs, alters or repairs an improvement
8 or any part thereof or furnishes labor, skill or superintendence
9 thereto; or supplies or hauls materials, fixtures, machinery or
10 equipment reasonably necessary for and actually used therein; or
11 any or all of the foregoing, whether as superintendent, builder
12 or materialman. The term includes an architect or engineer who,
13 by contract with the owner, express or implied, in addition to
14 the preparation of drawings, specifications and contract
15 documents also superintends or supervises any such erection,
16 construction, alteration or repair.

17 "Erection and construction." The erection and construction
18 of a new improvement or of a substantial addition to an existing
19 improvement or any adaptation of an existing improvement
20 rendering the improvement fit for a new or distinct use and
21 effecting a material change in the interior or exterior of the
22 improvement.

23 "Erection," "construction," "alteration" or "repair."

24 Includes:

25 (1) Demolition, removal of improvements, seeding,
26 sodding, landscaping, filling, leveling or grading,
27 excavation, installation of curbing and sewers and paving.

28 (2) Initial fitting up and equipping of the improvement
29 with fixtures, machinery and equipment suitable to the
30 purposes for which the erection, construction, alteration or

1 repair was intended.

2 (3) Furnishing, excavating for, laying, relaying,
3 stringing and restringing rails, ties, pipes, poles and
4 wires, whether on the property improved or upon other
5 property, in order to supply services to the improvement.

6 "Improvement." Includes, but is not limited to, the
7 erection, construction, alteration and repair, or addition to
8 any building or structure erected or constructed on land,
9 together with the fixtures and other personal property used in
10 fitting up and equipping it for the purpose for which it is
11 intended. The term also includes demolition, removal of
12 improvements, seeding, sodding, landscaping, filling, leveling
13 or grading, excavation, installation of curbing and sewers, and
14 paving on land regardless of whether any of the foregoing are
15 incidental to the erection, construction, alteration, repair or
16 addition to a building or structure.

17 "Labor." Includes the furnishing of skill or supervision.

18 "Materialman." One who by contract or agreement with a
19 contractor or subcontractor provides tangible, physical
20 materials used or to be used in the erection, construction,
21 alteration or repair of an improvement.

22 "Materials." Building materials, supplies of all kinds and
23 such fixtures, machinery and equipment as are reasonably
24 necessary for and incorporated into the improvement.

25 "Owner." An owner in fee simple, a tenant for life or years
26 or one having any other estate in or title to property.

27 "Property." The improvements, the land covered thereby and
28 the lot or curtilage appurtenant thereto belonging to the same
29 legal or equitable owner reasonably needed for the general
30 purposes thereof and forming a part of a single business or

1 residential plant.

2 "Prothonotary." The prothonotary of the court or courts of
3 common pleas of the county or counties in which the improvement
4 is situate or the person performing the duties similar to that
5 of a prothonotary in counties which do not have a prothonotary.

6 "Residential real property." Real property located within
7 this Commonwealth containing not more than two residential units
8 or on which not more than two residential units are to be
9 constructed and includes a residential condominium unit.

10 "Subcontractor." One who by contract with the contractor
11 effects an improvement; furnishes labor, skill or supervision of
12 an improvement; or supplies or hauls materials, fixtures,
13 machinery or equipment reasonably necessary for and used in the
14 improvement, whether as superintendent, builder or materialman.
15 The term does not include an architect or engineer who contracts
16 with a contractor.

17 "Visible commencement." A beginning of substantial change in
18 the land or existing structure on it or the placement of
19 materials on the property. The term does not include mere
20 staking and the like.

21 § 103. Interpretation of title.

22 This title is to be interpreted reasonably so as to carry out
23 its underlying purposes. A party who substantially complies in
24 good faith with this title shall not be denied relief under it.

25 CHAPTER 3

26 EXISTENCE AND EFFECT OF LIEN

27 Sec.

28 301. Right to lien.

29 302. Lien not allowed in certain cases.

30 303. Presumption as to use of materials, supplies and

1 equipment.

2 304. Consolidation or apportionment of claims.

3 305. Notice to owner by subcontractor or materialman.

4 306. Time lien takes effect.

5 307. Duration of lien.

6 308. Order to file claim.

7 309. Limitations on waiver of lien.

8 310. Effect of credit or collateral on waiver.

9 311. Right of subcontractor or materialman to rescind

10 contract.

11 312. Effect of contract not made in good faith.

12 313. Property bound by lien.

13 314. Discharge of lien.

14 315. Excessive property included in claim.

15 316. Removal of improvement subject to lien.

16 § 301. Right to lien.

17 (a) General rule.--An improvement and the estate or title of
18 the owner in the property shall be subject to a lien, to be
19 perfected under this title, for the payment of debts due by the
20 owner to the contractor or by the contractor to subcontractors
21 or materialmen for labor, materials, supplies or equipment
22 furnished in the erection or construction or alteration or
23 repair of the improvements if the amount of the claim, other
24 than amounts determined by apportionment under section 304(b)
25 (relating to consolidation or apportionment of claims), exceeds
26 \$500.

27 (b) Effect of incompleteness of improvement.--Except in case
28 of destruction by fire or other casualty where, through no fault
29 of the claimant, the improvement is not completed, the right to
30 a lien shall exist.

1 § 302. Lien not allowed in certain cases.

2 (a) Persons other than contractors, subcontractors or
3 materialmen.--No lien shall be allowed in favor of a person
4 other than a contractor, subcontractor or materialman even
5 though the person furnishes labor, materials, supplies or
6 equipment to an improvement.

7 (b) Public purposes.--No lien shall be allowed for labor or
8 materials furnished for a purely public purpose.

9 (c) Conveyance prior to lien.--If the property is conveyed
10 in good faith and for a valuable consideration prior to the
11 filing of a claim, the lien shall be wholly lost.

12 (d) Leasehold premises.--No lien shall be allowed against
13 the estate of an owner in fee by reason of consent given by the
14 owner to a tenant to improve the leased premises unless it
15 appears in writing signed by the owner that the improvement was
16 for the immediate use and benefit of the owner.

17 (e) Security interests.--No lien shall be allowed for that
18 portion of a debt representing the contract price of materials
19 against which the claimant holds or has claimed a security
20 interest under Title 13 (relating to commercial code) or to
21 which claimant has reserved title or the right to reacquire
22 title.

23 § 303. Presumption as to use of materials, supplies and
24 equipment.

25 Materials, supplies and equipment for use in or upon an
26 improvement placed on or near the property or delivered to the
27 owner under a contract shall be rebuttably presumed to have been
28 used in the improvement.

29 § 304. Consolidation or apportionment of claims.

30 (a) Consolidation.--Where a debt is incurred for labor,

1 materials, equipment or supplies furnished continuously by the
2 same claimant for work upon a single improvement but under more
3 than one contract, the claimant may elect to file a single claim
4 for the entire debt. In this case, completion of the work shall
5 not be deemed to occur with respect to any of the contracts
6 until it has occurred with respect to all of them.

7 (b) Apportionment.--Where a debt is incurred for labor or
8 materials furnished by the same claimant for work upon several
9 different improvements which do not form a single business or
10 residential plant, the claimant shall file separate claims with
11 respect to each improvement, with the amount of each claim
12 determined by apportionment of the total debt to the several
13 improvements. In this case, the amount of each separate claim
14 may be less than \$500 if the total debt exceeds \$500. In no
15 other case shall an apportioned claim be allowed.

16 § 305. Notice to owner by subcontractor or materialman.

17 (a) General rule.--A lien of a subcontractor or materialman
18 recorded under section 501 (relating to filing of claim and
19 notice of filing) is not enforceable against the owner unless
20 the subcontractor or materialman complies with this section.

21 (b) Formal notice in all cases.--No claim by a subcontractor
22 or materialman shall be valid unless, at least 30 days before
23 the claim is filed, the subcontractor or materialman has given
24 to the owner a formal written notice of intention to file a
25 claim. The notice is not required where the claim is filed
26 pursuant to an order under section 308 (relating to order to
27 file claim).

28 (1) The formal notice must state:

29 (i) The name of the party claimant.

30 (ii) The name of the person with whom he contracted.

- 1 (iii) The amount claimed to be due.
- 2 (iv) The general nature and character of the labor,
3 materials, equipment or supplies furnished.
- 4 (v) The date of completion of the work for which the
5 claim is made.
- 6 (vi) A brief description sufficient to identify the
7 property claimed to be subject to the lien.

8 (2) The notice may consist of a copy of the claim
9 intended to be filed, together with a statement that the
10 claimant intends to file the original.

11 (c) Service of notice.--The notice provided by this section
12 may be served by first class, registered or certified mail on
13 the owner or his agent or by an adult in the same manner as a
14 writ of summons in assumpsit or, if service cannot be so made
15 then by posting upon a conspicuous public part of the
16 improvements.

17 § 306. Time lien takes effect.

18 (a) General rule.--The lien of a claim filed under this
19 title shall take effect and have priority:

20 (1) In the case of the erection or construction of a
21 building or structure, as of the date of the visible
22 commencement upon the ground of the work of erecting or
23 constructing the building or structure.

24 (2) In the case of the alteration or repair of a
25 building or structure, as of the date of the filing of the
26 claim.

27 (b) Construction loan mortgage lien priority.--

28 (1) Except as otherwise provided in paragraph (2), the
29 lien of an advance made under a construction loan agreement
30 secured by a mortgage on the property shall be effective and

1 relate back in priority to the date of the recording of the
2 mortgage, whether or not the advance is deemed to have been
3 made voluntarily or involuntarily under the terms of the
4 construction loan agreement.

5 (2) That portion of an advance made under a construction
6 loan agreement secured by a mortgage which advance is paid
7 solely to the borrower and not jointly to the borrower and
8 the contractor, subcontractor or materialman shall, as to the
9 contractor, subcontractor or materialman only, be a lien on
10 the improvement only from the day the advance was made if:

11 (i) The request by the borrower for the advance was
12 based upon and supported by the invoice of the
13 contractor, subcontractor or materialman approved by the
14 lender for labor performed in or materials, supplies or
15 equipment furnished to the improvement and the invoice
16 was not paid.

17 (ii) The advance was made after the lender's receipt
18 of notice by the contractor, subcontractor or materialman
19 that a prior invoice approved by the lender for work
20 performed on or materials, supplies or equipment
21 furnished to the improvement remained unpaid for a period
22 in excess of 30 days from the date the invoice was
23 submitted.

24 § 307. Duration of lien.

25 (a) General rule.--Except as provided in subsection (b), a
26 lien that has become enforceable as provided in this title shall
27 be effective for five years after the time of recording the lien
28 under section 501 (relating to filing of claim and notice of
29 filing) or, if an amendment thereof has been recorded under
30 section 503 (relating to amendment of claim), for five years

1 after the time of that recording.

2 (b) Pending enforcement proceedings.--If a judicial
3 proceeding to enforce a lien is instituted while a lien is
4 effective under subsection (a) or under section 308 (relating to
5 order to file claim), the lien continues effective until
6 discharged by the court.

7 § 308. Order to file claim.

8 (a) General rule.--After the completion of the work by a
9 subcontractor or materialman, an owner or contractor may file an
10 order in the court in which the claim may be filed, requiring
11 the named claimant to file a claim within 30 days after notice
12 of the order. The owner shall notify the named claimant of such
13 filing by registered letter, issued not more than two days
14 following the effective filing date. The letter shall be mailed
15 to the last known address of the named claimant. The order shall
16 be entered by the prothonotary upon the judgment index and in
17 the mechanics' lien docket. Failure to file a claim within the
18 time specified shall defeat the right to file a claim. If a
19 claim is filed, it shall be entered as of the court, term and
20 number of the order.

21 (b) Effect of claim filed by subcontractor or materialman.--
22 Where a claim is filed by a subcontractor or materialman in
23 response to an order, the owner may give written notice to the
24 contractor under section 702 (relating to notice to contractor
25 of claim) and upon the giving of notice, may utilize the
26 remedies provided under sections 701 (relating to right to
27 retain funds of contractor) and 704 (relating to additional
28 remedies of owner); and the contractor shall be subject to the
29 duties under section 703 (relating to duty of contractor on
30 receipt of notice).

1 Section 309. Limitations on waiver of lien.

2 (a) General rule.--A written contract between the owner and
3 contractor or a separate written instrument signed by the
4 contractor which purports to provide that no claim or lien shall
5 be filed by any person shall be void unless filed in the time
6 and manner provided by section 311(a) (relating to right of
7 subcontractor or materialman to rescind contract), the written
8 contract or separate written instrument provides that no claim
9 or lien shall be filed by any subcontractor or materialman and
10 the owner has posted or caused to be posted a payment bond, a
11 copy of which shall be filed with the prothonotary prior to the
12 commencement of the work on the ground, indexed in the names of
13 the contractor as defendant and the owner as plaintiff and shall
14 be in accordance with subsections (b) and (c). The posting of a
15 payment bond under this section shall not exempt the owner from
16 the claim or lien of the contractor.

17 (b) Obligation of payment bond.--The payment bond must
18 obligate the surety, to the extent of its amount, to pay all
19 sums due to subcontractors and/or materialmen for services,
20 labor, materials, supplies and equipment furnished to the
21 contractor or its subcontractors under the contract under which
22 the claim or lien would arise. The obligation of a surety under
23 this section shall not be affected by modification of the
24 contract between the contractor and the owner, but the total
25 liability of the surety may not be greater than the penal sum of
26 the bond.

27 (c) Amount of payment bond.--The amount of the payment bond
28 shall be 100% of the contract price, unless the total amount
29 payable by the terms of the contract of the owner with the
30 contractor is indefinite, in which case the payment bond shall

1 be in a sum which the owner and contractor in good faith
2 estimate equals the amount that would be due to the contractor
3 if the contractor performs the contract.

4 (d) Duty to furnish copy of bond.--The person acquiring the
5 bond shall furnish a copy of a bond procured at cost of
6 reproduction to a claimant on request and, for refusal to
7 furnish a copy without justifiable cause, shall be liable to the
8 claimant for damages caused by the refusal or failure.

9 (e) Actions under bond.--A claimant may not recover under a
10 surety bond provided under this section unless the claimant
11 institutes suit against the surety within one year subsequent to
12 completion of performance by claimant. A subcontractor or
13 materialman having a claim under a bond has a direct right of
14 action against the surety. The contractor may intervene in an
15 action against the surety and may plead all defenses available
16 to the contractor against the claim of the subcontractor or
17 materialman, including a setoff arising from the same
18 transaction or occurrence upon which the claim of the
19 subcontractor or materialman is based.

20 § 310. Effect of credit or collateral on waiver.

21 The giving of credit or the receipt of evidence of
22 indebtedness or collateral otherwise than as provided in section
23 302 (relating to lien not allowed in certain cases) shall not
24 operate to waive the right to file a claim. Where credit is
25 given, no voluntary proceedings may be taken by the claimant to
26 enforce the lien until the credit period has expired.

27 § 311. Right of subcontractor or materialman to rescind
28 contract.

29 (a) General rule.--Any provisions of a contract between the
30 owner and the contractor which reduce or impair the rights or

1 remedies of a subcontractor or materialman or which postpone the
2 time for payment by the owner to the contractor for a period
3 exceeding four months after completion of the work shall be
4 grounds for rescission by the subcontractor or materialman of
5 its contract or agreement with the contractor or subcontractor
6 unless the subcontractor or materialman was given actual notice
7 of this provision prior to the time of the making of the
8 contract or agreement with the contractor or subcontractor.

9 (b) Recovery for prior work completed.--Rescission under
10 subsection (a) shall not impair the right of the subcontractor
11 to recover by lien or otherwise for work completed prior to
12 rescission.

13 § 312. Effect of contract not made in good faith.

14 A contract for the improvement made by the owner with one not
15 intended in good faith to be a contractor shall have no legal
16 effect except as between the parties to it, despite compliance
17 with this title. The contractor, as to third parties, shall be
18 treated as the agent of the owner.

19 § 313. Property bound by lien.

20 The lien of every claim shall bind only the interest of the
21 party named as owner of the property at the time of the contract
22 or of a party who acquired an interest after the execution of
23 this contract. No forfeiture or surrender of a leasehold or
24 tenancy, whether before or after the filing of the claim, shall
25 operate to prejudice the lien of the claim against the fixtures,
26 machinery or other similar property of the leasehold or tenancy.

27 § 314. Discharge of lien.

28 (a) Cash deposit.--A claim filed under this title shall,
29 upon petition of the owner or a party in interest, be discharged
30 as a lien against the property whenever a sum equal to the

1 amount of the claim is deposited with the court in the
2 proceedings for application to the payment of the amount finally
3 determined to be due.

4 (b) Refund of excess.--Excess of funds paid into court over
5 the amount of the claim determined and paid shall, upon
6 application, be refunded to the party depositing the funds.

7 (c) Security in lieu of cash.--In lieu of the deposit of a
8 sum, approved security may be entered in the proceedings in
9 double the amount of the required deposit or in a lesser amount
10 as the court may approve, which amount shall not be less than
11 the full amount of the required deposit. The entry of the
12 security shall entitle the owner to have the liens discharged as
13 under subsection (a).

14 (d) Authority of court.--The court, upon petition filed by a
15 party and after notice and hearing, may upon cause shown:

16 (1) Require the increase or decrease of a deposit or
17 security.

18 (2) Permit the substitution of security and enter an
19 exoneration of security already given.

20 § 315. Excessive property included in claim.

21 Where an owner objects that a lien has been claimed against
22 more property than should justly be included therein, the court
23 upon petition may, after hearing by deposition or otherwise,
24 limit the boundaries of the property subject to the lien.
25 Failure to raise this objection preliminarily shall not be a
26 waiver of the right to plead the objection as a defense
27 thereafter.

28 § 316. Removal of improvement subject to lien.

29 (a) General rule.--No improvement subject to the lien of a
30 claim filed under this title shall be removed from the land

1 except pursuant to title obtained at a judicial sale or by one
2 owning the land and not named as a defendant. An improvement
3 otherwise removed shall remain liable to the claim filed except
4 in the hands of a purchaser for value.

5 (b) Judicial proceedings to restrain removal.--The court may
6 on petition restrain the removal of the improvement in
7 accordance with the general rules of the Supreme Court governing
8 actions to prevent waste.

9 CHAPTER 5

10 RECORDING

11 Sec.

12 501. Filing of claim and notice of filing.

13 502. Contents of claim.

14 503. Amendment of claim.

15 504. Preliminary objections to claim.

16 505. Entries on judgment index and lien docket.

17 506. Recording notice of payment bond.

18 § 501. Filing of claim and notice of filing.

19 (a) General rule.--To perfect a lien, a claimant shall:

20 (1) File a claim with the prothonotary within four
21 months after the completion of his work.

22 (2) Serve written notice of filing upon the owner within
23 one month after filing, giving the court term and number and
24 date of filing. An affidavit of service of notice or the
25 acceptance of service shall be filed within 20 days after
26 service setting forth the date and manner of service.

27 (b) Property in more than one county.--Where the improvement
28 is located in more than one county, the claim may be filed in
29 any of the counties, but shall be effective only as to the part
30 of the property in the county in which it has been filed.

1 (c) Manner of service.--Service of the notice of filing of
2 claim shall be made by an adult in the same manner as a writ of
3 summons in assumpsit or, if service cannot be so made, then by
4 posting upon a conspicuous public part of the improvement.

5 § 502. Contents of claim.

6 The claim shall be made by oath or affirmation and shall
7 state:

8 (1) The name of the party claimant and whether the party
9 is filing as contractor, subcontractor or materialman.

10 (2) The name and address of the owner or reputed owner.

11 (3) The date of completion of the claimant's work.

12 (4) If filed by a subcontractor or materialman, the name
13 of the person and firm with whom the subcontractor or
14 materialman contracted and the date on which formal notice of
15 intention to file a claim was given.

16 (5) If filed by a contractor under a contract or
17 contracts for an agreed sum, an identification of the
18 contract and a general statement of the kind and character of
19 the labor, materials, supplies or equipment furnished.

20 (6) In all other cases than that set forth in paragraph
21 (5), a detailed statement of the kind and character of the
22 labor, materials, supplies and equipment furnished and the
23 prices charged.

24 (7) The amount claimed to be due.

25 (8) A description of the improvement and of the property
26 claimed to be subject to the lien as may be reasonably
27 necessary to identify them.

28 § 503. Amendment of claim.

29 A claim may be amended without prejudice to intervening
30 rights by agreement of the parties or by leave of court. After

1 the time for filing a claim has expired, no amendment may be
2 made which undertakes to:

3 (1) Substitute a different property than that described
4 in the claim.

5 (2) Substitute a different party with whom the claimant
6 contracted.

7 (3) Increase the aggregate amount of the claim.

8 § 504. Preliminary objections to claim.

9 A party may preliminarily object to a claim upon a showing of
10 exemption or immunity of the property from lien or lack of
11 substantial compliance with this title. The court shall
12 determine preliminary objections. If an issue of fact is raised
13 in the objections, the court may take evidence by deposition or
14 otherwise. If the filing of an amended claim is allowed, the
15 court shall fix the time within which it shall be filed. Failure
16 to file an objection preliminarily shall not constitute a waiver
17 of the right to raise the objection as a defense in subsequent
18 proceedings.

19 § 505. Entries on judgment index and lien docket.

20 The prothonotary shall enter the claim, verdict and judgment
21 upon the judgment index and mechanics' lien docket against the
22 owner. A note shall be made in the judgment index when a claim,
23 verdict or judgment is stricken, reversed or satisfied; the name
24 of a defendant is stricken; an action upon the claim to reduce
25 it to judgment is discontinued; or judgment is entered in favor
26 of the defendant.

27 § 506. Recording notice of payment bond.

28 (a) General rule.--If a prime contractor or owner has
29 secured a payment bond, a notice of payment bond shall be
30 recorded in the time and manner provided in section 309(a)

1 (relating to limitations on waiver of lien).

2 (b) Signing and content.--The notice shall be signed by the
3 contractor or owner and by the surety and shall state:

4 (1) The real estate being improved with a description
5 sufficient for identification.

6 (2) The name and address of the owner and of the
7 contractor.

8 (3) The name and address of the surety and the name of a
9 person on whom service of process may be made.

10 (4) The total amount of the payment bond and that the
11 bond meets the requirements of section 309.

12 CHAPTER 7

13 REMEDIES OF OWNER AGAINST CONTRACTOR

14 Sec.

15 701. Right to retain funds of contractor.

16 702. Notice to contractor of claim.

17 703. Duty of contractor on receipt of notice.

18 704. Additional remedies of owner.

19 § 701. Right to retain funds of contractor.

20 An owner who has been served with a notice of the filing of a
21 claim by a subcontractor or materialman may retain out of money
22 due to the contractor named in the notice a sum sufficient to
23 protect the owner from loss until such time as the claim is
24 finally settled, released, defeated or discharged.

25 § 702. Notice to contractor of claim.

26 (a) General rule.--An owner served with a notice as provided
27 by section 701 (relating to right to retain funds of contractor)
28 may and, if he has retained money due the contractor, shall give
29 written notice to the contractor named in the notice.

30 (b) Content.--The notice shall state:

1 (1) The name of the subcontractor or materialman, the
2 amount of the claim and the amount withheld by the owner.

3 (2) That, unless the contractor within 30 days from
4 service of the notice settles, undertakes to defend or
5 secures against the claim under section 703 (relating to duty
6 of contractor on receipt of notice), the owner may utilize
7 the remedies under section 704 (relating to additional
8 remedies of owner).

9 (c) Service.--The notice may be given by the owner or an
10 agent to the contractor personally or to the manager, executive
11 or principal officer or other agent of the contractor. If none
12 of these persons can be found, notice may be given by sending a
13 copy of the notice by first class, registered or certified mail
14 to the contractor at the contractor's last known office address.

15 § 703. Duty of contractor on receipt of notice.

16 Upon service of the notice under section 702 (relating to
17 notice to contractor of claim), the contractor shall within 30
18 days from the receipt of notice do one of the following:

19 (1) Settle or discharge the claim of the subcontractor
20 or materialman and furnish to the owner a written copy of a
21 waiver, release or satisfaction, signed by the claimant.

22 (2) Agree in writing to undertake to defend against the
23 claim and, if the owner has not retained sufficient funds for
24 protection against loss, furnish the owner additional
25 approved security to protect the owner from loss in the event
26 the defense is abandoned by the contractor or is
27 unsuccessful.

28 (3) Furnish to the owner approved security in an amount
29 sufficient to protect the owner from loss on account of the
30 claim.

1 § 704. Additional remedies of owner.

2 Should the contractor fail to settle, discharge or defend or
3 secure against the claim under section 703 (relating to duty of
4 contractor on receipt of notice), the owner may do one of the
5 following:

6 (1) Pay the claim of the subcontractor or materialman,
7 upon which payment the owner shall be subrogated to the
8 rights of the subcontractor or materialman against the
9 contractor together with any instrument or other collateral
10 security held by the subcontractor or materialman for the
11 payment of the claim.

12 (2) Undertake a defense against the claim, in which case
13 the contractor shall be liable to the owner for costs
14 incurred in the defense, including reasonable attorney fees,
15 whether or not the defense is successful. The undertaking of
16 the defense shall not affect the right of the owner to retain
17 funds of the contractor under section 701 (relating to right
18 to retain funds of contractor) until the claim of the
19 subcontractor or materialman is finally defeated or
20 discharged.

21 CHAPTER 9

22 ENFORCEMENT OF LIEN

23 Sec.

24 901. Proceedings to obtain judgment.

25 902. Duty of claimant on satisfaction of claim.

26 903. Revival of judgment.

27 904. Execution upon judgment.

28 § 901. Proceedings to obtain judgment.

29 (a) Supreme Court rules to govern.--The practice and
30 procedure to obtain judgment upon a claim filed shall be

1 governed by general rules promulgated by the Supreme Court.

2 (b) Time for commencing action.--An action to obtain
3 judgment upon a claim filed shall be commenced within two years
4 from the date of filing unless the time is extended in writing
5 by the owner.

6 (c) Venue for multicounty claims.--When a claim has been
7 filed in more than one county as provided by section 501
8 (relating to filing of claim and notice of filing), proceedings
9 to obtain judgment upon all the claims may be commenced in any
10 of the counties. The judgment shall be res adjudicata as to the
11 merits of the claims properly filed in the other counties. The
12 judgment may be transferred to the other county by filing of
13 record a certified copy of the docket entries in the action and
14 a certification of the judgment and amount, if any. The
15 prothonotary of the court to which the judgment has been
16 transferred shall index it upon the judgment index and enter it
17 upon the mechanics' lien docket.

18 (d) Limitation on time for obtaining judgment.--A verdict
19 must be recovered or judgment entered within five years from the
20 date of filing of the claim. Final judgment must be entered on a
21 verdict within five years. If a claim is not prosecuted to
22 verdict or judgment as provided in this section, the claim shall
23 be lost. If a complaint is filed in the cause and if the cause
24 is at issue, time consumed in the presentation and disposition
25 of motions and petitions of defendants, substitute defendants
26 and intervenors in the cause and consumed in appeal from an
27 order in the cause, from the date of perfection of the appeal to
28 the date of return of the certiorari from the appellate court to
29 the court of common pleas, shall be excluded in the computation
30 of the five-year period provided in this subsection.

1 (e) Defense to action on claim.--A setoff arising from the
2 same transaction or occurrence from which the claim arose may be
3 pleaded but may not be made the basis of a counterclaim.

4 (f) Remedies cumulative.--This title does not alter or
5 affect the right of a claimant to proceed in any other manner
6 for the collection of his debt.

7 § 902. Duty of claimant on satisfaction of claim.

8 Upon payment, satisfaction or discharge of the claim, verdict
9 or judgment, the claimant shall enter satisfaction upon the
10 record upon payment of the costs. Upon failure to do so within
11 30 days after a written request to satisfy, the court upon
12 petition of a party in interest may order the claim, verdict or
13 judgment satisfied; and the claimant shall be subject to a
14 penalty in favor of the party aggrieved in a sum as the court in
15 the petition proceedings may determine to be just, but not
16 exceeding the amount of the claim.

17 § 903. Revival of judgment.

18 Judgment upon a claim shall be revived within each recurring
19 five-year period. The practice and procedure to revive judgment
20 shall be governed by Title 42 (relating to judiciary and
21 judicial procedure) and by general rules of the Supreme Court.
22 The lien of the revived judgment shall, as in the case of the
23 original judgment, be limited to the lien property.

24 § 904. Execution upon judgment.

25 (a) Supreme Court rules to govern.--The practice and
26 procedure relating to execution shall be governed by general
27 rules of the Supreme Court.

28 (b) Judgment prerequisite to execution.--No execution shall
29 issue against the property subject to a claim except after
30 judgment has been obtained upon the claim and within five years

1 from the date of such judgment or a revival thereof.

2 (c) Division of tract.--Where only a part of a single tract
3 is subject to the lien of a mechanics' claim and such part
4 cannot be sold without prejudice or injury to the whole, the
5 court on petition of the owner, claimant or any person in
6 interest may order the entire tract sold and shall equitably
7 distribute the proceeds of sale according to the relative value
8 of the part bound by and that free of the claim. The court may
9 determine the matter itself and for that purpose may receive
10 evidence by deposition or otherwise, or may appoint an auditor
11 to hear the evidence and report to the court.

12 Section 2. (a) The following acts and parts of acts are
13 repealed:

14 Act of July 12, 1935 (P.L.667, No.246), entitled "An act
15 providing that parties furnishing material, supplies, fixtures
16 or equipment to buildings, under bailment lease or conditional
17 sales contract, shall not have the right to file mechanics'
18 liens therefor."

19 Act of August 24, 1963 (P.L.1175, No.497), known as the
20 Mechanics' Lien Law of 1963.

21 (b) All other acts and parts of acts are repealed insofar as
22 they are inconsistent with this act.

23 Section 3. This act shall take effect in 60 days.