
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 689

Session of
1981

INTRODUCED BY SPENCER, BERSON AND ALDEN, FEBRUARY 25, 1981

SENATOR O'CONNELL, STATE GOVERNMENT, IN SENATE, AS AMENDED,
NOVEMBER 16, 1982

AN ACT

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

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6 MECHANICS' LIENS

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29 The General Assembly of the Commonwealth of Pennsylvania
30 hereby enacts as follows:

1 Section 1. Title 49, act of November 25, 1970 (P.L.707,
2 No.230), known as the Pennsylvania Consolidated Statutes, is
3 amended by adding chapters to read:

4 TITLE 49

5 MECHANICS' LIENS

6 Chapter

7 1. Preliminary Provisions

8 3. Existence and Effect of Lien

9 5. Recording

10 7. Remedies of Owner Against Contractor

11 9. Enforcement of Lien

12 CHAPTER 1

13 PRELIMINARY PROVISIONS

14 Sec.

15 101. Short title of title.

16 102. Definitions.

17 103. Interpretation of title.

18 § 101. Short title of title.

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

21 § 102. Definitions.

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

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

30 "Claimant." A contractor or subcontractor who has filed or

1 may file a claim under this title for a lien 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 also includes an architect or engineer
13 who, by contract with the owner, express or implied, in addition
14 to 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." Includes:

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

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

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

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

"Labor." Includes the furnishing of skill or superintendence.

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

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

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

"Prothonotary." The prothonotary of the court or courts of common pleas of the county or counties in which the improvement is situate OR THE PERSON PERFORMING THE DUTIES SIMILAR TO THAT

<—

1 OF A PROTHONOTARY IN COUNTIES WHICH DO NOT HAVE A PROTHONOTARY.

2 "Residential real estate." Real estate located within this
3 Commonwealth containing buildings or structures used for
4 residential purposes not exceeding four stories in height or on
5 which buildings or structures to be used for residential
6 purposes not exceeding four stories in height are to be
7 constructed. THE TERM APPLIES REGARDLESS OF THE FORM OF <—
8 OWNERSHIP OF THE REAL ESTATE AND INCLUDES, BUT IS NOT LIMITED
9 TO, REAL ESTATE SUBJECT TO TIME SHARING, CLUSTER AND OTHER SUCH
10 ARRANGEMENTS. The term also includes real estate containing
11 existing buildings or structures which have been or are intended
12 to be adapted or improved for residential use regardless of
13 height, AND BUILDINGS OR STRUCTURES OF MIXED COMMERCIAL AND <—
14 RESIDENTIAL USE WHEREIN THE RESIDENTIAL USE IS GENUINE AND
15 SUBSTANTIAL AND THE STRUCTURE DOES NOT OR WILL NOT EXCEED FOUR
16 STORIES IN HEIGHT.

17 "Subcontractor." One who, by contract with the contractor,
18 express or implied, erects, constructs, alters or repairs an
19 improvement or any part thereof; or furnishes labor, skill or
20 superintendence thereto; or supplies or hauls materials,
21 fixtures, machinery or equipment reasonably necessary for and
22 actually used therein; or any or all of the foregoing, whether
23 as superintendent, builder or materialman. The term does not
24 include an architect or engineer who contracts with a contractor
25 or subcontractor or a person who contracts with a subcontractor
26 or with a materialman.

27 "Visible commencement." A beginning of substantial change in
28 the land or existing structure thereon or the placement of
29 materials on the property. Mere staking and the like do not
30 constitute visible commencement.

1 § 103. Interpretation of title.

2 The provisions of this title are to be interpreted reasonably
3 so as to carry out its underlying purposes. A EXCEPT FOR THE <—
4 FILING TIME REQUIREMENTS AND LIMITATIONS IMPOSED BY THIS TITLE,
5 A party who substantially complies in good faith with the OTHER <—
6 requirements of this title shall not be denied relief in
7 accordance with its provisions, as, for example, where the
8 failure of the party to strictly comply with the provisions of
9 this title is due to an error by a public office.

10 CHAPTER 3

11 EXISTENCE AND EFFECT OF LIEN

12 Sec.

13 301. Right to lien.

14 302. Lien not allowed in certain cases.

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28 316. Removal of improvement subject to lien.

29 § 301. Right to lien.

30 (a) General rule.--Every improvement and the estate or title

1 of the owner in the property shall be subject to a lien, to be
2 perfected as provided in this title, for the payment of all
3 debts due by the owner to the contractor or by the contractor to
4 any of his subcontractors for labor or materials furnished in
5 the erection or construction, or the alteration or repair of the
6 improvements, provided that the amount of the claim, other than
7 amounts determined by apportionment under section 304(b)
8 (relating to consolidation or apportionment of claims), exceeds
9 \$500.

10 (b) Effect of incompleteness of improvement.--Except in case
11 of destruction by fire or other casualty where, through no fault
12 of the claimant, the improvement is not completed, the right to
13 a lien shall nevertheless exist.

14 § 302. Lien not allowed in certain cases.

15 (a) Persons other than contractors or subcontractors.--No
16 lien shall be allowed in favor of any person other than a
17 contractor or subcontractor even though the person furnishes
18 labor or materials to an improvement.

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

21 (c) Conveyance prior to lien.--If the property is conveyed
22 in good faith and for a valuable consideration prior to the
23 filing of a claim for alterations or repairs, the lien shall be
24 wholly lost.

25 (d) Leasehold premises.--No lien shall be allowed against
26 the estate of an owner in fee by reason of any consent given by
27 the owner to a tenant to improve the leased premises unless it
28 appears in writing signed by the owner that the erection,
29 construction, alteration or repair was in fact for the immediate
30 use and benefit of the owner.

1 (e) Security interests.--No lien shall be allowed for that
2 portion of a debt representing the contract price of any
3 materials against which the claimant holds or has claimed a
4 security interest under Title 13 (relating to commercial code)
5 or to which claimant has reserved title or the right to
6 reacquire title.

7 § 303. Presumption as to use of materials.

8 Materials for use in or upon an improvement placed on or near
9 the property or delivered to the owner pursuant to a contract
10 shall be presumed to have been used therein in the absence of
11 proof to the contrary.

12 § 304. Consolidation or apportionment of claims.

13 (a) Consolidation.--Where a debt is incurred for labor or
14 materials furnished continuously by the same claimant for work
15 upon a single improvement but under more than one contract, the
16 claimant may elect to file a single claim for the entire debt.
17 In such case, "completion of the work" shall not be deemed to
18 occur with respect to any of the contracts until it has occurred
19 with respect to all of them.

20 (b) Apportionment.--Where a debt is incurred for labor or
21 materials furnished by the same claimant for work upon several
22 different improvements which do not form all or part of a single
23 business or residential plant, the claimant shall file separate
24 claims with respect to each such improvement, with the amount of
25 each claim determined by apportionment of the total debt to the
26 several improvements, and in such case, the amount of each
27 separate claim may be less than \$500, provided that the total
28 debt exceeds \$500. In no other case shall an apportioned claim
29 be allowed.

30 § 305. Notice to owner by subcontractor.

1 (a) General rule.--A lien of a subcontractor recorded under
2 the provisions of section 501 (relating to filing of claim and
3 notice of filing) is not enforceable against the owner unless
4 the provisions of this section are complied with.

5 (b) Preliminary notice in case of alteration and repair.--No
6 claim by a subcontractor for alterations or repairs shall be
7 valid unless, in addition to the formal notice required by
8 subsection (c), he has given to the owner on or before the date
9 of completion of the work a written preliminary notice of
10 intention to file a claim if the amount due or to become due is
11 not paid. The notice need set forth only the name of the
12 subcontractor, the name of the contractor, a general description
13 of the property against which the claim is to be filed, the
14 amount then due or to become due and a statement of intention to
15 file a claim therefor.

16 (c) Formal notice in all cases.--No claim by a
17 subcontractor, whether for erection or construction or for
18 alterations or repairs, shall be valid unless, at least 30 days
19 before the claim is filed, he has given to the owner a formal
20 written notice of intention to file a claim, except that the
21 notice shall not be required where the claim is filed pursuant
22 to a rule to do so as provided by section 308 (relating to rule
23 to file claim). The formal notice shall state:

24 (1) The name of the party claimant.

25 (2) The name of the person with whom he contracted.

26 (3) The amount claimed to be due.

27 (4) The general nature and character of the labor or
28 materials furnished.

29 (5) The date of completion of the work for which the
30 claim is made.

1 (6) A brief description sufficient to identify the
2 property claimed to be subject to the lien.

3 (7) The date on which preliminary notice of intention to
4 file a claim was given where such notice is required by
5 subsection (b) and a copy thereof.

6 The notice may consist of a copy of the claim intended to be
7 filed, together with a statement that the claimant intends to
8 file the original or a counterpart thereof.

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

15 § 306. Time lien takes effect.

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

18 (1) In the case of the erection or construction of an
19 improvement, as of the date of the visible commencement upon
20 the ground of the work of erecting or constructing the
21 improvement.

22 (2) In the case of the alteration or repair of an
23 improvement, as of the date of the filing of the claim.

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

25 (1) Except as otherwise provided in paragraph (2), the
26 lien of every advance made under a construction loan
27 agreement secured by a mortgage on the property shall be
28 effective and relate back in priority to the date of the
29 recording of the mortgage whether or not the advance is
30 deemed to have been made voluntarily or involuntarily under

1 the terms of the construction loan agreement.

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

8 (i) the request by the borrower for the advance was
9 based upon and supported by the invoice of the contractor
10 or subcontractor approved by the lender for work
11 performed in or materials furnished to the improvements
12 and the invoice was not paid; and

13 (ii) the advance was made after the lender's receipt
14 of WRITTEN notice BY CERTIFIED MAIL, RETURN RECEIPT <—
15 REQUESTED, by the contractor or subcontractor that a prior
16 invoice approved by the lender for work performed on or
17 materials furnished to the improvements remained unpaid for a
18 period in excess of 30 days from the date the invoice was
19 submitted.

20 § 307. Duration of lien.

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

28 (b) Pending enforcement proceedings.--If a judicial
29 proceeding to enforce a lien is instituted while a lien is
30 effective under subsection (a) or under section 308 (relating to

1 rule to file claim), the lien continues effective until
2 discharged by the court.

3 § 308. Rule to file claim.

4 (a) General rule.--At any time after the completion of the
5 work by a subcontractor, any owner or contractor may file a rule
6 or rules, as of course, in the court in which the claim may be
7 filed, requiring the party named therein to file his claim
8 within 30 days after notice of the rule or be forever barred
9 from doing so. The rule shall be entered by the prothonotary
10 upon the judgment index and in the mechanics' lien docket.
11 Failure to file a claim within the time specified shall operate
12 to wholly defeat the right to do so. If a claim is filed, it
13 shall be entered as of the court, term and number of the rule to
14 file the same.

15 (b) Effect of claim filed by subcontractor.--Where a claim
16 is filed by a subcontractor in response to such rule, the owner
17 may give written notice thereof to the contractor in the manner
18 set forth under section 702 (relating to notice to contractor of
19 claim) and upon the giving of such notice the owner may avail
20 himself of the remedies provided under sections 701 (relating to
21 right to retain funds of contractor) and 704 (relating to
22 additional remedies of owner) and the contractor shall be
23 subject to the duties set forth under section 703 (relating to
24 duty of contractor on receipt of notice).

25 § 309. Limitations on waiver of lien.

26 (a) General rule.--A written contract between the owner and
27 contractor or a separate written instrument signed by the
28 contractor which purports to provide that no claim or lien shall
29 be filed by ~~any person~~ THE CONTRACTOR OR ANY SUBCONTRACTOR shall <—
30 be void unless filed in the time and manner provided by section

311(a)(2) (relating to right of subcontractor to rescind
contract) and:

(1) the aggregate value of labor, services or materials
for the erection, construction, alteration or repair, as
appropriate, is less than ~~\$100,000~~; \$500,000 FOR THE YEAR <—
1982, WITH SAID AGGREGATE VALUE TO BE ADJUSTED ON APRIL 1,
1983 AND ANNUALLY THEREAFTER BY MULTIPLYING THE SAID
AGGREGATE VALUE FOR THE PRECEDING YEAR BY THE RATIO OF THE
COMPOSITE CONSTRUCTION COST INDEX COMPILED AND PUBLISHED BY
THE UNITED STATES DEPARTMENT OF COMMERCE, FOR THE PRECEDING
CALENDAR YEAR TO THE INDEX FOR THE NEXT PRECEDING CALENDAR
YEAR;

(2) the erection, construction, alteration or repair
involves residential real estate; or

(3) the written contract or separate written instrument
provides that no claim or lien shall be filed by any
subcontractor and the owner has posted or caused to be posted
a payment bond, a copy of which shall be filed with the
prothonotary prior to the commencement of the work on the
ground, indexed in the name of the contractor as defendant
and the owner as plaintiff, and shall be in accordance with
the provisions of subsections (b) and (c). THE PAYMENT BOND <—
SHALL BE EXECUTED BY ONE OR MORE SURETY COMPANIES LEGALLY
AUTHORIZED TO DO BUSINESS IN THE COMMONWEALTH OF
PENNSYLVANIA. The posting of a payment bond pursuant to this
section does not exempt the owner from the claim or lien of
the contractor.

(b) Obligation of payment bond.--The payment bond must
obligate the surety, to the extent of its amount, to pay all
sums due to subcontractors for services and materials supplied

1 to the contractor pursuant to the contract under which the claim
2 or lien would otherwise arise. The obligation of a surety under
3 this section shall not be affected by any change or modification
4 of the contract between the contractor and the owner but the
5 total liability of the surety may not be greater than the penal
6 sum of the bond.

7 (c) Amount of payment bond.--The amount of the payment bond
8 shall be not less than the following percentages of the total
9 contract price payable to the contractor:

10 (1) One hundred percent of the contract price up to and
11 including \$1,000,000.

12 (2) Fifty percent of that portion of the contract price
13 above \$1,000,000 and up to and including \$5,000,000.

14 (3) Thirty-five percent of that portion of the contract
15 price above \$5,000,000.

16 If the total amount payable by the terms of the contract of the
17 owner with the contractor is indefinite, the payment bond shall
18 be in a sum which the owner and contractor in good faith
19 estimate is at least one-half of the amount that is or would
20 have been due to the contractor if the contractor performs, or
21 would have performed, the contract according to its terms.

22 (d) Duty to furnish copy of bond.--The person acquiring the
23 bond shall furnish a true copy of any bond procured at cost of
24 reproduction to any claimant on request and, for refusal to
25 furnish a copy without justifiable cause, shall be liable to the
26 claimant for any damages caused by the refusal or failure.

27 (e) Actions under bond.--A claimant may not recover under a
28 surety bond provided pursuant to this section unless the
29 claimant institutes suit against the surety within one year
30 subsequent to completion of performance by claimant. A

1 subcontractor having a claim under a bond has a direct right of
2 action against the surety. The contractor may intervene in any
3 action against the surety and may plead all defenses available
4 to the contractor against the claim of the subcontractor
5 including a set-off arising from the same transaction or
6 occurrence upon which the claim of the subcontractor is based.

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

8 The giving of credit or the receipt of evidence of
9 indebtedness or collateral otherwise than as provided in section
10 302 (relating to lien not allowed in certain cases) shall not
11 operate to waive the right to file a claim but, where credit is
12 given, no voluntary proceedings shall be taken by the claimant
13 to enforce the lien until the credit period has expired.

14 § 311. Right of subcontractor to rescind contract.

15 (a) General rule.--Any provisions of a contract between the
16 owner and the contractor, which reduce or impair the rights and
17 remedies of a subcontractor or which postpone the time for
18 payment by the owner to the contractor for a period exceeding
19 four months after completion of the work, shall be grounds for
20 rescission by the subcontractor of his contract with the
21 contractor unless:

22 (1) the subcontractor was given actual notice thereof
23 prior to the time of the making of the contract with the
24 contractor; or

25 (2) notice of the contract or the pertinent provisions
26 thereof was filed in the office of the prothonotary prior to
27 the commencement of the work upon the ground or within ten
28 days after the execution of the principal contract (if
29 executed after commencement of the work) or not less than ten
30 days prior to the contract with the claimant subcontractor,

1 indexed in the name of the contractor as defendant and the
2 owner as plaintiff and also in the name of the contractor as
3 plaintiff and the owner as defendant. Notwithstanding the
4 filing of notice thereof, such a provision shall only be
5 applicable if in writing and signed by all those who, under
6 the contract, have an adverse interest to the subcontractor.

7 (b) Recovery for prior work completed.--Such recision as is
8 provided for in subsection (a) shall not impair the right of the
9 subcontractor to recover by lien or otherwise for work completed
10 prior thereto.

11 ~~(c) Temporary cessation of work. Such a provision in cases~~ <—
12 ~~of residential real estate may be applicable if work temporarily~~
13 ~~has ceased, all contractors and subcontractors prior to~~
14 ~~cessation have released their interests of record and notice is~~
15 ~~given at least ten days prior to recommencement.~~

16 (C) CESSATION OF WORK.--WHEN AN OWNER OR OTHER PARTY IN <—
17 INTEREST FILES IN THE OFFICE OF THE PROTHONOTARY AN AFFIDAVIT
18 THAT NO WORK HAS TAKEN PLACE OR MATERIALS FURNISHED TO THE
19 IMPROVEMENT WITHIN THE PRECEDING SIX MONTHS AND ATTACHES A LIST
20 OF THE NAMES AND ADDRESSES OF ALL CONTRACTORS AND SUBCONTRACTORS
21 WHO PRIOR TO SAID SIX-MONTH PERIOD SUPPLIED LABOR OR MATERIALS
22 TO THE IMPROVEMENT AND ATTACHES RELEASES EXECUTED BY THE NAMED
23 CONTRACTORS AND SUBCONTRACTORS THERE SHALL BE NO RIGHT IN ANY
24 PERSON TO CLAIM ANY AMOUNTS AGAINST THE IMPROVEMENT FOR ANY
25 LABOR OR MATERIAL ALLEGED TO HAVE BEEN SUPPLIED PRIOR TO THE
26 SIX-MONTH PERIOD. THE AFFIDAVIT FILED SHALL BE CONCLUSIVE
27 EVIDENCE OF ALL STATEMENTS CONTAINED THEREIN. ANY MECHANICS'
28 LIEN FOR WORK PERFORMED OR MATERIALS SUPPLIED FOR WORK
29 SUBSEQUENT TO THE FILING OF THE AFFIDAVIT SHALL DATE FROM THE
30 DATE OF THE FIRST WORK DONE OR THE FIRST MATERIALS SUPPLIED

1 SUBSEQUENT TO FILING OF THE AFFIDAVIT WHICHEVER IS THE SOONER.

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

3 A contract for the improvement made by the owner with one not
4 intended in good faith to be a contractor shall have no legal
5 effect except as between the parties thereto, even though
6 written, signed and filed as provided in this title, but the
7 contractor, as to third parties, shall be treated as the agent
8 of the owner.

9 § 313. Property bound by lien.

10 The lien of every claim shall bind only the interest of the
11 party named as owner of the property at the time of the contract
12 or acquired subsequently by him, but no forfeiture or surrender
13 of a leasehold or tenancy, whether before or after the filing of
14 the claim, shall operate to prejudice the lien of the claim
15 against the fixtures, machinery or other similar property of the
16 leasehold or tenancy.

17 § 314. Discharge of lien.

18 (a) Cash deposit.--Any claim filed under this title shall,
19 upon petition of the owner or any party in interest, be
20 discharged as a lien against the property whenever a sum equal
21 to the amount of the claim is deposited with the court in the
22 proceedings for application to the payment of the amount finally
23 determined to be due.

24 (b) Refund of excess.--Any excess of funds paid into court
25 over the amount of the claim or claims determined and paid
26 therefrom shall, upon application, be refunded to the owner or
27 party depositing the funds.

28 (c) Security in lieu of cash.--In lieu of the deposit of any
29 such sum or sums, approved security may be entered in the
30 proceedings in double the amount of the required deposit, or in

1 such lesser amount as the court shall approve, which shall not
2 be less than the full amount of the required deposit, and the
3 entry of the security shall entitle the owner to have the liens
4 discharged to the same effect as though the required sums had
5 been deposited in court.

6 (d) Authority of court.--The court, upon petition filed by
7 any party and after notice and hearing, may upon cause shown:

8 (1) Require the increase or decrease of any deposit or
9 security.

10 (2) Strike off security improperly filed.

11 (3) Permit the substitution of security and enter an
12 exoneration of security already given.

13 § 315. Excessive property included in claim.

14 Where an owner objects that a lien has been claimed against
15 more property than should justly be included therein, the court
16 upon petition may, after hearing by deposition or otherwise,
17 limit the boundaries of the property subject to the lien.
18 Failure to raise this objection preliminarily shall not be a
19 waiver of the right to plead the objection as a defense
20 thereafter.

21 § 316. Removal of improvement subject to lien.

22 (a) General rule.--No improvement subject to the lien of a
23 claim filed in accordance with this title shall be removed or
24 detached from the land except pursuant to title obtained at a
25 judicial sale or by one owning the land and not named as a
26 defendant. Any improvement otherwise removed shall remain liable
27 to the claim filed except in the hands of a purchaser for value.

28 (b) Judicial proceedings to restrain removal.--The court may
29 on petition restrain the removal of the improvement in
30 accordance with the general rules of the Supreme Court governing

1 actions to prevent waste.

2 CHAPTER 5

3 RECORDING

4 Sec.

5 501. Filing of claim and notice of filing.

6 502. Contents of claim.

7 503. Amendment of claim.

8 504. Preliminary objections to claim.

9 505. Entries on judgment index and lien docket.

10 506. Recording notice of payment bond.

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

12 (a) General rule.--To perfect a lien, every claimant must:

13 (1) File a claim with the prothonotary as provided by
14 this title within four months after the completion of the
15 work.

16 (2) Serve written notice of such filing upon the owner
17 within one month after filing, giving the court term and
18 number and date of filing of claim. An affidavit of service
19 of notice, or the acceptance of service, shall be filed
20 within 20 days after service setting forth the date and
21 manner of service.

22 (b) Property in more than one county.--Where the improvement
23 is located in more than one county, the claim may be filed in
24 any one or more of the counties, but shall be effective only as
25 to the part of the property in the county in which it has been
26 filed.

27 (c) Manner of service.--Service of the notice of filing of
28 claim shall be made by any adult in the same manner as a writ of
29 summons in assumpsit or, if service cannot be so made then by
30 posting upon a conspicuous public part of the improvement.

1 § 502. Contents of claim.

2 The claim shall be sworn or affirmed to and shall state:

3 (1) The name of the party claimant and whether he files
4 as contractor or subcontractor.

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

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

7 (4) If filed by a subcontractor, the name of the person
8 with whom the subcontractor contracted and the dates on which
9 preliminary notice, if required, and of formal notice of
10 intention to file a claim was given.

11 (5) If filed by a contractor under a contract or
12 contracts for an agreed sum, an identification of the
13 contract and a general statement of the kind and character of
14 the labor or materials furnished.

15 (6) In all other cases then that set forth in paragraph
16 (5), a detailed statement of the kind and character of the
17 labor or materials furnished, or both, and the prices charged
18 for each thereof.

19 (7) The amount or sum claimed to be due.

20 (8) Such description of the improvement and of the
21 property claimed to be subject to the lien as may be
22 reasonably necessary to identify them.

23 § 503. Amendment of claim.

24 A claim may be amended from time to time without prejudice to
25 intervening rights by agreement of the parties or by leave of
26 court except that no amendment shall be permitted after the time
27 for filing a claim has expired which undertakes to:

28 (1) substitute a different property than that described
29 in the claim;

30 (2) substitute a different party with whom the claimant

1 contracted; or

2 (3) increase the aggregate amount of the claim.

3 § 504. Preliminary objections to claim.

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

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

15 The prothonotary shall enter the claim, verdict and judgment
16 upon the judgment index and mechanics' lien docket against the
17 owner. When a claim, verdict or judgment is stricken, reversed
18 or satisfied, or the name of a defendant is stricken, or an
19 action upon the claim to reduce it to judgment is discontinued,
20 or judgment is entered thereon in favor of the defendant, a note
21 shall be made on the judgment index.

22 § 506. Recording notice of payment bond.

23 (a) General rule.--If a prime contractor or owner has
24 secured a payment bond, a notice of payment bond must be
25 recorded in the time and manner provided in section 309(a)(3)
26 (relating to limitations on waiver of lien).

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

29 (1) The real estate being improved with a description
30 thereof sufficient for identification.

1 service of the notice settles, undertakes to defend or
2 secures against the claim as provided by section 703
3 (relating to duty of contractor on receipt of notice), the
4 owner may avail himself of the remedies provided by section
5 704 (relating to additional remedies of owner).

6 (c) Service.--The notice may be given by the owner or his
7 agent to the contractor personally, or to the manager, executive
8 or principal officer or other agent of the contractor, or if
9 none of these persons can be found, by sending a copy of the
10 notice by first class, registered or certified mail to the
11 contractor at his last known office address.

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

13 Upon service of the notice provided by section 702 (relating
14 to notice to contractor of claim), the contractor shall within
15 30 days from the receipt of notice do one of the following:

16 (1) Settle or discharge the claim of the subcontractor
17 and furnish to the owner a written copy of a waiver, release
18 or satisfaction thereof, signed by the claimant.

19 (2) Agree in writing to undertake to defend against the
20 claim and, if the owner has not retained sufficient funds to
21 protect him against loss, furnish the owner additional
22 approved security to protect the owner from loss in the event
23 the defense is abandoned by the contractor or does not
24 prevail.

25 (3) Furnish to the owner approved security in an amount
26 sufficient to protect the owner from loss on account of the
27 claim.

28 § 704. Additional remedies of owner.

29 Should the contractor fail to settle, discharge or defend or
30 secure against the claim, as provided by this title, the owner

1 may do one of the following:

2 (1) Pay the claim of the subcontractor, upon which
3 payment the owner shall be subrogated to the rights of the
4 subcontractor against the contractor together with any
5 instrument or other collateral security held by the
6 subcontractor for the payment thereof.

7 (2) Undertake a defense against the claim in which case
8 the contractor shall be liable to the owner for all costs,
9 expenses and charges incurred in the defense, including
10 reasonable attorneys' fees, whether the defense be successful
11 or not, but the undertaking of the defense shall not affect
12 the right of the owner to retain funds of the contractor
13 under section 701 (relating to right to retain funds of
14 contractor) until the claim of the subcontractor is finally
15 defeated or discharged.

16 CHAPTER 9

17 ENFORCEMENT OF LIEN

18 Sec.

19 901. Proceedings to obtain judgment.

20 902. Appellate review.

21 903. Duty of claimant on satisfaction of claim.

22 904. Revival of judgment.

23 905. Execution upon judgment.

24 § 901. Proceedings to obtain judgment.

25 (a) Supreme Court rules to govern.--The practice and
26 procedure to obtain judgment upon a claim filed shall be
27 governed by general rules promulgated by the Supreme Court.

28 (b) Time for commencing action.--At any time after the
29 filing of a claim, the owner or contractor, if the contractor
30 has not filed the claim, may file a rule as of course in the

1 court in which the claim is filed requiring the party who filed
2 the claim to commence an action to obtain judgment within 30
3 days of the service of the rule upon said party. Failure to
4 commence the action within that time shall operate to wholly
5 defeat the right to do so unless the time for commencing the
6 action is extended in writing by the party filing the rule to
7 commence. In any event, an action to obtain judgment upon a
8 claim filed shall be commenced within two years from the date of
9 filing unless the time is extended in writing by the owner.

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

22 (d) Limitation on time for obtaining judgment.--A verdict
23 must be recovered or judgment entered within five years from the
24 date of filing of the claim. Final judgment must be entered on a
25 verdict within five years. If a claim is not prosecuted to
26 verdict or judgment as provided in this section, the claim shall
27 be wholly lost. In either case, if a complaint has been or shall
28 be filed in the cause and if the cause has been or shall be at
29 issue, all time theretofore or thereafter consumed in the
30 presentation and disposition of all motions and petitions of

1 defendants, substituted defendants and intervenors in the cause,
2 and in any appeal or appeals from any order in the cause, from
3 the date of perfection of the appeal to the date of return of
4 the certiorari from the appellate court to the court of common
5 pleas, shall be excluded in the computation of the five-year
6 period provided in this subsection.

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

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

13 § 902. Appellate review.

14 An appeal may be taken to the appropriate appellate court
15 from any judgment, order or decree entered by the court of
16 common pleas under the provisions of this title or from any
17 refusal to open a judgment entered by default.

18 § 903. Duty of claimant on satisfaction of claim.

19 Upon payment, satisfaction or other discharge of the claim,
20 verdict or judgment, the claimant shall enter satisfaction
21 thereof upon the record upon payment of the costs of same. Upon
22 failure to do so within 30 days after a written request to
23 satisfy, the court upon petition of any party in interest may
24 order the claim, verdict or judgment satisfied and the claimant
25 shall be subject to a penalty in favor of the party aggrieved in
26 such sum as the court in the petition proceedings shall
27 determine to be just, but not exceeding the amount of the claim.

28 § 904. Revival of judgment.

29 Judgment upon a claim shall be revived within each recurring
30 five-year period. The practice and procedure to revive judgment

1 shall be governed by Title 42 (relating to judiciary and
2 judicial procedure) and by general rules of the Supreme Court,
3 but the lien of the revived judgment shall, as in the case of
4 the original judgment, be limited to the lien property.

5 § 905. Execution upon judgment.

6 (a) Supreme Court rules to govern.--The practice and
7 procedure relating to execution shall be governed by general
8 rules of the Supreme Court.

9 (b) Judgment prerequisite to execution.--No execution shall
10 issue against the property subject to a claim except after
11 judgment has been obtained upon the claim and within five years
12 from the date of such judgment or a revival thereof.

13 (c) Division of tract.--Where only a part of a single tract
14 is subject to the lien of a mechanic's claim and such part
15 cannot be sold without prejudice or injury to the whole, the
16 court on petition of the owner, claimant or any person in
17 interest may order the entire tract sold and shall equitably
18 distribute the proceeds of sale according to the relative value
19 of the part bound by and that free of the claim. The court may
20 determine the matter itself and for that purpose may receive
21 evidence by deposition or otherwise, or may appoint an auditor
22 to hear the evidence and report to the court.

23 Section 2. (a) The following acts are repealed:

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

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

1 (b) All other acts and parts of acts are repealed insofar as
2 they are inconsistent with this act.
3 Section 3. This act shall take effect in 60 days.