

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1411 Session of
1984

INTRODUCED BY O'CONNELL, SCANLON, KELLEY AND SHAFFER, JUNE 4,
1984

REFERRED TO JUDICIARY, JUNE 4, 1984

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

30 Section 1. Title 49 of the Pennsylvania Consolidated

1 Statutes is amended by adding chapters to read:

2 TITLE 49

3 MECHANICS' LIENS

4 Chapter

5 1. Preliminary Provisions

6 3. Existence and Effect of Lien

7 5. Recording

8 7. Remedies of Owner Against Contractor

9 9. Enforcement of Lien

10 CHAPTER 1

11 PRELIMINARY PROVISIONS

12 Sec.

13 101. Short title of title.

14 102. Definitions.

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16 § 101. Short title of title.

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

19 § 102. Definitions.

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

25 "Claimant." A contractor or subcontractor who has filed or
26 may file a claim under this title for a lien against property.

27 "Completion of the work." Performance of the last of the
28 labor or delivery of the last of the materials required by the
29 terms of the contract of the claimant, whichever last occurs.

30 "Contractor." One who, by contract with the owner, effects

1 an improvement; furnishes labor, skill or supervision of an
2 improvement; or supplies or hauls materials, fixtures, machinery
3 or equipment reasonably necessary for and used in the
4 improvement, whether as superintendent, builder or materialman.
5 The term includes an architect or engineer who, by contract with
6 the owner, in addition to the preparation of drawings,
7 specifications and contract documents, supervises an
8 improvement.

9 "Erection, construction, alteration or repair." Includes:

10 (1) Demolition, removal of improvements, seeding,
11 sodding, landscaping, filling, leveling or grading,
12 excavation, installation of curbing and sewers and paving.

13 (2) Initial fitting up and equipping of the improvement
14 with fixtures, machinery and equipment suitable to the
15 purposes for which the erection, construction, alteration or
16 repair was intended.

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

21 "Improvement." Includes, but is not limited to, the
22 erection, construction, alteration, repair and addition to a
23 building or structure erected or constructed on land, together
24 with the fixtures and other personal property used in fitting up
25 and equipping it for the purpose for which it is intended.

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

27 "Residential real estate." Real estate located in this
28 Commonwealth containing buildings or structures used for
29 residential purposes not exceeding four stories in height or on
30 which buildings or structures to be used for residential

1 purposes not exceeding four stories in height are to be
2 constructed. The term includes real estate containing existing
3 buildings or structures which have been or are intended to be
4 adapted or improved for residential use regardless of height.

5 "Subcontractor." One who, by contract with the contractor,
6 effects an improvement; furnishes labor, skill or supervision of
7 an improvement; or supplies or hauls materials, fixtures,
8 machinery or equipment reasonably necessary for and used in the
9 improvement, whether as superintendent, builder or materialman.

10 The term does not include an architect or engineer who contracts
11 with a contractor or a person who contracts with a subcontractor
12 or with a materialman.

13 "Visible commencement." A beginning of substantial change in
14 the land or existing structure on it or the placement of
15 materials on the property. The term does not include mere
16 staking and the like.

17 § 103. Interpretation.

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

21 CHAPTER 3

22 EXISTENCE AND EFFECT OF LIEN

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11 § 301. Right to lien.

12 (a) General rule.--An improvement and the estate or title of
13 the owner in the property shall be subject to a lien, to be
14 perfected under this title, for the payment of debts due by the
15 owner to the contractor or by the contractor to subcontractors
16 for labor, materials supplies or equipment furnished in
17 improvements if the amount of the claim, other than amounts
18 determined by apportionment under section 304(b) (relating to
19 consolidation or apportionment of claims), exceeds \$500.

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

24 § 302. Lien not allowed in certain cases.

25 (a) Persons other than contractors or subcontractors.--No
26 lien shall be allowed in favor of a person other than a
27 contractor or subcontractor even though the person furnishes
28 labor, materials, supplies or equipment to an improvement.

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

1 (c) Conveyance prior to lien.--If the property is conveyed
2 in good faith and for consideration prior to the filing of a
3 claim, there shall be no lien.

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

9 (e) Security interests.--No lien shall be allowed for that
10 portion of a debt representing the contract price of materials
11 against which the claimant holds or has claimed a security
12 interest under Title 13 (relating to commercial code) or to
13 which claimant has reserved title or the right to reacquire
14 title.

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

17 Materials, supplies and equipment for use in or upon an
18 improvement placed on or near the property or delivered to the
19 owner under a contract shall be rebuttably presumed to have been
20 used in the improvement.

21 § 304. Consolidation or apportionment of claims.

22 (a) Consolidation.--Where a debt is incurred for labor,
23 materials equipment or supplies furnished continuously by the
24 same claimant for work upon a single improvement but under more
25 than one contract, the claimant may elect to file a single claim
26 for the entire debt. In this case, "completion of the work"
27 shall not be deemed to occur with respect to any of the
28 contracts until it has occurred with respect to all of them.

29 (b) Apportionment.--Where a debt is incurred for labor or
30 materials furnished by the same claimant for work upon several

1 different improvements which do not form a single business or
2 residential plant, the claimant shall file separate claims with
3 respect to each improvement, with the amount of each claim
4 determined by apportionment of the total debt to the several
5 improvements. In this case, the amount of each separate claim
6 may be less than \$500 if the total debt exceeds \$500. In no
7 other case shall an apportioned claim be allowed.

8 § 305. Notice to owner by subcontractor.

9 (a) General rule.--A lien of a subcontractor recorded under
10 of section 501 (relating to filing of claim and notice of
11 filing) is not enforceable against the owner unless the owner
12 complies with this section.

13 (b) Preliminary notice in case of alteration and repair.--No
14 claim by a subcontractor for alterations or repairs shall be
15 valid unless, in addition to the formal notice required by
16 subsection (c), the subcontractor has given to the owner, on or
17 before the date of completion of the work, a written preliminary
18 notice of intention to file a claim if the amount due is not
19 paid. The notice must set forth the name of the subcontractor,
20 the name of the contractor, a general description of the
21 property against which the claim is to be filed, the amount due
22 or to become due and a statement of intention to file a claim.

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

29 (1) The formal notice must state:

30 (i) The name of the party claimant.

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

2 (iii) The amount claimed to be due.

3 (iv) The general nature and character of the labor,
4 materials, equipment or supplies furnished.

5 (v) The date of completion of the work for which the
6 claim is made.

7 (iv) A brief description sufficient to identify the
8 property claimed to be subject to the lien.

9 (vii) The date on which preliminary notice of
10 intention to file a claim was given where notice is
11 required by subsection (b) and a copy of the notice.

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

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

21 § 306. Time lien takes effect.

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

24 (1) In the case of the erection or construction of a
25 building or structure, as of the date of the visible
26 commencement upon the ground of the work of erecting or
27 constructing the building or structure.

28 (2) In the case of the alteration or repair of a
29 building or structure as of the date of the filing of the
30 claim.

(b) Construction loan mortgage lien priority.--

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

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

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

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

§ 307. Duration of lien.

(a) General rule.--Except as provided in subsection (b), a lien that has become enforceable under this title shall be effective for five years after the time of recording the lien

1 under section 501 (relating to filing of claim and notice of
2 filing) or, if an amendment thereof has been recorded under
3 section 503 (relating to amendment of claim), for five years
4 after the time of that recording.

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

10 § 308. Order to file claim.

11 (a) General rule.--After the completion of the work by a
12 subcontractor, an owner or contractor may file an order in the
13 court in which the claim may be filed, requiring the named
14 claimant to file a claim within 30 days after notice of the
15 order. The order shall be entered by the prothonotary upon the
16 judgment index and in the mechanics' lien docket. Failure to
17 file a claim within the time specified shall defeat the right to
18 file a claim. If a claim is filed, it shall be entered as of the
19 court, term and number of the order.

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

29 § 309. Limitations on waiver of lien.

30 (a) General rule.--A written contract between the owner and

1 contractor or a separate written instrument signed by the
2 contractor which purports to provide that no claim or lien shall
3 be filed by any person shall be void unless filed in the time
4 and manner provided by section 311(a)(2) (relating to right of
5 subcontractor to rescind contract) and one of the following
6 applies:

7 (1) The aggregate value of labor, services, materials
8 and equipment for the improvement is less than \$100,000.

9 (2) The improvement involves residential real estate.

10 (3) The written contract or separate written instrument
11 provides that no claim or lien shall be filed by any
12 subcontractor; and the owner has posted or caused to be
13 posted a payment bond, a copy of which shall be filed with
14 the prothonotary prior to the commencement of the work on the
15 ground, indexed in the names of the contractor as defendant
16 and the owner as plaintiff and shall be in accordance with
17 subsections (b) and (c). The posting of a payment bond under
18 this section shall not exempt the owner from the claim or
19 lien of the contractor.

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

29 (c) Amount of payment bond.--

30 (1) The amount of the payment bond shall be not less

1 than the following percentages of the total contract price
2 payable to the contractor:

3 (i) One hundred percent of the contract price up to
4 \$1,000,000.

5 (ii) Fifty percent of that portion of the contract
6 price above \$1,000,000 and up to \$5,000,000.

7 (iii) Thirty-five percent of that portion of the
8 contract price above \$5,000,000.

9 (2) If the total amount payable by the terms of the
10 contract of the owner with the contractor is indefinite, the
11 payment bond shall be in a sum which the owner and contractor
12 in good faith estimate is at least one-half of the amount
13 that would be due to the contractor if the contractor
14 performs the contract.

15 (d) Duty to furnish copy of bond.--The person acquiring the
16 bond shall furnish a copy of a bond procured at cost of
17 reproduction to a claimant on request and, for refusal to
18 furnish a copy without justifiable cause, shall be liable to the
19 claimant for damages caused by the refusal or failure.

20 (e) Actions under bond.--A claimant may not recover under a
21 surety bond provided under this section unless the claimant
22 institutes suit against the surety within one year subsequent to
23 completion of performance by claimant. A subcontractor having a
24 claim under a bond has a direct right of action against the
25 surety. The contractor may intervene in an action against the
26 surety and may plead all defenses available to the contractor
27 against the claim of the subcontractor, including a set-off
28 arising from the same transaction or occurrence upon which the
29 claim of the subcontractor is based.

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

1 The giving of credit or the receipt of evidence of
2 indebtedness or collateral otherwise than as provided in section
3 302 (relating to lien not allowed in certain cases) shall not
4 operate to waive the right to file a claim. Where credit is
5 given, no voluntary proceedings may be taken by the claimant to
6 enforce the lien until the credit period has expired.

7 § 311. Right of subcontractor to rescind contract.

8 (a) General rule.--Provisions of a contract between the
9 owner and the contractor which reduce or impair the rights or
10 remedies of a subcontractor or which postpone the time for
11 payment by the owner to the contractor for a period exceeding
12 four months after completion of the work shall be grounds for
13 rescission by the subcontractor of its contract with the
14 contractor unless either of the following apply:

15 (1) The subcontractor was given actual notice of this
16 provision prior to the time of the making of the contract
17 with the contractor.

18 (2) Notice of the provisions was filed in the
19 office of the prothonotary prior to the commencement of the
20 work upon the ground, within ten days after the execution of
21 the principal contract (if executed after commencement of the
22 work) or not less than ten days prior to the contract with
23 the claimant subcontractor, indexed in the names of the
24 contractor as defendant and the owner as plaintiff and in the
25 names of the contractor as plaintiff and the owner as
26 defendant. Notwithstanding the filing of notice, the
27 provision shall only be applicable if it is in writing and
28 signed by all those who, under the contract, have an adverse
29 interest to the subcontractor.

30 (b) Recovery for prior work completed.--Rescission under

1 subsection (a) shall not impair the right of the subcontractor
2 to recover by lien or otherwise for work completed prior to
3 rescission.

4 (c) Temporary cessation of work.--A provision for temporary
5 cessation of work in cases of residential real estate may be
6 applicable if work temporarily has ceased, all contractors and
7 subcontractors prior to cessation have released their interests
8 of record and notice is given at least ten days prior to
9 recommencement.

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

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

16 § 313. Property bound by lien.

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

24 § 314. Discharge of lien.

25 (a) Cash deposit.--A claim filed under this title shall,
26 upon petition of the owner or a party in interest, be discharged
27 as a lien against the property whenever a sum equal to the
28 amount of the claim is deposited with the court in the
29 proceedings for application to the payment of the amount finally
30 determined to be due.

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

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

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

13 (1) Require the increase or decrease of a deposit or
14 security.

15 (2) Strike security improperly filed.

16 (3) Permit the substitution of security and enter an
17 exoneration of security already given.

18 § 315. Excessive property included in claim.

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

26 § 316. Removal of improvement subject to lien.

27 (a) General rule.--No improvement subject to the lien of a
28 claim filed under this title shall be removed from the land
29 except pursuant to title obtained at a judicial sale or by one
30 owning the land and not named as a defendant. An improvement

1 otherwise removed shall remain liable to the claim filed except
2 in the hands of a purchaser for value.

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

7 CHAPTER 5

8 RECORDING

9 Sec.

10 501. Filing of claim and notice of filing.

11 502. Contents of claim.

12 503. Amendment of claim.

13 504. Preliminary objections to claim.

14 505. Entries on judgment index and lien docket.

15 506. Recording notice of payment bond.

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

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

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

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

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

29 (c) Manner of service.--Service of the notice of filing of
30 claim shall be made by an adult in the same manner as a writ of

1 summons in assumpsit or, if service cannot be so made, then by
2 posting upon a conspicuous public part of the improvement.

3 § 502. Contents of claim.

4 The claim shall be made by oath or affirmation and shall
5 state:

6 (1) The name of the party claimant and whether the party
7 is filing as contractor or subcontractor.

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

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

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

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

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

22 (7) The amount claimed to be due.

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

26 § 503. Amendment of claim.

27 A claim may be amended without prejudice to intervening
28 rights by agreement of the parties or by leave of court. After
29 the time for filing a claim has expired, no amendment may be
30 made which undertakes to:

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

3 (2) Substitute a different party with whom the claimant
4 contracted.

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

6 § 504. Preliminary objections to claim.

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

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

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

25 § 506. Recording notice of payment bond.

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

30 (b) Signing and content.--The notice shall be signed by the

contractor or owner and by the surety and shall state:

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

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

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

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

CHAPTER 7

REMEDIES OF OWNER AGAINST CONTRACTOR

Sec.

701. Right to retain funds of contractor.

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§ 701. Right to retain funds of contractor.

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

§ 702. Notice to contractor of claim.

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

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

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

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

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

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

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

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

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

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

29 § 704. Additional remedies of owner.

30 Should the contractor fail to settle, discharge or defend or

secure against the claim under section 703 (relating to duty of contractor on receipt of notice), the owner may do one of the following:

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

(2) Undertake a defense against the claim, in which case the contractor shall be liable to the owner for costs incurred in the defense, including reasonable attorneys' fees, whether or not the defense is successful. The undertaking of the defense shall not affect the right of the owner to retain funds of the contractor under section 701 (relating to right to retain funds of contractor) until the claim of the subcontractor is finally defeated or discharged.

CHAPTER 9

ENFORCEMENT OF LIEN

Sec.

901. Proceedings to obtain judgment.

902. Duty of claimant on satisfaction of claim.

903 Revival of judgment.

904. Execution upon judgment.

§ 901. Proceedings to obtain judgment.

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

(b) Time for commencing action.--After the filing of a claim, the owner or contractor, if the contractor has not filed the claim, may file another in the court in which the claim is

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

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

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

1 the date of return of the certiorari from the appellate court to
2 the court of common pleas, shall be excluded in the computation
3 of the five-year period provided in this subsection.

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

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

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

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

20 § 903. Revival of judgment.

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

27 § 904. Execution upon judgment.

28 (a) Supreme Court rules to govern.--The practice and
29 procedure relating to execution shall be governed by general
30 rules of the Supreme Court.

1 (b) Judgment prerequisite to execution.--No execution shall
2 issue against the property subject to a claim except after
3 judgment has been obtained upon the claim and within five years
4 from the date of judgment or a revival of the judgment.

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

15 Section 2. The following acts are repealed:

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

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

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