
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 2641 Session of
1992

INTRODUCED BY VAN HORNE, DALEY, BARLEY, MICOZZIE, TRELLO, CIVERA
AND ADOLPH, MAY 4, 1992

REFERRED TO COMMITTEE ON LABOR RELATIONS, MAY 4, 1992

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. Scope of title.

10 § 103. Definitions.

11 § 104. Notice and knowledge.

12 § 105. Presumption of agency as to contracting owner.

13 § 106. Construction of title.

14 Chapter 3. Existence and Effect of Lien

15 § 301. Mechanics' lien in general.

16 § 302. Governmental exemption from mechanics' lien.

17 § 303. Real estate subject to mechanics' lien.

18 § 304. Limitation of mechanics' lien for materials furnished.

1 § 305. Notice to owner.

2 § 306. Real estate of protected party.

3 § 307. Amount of mechanics' lien.

4 § 308. Attachment and recording of mechanics' lien.

5 § 309. Priority among mechanics' lien claimants.

6 § 310. Priority of mechanics' lien claims against other claims.

7 § 311. Duration of mechanics' lien and statute of limitations.

8 § 312. Surety bond.

9 § 313. Release of lien.

10 § 314. Obligation of claimant to furnish information.

11 § 315. Waiver of claimant's rights.

12 § 316. Affidavit of nonpayment.

13 Chapter 5. Recording

14 § 501. Notice of commencement.

15 § 502. Termination of notice of commencement.

16 § 503. Recording mechanics' lien.

17 § 504. Amendment or continuation of mechanics' lien.

18 § 505. Recording assignment of mechanics' lien.

19 § 506. Recording notice of surety bond.

20 § 507. Recording certificate of prothonotary showing surety

21 deposit.

22 § 508. Recording concerning judicial proceedings.

23 § 509. Owner's statement of apportionment.

24 § 510. Discharge of mechanics' lien.

25 Chapter 7. Enforcement of Lien

26 § 701. Proceeding to enforce mechanics' lien.

27 § 702. Recording of notice of termination before abandonment or

28 completion.

29 § 703. Remedies for wrongful conduct.

30 Chapter 9. Trust Funds

1 § 901. Creation of trust in connection with real estate
2 improvement contract.

3 The General Assembly of the Commonwealth of Pennsylvania
4 hereby enacts as follows:

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

7 CHAPTER 1

8 PRELIMINARY PROVISIONS

9 Sec.

10 101. Short title of title.

11 102. Scope of title.

12 103. Definitions.

13 104. Notice and knowledge.

14 105. Presumption of agency as to contracting owner.

15 106. Construction of title.

16 § 101. Short title of title.

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

19 § 102. Scope of title.

20 This title creates and provides for the attachment and
21 enforceability of a lien against real estate in favor of a
22 person furnishing services or materials under a real estate
23 improvement contract.

24 § 103. Definitions.

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

30 "Claimant." A person having a right to a lien upon real

1 estate under this title. The term includes a successor in
2 interest.

3 "Common interest community." Real estate described in an
4 instrument with respect to which a person by reason of ownership
5 of a part of the real estate is obligated to pay for real estate
6 taxes or assessments, insurance premiums, maintenance or
7 improvement of another part of the real estate. The term
8 includes real estate comprising a condominium or cooperative.

9 "Construction security agreement." A recorded security
10 agreement that contains a legend on the first page clearly
11 stating that it is a "Construction Security Agreement" and that
12 secures an obligation the debtor incurred for the purpose of
13 making an improvement of the real estate in which the security
14 interest is given.

15 "Contract price." The amount agreed upon by the contracting
16 parties to be paid for performing services and furnishing
17 materials covered by the contract, increased or diminished by
18 the price of change orders or extras, amounts attributable to
19 amended specifications or breach of contract, including defects
20 in workmanship or materials. Liquidation of damages between the
21 contracting owner and a prime contractor does not diminish the
22 contract price as to other claimants. If no price is agreed upon
23 by the contracting parties, the term means the reasonable value
24 of all services and materials covered by the contract.

25 "Contracting owner." A person who owns real estate and who,
26 personally or through an agent, enters into a contract, express
27 or implied, for the improvement of the real estate.

28 "Good faith." Honesty in fact and the observance of
29 reasonable standards of fair dealing in the conduct or
30 transaction involved.

1 "Judicial proceeding." Action at law or suit in equity or
2 any other proceeding in which rights are judicially determined.

3 "Organization." A corporation, government, governmental
4 subdivision or agency, business trust, estate, trust,
5 partnership, association, joint venture or any other legal or
6 commercial entity.

7 "Prime contract." Any real estate improvement contract made
8 between the contracting owner and a prime contractor.

9 "Prime contractor." A person who makes a real estate
10 improvement contract with a contracting owner.

11 "Protected party." The term includes:

12 (1) An individual who contracts to give a security
13 interest in or to buy or have improved residential real
14 estate, all or a part of which the individual occupies or
15 intends to occupy as a residence.

16 (2) A person obligated primarily or secondarily on a
17 contract to buy or to improve residential real estate or on
18 an obligation secured by residential real estate if, when the
19 person becomes obligated, that person is related to an
20 individual who occupies or intends to occupy all or a part of
21 the real estate as a residence.

22 (3) With respect to a real estate security agreement, a
23 person who acquires residential real estate and assumes or
24 takes subject to the obligation of a prior protected party
25 under the security agreement.

26 "Real estate." An estate or interest in, on, over or under
27 land, including minerals, structures, fixtures and other things
28 that by custom, usage or law pass with a conveyance of land
29 though not described or mentioned in the contract of sale or
30 instrument of conveyance and, if appropriate to the context, the

1 land in which the interest is claimed. The term also includes
2 rents, the interests of a landlord or tenant and interests in a
3 common interest community.

4 "Real estate improvement contract."

5 (1) A contract to perform services or furnish materials
6 for the purpose of producing a physical change in the real
7 estate, including:

8 (i) Alteration of the surface by excavation, fill,
9 change in grade or change in a shore, bank or floodplain
10 of a stream, swamp or body of water.

11 (ii) Construction or installation in, on, over or
12 under the surface of the land.

13 (iii) Demolition, repair, remodeling or removal of a
14 structure previously constructed or installed.

15 (iv) Seeding, sodding or other landscaping.

16 (v) Surface or subsurface testing, boring or
17 analyzing or the preparation of plans, surveys or
18 architectural or engineering plans or drawings for any
19 change in the physical condition of land, whether or not
20 used incident to producing a change in the physical
21 condition of the real estate.

22 (2) The term does not include:

23 (i) A contract to perform services in connection
24 with the financing of a real estate improvement.

25 (ii) A contract for the exploration, drilling,
26 production, mining or transportation of oil, gas or other
27 minerals, or removal of timber, gravel, soil, sod or
28 things growing on land, or other similar contracts in
29 which the activity is primarily for the purpose of
30 realizing upon the disposal or removal of the objects

1 removed, or a contract for the planting, cultivation or
2 harvesting of crops or for the preparation of the soil
3 for planting of crops.

4 "Record." To present to the prothonotary, for the place
5 where the land is situated, a document that the prothonotary
6 accepts and either enters in a daily log or notes thereon an
7 identifying number or receipt, regardless of whether under
8 applicable law the prothonotary is directed to file the document
9 or otherwise to maintain a record of it.

10 "Related." A person is related to:

11 (1) An individual if that person is any of the
12 following:

13 (i) An organization directly or indirectly
14 controlled by the individual, the individual's spouse or
15 a relative by blood, marriage or adoption who shares the
16 same residence with the individual.

17 (ii) The spouse of the individual.

18 (iii) A brother, brother-in-law, sister or sister-
19 in-law of the individual.

20 (iv) An ancestor, descendant or adopted child of the
21 individual or of the individual's spouse.

22 (v) Any other relative by blood, marriage or
23 adoption of the individual or of the individual's spouse
24 if the relative shares the same residence with the
25 individual.

26 (2) An organization if that person is either of the
27 following:

28 (i) Any other organization controlling, controlled
29 by or under common control with the organization.

30 (ii) A person related to the person controlling the

1 organization.

2 "Residential real estate." In relation to a protected party,
3 means real estate, improved or to be improved, containing not
4 more than three acres, not more than four dwelling units and no
5 nonresidential uses for which the protected party is a lessor.
6 The term also includes a unit in a common interest community if
7 the unit is otherwise residential real estate, regardless of the
8 size of or the number of units in the common interest community.

9 "Security agreement." A writing that creates or provides for
10 a security interest in real estate. The term includes a mortgage
11 or deed of trust.

12 "Security interest." An interest in real estate which
13 secures payment or performance of an obligation. If a lease is
14 intended as security to the lessor, the lessor's interest is a
15 security interest. If a seller's retention of legal title to
16 real estate after the buyer enters into possession is intended
17 as security, the seller's interest is a security interest. The
18 inclusion in a lease of an option to purchase at a price not
19 unreasonable under the circumstances at the time of contracting
20 does not of itself indicate the lease is intended for security,
21 and retention of the title to real estate by a seller under a
22 contract right to retain title for not more than one year after
23 the buyer enters into possession of the real estate is not a
24 retention for security.

25 § 104. Notice and knowledge.

26 (a) Notice.--A person has notice of a fact if the person has
27 any of the following:

28 (1) Actual knowledge of it.

29 (2) Received a notice or notification of it.

30 (3) Reason to know it exists from all facts and

1 circumstances known to the person at the time in question.

2 (b) Knowledge.--Except as provided in subsection (e), a
3 person has knowledge or learns of a fact only when the person
4 has actual knowledge of it.

5 (c) Notification.--A person notifies or gives or sends
6 notice or notification to another, whether or not the other
7 person actually comes to know of it, by taking steps required by
8 this title to inform the other in ordinary course.

9 (d) Receipt of notice.--A person receives a notice or
10 notification when it either:

11 (1) Comes to the person's attention.

12 (2) Is delivered at the place of business through which
13 the person conducted the transaction with respect to which
14 the notice or notification is given or at any other place
15 held out by the person as the place for receipt of the
16 communication.

17 (e) Particular transaction.--Notice, knowledge of a notice
18 or notification received by a person is effective for a
19 particular transaction at the earlier of the time it comes to
20 the attention of the individual conducting the transaction or
21 the time it would have come to the individual's attention had
22 the person maintained reasonable routines for communicating
23 significant information to the individual conducting the
24 transaction and had there been reasonable compliance with the
25 routines. An individual acting for the person is not required to
26 communicate information unless the communication is part of the
27 individual's regular duties or the individual has reason to know
28 of the transaction and that the transaction would be materially
29 affected by the information.

30 (f) Warning.--Notwithstanding agreement to the contrary,

1 notices required or permitted to be sent to protected parties
2 under this title shall contain a warning as follows:

3 This is an important notice regarding your rights in real
4 estate. Get it translated immediately.

5 § 105. Presumption of agency as to contracting owner.

6 For the purpose of determining whether an owner is a
7 contracting owner, agency is presumed, in the absence of clear
8 and convincing evidence to the contrary, between employer and
9 employee and between spouses.

10 § 106. Construction of title.

11 This title shall be liberally construed and applied to
12 promote its underlying purposes and policies, which are:

13 (1) To simplify, clarify and modernize the law governing
14 mechanics' liens.

15 (2) To provide procedures for the protection of persons
16 furnishing services and materials for real estate
17 improvements.

18 (3) To further the security and certainty of land
19 titles.

20 CHAPTER 3

21 EXISTENCE AND EFFECT OF LIEN

22 Sec.

23 301. Mechanics' lien in general.

24 302. Governmental exemption from mechanics' lien.

25 303. Real estate subject to mechanics' lien.

26 304. Limitation of mechanics' lien for materials furnished.

27 305. Notice to owner.

28 306. Real estate of protected party.

29 307. Amount of mechanics' lien.

30 308. Attachment and recording of mechanics' lien.

1 309. Priority among mechanics' lien claimants.
2 310. Priority of mechanics' lien claims against other claims.
3 311. Duration of mechanics' lien and statute of limitations.
4 312. Surety bond.
5 313. Release of lien.
6 314. Obligation of claimant to furnish information.
7 315. Waiver of claimant's rights.
8 316. Affidavit of nonpayment.

9 § 301. Mechanics' lien in general.

10 (a) Person who acquires lien.--A person who provides
11 services or materials pursuant to a real estate improvement
12 contract has a mechanics' lien to secure payment of the contract
13 price only to the extent permitted by this title.

14 (b) Enforcement of lien.--A mechanics' lien may not be
15 enforced under this title unless it is recorded in accordance
16 with section 503 (relating to recording mechanics' lien) within
17 the time specified in section 308 (relating to attachment and
18 recording of mechanics' lien).

19 § 302. Governmental exemption from mechanics' lien.

20 Real estate owned by the Commonwealth, a county, a
21 municipality, a governmental agency or a political subdivision
22 is exempt from a mechanics' lien under this title.

23 § 303. Real estate subject to mechanics' lien.

24 (a) Notice of commencement.--A recorded mechanics' lien
25 applies to:

26 (1) The real estate described in the notice of
27 commencement under section 501 (relating to notice of
28 commencement), if the notice of commencement was recorded
29 before the recording of the mechanics' lien.

30 (2) The real estate of the contracting owner being

1 improved or directly benefited, except as provided in
2 paragraph (3), if a notice of commencement was not recorded
3 before the recording of the mechanics' lien.

4 (3) The contracting owner's real estate described in the
5 notice of commencement, if a claimant who recorded a lien
6 while there was no recorded notice of commencement covering
7 the real estate later records a notice of commencement.

8 (b) Value of services and materials.--A claimant's lien on a
9 contracting owner's real estate includes the value of services
10 and materials provided under a real estate improvement contract
11 with that owner for improvements directly benefiting, but not
12 located on, that owner's real estate.

13 (c) Apportionment.--

14 (1) If a recorded notice of commencement covers more
15 than one lot in a platted subdivision of record, a claimant
16 may apportion the claimant's mechanics' lien to the various
17 lots covered by the notice of commencement in any proportion
18 the claimant chooses and states in the claimant's recorded
19 mechanics' lien and may assign all of the lien to a
20 particular lot.

21 (2) If a recorded mechanics' lien does not contain an
22 apportionment as provided in paragraph (1), the owner may
23 demand the claimant to make an apportionment. If the claimant
24 does not make an apportionment within 90 days after the
25 demand by recording an amendment of the recorded lien, the
26 owner may make a good faith apportionment by recording an
27 owner's statement of apportionment. The apportionment is
28 conclusive in favor of a person acquiring an interest in the
29 real estate after the statement of apportionment is recorded,
30 even if the owner did not give the notice to apportion

1 referred to in this subsection or for any other reason was
2 not entitled to record a statement of apportionment or did
3 not make a good faith apportionment.

4 (d) Condominiums.--

5 (1) Except as expressly provided in Title 68 (relating
6 to real and personal property), a mechanics' lien arising
7 under this title by reason of an improvement to real estate
8 that is part of a common interest community does not attach
9 to the common elements, but attaches to the units as follows:

10 (i) If the improvement was contracted for by the
11 association of unit owners, however denominated, the lien
12 attaches to all the units in the common interest
13 community for which the association acts, unless the
14 association notifies the claimant, when the contract is
15 made, that the lien may attach only to the units on or
16 for the benefit of which the improvement is being made.

17 (ii) If the improvement was contracted for by a unit
18 owner, the lien attaches only to that owner's unit.

19 (2) Except as provided in subsection (c), if a
20 mechanics' lien attaches to two or more units in a common
21 interest community, the unit owner of an affected unit may
22 pay to the claimant the amount of the lien liability
23 attributable to the owner's unit, and the claimant, upon
24 receipt of payment, promptly shall deliver a release of the
25 lien covering that unit. The amount of the payment must be in
26 the proportion the unit owner's common-expense liability
27 bears to the common-expense liabilities of all unit owners
28 whose units are subject to the lien. After payment, the
29 association may not assess or have a lien against that unit
30 owner's unit for any portion of the common expenses incurred

1 in connection with the lien.

2 § 304. Limitation of mechanics' lien for materials furnished.

3 (a) When mechanics' lien arises.--A mechanics' lien for
4 furnishing materials, including tools, appliances and machinery,
5 arises only if all of the following occur:

6 (1) The materials are furnished with the intent shown by
7 the contract of sale, the delivery order, delivery to the
8 site by the claimant or at the claimant's direction or by
9 other evidence that they be used in the course of
10 construction of or incorporated into the improvement in
11 connection with which the lien arises.

12 (2) The materials are:

13 (i) incorporated in the improvement or consumed as
14 normal wastage in construction operations;

15 (ii) specifically fabricated for incorporation in
16 the improvements and not readily resalable in the
17 ordinary course of the fabricator's business even though
18 not actually incorporated in the improvement;

19 (iii) used for the construction or for the operation
20 of machinery or equipment used in the course of
21 construction and not remaining in the improvement,
22 subject to diminution by the salvage value of those
23 materials; or

24 (iv) tools, appliances or machinery used on the
25 particular improvement, but a lien for furnishing tools,
26 appliances or machinery used on the improvement is
27 limited by subsection (c).

28 (b) Presumption.--The delivery of materials to the site of
29 the improvement, whether or not by the claimant, creates a
30 presumption that they were used in the course of construction or

1 were incorporated into the improvement.

2 (c) Limitation.--A mechanics' lien arising for furnishing
3 tools, appliances or machinery under subsection (a)(2)(iv) is
4 limited as follows if any of the following apply:

5 (1) The lien is for the reasonable rental value for the
6 period of actual use and any reasonable periods of nonuse
7 taken into account in the rental contract if the tools,
8 appliances or machinery are rented.

9 (2) The lien is for the price but arises only if they
10 were purchased for use in the course of the particular
11 improvement and have no substantial value to the purchaser
12 after the completion of the improvement on which they were
13 used if the tools, appliances or machinery are purchased.

14 § 305. Notice to owner.

15 (a) General rule.--At any time after entering into a real
16 estate improvement contract, a claimant may give a notice of
17 lien liability to the contracting owner.

18 (b) Content.--The notice of lien liability must be in
19 writing, must state that it is a notice of a right to assert a
20 mechanics' lien against real estate for services or materials
21 provided or to be provided in connection with improvement of the
22 real estate and must contain all of the following:

23 (1) The name of the claimant and the address to which
24 the owner or others may send communications to the claimant.

25 (2) The name and address of the person with whom the
26 claimant contracted.

27 (3) The name of the owner against whom a lien is or may
28 be claimed.

29 (4) A general description of the services and materials
30 provided or to be provided.

1 as contracting owner by naming that person in the notice of
2 commencement or otherwise, a notice directed to and received
3 by that person is effective against the contracting owner.

4 (2) If the contracting owner has held out a fictitious
5 or nonexisting person as contracting owner by naming that
6 person in the notice of commencement or otherwise, a notice
7 to that fictitious or nonexisting person delivered at an
8 address held out by the contracting owner as the address of
9 the fictitious or nonexisting person is effective against the
10 contracting owner.

11 § 306. Real estate of protected party.

12 No mechanics' lien arises under this title as to real estate
13 owned by a protected party unless the real estate improvement
14 contract is in writing, is signed by the contracting owner and
15 includes the following notice conspicuously on its first page:

16 Notice

17 By signing this contract you are subjecting your real
18 estate to the provisions of the Mechanics' Lien Law and
19 to the risk of a forced sale to enforce payment for
20 services or materials.

21 § 307. Amount of mechanics' lien.

22 (a) Lien of prime contractor.--Subject to subsection (f),
23 the lien of a prime contractor is for the unpaid part of the
24 prime contract price.

25 (b) Lien of claimant other than prime contractor.--Except as
26 against a protected party contracting owner and subject to
27 subsection (f), the lien of a claimant other than a prime
28 contractor is for the unpaid price of services and materials
29 provided that, within 20 days after first providing services or
30 materials, the owner receives from the claimant a notice of lien

1 liability as provided for in section 305 (relating to notice to
2 owner). If a notice of lien liability is received by the
3 contracting owner from the claimant more than 20 days after the
4 claimant first provided services or materials, the amount of the
5 lien of the claimant shall be for the unpaid price of the
6 services and materials provided within 20 days prior to the
7 receipt by the contracting owner of notice of lien liability as
8 well as for those services and materials provided following
9 receipt of the notice.

10 (c) Limit on lien of claimant other than prime contractor.--
11 Except as provided by subsections (d) and (e), as against a
12 protected party contracting owner, the lien of a claimant other
13 than a prime contractor is for the lesser of:

14 (1) The amount unpaid under the claimant's contract.

15 (2) The amount unpaid under the prime contract through
16 which the claimant claims at the time the contracting owner
17 receives the claimant's notice of lien liability.

18 (d) Priority of liens.--If a contracting owner is a
19 protected party and the contracting owner's lien liability under
20 a prime contract is less than the total amount of claims of all
21 claimants claiming through the prime contractor:

22 (1) lien claimants whose liens attach at different times
23 have liens in the order of attachment until the owner's lien
24 liability is exhausted; and

25 (2) among claimants whose liens attach at the same time,
26 each claimant's lien is for that claimant's proportional
27 amount of the contracting owner's lien liability to those
28 claimants.

29 (e) Prime contract price.--If a contracting owner is a
30 protected party, the mechanics' lien liability of the owner

1 under a particular prime contract is the prime contract price
2 less payments thereon properly made. A payment on a prime
3 contract price is properly made to the extent the payment is
4 either:

5 (1) Made in good faith before receipt by the contracting
6 owner of a notice of lien liability.

7 (2) If made after receipt by the contracting owner of a
8 notice of lien liability, made in good faith and leaves
9 unpaid a part of the prime contract price sufficient to
10 satisfy the unpaid claims of all claimants who have given
11 notice of lien liability and whose claims are not being
12 satisfied by the payment.

13 (f) Reduction of lien amount.--The mechanics' lien of a
14 claimant is reduced by the sum of the mechanics' liens of other
15 claimants who claim through that claimant.

16 (g) Costs and expenses.--In addition to the unpaid price of
17 services and materials, the amount of the lien of a claimant
18 shall include all reasonable costs and expenses incurred in
19 recording a mechanics' lien and in the enforcement of a
20 mechanics' lien, including, but not limited to, reasonable
21 attorney fees.

22 § 308. Attachment and recording of mechanics' lien.

23 (a) Recording required.--A mechanics' lien does not attach
24 and may not be enforced unless the claimant has recorded the
25 lien after entering into a real estate improvement contract and
26 within 12 months after the date the claimant provided the final
27 materials or services pursuant to the contract.

28 (b) Notice of commencement.--If a mechanics' lien is
29 recorded while a notice of commencement is effective as to the
30 improvement in connection with which the lien arises, the lien

1 attaches as of the time the notice is recorded, even though
2 visible commencement occurred before the notice is recorded. A
3 notice of commencement is not effective until recorded and,
4 after recording, is effective until it lapses. A notice of
5 commencement lapses at the earlier of its expiration or the date
6 it is terminated by a notice of termination.

7 (c) Visible commencement.--If a mechanics' lien is recorded
8 while there is no effective notice of commencement covering the
9 improvement in connection with which the lien arises, the lien
10 attaches at the earlier of visible commencement of the
11 improvement or the recording of the lien. However, if visible
12 commencement has occurred before or within 30 days after the
13 lapse of the last notice of commencement covering the
14 improvement, the lien either:

15 (1) Attaches at the time the lien is recorded if the
16 lien is recorded within 30 days after lapse of the last
17 effective notice of commencement.

18 (2) Relates back to and attaches 31 days after the
19 termination date if the lien is recorded more than 30 days
20 after lapse of the last effective notice of commencement.

21 (d) New construction.--If new construction is the principal
22 improvement involved and the materials, excavation, preparation
23 of an existing structure or other preparation are readily
24 visible on a reasonable inspection of the real estate, visible
25 commencement occurs when any of the following occur:

26 (1) Materials are delivered preparatory to construction
27 to the real estate to which the mechanics' lien attaches.

28 (2) Excavation is begun on the real estate to which the
29 mechanics' lien attaches.

30 (3) Other preparation of an existing structure to

1 receive the new construction or other preparation of the real
2 estate to which the mechanics' lien attaches is begun.

3 (e) Circumstances of case.--In a case not covered by
4 subsection (d), the time visible commencement occurs is to be
5 determined by the circumstances of the case.

6 § 309. Priority among mechanics' lien claimants.

7 (a) Liens attaching at same time.--All mechanics' liens
8 attaching at the same time have equal priority and share the
9 amount received upon foreclosure of the liens and available for
10 distribution to mechanics' lien claimants in the proportions the
11 respective liens bear to the total of all liens attaching at
12 that time.

13 (b) Liens attaching at different times.--Except as provided
14 by subsection (c), mechanics' liens attaching at different times
15 have priority in the order of attachment.

16 (c) Equal priority.--A claimant who records a notice of
17 commencement after recording a mechanics' lien has only equal
18 priority with claimants who record a lien while the notice of
19 commencement is effective. Any priority a claimant gains over
20 third parties by recording the lien is preserved for the benefit
21 of all claimants having equal priority under this subsection.

22 § 310. Priority of mechanics' lien claims against other claims.

23 (a) Priority over adverse claims.--Except as provided in
24 this section, a mechanics' lien has priority over adverse claims
25 against the real estate as if the mechanics' lien claimant were
26 a purchaser for value without knowledge whose interest was of
27 record when the mechanics' lien attached.

28 (b) Priority over subsequent advances.--Except as provided
29 in subsection (c), a mechanics' lien has priority over
30 subsequent advances made under a previously recorded security

1 interest if the subsequent advances were made with knowledge
2 that the mechanics' lien had attached.

3 (c) Subsequent advance prevails.--Notwithstanding knowledge
4 that the mechanics' lien has attached or the advance exceeds the
5 maximum amount stated in the recorded security agreement and
6 whether or not the advance is made pursuant to a commitment, a
7 subsequent advance made under a security agreement recorded
8 before the mechanics' lien attached has priority over the lien
9 if any of the following apply:

10 (1) The subsequent advance is made under a construction
11 security agreement and is made in payment of the price of the
12 agreed improvements.

13 (2) The subsequent advance is made or incurred for the
14 reasonable protection of the security interest in the real
15 estate, such as payment for real property taxes, hazard
16 insurance premiums or maintenance charges imposed under a
17 common interest community declaration or other covenant.

18 (3) The subsequent advance was applied to the payment of
19 any lien or encumbrance that was prior to the mechanics'
20 lien.

21 (d) Subsequent security interest.--To the extent that a
22 subsequent security interest is given to secure funds used to
23 pay a debt secured by a security interest having priority over a
24 mechanics' lien under this section, the subsequent security
25 interest is also prior to the mechanics' lien.

26 (e) Buyer who is a protected party.--Even though notice of
27 commencement has been recorded, a buyer who is a protected party
28 takes free of all mechanics' liens that are not of record at the
29 time the title document is recorded or, if the protected party
30 is a lessee for one year or less, at the beginning of the lease

1 term.

2 § 311. Duration of mechanics' lien and statute of limitations.

3 (a) Enforceability.--Except as provided in subsections (b)
4 and (c), a mechanics' lien that has become enforceable as
5 provided in this title continues to be enforceable for one year
6 after recording of the lien or, if an amendment or continuation
7 thereof has been recorded during the period allowed for
8 recording the original construction lien, one year after that
9 recording.

10 (b) Judicial proceeding.--Except as provided in subsection
11 (c), if an owner, holder of a security interest or other person
12 having an interest in the real estate gives the claimant written
13 demand to commence a judicial proceeding within 30 days, the
14 mechanics' lien lapses unless, within six months after receipt
15 of the written demand, the claimant commences a judicial
16 proceeding and records a notice of pending proceeding or records
17 an affidavit that the total contract price is not yet due under
18 the contract for which the lien was recorded. If the claimant
19 commences a judicial proceeding under this subsection, the court
20 shall afford a prompt hearing.

21 (c) Commencement of judicial proceeding.--If a judicial
22 proceeding to enforce a mechanics' lien is commenced while a
23 lien is effective under subsection (a) or (b), the lien
24 continues during the pendency of the proceeding if a notice of
25 pending proceeding is recorded and remains effective.

26 § 312. Surety bond.

27 (a) Nonattachment of lien.--A mechanics' lien does not
28 attach to real estate on behalf of a claimant claiming through a
29 prime contractor if the owner or the prime contractor has
30 procured from a reputable and financially solvent corporate

1 surety company authorized to do business in this Commonwealth a
2 bond meeting the requirements of this section and has recorded a
3 notice of surety bond.

4 (b) Obligations of surety company.--The bond shall obligate
5 the surety company, to the extent of the penal sum of the bond,
6 to pay all sums due to mechanics' lien claimants other than the
7 prime contractor for services and materials provided pursuant to
8 the contract under which the lien would otherwise arise.

9 (c) Penal sum.--The penal sum of the bond must not be less
10 than 100% of the prime contract price.

11 (d) True copy on request.--The person procuring the bond
12 shall furnish to any claimant on request a true copy at cost of
13 reproduction and is liable to the requesting claimant for any
14 damages caused by unjustified failure to furnish a copy.

15 (e) Recovery by claimant.--A claimant may not recover under
16 the bond unless:

17 (1) a judicial proceeding is commenced against the
18 surety within two years after the completion of the
19 claimant's performance or within any longer period permitted
20 by the terms of the bond; and

21 (2) if the claimant does not have a direct contract
22 relationship with the prime contractor, within one year after
23 completion of the claimant's performance, the claimant gives
24 the prime contractor written notice of the amount due.

25 (f) Direct proceeding against claimant.--A claimant having a
26 claim under the bond may proceed directly against the surety. A
27 judicial proceeding on the bond may be maintained separately
28 from and without commencing a proceeding against the prime
29 contractor and without complying with the procedures for notice
30 and recording under this title. In a judicial proceeding on the

1 bond, the court shall award to the prevailing party court costs
2 and reasonable attorney fees.

3 (g) Obligation of surety.--The obligation of a surety under
4 this section is not affected by any modification of the contract
5 between the prime contractor and the contracting owner, but the
6 total liability of the surety may not exceed the penal sum of
7 the bond.

8 § 313. Release of lien.

9 (a) Conditions for release of lien.--A person having an
10 interest in real estate may release the real estate from
11 mechanics' liens that have attached to it by:

12 (1) depositing in the office of the prothonotary a sum
13 of money, in cash, certified check or other bank obligation,
14 or a surety bond issued by a surety company authorized to do
15 business in this Commonwealth, in an amount sufficient to pay
16 the total of the amounts claimed in the liens being released;
17 and

18 (2) recording, as provided in section 507 (relating to
19 recording certificate of prothonotary showing surety
20 deposit), a certificate of the prothonotary showing that the
21 deposit has been made.

22 (b) Issuance of certificate.--The prothonotary shall accept
23 the deposit and issue the certificate.

24 (c) Transfer of rights.--Upon release of the real estate
25 from a mechanics' lien under this section, the claimant's rights
26 are transferred from the real estate to the deposit or surety
27 bond, and, upon determination of the claim, the court shall
28 order the prothonotary to pay the sums due or render judgment
29 against the surety company on the bond, as appropriate.

30 § 314. Obligation of claimant to furnish information.

1 (a) Prime contractor.--A prime contractor, on request, shall
2 furnish the following accurate information within a reasonable
3 time, not exceeding ten days, to any person entitled to claim a
4 mechanics' lien through the prime contractor:

5 (1) A description of the real estate being improved or
6 benefited sufficient to identify it.

7 (2) The name and address of the contracting owner with
8 whom the prime contractor contracted.

9 (3) Whether there is a surety bond and, if so, the name
10 of the surety.

11 (b) Request of person other than prime contractor.--At the
12 request of a person who may claim a mechanics' lien through a
13 contractor who is not a prime contractor, the contractor shall
14 furnish to the claimant, within a reasonable time not exceeding
15 five days, the name of the person to whom the contractor is
16 obligated to provide the materials or services in connection
17 with which the lien claim may arise.

18 (c) Penalty.--A person who fails to furnish information as
19 required by this section is liable to the requesting party for
20 actual damages or \$200, whichever is greater.

21 § 315. Waiver of claimant's rights.

22 (a) Waiver or release prohibited.--A mechanics' lien under
23 this title or claim upon a bond furnished under this section may
24 not be waived or released in advance of the claimant's
25 furnishing of services or materials pursuant to a real estate
26 improvement contract for which the waiver or release is sought.
27 Any purported waiver or release of lien or bond claim under this
28 section executed or made in advance of the completion of the
29 furnishing of the services or materials for which the waiver or
30 release is sought is null, void and unenforceable.

1 (b) Oral or written statement not to affect lien.--No oral
2 or written statement by a claimant purporting to waive, release,
3 impair or otherwise adversely affect a mechanics' lien under
4 this title or a claim under a bond furnished under this section
5 is enforceable or creates an estoppel or impairment of a claim
6 of lien or a claim upon the bond unless a written waiver or
7 release is obtained in accordance with the provisions of
8 subsection (a) or unless the claimant has received payment of
9 the amount to which the claimant is entitled in accordance with
10 section 307 (relating to amount of mechanics' lien).

11 (c) Interim waiver and release.--When a claimant is
12 requested to execute a waiver and release in exchange for or in
13 order to induce payment other than final payment, the waiver and
14 release form shall contain the following, and the priority of
15 the claimant's lien rights, except as to any retention, shall
16 thereafter run from the day after the date specified in the form
17 and upon payment:

18 (1) Name of county.

19 (2) Name of contractor.

20 (3) Description of materials and labor.

21 (4) Title of project or building.

22 (5) City and county in which the project or building is
23 located.

24 (6) Name of owner.

25 (7) Description of the property upon which the
26 improvements were made using either a metes and bounds
27 description, the land lot district, block and lot number or
28 street address of the project.

29 (8) A statement that, upon receipt of a certain sum, the
30 claimant waives and releases any and all mechanics' liens or

claims on the described property through a certain date and excepting those rights and liens that the claimant might have in any retained amounts, or accounts of labor or materials or both, furnished by the undersigned claimant to or on account of the contractor for the building or premises.

(9) Date.

(10) Signature of claimant and seal.

(11) Signature of witness.

(12) Address of witness.

Failure to furnish all the information shall not invalidate the form as long as the subject matter of the release may reasonably be determined.

(d) Unconditional waiver and release.--When a claimant is requested to execute a waiver and release in exchange for or in order to induce payment of final payment, the waiver and release form shall contain the following:

(1) Name of county.

(2) Name of contractor.

(3) Description of materials and labor.

(4) Title of project or building.

(5) City and county in which project or building is located.

(6) Name of owner.

(7) Description of the property upon which the improvements were made using either a metes and bounds description, the land lot district, block and lot number or street address of the project.

(8) A statement that, upon receipt of a certain sum, the claimant waives all claims or any right against any labor and material bond it has upon the described property.

1 (9) Signature of claimant and seal.

2 (10) Signature of witness.

3 (11) Address of witness.

4 (12) Notice stating that the document waives rights
5 unconditionally, that the claimant has been paid for giving
6 up those rights and that the document is enforceable against
7 the claimant if he signs it even though he has not been paid
8 and advising the claimant to use a conditional release form,
9 if he has not been paid.

10 Failure to furnish all the information shall not invalidate the
11 form as long as the subject matter of the release may reasonably
12 be determined.

13 (e) Enforceability not affected.--This section shall not
14 affect:

15 (1) The enforceability of any subordination of lien
16 rights by a potential lien claimant to the rights of any
17 other party which may have or acquire an interest in all or
18 any part of the real estate for which the potential claimant
19 has furnished labor, services or material, even though the
20 subordination is entered into in advance of furnishing labor,
21 services or material and even though the claimant has not
22 actually received payment in full for its claim.

23 (2) The enforceability of any waiver of lien rights
24 given in connection with the settlement of a bona fide
25 dispute concerning the amount due the lien claimant for
26 labor, services or material which have already been
27 furnished.

28 (3) The validity of a cancellation or release of a
29 recorded claim of lien or preliminary notice of lien
30 liability.

1 § 316. Affidavit of nonpayment.

2 (a) Waiver and release binding.--When a waiver and release
3 provided for in section 315 (relating to waiver of claimant's
4 rights) is executed by the claimant, it shall be binding against
5 the claimant for all purposes, subject only to payment in full
6 of the amount set forth in the waiver and release.

7 (b) Payment.--The amount set forth in the waiver and release
8 shall conclusively be deemed paid in full upon the earliest of:

9 (1) Actual receipt of funds.

10 (2) Execution by the claimant of a separate written
11 acknowledgment of payment in full.

12 (3) Thirty days after the date of the execution of the
13 waiver and release, unless, prior to the expiration of the
14 30-day period, the claimant files a mechanics' lien or files
15 in the county in which the property is located an affidavit
16 of nonpayment.

17 (c) Affidavit of nonpayment.--The affidavit of nonpayment in
18 subsection (b) shall contain the following:

19 (1) Name of county.

20 (2) Name of contractor.

21 (3) Description of materials and labor.

22 (4) Title of project or building.

23 (5) City and county in which project or building is
24 located.

25 (6) Name of owner.

26 (7) Description of the property upon which the
27 improvements were made using either a metes and bounds
28 description, the land lot district, block and lot number or
29 street address of the project.

30 (8) A statement that, pursuant to section 315, the

1 claimant executed a lien waiver and release with respect to
2 the property on the stated date, that the amount set forth in
3 the release has not been paid and that claimant gives notice
4 of nonpayment.

5 (9) Signature of claimant and seal.

6 (10) Date.

7 (11) Signature of witness.

8 (12) Signature of notary public.

9 (d) Affidavit of nonpayment deemed void.--A claimant who is
10 paid in full the amount set forth in the waiver and release form
11 after filing an affidavit of nonpayment shall, upon request,
12 execute in recordable form an affidavit swearing that payment in
13 full has been received. Upon recordation in the county in which
14 the affidavit of nonpayment was recorded, the affidavit of
15 nonpayment to which it relates shall be deemed void.

16 (e) Reliance on waiver and release form.--The claimant may
17 rely upon the information contained in the waiver and release
18 form, when complete, for filing the affidavit of nonpayment or
19 claim of lien.

20 (f) Suspension of waiver and release form.--A waiver and
21 release shall be suspended upon filing of an affidavit of
22 nonpayment until payment in full has been received.

23 (g) Time to file not affected.--Nothing in this section
24 shall shorten the time within which to file a claim of lien.

25 CHAPTER 5

26 RECORDING

27 Sec.

28 501. Notice of commencement.

29 502. Termination of notice of commencement.

30 503. Recording mechanics' lien.

1 504. Amendment or continuation of mechanics' lien.
2 505. Recording assignment of mechanics' lien.
3 506. Recording notice of surety bond.
4 507. Recording certificate of prothonotary showing surety
5 deposit.
6 508. Recording concerning judicial proceedings.
7 509. Owner's statement of apportionment.
8 510. Discharge of mechanics' lien.
9 § 501. Notice of commencement.

10 (a) Contents of notice.--Except as provided in subsection
11 (e), a notice of commencement must be signed by the contracting
12 owner, be denominated "notice of commencement" and state the
13 following:

14 (1) The real estate being or intended to be improved or
15 directly benefited, with a description of the real estate
16 sufficient to identify it.

17 (2) The name and address and interest in the real estate
18 of the contracting owner, and the name and address of the fee
19 simple titleholder, if other than the contracting owner.

20 (3) If, after the notice of commencement is recorded, a
21 mechanics' lien is recorded as to an improvement covered by
22 the notice of commencement, the lien has priority from the
23 time the notice of commencement is recorded.

24 (b) Duration of period.--A notice of commencement may state
25 a duration of any period, but, except as to a protected party,
26 the duration shall be for a minimum period of six years after
27 the recording. If no duration is stated, the duration of the
28 notice shall be for six years after the recording. If the notice
29 affects residential real estate, the duration of the notice as
30 to a protected party is three years after the recording.

1 (c) Limitation to particular improvement.--The notice of
2 commencement may state that it is limited to a particular
3 improvement or portion thereof on the real estate. However, the
4 limitation is not effective unless the particular improvement or
5 portion thereof to which it applies is stated with sufficient
6 specificity that a claimant, by reasonable inquiry, may
7 determine whether the improvement is covered by the notice of
8 commencement.

9 (d) Extending duration of notice.--A contracting owner shall
10 extend the duration of a notice of commencement by signing and
11 recording before it lapses a continuation statement that refers
12 to the location in the record and date of recording of the
13 notice of commencement and states the date to which duration of
14 the notice is extended.

15 (e) Absence of notice of commencement.--In the absence of a
16 notice of commencement applicable to an improvement, a claimant
17 who is entitled to record a mechanics' lien may sign and record
18 a notice of commencement denominated "notice of commencement,
19 claimant recording" and state the following:

20 (1) In accordance with subsection (j), the real estate
21 being or intended to be improved or directly benefited, with
22 a description of the real estate sufficient to identify it.

23 (2) The name and address of the contracting owner
24 against whom the notice of commencement is effective.

25 (3) The name and address of the claimant recording the
26 notice of commencement.

27 (4) The name and address of the person with whom the
28 claimant contracted with respect to the improvement.

29 (5) A brief description of the services or materials
30 provided or to be provided by the claimant for the

1 improvement.

2 (6) If, after the notice of commencement is recorded, a
3 mechanics' lien is recorded as to an improvement covered by
4 the notice, the lien has priority from the time the notice is
5 recorded.

6 (f) Copy of notice to contracting owner.--A claimant
7 recording a notice of commencement shall send a copy of it to
8 the contracting owner not later than the day it is recorded. The
9 claimant is liable to the contracting owner for any damages
10 caused by failure to comply with this subsection.

11 (g) Notice of commencement recorded by claimant.--This title
12 applies equally to all notices of commencement, but, as to a
13 notice of commencement recorded by a claimant, the following
14 apply:

15 (1) Notwithstanding any stated duration, the duration is
16 one year after the recording.

17 (2) A limitation under subsection (c) is not effective.

18 (h) Improvements described within.--Unless a notice of
19 commencement is limited to a particular improvement contract or
20 project or portion thereof, it covers all improvements made on
21 the real estate described in the notice whether or not they were
22 contemplated by the person recording the notice at the time of
23 recording.

24 (i) Improvements on real estate not owned by contracting
25 owner.--Unless a notice of commencement provides otherwise, it
26 covers improvements made on real estate not owned by the
27 contracting owner if, under section 303(b) (relating to real
28 estate subject to mechanics' lien), a mechanics' lien arises
29 against the contracting owner's real estate described in the
30 notice of commencement as a result of the improvements.

(j) Contents of notice of commencement.--A notice of commencement recorded by a claimant may describe all or any part of the contracting owner's real estate being improved or directly benefited.

§ 502. Termination of notice of commencement.

(a) Requirements.--A contracting owner may terminate a notice of commencement as to all or any identified portion of the real estate subject to the notice of commencement by:

(1) Recording a notice of termination denominated "termination of notice of commencement" which contains all of the following:

(i) The information required by section 501(a)(1) and (2) (relating to notice of commencement) for a notice of commencement.

(ii) A reference to the recorded notice of commencement by its location in the record and a statement of its date of recording.

(iii) A statement of the date as of which the notice of commencement is terminated, which may not be earlier than 30 days after the notice of termination is recorded.

(iv) A description of the portion of the real estate, subject to the notice of commencement, to which the notice of termination applies.

(2) Sending, at least 21 days before the effective date of the notice of termination, a copy of the notice of termination, showing the date it was recorded, to all claimants who have requested that the owner notify them of the recording of a notice of termination.

(3) Publishing a notice of the recording of the notice of termination, which notice must comply with subsection (b)

1 and must be published at least once a week for three
2 consecutive weeks in a newspaper having general circulation
3 in the county where the recording occurs, the last
4 publication of which must be at least five days before the
5 stated termination date.

6 (4) Recording an affidavit stating that the notice of
7 the recorded notice of termination has been sent to all
8 claimants who have requested notice and that publication has
9 been made, stating the name of the newspaper and dates of
10 publication and accompanied by a copy of the published
11 notice.

12 (b) Published notice.--The published notice of the recording
13 of the notice of termination shall contain the information
14 required for a notice of termination under subsection (a), a
15 statement of the date on which the notice of termination was
16 recorded and a statement that all mechanics' lien claims for
17 which a notice of lien is not recorded by the termination date
18 may be defeated by a transfer of the real estate.

19 (c) Reliance on affidavit.--A purchaser, judgment creditor
20 or other person having any lien against the real estate may rely
21 on an affidavit complying with subsection (a)(4) without a duty
22 to inquire as to its accuracy and is not prejudiced by its
23 inaccuracy.

24 § 503. Recording mechanics' lien.

25 (a) General rule.--A claimant may record a mechanics' lien
26 which shall be signed by the claimant and state the following:

27 (1) The real estate subject to the lien, with a
28 description of the real estate sufficient to identify it.

29 (2) The name of the person against whose interest in the
30 real estate a lien is claimed.

1 (3) The name and address of the claimant.

2 (4) The name and address of the person with whom the
3 claimant contracted.

4 (5) A general description and the contract price of the
5 services performed or to be performed or materials furnished
6 or to be furnished for the improvement.

7 (6) The amount unpaid, whether or not due, to the
8 claimant for services or materials or, if no amount is fixed
9 by the contract, a good faith estimate of the amount
10 designated as an estimate.

11 (7) The time the last services or materials were
12 provided or, if that time has not yet occurred, an estimate
13 of the time.

14 (8) That, at least five business days before recording
15 the lien, the claimant delivered to the contracting owner
16 either the notice described in section 305(a) (relating to
17 notice of owner) or a copy of the lien to be recorded.

18 (b) Name stated in lien.--The name stated in the mechanics'
19 lien in accordance with the requirement of subsection (a)(2) may
20 be the name of the contracting owner or the name of the record
21 holder of the contracting owner's interest at the time of
22 recording the lien.

23 § 504. Amendment or continuation of mechanics' lien.

24 (a) General rule.--During the period allowed for recording
25 the original mechanics' lien, a recorded mechanics' lien may be
26 amended or continued by an additional recording. The amendment
27 or continuation extends the period of enforceability of a
28 recorded lien pursuant to section 311 (relating to duration of
29 mechanics' lien and statute of limitations). An amendment adding
30 real estate or increasing the amount of lien claimed is

1 effective as to the additional real estate or increased amount
2 only from the time the amendment is recorded.

3 (b) Expiration for original recording.--Even though the
4 period allowed for recording the original mechanics' lien has
5 expired, a recorded mechanics' lien may be amended for the
6 purpose of:

7 (1) Reducing the amount of the lien.

8 (2) Limiting the real estate against which the lien is
9 claimed.

10 (3) Making an apportionment of the lien among lots of a
11 platted subdivision of record.

12 (c) Required information.--An amendment or continuation
13 shall state the location in the record and date of recording of
14 the notice of the mechanics' lien being amended or continued and
15 the respects in which it is being amended or that the recording
16 is for the purpose of continuing the period of enforceability of
17 the lien.

18 § 505. Recording assignment of mechanics' lien.

19 (a) Contents of assignment.--A recorded mechanics' lien may
20 be assigned by its holder. The assignment may be recorded and
21 shall be signed by the assignor and state the following:

22 (1) The name of the claimant.

23 (2) The name and address of the assignee.

24 (3) The person against whom the lien is claimed.

25 (4) The real estate affected with a description
26 sufficient to identify it.

27 (5) The location in the record and date of recording of
28 the notice of lien.

29 (b) Notice of assignment.--Even though an assignment has
30 been recorded, an owner may continue to deal with the original

1 claimant as to the claim until the owner receives notice of the
2 assignment and a direction that no arrangements or payments may
3 be made without the assignee's consent. If requested by the
4 owner, the assignee shall furnish reasonable proof that an
5 assignment has been made and, unless the assignee does so, the
6 owner may pay the assignor.

7 (c) Unrecorded assignment.--Unless a statement of assignment
8 is recorded, the assignee need not be a party to any judicial
9 proceeding to foreclose a security interest, mechanics' lien or
10 other encumbrance.

11 (d) Enforceability.--Failure to record an assignment does
12 not affect its enforceability.

13 § 506. Recording notice of surety bond.

14 (a) General rule.--If a prime contractor or owner has
15 secured a surety bond, a notice of surety bond may be recorded.

16 (b) Contents of notice.--The notice shall be signed by the
17 contractor or owner and by the surety company and state the
18 following:

19 (1) The real estate being improved with a description
20 sufficient to identify it.

21 (2) The names and respective addresses of the owner and
22 the prime contractor.

23 (3) The names and respective addresses of the surety
24 company and a person on whom service of process may be made.

25 (4) The total sum of the bond and that the bond meets
26 the requirements of section 312 (relating to surety bond).

27 (5) The bond is for the purpose of relieving the real
28 estate from mechanics' liens arising under the contract
29 between the named prime contractor and contracting owner.

30 § 507. Recording certificate of prothonotary showing surety

1 deposit.

2 (a) General rule.--A person who has deposited money or a
3 surety bond with the prothonotary in substitution of collateral
4 may record a certificate of the prothonotary showing the
5 deposit.

6 (b) Requirements.--The certificate must be signed by the
7 prothonotary and, if money, state the amount deposited or, if a
8 surety bond, state the amount of the bond and the name and
9 address of the surety company.

10 (c) Contents of certificate.--The certificate must also
11 state, on the basis of information furnished by the person
12 making the deposit, the following:

13 (1) The real estate being improved with a description
14 sufficient to identify it.

15 (2) The name and address of the person in whose behalf
16 the deposit was made.

17 (3) If a surety bond is deposited, the name and address
18 of a person on whom service of process may be made.

19 (4) The name of the claimants for whom the deposit is
20 made, the amount of their claims and the location of their
21 liens in the record.

22 § 508. Recording concerning judicial proceedings.

23 (a) Commencement of judicial proceeding.--A person who has
24 demanded commencement of judicial proceedings to enforce a
25 mechanics' lien may record a copy of the demand in the office in
26 which the lien was recorded. The demand shall refer by location
27 in the record to the recorded lien under which it was given and
28 state the date demand was given to commence a judicial
29 proceeding and the names of the owner and the claimant.

30 (b) Receipt of demand to commence judicial proceedings.--A

1 claimant who has received demand to commence a judicial
2 proceeding may record, in the office in which the mechanics'
3 lien was recorded, a statement that the total contract price is
4 not yet due under the contract for which the lien was recorded.
5 The statement must refer to the recorded lien by its location in
6 the record and state the names of the owner and the claimant.

7 § 509. Owner's statement of apportionment.

8 An owner entitled to apportion a mechanics' lien among lots
9 of a platted subdivision of record may record a statement making
10 the apportionment. The statement shall:

11 (1) Refer to the location in the record of the lien
12 being apportioned.

13 (2) State the name of the owner and the claimant.

14 (3) State the date on which the owner demanded the
15 claimant to apportion and that the claimant has not
16 apportioned.

17 (4) Make the apportionment.

18 § 510. Discharge of mechanics' lien.

19 (a) Ways to discharge lien.--A mechanics' lien provided by
20 this title may be discharged of record by:

21 (1) Recording a signed statement of the record claimant
22 stating that the lien is released.

23 (2) Failing to record, within the time prescribed in the
24 provisions on duration of lien in section 311 (relating to
25 duration of mechanics' lien and statute of limitations),
26 notice of pending proceedings to enforce the lien or an
27 affidavit that the total contract price is not yet due.

28 (3) Recording the original or certified copy of a final
29 judgment or decree of a court of competent jurisdiction so
30 providing.

(4) Recording a certificate of the prothonotary showing the deposit of substitute collateral.

(b) Reduction of amount of lien.--The mechanics' lien claimant of record by partial release may reduce the amount of the lien claimed in the notice of lien or limit the notice of lien to a portion of the real estate described in the notice of commencement by recording an amendment to the claimant's lien showing the reduction in amount or limited portion of the real estate against which a lien is claimed.

(c) Reference to notice of lien.--A statement under subsection (a)(1) or a judgment under subsection (a)(3) shall refer by location in the record to the notice of the mechanics' lien to which it applies.

CHAPTER 7

ENFORCEMENT OF LIEN

Sec.

701. Proceeding to enforce mechanics' lien.

702. Recording of notice of termination before abandonment or completion.

703. Remedies for wrongful conduct.

§ 701. Proceeding to enforce mechanics' lien.

(a) Applicability of civil action rules.--Except as otherwise provided in this section, the rules applicable to a civil action apply to a judicial proceeding to foreclose a mechanics' lien under this title.

(b) Judicial proceeding.--In a judicial proceeding to foreclose a mechanics' lien, all claimants having recorded liens may join as plaintiffs, and those who do not join as plaintiffs may be joined as defendants. A person who records a mechanics' lien or acquires an interest in real estate after the

1 commencement of the foreclosure proceeding may be made a
2 defendant before judgment.

3 (c) Court to determine amount due.--The court shall
4 determine the amount due or owing to each claimant and direct
5 foreclosure of the mechanics' liens against the real estate.
6 Foreclosure may be by any method available for foreclosure of
7 security interests in real estate, or otherwise, as ordered by
8 the court.

9 § 702. Recording of notice of termination before abandonment or
10 completion.

11 (a) Liability of contracting owner.--If a contracting owner
12 records a notice of termination before abandonment or
13 substantial completion of all improvements covered by the notice
14 of commencement being terminated, the contracting owner is
15 personally liable to any mechanics' lien claimant to the extent
16 the claimant is unable to realize on the lien because the notice
17 of termination was recorded before abandonment or substantial
18 completion.

19 (b) Notice of termination effective.--A notice of
20 termination is effective even though the owner, under subsection
21 (a), may be personally liable to a mechanics' lien claimant by
22 reason of the owner's recording of the notice of termination.

23 § 703. Remedies for wrongful conduct.

24 (a) Action by court.--If a person is wrongfully deprived of
25 benefits arising under this title by conduct other than that
26 described in section 702 (relating to recording of notice of
27 termination before abandonment or completion) on a contracting
28 owner's duties, the court shall award damages and may make
29 orders restraining the owner or other person or ordering them to
30 proceed on appropriate terms and conditions.

(b) Bad faith.--If in bad faith a claimant records a lien, overstates the amount for which the claimant is entitled to a lien or refuses to execute a release of a lien, the court may:

(1) Declare the lien void.

(2) Award damages to the owner or any other person injured by the recording, overstating or refusing to execute a release.

(c) Damages.--Damages awarded under this section may include the costs of correcting the record and reasonable attorney fees.

CHAPTER 9

TRUST FUNDS

Sec.

901. Creation of trust in connection with real estate improvement contract.

§ 901. Creation of trust in connection with real estate improvement contract.

(a) Assets of trusts.--The funds described in subsection (c), (d) or (e) received in connection with a real estate improvement constitute assets of trusts which are charged with the burden of paying the cost of the improvement to the same extent as the real estate being improved or benefited is subject to a mechanics' lien.

(b) Additional security.--A mechanics' lien continues as additional security for the obligations it secures.

(c) Owner as trustee.--Assets of a trust of which the owner is trustee are the funds received and the right to payment of funds:

(1) under a construction mortgage;

(2) under a mortgage recorded subsequent to the commencement of the improvement and before expiration of the

1 period during which a mechanics' lien shall be recorded
2 pursuant to section 308 (relating to attachment and recording
3 of mechanics' lien); or

4 (3) as consideration for a conveyance recorded
5 subsequent to the commencement of the improvement and before
6 expiration of the period during which a mechanics' lien shall
7 be recorded pursuant to section 308.

8 (d) Prime contractor as trustee.--Assets of a trust of which
9 a prime contractor is trustee are the payments received and the
10 right to payment under a real estate improvement contract,
11 whether or not earned by performance, and under an assignment of
12 funds due or earned or to become due or earned under the
13 contract.

14 (e) Subcontractor as trustee.--Assets of a trust of which a
15 subcontractor is trustee are the payments received by the
16 subcontractor and the subcontractor's right to payment under the
17 subcontract, whether or not earned by performance, and under an
18 assignment of the funds due or earned or to become due or earned
19 under the subcontract.

20 (f) Breach of trust.--Except as provided in subsections (g)
21 and (h), use by a trustee of any assets of a trust for other
22 than trust purposes before all claims, except those that are
23 subject to a bona fide dispute, have been paid in full
24 constitutes a breach of trust and a misappropriation of assets
25 of the trust.

26 (g) Payment of trustee's expenses.--A trustee who is an
27 owner of the real estate being improved may use assets of the
28 trust to pay the trustee's own expenses incurred in connection
29 with the real estate improvement, including land costs and that
30 portion of the general operating expense of the trustee's

1 business reasonably allocable to the real estate improvement. A
2 trustee who is a prime contractor or subcontractor may use
3 assets of the trust to pay the trustee's own expenses incurred
4 in connection with providing services or materials for the real
5 estate improvement, including that portion of the general
6 operating expense of the trustee's business reasonably allocable
7 to the contract under which the services or materials are
8 provided. Payments made under this subsection, for the purposes
9 of subsection (k), are treated in the same manner as payments
10 for any other purpose of the trust.

11 (h) Application of funds to nontrust purposes.--A trustee
12 does not commit a breach of trust or misappropriate trust funds
13 by applying funds to nontrust purposes if the assets of the
14 trust remaining after the application are sufficient to pay all
15 amounts payable from the assets of the trust at that time and
16 all amounts the trustee could reasonably anticipate will be
17 payable from those assets in the future.

18 (i) Corporation as trustee.--If a trustee is a corporation,
19 any of its officers, directors or agents who are responsible for
20 misappropriation of assets of the trust are subject to the
21 penalties for breach of trusts.

22 (j) Separate trust accounts.--A trustee need not keep
23 separate trust accounts, but the trustee's books must show
24 clearly the allocation to each trust of the funds deposited and
25 withdrawals made with sufficient clarity to establish that any
26 disbursements were consistent with the trust obligations.

27 (k) Order of payment.--A trustee need not select any
28 particular order of payment or division of assets of the trust
29 or manner of payment of any trust claims or apply any assets of
30 the trust to any particular purpose of the trust.

1 (1) Obligation of person making payment.--A person making
2 payment has no obligation to see to the proper application of
3 funds by the owner, prime contractor or subcontractor.

4 (m) Remedies.--Except as provided in this section, the
5 remedies available for and the penalties applicable to breach of
6 trust are the same as provided in other law or in equity.

7 Section 2. Nothing in this act shall be deemed to affect or
8 impair any mechanics' lien existing on the effective date of
9 this act, nor to affect or impair the rights, duties or
10 liability of any party to any such existing lien or any action
11 related thereto.

12 Section 3. (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 4. This act shall take effect in 60 days.