

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2959 Session of
2006

INTRODUCED BY LEH, SEPTEMBER 27, 2006

AS REPORTED FROM COMMITTEE ON LABOR RELATIONS, HOUSE OF
REPRESENTATIVES, AS AMENDED, OCTOBER 4, 2006

AN ACT

1 ~~Amending the act of August 24, 1963 (P.L.1175, No.497), entitled~~ <—
2 ~~"An act to codify, amend, revise and consolidate the laws~~
3 ~~relating to mechanics' liens," further providing for~~
4 ~~definitions, for right of owner to limit claims to unpaid~~
5 ~~balance of contract price and for formal notice by~~
6 ~~subcontractor as condition precedent.~~
7 AMENDING THE ACT OF AUGUST 24, 1963 (P.L.1175, NO.497), ENTITLED <—
8 "AN ACT TO CODIFY, AMEND, REVISE AND CONSOLIDATE THE LAWS
9 RELATING TO MECHANICS' LIENS," FURTHER PROVIDING FOR RIGHT OF
10 OWNER TO LIMIT CLAIMS TO UNPAID BALANCE OF CONTRACT PRICE.

11 The General Assembly of the Commonwealth of Pennsylvania
12 hereby enacts as follows:

13 ~~Section 1. Sections 201, 405 and 501 of the act of August~~ <—
14 ~~24, 1963 (P.L.1175, No.497), known as the Mechanics' Lien Law of~~
15 ~~1963, amended June 29, 2006 (P.L.210, No.52), are amended to~~
16 ~~read:~~

17 ~~Section 201. Definitions. The following words, terms and~~
18 ~~phrases when used in this act shall have the meaning ascribed to~~
19 ~~them in this section, except where the context clearly indicates~~
20 ~~a different meaning:~~

21 ~~(1) "Improvement" includes any building, structure or other~~

~~improvement of whatsoever kind or character erected or constructed on land, together with the fixtures and other personal property used in fitting up and equipping the same for the purpose for which it is intended.~~

~~(2) "Property" means the improvement, the land covered thereby and the lot or curtilage appurtenant thereto belonging to the same legal or equitable owner reasonably needed for the general purposes thereof and forming a part of a single business or residential plant.~~

~~(3) "Owner" means an owner in fee, a tenant for life or years or one having any other estate in or title to property.~~

~~(3.1) "Contract" means a written agreement, or a written amendment to a written agreement, evidencing the respective responsibilities of the contracting parties that is signed by each of the parties to the agreement. In the case of a supplier, the term includes a delivery or order slip signed by the owner, contractor or subcontractor, or an authorized agent of any of them. The term includes a written agreement between a labor benefit fund and a contractor or a subcontractor. The term does not include an agreement predominantly intended to reduce the credit risk of a party, including a joint check arrangement, payment guarantee or similar credit agreement.~~

~~(4) "Contractor" means [one who, by contract with the owner, express or implied, erects, constructs, alters or repairs an improvement or any part thereof or furnishes labor, skill or superintendence thereto; or supplies or hauls materials, fixtures, machinery or equipment reasonably necessary for and actually used therein; or any or all of the foregoing, whether as superintendent, builder or materialman. The term also includes an architect or engineer who, by contract with the~~

1 owner, express or implied, in addition to the preparation of
2 drawings, specifications and contract documents also
3 superintends or supervises any such erection, construction,
4 alteration or repair.] a person in direct privity of contract
5 with the owner of real property for improvements to the real
6 property. The term includes a construction manager who enters
7 into a single contract with an owner for the performance of all
8 construction work within the scope of a construction manager's
9 contract, a construction manager who enters into a subcontract,
10 a construction manager who is designated as an owner's agent
11 without entering into a subcontract, a licensed architect,
12 landscape architect, professional engineer or land surveyor who
13 is in direct privity of contract with the owner, is not a
14 salaried employee of the owner and provides services in
15 connection with a proposed or actual improvement of real
16 property.

17 (5) ~~"Subcontractor" means [one who, by contract with the~~
18 ~~contractor, or pursuant to a contract with a subcontractor in~~
19 ~~direct privity of a contract with a contractor, express or~~
20 ~~implied, erects, constructs, alters or repairs an improvement or~~
21 ~~any part thereof; or furnishes labor, skill or superintendence~~
22 ~~thereto; or supplies or hauls materials, fixtures, machinery or~~
23 ~~equipment reasonably necessary for and actually used therein; or~~
24 ~~any or all of the foregoing, whether as superintendent, builder~~
25 ~~or materialman. The term does not include an architect or~~
26 ~~engineer who contracts with a contractor or subcontractor, or a~~
27 ~~person who contracts with a materialman or a person who~~
28 ~~contracts with a subcontractor not in direct privity of a~~
29 ~~contract with a contractor.] a person who provides work in~~
30 ~~connection with the improvement of real property pursuant to a~~

~~contract with a contractor. The term includes a labor benefit fund.~~

~~(5.1) "Sub subcontractor" means a person who provides work in connection with the improvement of real property pursuant to a contract with a subcontractor. The term includes a labor benefit fund.~~

~~(5.2) "Supplier" means a supplier of material or equipment, including rental equipment, pursuant to a contract with an owner, contractor or subcontractor. The term does not include a person who supplies fuel for use in motor vehicles or equipment delivered to or used on a site to be improved or a seller of personal property who has a lien against a motor vehicle pursuant to applicable law.~~

~~(6) "Claimant" means a contractor or subcontractor who has filed or may file a claim under this act for a lien against property.~~

~~(7) "Materials" means building materials and supplies of all kinds, and also includes fixtures, machinery and equipment reasonably necessary to and incorporated into the improvement.~~

~~(8) "Completion of the work" means performance of the last of the labor or delivery of the last of the materials required by the terms of the claimant's contract or agreement, whichever last occurs.~~

~~(9) "Labor" includes the furnishing of skill or superintendence.~~

~~(10) "Erection and construction" means the erection and construction of a new improvement or of a substantial addition to an existing improvement or any adaptation of an existing improvement rendering the same fit for a new or distinct use and effecting a material change in the interior or exterior thereof.~~

~~(11) "Alteration and repair" means any alteration or repair of an existing improvement which does not constitute erection or construction as defined herein.~~

~~(12) "Erection, construction, alteration or repair" includes:~~

~~(a) Demolition, removal of improvements, excavation, grading, filling, paving and landscaping, when such work is incidental to the erection, construction, alteration or repair;~~

~~(b) Initial fitting up and equipping of the improvement with fixtures, machinery and equipment suitable to the purposes for which the erection, construction, alteration or repair was intended; and~~

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

~~(13) "Prothonotary" means the prothonotary of the court or courts of common pleas of the county or counties in which the improvement is situate.~~

~~(14) "Residential building" means property on which there is a residential building, or which is zoned or otherwise approved for residential development, planned development or agricultural use, or for which a residential subdivision plan or planned residential development plan has received preliminary, tentative or final approval pursuant to the act of July 31, 1968 (P.L.805, No.247), known as the "Pennsylvania Municipalities Planning Code."~~

~~Section 405. [Right of Owner to Limit Claims to Unpaid Balance of Contract Price. Where the claims of subcontractors exceed in the aggregate the unpaid balance of the contract price~~

~~specified in the contract between the owner and the contractor,
then if the subcontractor has actual notice of the total amount
of said contract price and of its provisions for the time or
times for payment thereof before any labor or materials were
furnished by him, or if such contract or the pertinent
provisions thereof were filed in the office of the prothonotary
in the time and manner provided in section 402, each claim
shall, upon application of the owner, be limited to its pro rata
share of the contract price remaining unpaid, or which should
have remained unpaid, whichever is greatest in amount at the
time notice of intention to file a claim was first given to the
owner, such notice inuring to the benefit of all claimants.]~~

~~Maximum Liens. (a) General Rule. Subject to subsections (b)
and (c), the maximum amount for which an interest in real
property may be subject to a lien under this act for one or more
lien claims filed under this act shall not be greater than the
contract price of the contract between the owner and the
contractor less the amount of payments made, if any, prior to
receipt by the owner of a copy of the lien claim, by the owner
to the contractor or to another lien claimant.~~

~~(b) Subcontractors and Suppliers. In the case of a lien
claim filed by a subcontractor or supplier in direct privity of
contract with the contractor, the maximum amount for which an
interest in real property may be subject to a lien under this
act for one or more lien claims filed under this act shall not
be greater than the lesser of:~~

~~(1) the amount provided in subsection (a); or
(2) the contract price of the contract between the
contractor and the subcontractor or supplier, less the amount of
payments made, if any, prior to receipt of a copy of the lien~~

~~claim, by the contractor to the subcontractor or supplier or to another lien claimant in direct privity of contract with the subcontractor.~~

~~(c) Sub subcontractors and Their Suppliers. In the case of a lien claim filed by a sub subcontractor or supplier in direct privity of contract with a subcontractor, the maximum amount for which an interest in real property may be subject to a lien under this act for one or more lien claims filed under this act shall not be greater than the lesser of:~~

~~(1) the amount provided in subsection (a);~~

~~(2) the contract price of the contract between the contractor and subcontractor with whom the sub subcontractor or supplier has contracted, less the amount of payment made, if any, prior to receipt by the contractor of a copy of the lien claim, to the subcontractor or to another lien claimant; or~~

~~(3) the contract price of the contract between the subcontractor and the sub subcontractor or supplier less the amount of payments made, if any, by the subcontractor to the sub subcontractor or supplier.~~

~~(d) Effect of Breach of Contract. For purposes of determining the maximum amount for which an interest in real property may be subject to a lien, in the event a contractor, subcontractor, sub subcontractor or supplier is in breach under the terms of a contract to which it is a party, the contract price of the contract shall be deemed to have been reduced by the damages incurred by the nonbreaching party to the contract as a result of the breach.~~

~~Section 501.—[Formal Notice by Subcontractor as Condition Precedent.—~~

~~(b.1) Time Period of Formal Notice. No claim by a~~

~~subcontractor, whether for erection or construction or for alterations or repairs, shall be valid unless, at least thirty (30) days before the same is filed, he shall have given to the owner a formal written notice of his intention to file a claim, except that such notice shall not be required where the claim is filed pursuant to a rule to do so as provided by section 506.~~

~~(c) Contents of Formal Notice. The formal notice shall state:~~

~~(1) the name of the party claimant;~~

~~(2) the name of the person with whom he contracted;~~

~~(3) the amount claimed to be due;~~

~~(4) the general nature and character of the labor or materials furnished;~~

~~(5) the date of completion of the work for which his claim is made;~~

~~(6) a brief description sufficient to identify the property claimed to be subject to the lien.~~

~~(d) Service of Notice. The notice provided by this section may be served by first class, registered or certified mail on the owner or his agent or by an adult in the same manner as a writ of summons in assumpsit, or if service cannot be so made then by posting upon a conspicuous public part of the improvement.] Notices of Commencement and Furnishings. (a)~~

~~Notice of Commencement.~~

~~(1) Owner's Right to File.~~

~~(i) Within thirty (30) days following execution of a contract with a contractor, the owner may file with the prothonotary a notice of commencement that does all of the following:~~

~~(A) Identifies with reasonable specificity the real property~~

~~upon which the improvement will be constructed.~~

~~(B) Sets forth the name of the contractor, the name of the owner and the address at which the owner may be served with claims and notices pursuant to this act.~~

~~(ii) The prothonotary shall index the notice of commencement on the construction lien docket in the name of the contractor as plaintiff and in the name of the owner as defendant.~~

~~(2) Delivery of notice.~~

~~(i) The owner shall deliver a copy of the notice of commencement to the contractor within seven (7) days after the notice is filed.~~

~~(ii) Within seven (7) days following receipt of a written request from a subcontractor, sub subcontractor or supplier, the contractor shall deliver a copy of the notice of commencement to the requesting party.~~

~~(b) Notice of Furnishing.~~

~~(1) Service of Notice. If a notice of commencement has been filed under subsection (a), a subcontractor, sub subcontractor or supplier who performs work or services or provides material or equipment in furtherance of an improvement to real property and who wishes to preserve his lien rights shall serve a notice of furnishing upon the owner named in the notice of commencement at the address listed in the notice of commencement within the later of:~~

~~(i) thirty (30) days after the filing of the notice of commencement; or~~

~~(ii) thirty (30) days after first performing work or services or first providing materials or equipment in connection with the improvement of the real property.~~

~~(2) Preservation of Rights. A notice of furnishing served~~

~~within the applicable period under paragraph (1) preserves the subcontractor's, sub subcontractor's or supplier's lien rights for amounts owing for work and services performed and materials and equipment furnished from the date the work or services were first performed or materials or equipment were first furnished through the date of service of the notice of furnishing and thereafter.~~

~~(3) Forfeiture of Rights. If a subcontractor, sub subcontractor or supplier fails to serve a notice of furnishing within the applicable period under paragraph (1), the subcontractor, sub subcontractor or supplier shall be deemed to have forfeited its right to file a lien claim.~~

~~(4) Absence of Notice of Commencement. If the owner fails to file a notice of commencement in accordance with subsection (a), no subcontractor, sub subcontractor or supplier shall be required to serve a notice of furnishing in order to preserve the subcontractor's, sub subcontractor's or supplier's lien rights.~~

SECTION 1. SECTION 405 OF THE ACT OF AUGUST 24, 1963 (P.L.1175, NO.497), KNOWN AS THE MECHANICS' LIEN LAW OF 1963, AMENDED JUNE 29, 2006 (P.L.210, NO.52), IS AMENDED TO READ:

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

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

8 (A) GENERAL RULE. SUBJECT TO SUBSECTIONS (B) AND (C), THE
9 MAXIMUM AMOUNT FOR WHICH AN INTEREST IN REAL PROPERTY MAY BE
10 SUBJECT TO A LIEN UNDER THIS ACT FOR ONE OR MORE LIEN CLAIMS
11 FILED UNDER THIS ACT SHALL NOT BE GREATER THAN THE PRICE OF THE
12 CONTRACT BETWEEN THE OWNER AND THE CONTRACTOR LESS THE AMOUNT OF
13 PAYMENTS MADE, IF ANY, PRIOR TO RECEIPT BY THE OWNER OF A COPY
14 OF THE LIEN CLAIM BY THE OWNER TO THE CONTRACTOR OR TO ANOTHER
15 LIEN CLAIMANT.

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

21 (1) THE AMOUNT PROVIDED IN SUBSECTION (A); OR
22 (2) THE CONTRACT PRICE OF THE CONTRACT BETWEEN THE
23 CONTRACTOR AND SUBCONTRACTOR LESS THE AMOUNT OF PAYMENTS MADE,
24 IF ANY, PRIOR TO RECEIPT OF A COPY OF THE LIEN CLAIM, BY THE
25 CONTRACTOR TO THE SUBCONTRACTOR OR TO ANOTHER LIEN CLAIMANT IN
26 PRIVITY OF CONTRACT WITH THE SUBCONTRACTOR.

27 (C) OTHER LIEN CLAIMS. IN THE CASE OF A LIEN CLAIM FILED BY
28 A PARTY IN PRIVITY OF CONTRACT WITH A SUBCONTRACTOR, THE MAXIMUM
29 AMOUNT FOR WHICH AN INTEREST IN REAL PROPERTY MAY BE SUBJECT TO
30 A LIEN UNDER THIS ACT FOR ONE OR MORE LIEN CLAIMS FILED UNDER

1 THIS ACT SHALL NOT BE GREATER THAN THE LESSER OF:

2 (1) THE AMOUNT PROVIDED IN SUBSECTION (A);

3 (2) THE PRICE OF THE CONTRACT BETWEEN THE CONTRACTOR AND
4 SUBCONTRACTOR WITH WHOM THE PARTY HAS CONTRACTED, LESS THE
5 AMOUNT OF PAYMENT MADE, IF ANY, PRIOR TO RECEIPT BY THE
6 CONTRACTOR OF A COPY OF THE LIEN CLAIM, TO THE SUBCONTRACTOR OR
7 TO ANOTHER LIEN CLAIMANT; OR

8 (3) THE PRICE OF THE CONTRACT BETWEEN THE SUBCONTRACTOR AND
9 THE PARTY LESS THE AMOUNT OF PAYMENTS MADE, IF ANY, BY THE
10 SUBCONTRACTOR TO THE PARTY.

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

18 (E) DEFINITION. AS USED IN THIS SECTION, THE TERM "OTHER
19 PARTIES" HAS THE SAME MEANING AS THE TERM "SUBCONTRACTOR" IN
20 SECTION 201(5).

21 Section 2. This act shall take effect January 1, 2007.