

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 982 Session of 2013

INTRODUCED BY DELOZIER, AUMENT, BAKER, CARROLL, P. DALEY, EVANKOVICH, GIBBONS, GINGRICH, GRELL, HARHAI, HESS, HICKERNELL, KAUFFMAN, M. K. KELLER, KORTZ, KOTIK, LONGIETTI, MACKENZIE, MASSER, METCALFE, MILLARD, R. MILLER, MILNE, MURT, MUSTIO, O'NEILL, PYLE, QUINN, ROCK, SABATINA, SAINATO, STEVENSON, SWANGER, TRUITT, WATSON, MCGINNIS AND HENNESSEY, MARCH 13, 2013

AS REPORTED FROM COMMITTEE ON LABOR AND INDUSTRY, HOUSE OF REPRESENTATIVES, AS AMENDED, OCTOBER 2, 2013

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," providing for the definition
4 of "costs of construction"; and further providing for right
5 to lien and amount, for priority of lien and for discharge of
6 lien on payment into court or entry of security.

7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 Section 1. Section 201 of the act of August 24, 1963
10 (P.L.1175, No.497), known as the Mechanics' Lien Law of 1963, is
11 amended by adding a definition to read:

12 Section 201. Definitions.--The following words, terms and
13 phrases when used in this act shall have the meaning ascribed to
14 them in this section, except where the context clearly indicates
15 a different meaning:

16 * * *

17 (15) "Costs of construction" means all costs, expenses and

1 reimbursements pertaining to erection, construction, alteration,
2 repair, mandated off-site improvements, government impact fees
3 and ~~soft~~ OTHER CONSTRUCTION-RELATED costs, including, but not <--
4 limited to, costs, expenses and reimbursements in the nature of
5 taxes, insurance, bonding, inspections, surveys, testing,
6 permits, legal fees, architect fees, engineering fees,
7 consulting fees, accounting fees, management fees, utility fees,
8 tenant improvements, leasing commissions, payment of prior loans <--
9 FILED OR RECORDED LIENS or mortgages, INCLUDING MECHANICS' <--
10 LIENS, MUNICIPAL CLAIMS, mortgage origination fees and
11 commissions, finance costs, closing fees, recording fees, title
12 insurance or escrow fees, or any similar or comparable costs,
13 expenses or reimbursements related to an improvement, made or
14 intended to be made, to the property. For purposes of this
15 definition, reimbursement includes any such disbursements made
16 to the borrower, any person acting for the benefit or on behalf
17 of the borrower, or to an affiliate of the borrower.

18 Section 2. Section 301 of the act is amended to read:

19 Section 301. Right to Lien; Amount; Subcontractor.--[Every]

20 (a) General Rule. Except as provided under subsection (b),
21 every improvement and the estate or title of the owner in the
22 property shall be subject to a lien, to be perfected as herein
23 provided, for the payment of all debts due by the owner to the
24 contractor or by the contractor to any of his subcontractors for
25 labor or materials furnished in the erection or construction, or
26 the alteration or repair of the improvement, provided that the
27 amount of the claim, other than amounts determined by
28 apportionment under section 306(b) of this act, shall exceed
29 five hundred dollars (\$500).

30 (b) Subcontractor. A subcontractor does not have the right

1 to a lien with respect to an improvement to a residential
2 property if:

3 (1) the owner or tenant paid the full contract price to the
4 contractor;

5 (2) the property is or is intended to be used as the
6 residence of the owner or subsequent to occupation by the owner,
7 a tenant of the owner; and

8 (3) the residential property is a single townhouse or a
9 building that consists of one or two dwelling units used,
10 intended or designed to be built, used, rented or leased for
11 living purposes. For the purposes of this paragraph, the term
12 "townhouse" shall mean a single-family dwelling unit constructed
13 in a group of three or more attached units in which each unit
14 extends from foundation to roof with a yard or public way on at
15 least two sides.

16 Section 3. Section 508(c) of the act, amended June 29, 2006
17 (P.L.210, No.52), is amended to read:

18 Section 508. Priority of Lien.--The lien of a claim filed
19 under this act shall take effect and have priority as follows:

20 * * *

21 (c) Any lien obtained under this act by a contractor or
22 subcontractor shall be subordinate to the following:

23 (1) A purchase money mortgage as defined in 42 Pa.C.S. §
24 8141(1) (relating to time from which liens have priority).

25 (2) An open-end mortgage as defined in 42 Pa.C.S. § 8143(f)
26 (relating to open-end mortgages), [the proceeds of which are
27 used to pay all or part of the cost of completing erection,
28 construction, alteration or repair of the mortgaged premises
29 secured by the open-end mortgage.] ~~where at least twenty five~~ <--

30 ~~per cent~~ SIXTY PER CENT (60%) of the proceeds are intended to <--

1 pay or are used to pay all or part of the costs of construction.

2 ~~(3) The refinance or modification of a purchase money~~ <--
3 ~~mortgage as set forth in paragraph (1) or open end mortgage as~~
4 ~~set forth in paragraph (2), notwithstanding that:~~

5 ~~(i) the new principal amount of the mortgage may exceed the~~
6 ~~stated amount of the original mortgage; or~~

7 ~~(ii) advances made under the mortgage may be used for~~
8 ~~purposes unrelated to the costs of construction.~~

9 Section 4. Section 510 heading of the act is amended and the
10 section is amended by adding a subsection to read:

11 Section 510. Discharge of Lien [on Payment into Court or
12 Entry of Security] OR REDUCTION OF LIEN.-- <--

13 * * *

14 ~~(f) Residential property. A claim filed under this act with~~ <--
15 ~~respect to an improvement to a residential property subject to~~
16 ~~section 301(b) shall, upon petition or motion to the court by~~
17 ~~the owner or a party in interest, be discharged as a lien~~
18 ~~against the property when:~~

19 ~~(1) the owner or tenant has paid the full contract price to~~
20 ~~the contractor; or~~

21 ~~(2) the lien shall be reduced to the amount of the unpaid~~
22 ~~contract price owed by the owner or tenant to the contractor.~~

23 (F) RESIDENTIAL PROPERTY. <--

24 (1) A CLAIM FILED UNDER THIS ACT WITH RESPECT TO AN
25 IMPROVEMENT TO A RESIDENTIAL PROPERTY SUBJECT TO SECTION 301(B)
26 SHALL, UPON A COURT ORDER ISSUED IN RESPONSE TO A PETITION OR
27 MOTION TO THE COURT BY THE OWNER OR A PARTY IN INTEREST, BE
28 DISCHARGED AS A LIEN AGAINST THE PROPERTY WHEN THE OWNER OR
29 TENANT HAS PAID THE FULL CONTRACT PRICE TO THE CONTRACTOR.

30 (2) WHERE THE OWNER OR TENANT HAS PAID A SUM TO THE

1 CONTRACTOR WHICH IS LESS THAN THE SUM OF THE FULL CONTRACT
2 PRICE, A CLAIM FILED UNDER THIS ACT WITH RESPECT TO AN
3 IMPROVEMENT TO A RESIDENTIAL PROPERTY SUBJECT TO SECTION 301(B),
4 SHALL, UPON A COURT ORDER ISSUED IN RESPONSE TO A PETITION OR
5 MOTION TO THE COURT BY THE OWNER OR A PARTY IN INTEREST, CAUSE
6 THE LIEN TO BE REDUCED TO THE AMOUNT OF THE UNPAID CONTRACT
7 PRICE OWED BY THE OWNER OR TENANT TO THE CONTRACTOR.

8 ~~Section 5. The amendment of sections 301 and 510 of the act <--~~
9 ~~shall apply to contracts entered into on or after the effective~~
10 ~~date of this section.~~

11 SECTION 5. THE ADDITION OF THE DEFINITION OF "COSTS OF <--
12 CONSTRUCTION" IN SECTION 201 OF THE ACT AND THE AMENDMENT OF
13 SECTION 508(C) OF THE ACT SHALL APPLY TO LIENS PERFECTED ON OR
14 AFTER THE EFFECTIVE DATE OF THIS SECTION, INCLUDING LIENS
15 RELATING TO THE CONSTRUCTION OF AN IMPROVEMENT FOR WHICH THE
16 VISIBLE COMMENCEMENT OF WORK OCCURRED PRIOR TO THE EFFECTIVE
17 DATE OF THIS SECTION, BUT WERE NOT PERFECTED UNTIL ON OR AFTER
18 THE EFFECTIVE DATE OF THIS SECTION.

19 Section 6. This act shall take effect in ~~30~~ 60 days. <--