

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1101 Session of 2009

INTRODUCED BY GRUCELA, BOYD, COHEN, D. COSTA, DENLINGER,
FABRIZIO, GEIST, GIBBONS, HALUSKA, HARKINS, HENNESSEY, HESS,
KORTZ, MAHONEY, MILLER, MOUL, PETRI, SIPTROTH, K. SMITH,
STERN AND YOUNGBLOOD, MARCH 25, 2009

REFERRED TO COMMITTEE ON JUDICIARY, MARCH 25, 2009

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 to lien and amount, for waiver of lien
5 by claimant, for contents of claim and for priority of lien.

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

8 Section 1. The definition of "claimant" in section 201 of
9 the act of August 24, 1963 (P.L.1175, No.497), known as the
10 Mechanics' Lien Law of 1963, amended June 29, 2006 (P.L.210,
11 No.52), is amended and the section is amended by adding a
12 definition to read:

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

17 * * *

18 (6) "Claimant" means a contractor [or] subcontractor or

1 surveyor who has filed or may file a claim under this act for a
2 lien against property.

3 * * *

4 (15) "Surveyor" means a professional land surveyor as
5 defined under section 2(f) of the act of May 23, 1945 (P.L.913,
6 No.367), known as the "Engineer, Land Surveyor and Geologist
7 Registration Law."

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

9 Section 301. Right to Lien; Amount.--

10 (a) Contractors and Subcontractors. Every improvement and
11 the estate or title of the owner in the property shall be
12 subject to a lien, to be perfected as [herein] provided under
13 this act, for the payment of all debts due by the owner to the
14 contractor or by the contractor to any of his subcontractors for
15 labor or materials furnished in the erection or construction, or
16 the alteration or repair of the improvement, provided that the
17 amount of the claim, other than amounts determined by
18 apportionment under section 306(b) of this act, shall exceed
19 five hundred dollars (\$500).

20 (b) Surveyors. Every estate or title of the owner in the
21 property shall be subject to a lien, to be perfected as provided
22 under this act, for the payment of all debts due by the owner to
23 the surveyor for the services of the surveyor pertaining to the
24 land, provided that the amount of the claim shall exceed five
25 hundred dollars (\$500).

26 Section 3. Section 401 of the act, amended June 29, 2006
27 (P.L.210, No.52), is amended to read:

28 Section 401. Waiver of Lien by Claimant.--

29 (a) Residential Buildings.

30 (1) A contractor may waive his right to file a claim against

1 property for the erection, construction, alteration or repair of
2 a residential building, in which the total contract price
3 between the owner and the contractor is less than one million
4 dollars (\$1,000,000), by a written instrument signed by him or
5 by any conduct which operates equitably to estop such contractor
6 from filing a claim.

7 (2) (i) A subcontractor may waive his right to file a claim
8 against property for the erection, construction, alteration or
9 repair of a residential building, in which the total contract
10 price between the owner and the contractor is less than one
11 million dollars (\$1,000,000), by a written instrument signed by
12 him or by any conduct which operates equitably to estop him from
13 filing a claim.

14 (ii) A subcontractor may waive his right to file a claim
15 against the property, irrespective of the contract price between
16 the owner and the contractor, of a residential building by a
17 written instrument signed by him or by any conduct which
18 operates equitably to estop him from filing a claim, provided
19 the contractor has posted a bond guaranteeing payment for labor
20 and materials provided by subcontractors.

21 (3) A surveyor may waive his right to file a claim against
22 property for the erection, construction, alteration or repair of
23 a residential building by a written instrument signed by him or
24 by any conduct which operates equitably to estop such surveyor
25 from filing a claim.

26 (b) Nonresidential Buildings.

27 (1) Except as provided in subsection (a)(1), a waiver by a
28 contractor of lien rights is against public policy, unlawful and
29 void unless given in consideration for payment for the work,
30 services, materials or equipment provided and only to the extent

1 that such payment is actually received.

2 (2) Except as provided in subsection (a) (2), a waiver by a
3 subcontractor of lien rights is against public policy, unlawful
4 and void, unless given in consideration for payment for the
5 work, services, materials or equipment provided and only to the
6 extent that such payment is actually received, or unless the
7 contractor has posted a bond guaranteeing payment for labor and
8 materials provided by subcontractors.

9 (3) Except as provided in subsection (a) (3), a waiver by a
10 surveyor of lien rights is against public policy, unlawful and
11 void unless given in consideration for payment for the work,
12 services, materials or equipment provided and only to the extent
13 that such payment is actually received.

14 Section 4. Section 503 of the act is amended to read:

15 Section 503. Contents of Claim.--The claim shall state:

16 (1) the name of the party claimant, and whether he files as
17 contractor [or], subcontractor or surveyor;

18 (2) the name and address of the owner or reputed owner;

19 (3) the date of completion of the claimant's work;

20 (4) if filed by a subcontractor, the name of the person with
21 whom he contracted, and the dates on which preliminary notice,
22 if required, and of formal notice of intention to file a claim
23 was given;

24 (5) if filed by a contractor or surveyor under a contract or
25 contracts for an agreed sum, an identification of the contract
26 and a general statement of the kind and character of the labor
27 or materials furnished;

28 (6) in all other cases than that set forth in clause (5) of
29 this section, a detailed statement of the kind and character of
30 the labor or materials furnished, or both, and the prices

1 charged for each thereof;

2 (7) the amount or sum claimed to be due; and

3 (8) such description of the improvement and of the property
4 claimed to be subject to the lien as may be reasonably necessary
5 to identify them.

6 Section 5. Section 508 of the act, amended June 29, 2006
7 (P.L.210, No.52), is amended to read:

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

10 (a) Except as set forth in subsection (c), in the case of
11 the erection or construction of an improvement, as of the date
12 of the visible commencement upon the ground of the work of
13 erecting or constructing the improvement.

14 (b) (1) Except as set forth in subsection (c), in the case
15 of the alteration or repair of an improvement by a contractor or
16 subcontractor, as of the date of the filing of the claim by a
17 contractor or subcontractor.

18 (2) Except as set forth in subsection (c), in the case of
19 the services of a surveyor, as of the date of the filing of the
20 claim by the surveyor.

21 (c) Any lien obtained under this act by a contractor [or],
22 subcontractor or surveyor 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 used
27 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.

30 Section 6. This act shall take effect in 60 days.