

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 563 Session of 2009

INTRODUCED BY BROWNE, ROBBINS, BOSCOLA, ORIE, TOMLINSON, WAUGH, WOZNIAK, VANCE, EARLL, FOLMER AND WONDERLING, MARCH 2, 2009

SENATOR GORDNER, LABOR AND INDUSTRY, AS AMENDED, JUNE 23, 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 waiver of lien by claimant, for right to~~
5 ~~limit claims to unpaid balance of contract price and for~~
6 ~~priority of lien.~~

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
10 DEFINITIONS AND FOR WAIVER OF LIEN BY CLAIMANT.

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

13 ~~Section 1. Sections 201(14), 401, 405 and 508 of the act of~~ ←
14 ~~August 24, 1963 (P.L.1175, No.497), known as the Mechanics' Lien~~
15 ~~Law of 1963, amended June 29, 2006 (P.L.210, No.52), are amended~~
16 ~~to 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 \* \* \*

22 ~~(14) "Residential [building] property" means property on-~~

1 ~~which there is or will be constructed a residential building not~~  
2 ~~more than three stories in height, not including any basement~~  
3 ~~level, regardless of whether any portion of that basement is at~~  
4 ~~grade level, or which is zoned or otherwise approved for~~  
5 ~~residential development on which there is or will be constructed~~  
6 ~~a residential building not more than three stories in height,~~  
7 ~~not including any basement level, regardless of whether any~~  
8 ~~portion of that basement is at grade level, planned residential~~  
9 ~~development or agricultural use, or for which a residential~~  
10 ~~subdivision or land development plan or planned residential~~  
11 ~~development plan has received preliminary, tentative or final~~  
12 ~~approval on which there is or will be constructed a residential~~  
13 ~~building not more than three stories in height, not including~~  
14 ~~any basement level, regardless of whether any portion of that~~  
15 ~~basement is at grade level, pursuant to the act of July 31, 1968~~  
16 ~~(P.L.805, No.247), known as the "Pennsylvania Municipalities~~  
17 ~~Planning Code."~~

18 ~~Section 401. Waiver of Lien by Claimant.~~

19 ~~(a) Residential [Buildings] Property.~~

20 ~~[(1)] A contractor or subcontractor may waive his right to~~  
21 ~~file a claim against residential property [for the erection,~~  
22 ~~construction, alteration or repair of a residential building, in~~  
23 ~~which the total contract price between the owner and the~~  
24 ~~contractor is less than one million dollars (\$1,000,000),] by a~~  
25 ~~written instrument signed by him or by any conduct which~~  
26 ~~operates equitably to estop such contractor from filing a claim.~~

27 ~~[(2) (i) A subcontractor may waive his right to file a~~  
28 ~~claim against property for the erection, construction,~~  
29 ~~alteration or repair of a residential building, in which the~~  
30 ~~total contract price between the owner and the contractor is~~

1 ~~less than one million dollars (\$1,000,000), by a written~~  
2 ~~instrument signed by him or by any conduct which operates~~  
3 ~~equitably to estop him from filing a claim.~~

4 ~~(ii) A subcontractor may waive his right to file a claim~~  
5 ~~against the property, irrespective of the contract price between~~  
6 ~~the owner and the contractor, of a residential building by a~~  
7 ~~written instrument signed by him or by any conduct which~~  
8 ~~operates equitably to estop him from filing a claim, provided~~  
9 ~~the contractor has posted a bond guaranteeing payment for labor~~  
10 ~~and materials provided by subcontractors.]~~

11 ~~(b) Nonresidential Buildings.~~

12 ~~(1) Except as provided in subsection [(a)(1)] (a), a waiver~~  
13 ~~by a contractor of lien rights is against public policy,~~  
14 ~~unlawful and void unless given in consideration for payment for~~  
15 ~~the work, services, materials or equipment provided and only to~~  
16 ~~the extent that such payment is actually received.~~

17 ~~(2) Except as provided in subsection [(a)(2)] (a), a waiver~~  
18 ~~by a subcontractor of lien rights is against public policy,~~  
19 ~~unlawful and void, unless given in consideration for payment for~~  
20 ~~the work, services, materials or equipment provided and only to~~  
21 ~~the extent that such payment is actually received, or unless the~~  
22 ~~contractor has posted a bond guaranteeing payment for labor and~~  
23 ~~materials provided by subcontractors.~~

24 ~~Section 405. [Right of Owner to Limit Claims to Unpaid~~  
25 ~~Balance of Contract Price. Where the claims of subcontractors~~  
26 ~~exceed in the aggregate the unpaid balance of the contract price~~  
27 ~~specified in the contract between the owner and the contractor,~~  
28 ~~then if the subcontractor has actual notice of the total amount~~  
29 ~~of said contract price and of its provisions for the time or~~  
30 ~~times for payment thereof before any labor or materials were~~

1 furnished by him, or if such contract or the pertinent  
2 provisions thereof were filed in the office of the prothonotary  
3 in the time and manner provided in section 402, each claim  
4 shall, upon application of the owner, be limited to its pro rata  
5 share of the contract price remaining unpaid, or which should  
6 have remained unpaid, whichever is greatest in amount at the  
7 time notice of intention to file a claim was first given to the  
8 owner, such notice inuring to the benefit of all claimants.]-

9 Right to Limit Claims to Unpaid Balance of Contract Price.

10 (a) Contractor. The maximum amount for which an interest in  
11 real property may be subject to a lien under this act for one or  
12 more lien claims filed pursuant to this act shall not be greater  
13 than the price of the contract between the owner and the  
14 contractor less the amount of payments made by the owner to the  
15 contractor or to another lien claimant prior to receipt by the  
16 owner of a notice of intention to file a lien claim pursuant to  
17 section 501.

18 (b) Subcontractors.

19 (1) In the case of a lien claim filed by a subcontractor in  
20 privity of contract with the contractor, the maximum amount for  
21 which an interest in real property may be subject to a lien  
22 under this act for one or more lien claims filed under this act  
23 shall not be greater than the lesser of:

24 (i) the amount provided in subsection (a); or

25 (ii) the price of the contract between the contractor and  
26 subcontractor less the amount of payments, if any, justifiably  
27 made prior to receipt by the contractor of a copy of a notice of  
28 intention to file a claim by the contractor to the subcontractor  
29 or to another lien claimant in privity of contract with the  
30 subcontractor.

1 ~~(2) In the case of a lien claim filed by a party of privity~~  
2 ~~in contract with a subcontractor, the maximum amount for which~~  
3 ~~an interest in real property may be subject to a lien under this~~  
4 ~~act for one or more lien claims filed under this act shall not~~  
5 ~~be greater than the lesser of:~~

6 ~~(i) the amount provided in subsection (a); or~~

7 ~~(ii) the price of the contract between the contractor and~~  
8 ~~subcontractor with whom the party has contracted, less the~~  
9 ~~amount of payments justifiably made, if any, prior to receipt by~~  
10 ~~the contractor of a copy of the notice of intention to file a~~  
11 ~~claim to the subcontractor or to another lien claimant; or~~

12 ~~(iii) the price of the contract between the subcontractor~~  
13 ~~and the party less the amount of payments justifiably made, if~~  
14 ~~any, by the subcontractor to the party.~~

15 ~~(c) Breach. For purposes of determining the maximum amount~~  
16 ~~for which an interest in real property may be subject to a lien~~  
17 ~~in the event that a contractor or subcontractor is in breach~~  
18 ~~under the terms of a contract to which it is a party, the price~~  
19 ~~of the contract shall be deemed to have been reduced by the~~  
20 ~~damages incurred by the nonbreaching party to the contract as a~~  
21 ~~result of the breach.~~

22 ~~(d) For purposes of this section.~~

23 ~~(1) The term "price of the contract" shall include amounts~~  
24 ~~due for labor or material which are furnished as a result of:~~

25 ~~(i) a contract;~~

26 ~~(ii) a written amendment to a contract; or~~

27 ~~(iii) any change order or other directive for labor or~~  
28 ~~materials in addition to the scope of work under an initial~~  
29 ~~contract, provided that the lien claimant has notified the party~~  
30 ~~with whom it is in privity of contract within seven (7) days of~~

~~1 the receipt of the change order or other directive that the  
2 furnishing is alleged to be in addition to the scope of work  
3 under the contract; or~~

~~4 (2) in the case of a supplier, "price of the contract"  
5 includes a delivery or order slip signed by the owner,  
6 contractor or subcontractor, or an authorized agent of any of  
7 them.~~

~~8 (3) "Price of the contract" does not include an agreement  
9 predominantly intended to reduce the credit risk of a party,  
10 including a joint check arrangement, payment guarantee or  
11 similar credit agreement.~~

~~12 Section 508. Priority of Lien. The lien of a claim filed  
13 under this act shall take effect and have priority as follows:~~

~~14 (a) Except as set forth in subsection (c), in the case of  
15 the erection or construction of an improvement, as of the date  
16 of the visible commencement upon the ground of the work of  
17 erecting or constructing the improvement.~~

~~18 (b) Except as set forth in subsection (c), in the case of  
19 the alteration or repair of an improvement, as of the date of  
20 the filing of the claim.~~

~~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 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[.] or to secure certain  
30 advances under 42 Pa.C.S. § 8144 (relating to mortgages to~~

1 ~~secure certain advances).~~

2 ~~(3) Any substitution, refinance or modification of a~~  
3 ~~mortgage referred to under paragraphs (1) and (2).~~

4 SECTION 1. SECTIONS 201(14) AND 401 OF THE ACT OF AUGUST 24, ←  
5 1963 (P.L.1175, NO.497), KNOWN AS THE MECHANICS' LIEN LAW OF  
6 1963, AMENDED JUNE 29, 2006 (P.L.210, NO.52), ARE AMENDED TO  
7 READ:

8 SECTION 201. DEFINITIONS.--THE FOLLOWING WORDS, TERMS AND  
9 PHRASES WHEN USED IN THIS ACT SHALL HAVE THE MEANING ASCRIBED TO  
10 THEM IN THIS SECTION, EXCEPT WHERE THE CONTEXT CLEARLY INDICATES  
11 A DIFFERENT MEANING:

12 \* \* \*

13 (14) "RESIDENTIAL [BUILDING] PROPERTY" MEANS PROPERTY ON  
14 WHICH THERE IS OR WILL BE CONSTRUCTED A RESIDENTIAL BUILDING NOT  
15 MORE THAN THREE STORIES IN HEIGHT, NOT INCLUDING ANY BASEMENT  
16 LEVEL, REGARDLESS OF WHETHER ANY PORTION OF THAT BASEMENT IS AT  
17 GRADE LEVEL, OR WHICH IS ZONED OR OTHERWISE APPROVED FOR  
18 RESIDENTIAL DEVELOPMENT ON WHICH THERE IS OR WILL BE CONSTRUCTED  
19 A RESIDENTIAL BUILDING NOT MORE THAN THREE STORIES IN HEIGHT,  
20 NOT INCLUDING ANY BASEMENT LEVEL, REGARDLESS OF WHETHER ANY  
21 PORTION OF THAT BASEMENT IS AT GRADE LEVEL, PLANNED RESIDENTIAL  
22 DEVELOPMENT OR AGRICULTURAL USE, OR FOR WHICH A RESIDENTIAL  
23 SUBDIVISION OR LAND DEVELOPMENT PLAN OR PLANNED RESIDENTIAL  
24 DEVELOPMENT PLAN HAS RECEIVED PRELIMINARY, TENTATIVE OR FINAL  
25 APPROVAL ON WHICH THERE IS OR WILL BE CONSTRUCTED A RESIDENTIAL  
26 BUILDING NOT MORE THAN THREE STORIES IN HEIGHT, NOT INCLUDING  
27 ANY BASEMENT LEVEL, REGARDLESS OF WHETHER ANY PORTION OF THAT  
28 BASEMENT IS AT GRADE LEVEL, PURSUANT TO THE ACT OF JULY 31, 1968  
29 (P.L.805, NO.247), KNOWN AS THE "PENNSYLVANIA MUNICIPALITIES  
30 PLANNING CODE."

1 SECTION 401. WAIVER OF LIEN BY CLAIMANT.--

2 (A) RESIDENTIAL [BUILDINGS] PROPERTY.

3 [(1)] A CONTRACTOR OR SUBCONTRACTOR MAY WAIVE HIS RIGHT TO  
4 FILE A CLAIM AGAINST RESIDENTIAL PROPERTY [FOR THE ERECTION,  
5 CONSTRUCTION, ALTERATION OR REPAIR OF A RESIDENTIAL BUILDING, IN  
6 WHICH THE TOTAL CONTRACT PRICE BETWEEN THE OWNER AND THE  
7 CONTRACTOR IS LESS THAN ONE MILLION DOLLARS (\$1,000,000),] BY A  
8 WRITTEN INSTRUMENT SIGNED BY HIM OR BY ANY CONDUCT WHICH  
9 OPERATES EQUITABLY TO ESTOP SUCH CONTRACTOR FROM FILING A CLAIM.

10 [(2) (I)] A SUBCONTRACTOR MAY WAIVE HIS RIGHT TO FILE A  
11 CLAIM AGAINST PROPERTY FOR THE ERECTION, CONSTRUCTION,  
12 ALTERATION OR REPAIR OF A RESIDENTIAL BUILDING, IN WHICH THE  
13 TOTAL CONTRACT PRICE BETWEEN THE OWNER AND THE CONTRACTOR IS  
14 LESS THAN ONE MILLION DOLLARS (\$1,000,000), BY A WRITTEN  
15 INSTRUMENT SIGNED BY HIM OR BY ANY CONDUCT WHICH OPERATES  
16 EQUITABLY TO ESTOP HIM FROM FILING A CLAIM.

17 (II) A SUBCONTRACTOR MAY WAIVE HIS RIGHT TO FILE A CLAIM  
18 AGAINST THE PROPERTY, IRRESPECTIVE OF THE CONTRACT PRICE BETWEEN  
19 THE OWNER AND THE CONTRACTOR, OF A RESIDENTIAL BUILDING BY A  
20 WRITTEN INSTRUMENT SIGNED BY HIM OR BY ANY CONDUCT WHICH  
21 OPERATES EQUITABLY TO ESTOP HIM FROM FILING A CLAIM, PROVIDED  
22 THE CONTRACTOR HAS POSTED A BOND GUARANTEEING PAYMENT FOR LABOR  
23 AND MATERIALS PROVIDED BY SUBCONTRACTORS.]

24 (B) NONRESIDENTIAL BUILDINGS.

25 (1) EXCEPT AS PROVIDED IN SUBSECTION [(A) (1)] (A), A WAIVER  
26 BY A CONTRACTOR OF LIEN RIGHTS IS AGAINST PUBLIC POLICY,  
27 UNLAWFUL AND VOID UNLESS GIVEN IN CONSIDERATION FOR PAYMENT FOR  
28 THE WORK, SERVICES, MATERIALS OR EQUIPMENT PROVIDED AND ONLY TO  
29 THE EXTENT THAT SUCH PAYMENT IS ACTUALLY RECEIVED.

30 (2) EXCEPT AS PROVIDED IN SUBSECTION [(A) (2)] (A), A WAIVER



1 BY A SUBCONTRACTOR OF LIEN RIGHTS IS AGAINST PUBLIC POLICY,  
2 UNLAWFUL AND VOID, UNLESS GIVEN IN CONSIDERATION FOR PAYMENT FOR  
3 THE WORK, SERVICES, MATERIALS OR EQUIPMENT PROVIDED AND ONLY TO  
4 THE EXTENT THAT SUCH PAYMENT IS ACTUALLY RECEIVED, OR UNLESS THE  
5 CONTRACTOR HAS POSTED A BOND GUARANTEEING PAYMENT FOR LABOR AND  
6 MATERIALS PROVIDED BY SUBCONTRACTORS.

7 Section 2. This act shall take effect in 60 days.