

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

AS REPORTED FROM COMMITTEE ON LABOR RELATIONS, HOUSE OF REPRESENTATIVES, AS AMENDED, JULY 28, 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 and, for waiver of lien by claimant AND FOR
5 WAIVER BY CONTRACTOR AND EFFECT ON SUBCONTRACTOR.



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

8 Section 1. Sections 201(14) and 401, 401 AND 402(A) of the
9 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), are amended 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 (14) "Residential [building] property" means property on
18 which there is or will be constructed a residential building not

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

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

18 (a) Residential [Buildings] Property.

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

26 [(2) (i)] A subcontractor may waive his right to file a
27 claim against property for the erection, construction,
28 alteration or repair of a residential building, in which the
29 total contract price between the owner and the contractor is
30 less than one million dollars (\$1,000,000), by a written

1 instrument signed by him or by any conduct which operates
2 equitably to estop him from filing a claim.

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

10 (b) Nonresidential Buildings.

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

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

23 SECTION 402. WAIVER BY CONTRACTOR; EFFECT ON
24 SUBCONTRACTOR.--

25 (A) GENERAL RULE.--[PROVIDED] TO THE EXTENT THAT LIEN RIGHTS
26 MAY BE VALIDLY WAIVED [AS SET FORTH UNDER SECTION 401] BY A
27 CONTRACTOR OR SUBCONTRACTOR UNDER SECTION 401(A) OR WHERE THE
28 CONTRACTOR HAS POSTED A BOND UNDER SECTION 401(B)(2), A WRITTEN
29 CONTRACT BETWEEN THE OWNER AND A CONTRACTOR, OR A SEPARATE
30 WRITTEN INSTRUMENT SIGNED BY THE CONTRACTOR, WHICH PROVIDES THAT



1 NO CLAIM SHALL BE FILED BY ANYONE, SHALL BE BINDING: BUT THE
2 ONLY ADMISSIBLE EVIDENCE THEREOF, AS AGAINST A SUBCONTRACTOR,
3 SHALL BE PROOF OF ACTUAL NOTICE THEREOF TO HIM BEFORE ANY LABOR
4 OR MATERIALS WERE FURNISHED BY HIM; OR PROOF THAT SUCH CONTRACT
5 OR SEPARATE WRITTEN INSTRUMENT WAS FILED IN THE OFFICE OF THE
6 PROTHONOTARY PRIOR TO THE COMMENCEMENT OF THE WORK UPON THE
7 GROUND OR WITHIN TEN (10) DAYS AFTER THE EXECUTION OF THE
8 PRINCIPAL CONTRACT OR NOT LESS THAN TEN (10) DAYS PRIOR TO THE
9 CONTRACT WITH THE CLAIMANT SUBCONTRACTOR, INDEXED IN THE NAME OF
10 THE CONTRACTOR AS DEFENDANT AND THE OWNER AS PLAINTIFF AND ALSO
11 IN THE NAME OF THE CONTRACTOR AS PLAINTIFF AND THE OWNER AS
12 DEFENDANT. THE ONLY ADMISSIBLE EVIDENCE THAT SUCH A PROVISION
13 HAS, NOTWITHSTANDING ITS FILING, BEEN WAIVED IN FAVOR OF ANY
14 SUBCONTRACTOR, SHALL BE A WRITTEN AGREEMENT TO THAT EFFECT
15 SIGNED BY ALL THOSE WHO, UNDER THE CONTRACT, HAVE AN ADVERSE
16 INTEREST TO THE SUBCONTRACTOR'S ALLEGATION.

17 * * *

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