

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1495 Session of 2012

INTRODUCED BY WARD, BAKER, EARLL, WAUGH, SOLOBAY, FOLMER, ALLOWAY, McILHINNEY, EICHELBERGER, FONTANA, FERLO, SMUCKER, MENSCH AND RAFFERTY, MAY 31, 2012

SENATOR GORDNER, LABOR AND INDUSTRY, AS AMENDED, OCTOBER 1, 2012

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 AND PRIORITY OF LIEN and for discharge OR
6 REDUCTION of 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 301 of the act of August 24, 1963
10 (P.L.1175, No.497), known as the Mechanics' Lien Law of 1963, is
11 amended to read:



12 SECTION 1. SECTION 201 OF THE ACT OF AUGUST 24, 1963
13 (P.L.1175, NO.497), KNOWN AS THE MECHANICS' LIEN LAW OF 1963, IS
14 AMENDED BY ADDING A DEFINITION TO READ:



15 SECTION 201. DEFINITIONS.--THE FOLLOWING WORDS, TERMS AND
16 PHRASES WHEN USED IN THIS ACT SHALL HAVE THE MEANING ASCRIBED TO
17 THEM IN THIS SECTION, EXCEPT WHERE THE CONTEXT CLEARLY INDICATES
18 A DIFFERENT MEANING:

19 * * *

1 (15) "COSTS OF CONSTRUCTION" MEANS ALL COSTS, EXPENSES AND
2 REIMBURSEMENTS PERTAINING TO ERECTION, CONSTRUCTION, ALTERATION,
3 REPAIR, MANDATED OFF-SITE IMPROVEMENTS, GOVERNMENT IMPACT FEES
4 AND SOFT COSTS, INCLUDING, BUT NOT LIMITED TO, COSTS, EXPENSES
5 AND REIMBURSEMENTS IN THE NATURE OF TAXES, INSURANCE, BONDING,
6 INSPECTIONS, SURVEYS, TESTING, PERMITS, LEGAL FEES, ARCHITECT
7 FEES, ENGINEERING FEES, CONSULTING FEES, ACCOUNTING FEES,
8 MANAGEMENT FEES, UTILITY FEES, TENANT IMPROVEMENTS, LEASING
9 COMMISSIONS, PAYMENT OF PRIOR LOANS OR MORTGAGES, MORTGAGE
10 ORIGINATION FEES AND COMMISSIONS, FINANCE COSTS, CLOSING FEES,
11 RECORDING FEES, TITLE INSURANCE OR ESCROW FEES, OR ANY SIMILAR
12 OR COMPARABLE COSTS, EXPENSES OR REIMBURSEMENTS RELATED TO AN
13 IMPROVEMENT, MADE OR INTENDED TO BE MADE, TO THE PROPERTY. FOR
14 PURPOSES OF THIS DEFINITION, REIMBURSEMENT INCLUDES ANY SUCH
15 DISBURSEMENTS MADE TO THE BORROWER, ANY PERSON ACTING FOR THE
16 BENEFIT OR ON BEHALF OF THE BORROWER, OR TO AN AFFILIATE OF THE
17 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; and

5 (2) the property is or is intended to be used as the
6 residence of the owner or tenant.

7 SECTION 3. SECTION 508(C) OF THE ACT, AMENDED JUNE 29, 2006 ←
8 (P.L.210, NO.52), IS AMENDED TO READ:

9 SECTION 508. PRIORITY OF LIEN.--THE LIEN OF A CLAIM FILED
10 UNDER THIS ACT SHALL TAKE EFFECT AND HAVE PRIORITY AS FOLLOWS:

11 * * *

12 (C) ANY LIEN OBTAINED UNDER THIS ACT BY A CONTRACTOR OR
13 SUBCONTRACTOR SHALL BE SUBORDINATE TO THE FOLLOWING:

14 (1) A PURCHASE MONEY MORTGAGE AS DEFINED IN 42 PA.C.S. §
15 8141(1) (RELATING TO TIME FROM WHICH LIENS HAVE PRIORITY).

16 (2) AN OPEN-END MORTGAGE AS DEFINED IN 42 PA.C.S. § 8143(F)
17 (RELATING TO OPEN-END MORTGAGES), [THE PROCEEDS OF WHICH ARE
18 USED TO PAY ALL OR PART OF THE COST OF COMPLETING ERECTION,
19 CONSTRUCTION, ALTERATION OR REPAIR OF THE MORTGAGED PREMISES
20 SECURED BY THE OPEN-END MORTGAGE.] WHERE AT LEAST TWENTY-FIVE
21 PERCENT (25%) OF THE PROCEEDS ARE INTENDED TO PAY OR ARE USED TO
22 PAY ALL OR PART OF THE COSTS OF CONSTRUCTION.

23 (3) THE REFINANCE OR MODIFICATION OF A PURCHASE MONEY
24 MORTGAGE AS SET FORTH IN PARAGRAPH (1) OR OPEN-END MORTGAGE AS
25 SET FORTH IN PARAGRAPH (2), NOTWITHSTANDING THAT:

26 (I) THE NEW PRINCIPAL AMOUNT OF THE MORTGAGE MAY EXCEED THE
27 STATED AMOUNT OF THE ORIGINAL MORTGAGE; OR

28 (II) ADVANCES MADE UNDER THE MORTGAGE MAY BE USED FOR
29 PURPOSES UNRELATED TO THE COSTS OF CONSTRUCTION.

30 Section 2 4. Section 510 heading of the act is amended and ←

1 the section is amended by adding a subsection to read:

2 Section 510. Discharge of Lien [on Payment into Court or
3 Entry of Security] OR REDUCTION OF LIEN.-- ←

4 * * *

5 ~~(f) Residential property. A claim filed under this act with~~ ←

6 (F) RESIDENTIAL PROPERTY. ←

7 (1) A CLAIM FILED UNDER THIS ACT WITH respect to an
8 improvement to a residential property subject to section 301(b)
9 shall, upon petition or motion to the court by the owner or a
10 party in interest, be discharged as a lien against the property
11 when: ←

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

14 ~~(2) the lien shall~~ WHEN THE OWNER OR TENANT HAS PAID THE ←
15 FULL CONTRACT PRICE TO THE CONTRACTOR.

16 (2) WHERE THE OWNER OR TENANT HAS PAID A SUM TO THE
17 CONTRACTOR WHICH IS LESS THAN THE SUM OF THE FULL CONTRACT
18 PRICE, A CLAIM FILED UNDER THIS ACT WITH RESPECT TO AN
19 IMPROVEMENT TO A RESIDENTIAL PROPERTY SUBJECT TO SECTION 301(B),
20 SHALL UPON PETITION OR MOTION TO THE COURT BY THE OWNER OR A
21 PARTY IN INTEREST CAUSE THE LIEN TO be reduced to the amount of
22 the unpaid contract price owed by the owner or tenant to the
23 contractor.

24 SECTION 5. THE AMENDMENT OF SECTIONS 301 AND 510 OF THE ACT ←
25 SHALL APPLY TO ALL MECHANICS' LIENS PERFECTED AFTER DECEMBER 31,
26 2012.

27 ~~Section 3. This act shall take effect in 60 days.~~ ←

28 SECTION 6. THIS ACT SHALL TAKE EFFECT IMMEDIATELY. ←