

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 145 Session of 2013

INTRODUCED BY WARD, WAUGH, MENSCH, ERICKSON, ALLOWAY, BAKER, FONTANA, EICHELBERGER, BOSCOLA, VULAKOVICH, FARNESE, FERLO, SOLOBAY, BRUBAKER AND FOLMER, JANUARY 15, 2013

REFERRED TO LABOR AND INDUSTRY, JANUARY 15, 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 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 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
 18 reimbursements pertaining to erection, construction, alteration,
 19 repair, mandated off-site improvements, government impact fees

1 and soft costs, including, but not limited to, costs, expenses
2 and reimbursements in the nature of taxes, insurance, bonding,
3 inspections, surveys, testing, permits, legal fees, architect
4 fees, engineering fees, consulting fees, accounting fees,
5 management fees, utility fees, tenant improvements, leasing
6 commissions, payment of prior loans or mortgages, mortgage
7 origination fees and commissions, finance costs, closing fees,
8 recording fees, title insurance or escrow fees, or any similar
9 or comparable costs, expenses or reimbursements related to an
10 improvement, made or intended to be made, to the property. For
11 purposes of this definition, reimbursement includes any such
12 disbursements made to the borrower, any person acting for the
13 benefit or on behalf of the borrower, or to an affiliate of the
14 borrower.

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

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

17 (a) General Rule. Except as provided under subsection (b),

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

27 (b) Subcontractor. A subcontractor does not have the right
28 to a lien with respect to an improvement to a residential
29 property if:

30 (1) the owner or tenant paid the full contract price to the

1 contractor; and

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

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

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

8 * * *

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

11 (1) A purchase money mortgage as defined in 42 Pa.C.S. §
12 8141(1) (relating to time from which liens have priority).

13 (2) An open-end mortgage as defined in 42 Pa.C.S. § 8143(f)
14 (relating to open-end mortgages), [the proceeds of which are
15 used to pay all or part of the cost of completing erection,
16 construction, alteration or repair of the mortgaged premises
17 secured by the open-end mortgage.] where at least twenty-five
18 percent (25%) of the proceeds are intended to pay or are used to
19 pay all or part of the costs of construction.

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

23 (i) the new principal amount of the mortgage may exceed the
24 stated amount of the original mortgage; or

25 (ii) advances made under the mortgage may be used for
26 purposes unrelated to the costs of construction.

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

29 Section 510. Discharge of Lien [on Payment into Court or
30 Entry of Security] or Reduction of Lien.--

1 * * *

2 (f) Residential Property.

3 (1) A claim filed under this act with respect to an
4 improvement to a residential property subject to section 301(b)
5 shall, upon petition or motion to the court by the owner or a
6 party in interest, be discharged as a lien against the property
7 when the owner or tenant has paid the full contract price to the
8 contractor.

9 (2) Where the owner or tenant has paid a sum to the
10 contractor which is less than the sum of the full contract
11 price, a claim filed under this act with respect to an
12 improvement to a residential property subject to section 301(b),
13 shall upon petition or motion to the court by the owner or a
14 party in interest cause the lien to be reduced to the amount of
15 the unpaid contract price owed by the owner or tenant to the
16 contractor.

17 Section 5. The addition of the definition of "costs of
18 construction" in section 201 of the act and the amendment of
19 section 508(c) of the act shall apply to liens perfected on or
20 after the effective date of this section, including liens
21 relating to the construction of an improvement for which the
22 visible commencement of work occurred prior to the effective
23 date of this section, but were not perfected until on or after
24 the effective date of this section.

25 Section 6. This act shall take effect immediately.