

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, FOLMER, BROWNE, McILHINNEY AND BLAKE, JANUARY 15, 2013

AS AMENDED ON THIRD CONSIDERATION, JUNE 11, 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 other CONSTRUCTION-RELATED costs, including, but not limited <--
2 to, costs, expenses and reimbursements in the nature of taxes,
3 insurance, bonding, inspections, surveys, testing, permits,
4 legal fees, architect fees, engineering fees, consulting fees,
5 accounting fees, management fees, utility fees, tenant
6 improvements, leasing commissions, payment of prior filed
7 mechanics¹ OR RECORDED liens or mortgages, INCLUDING MECHANICS <--
8 LIENS, MUNICIPAL CLAIMS, mortgage origination fees and
9 commissions, finance costs, closing fees, recording fees, title
10 insurance or escrow fees, or any similar or comparable costs,
11 expenses or reimbursements related to an improvement, made or
12 intended to be made, to the property. For purposes of this
13 definition, reimbursement includes any such disbursements made
14 to the borrower, any person acting for the benefit or on behalf
15 of the borrower, or to an affiliate of the borrower.

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

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

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

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

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

1 (1) the owner or tenant paid the full contract price to the
2 contractor; and

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

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

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

9 * * *

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

12 (1) A purchase money mortgage as defined in 42 Pa.C.S. §
13 8141(1) (relating to time from which liens have priority).

14 (2) An open-end mortgage as defined in 42 Pa.C.S. § 8143(f)
15 (relating to open-end mortgages), [the proceeds of which are
16 used to pay all or part of the cost of completing erection,
17 construction, alteration or repair of the mortgaged premises
18 secured by the open-end mortgage.] where at least sixty percent
19 (60%) of the proceeds are intended to pay or are used to pay all
20 or part of the costs of construction.

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

24 ~~(i) the new principal amount of the mortgage may exceed the~~
25 ~~stated amount of the original mortgage;~~

26 ~~(ii) advances made under the mortgage may be used for~~
27 ~~purposes unrelated to the costs of construction; or~~

28 ~~(iii) all liens, including mechanics' liens, shall be paid~~
29 ~~at the time of the modification.~~

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

1 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.

6 (1) A claim filed under this act with respect to an
7 improvement to a residential property subject to section 301(b)
8 shall, upon A COURT ORDER ISSUED IN RESPONSE TO A petition or <--
9 motion to the court by the owner or a party in interest, be
10 discharged as a lien against the property when the owner or
11 tenant has paid the full contract price to the contractor.

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

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

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