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### Statutory Outline

#### MECHANICS' LIEN LAW OF 1963

#### TITLE 49 P.S. MECHANICS' LIENS.

#### CHAPTER 6. MECHANICS' LIEN LAW OF 1963

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**Section 49-1101. Short Title.**—This act shall be known and may be cited as the "Mechanics' Lien Law of 1963."

**Section 49-1201. Definitions.**—The following words, terms and phrases when used in this act shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

- (1) **"Improvement"** includes any building, structure or other improvement of whatsoever kind or character erected or constructed on land, together with the fixtures and other personal property used in fitting up and equipping the same for the purpose for which it is intended.
- (2) **"Property"** means the improvement, the land covered thereby and the lot or curtilage appurtenant thereto belonging to the same legal or equitable owner reasonably needed for the general purposes thereof and forming a part of a single business or residential plant.
- (3) **"Owner"** means an owner in fee, a tenant for life or years or one having any other estate in or title to property.
- (4) **"Contractor"** means one who, by contract with the owner, express or implied, erects, constructs, alters or repairs an improvement or any part thereof or furnishes labor, skill or superintendence thereto; or supplies or hauls materials, fixtures, machinery or equipment reasonably necessary for and actually used therein; or any or all of the foregoing, whether as superintendent, builder or materialman. The term also includes an architect or engineer who, by contract with the owner, express or implied, in addition to the preparation of drawings, specifications and contract documents also superintends or supervises any such erection, construction, alteration or repair.
- (5) **"Subcontractor"** means one who, by contract with the contractor, or pursuant to a contract with a subcontractor in direct privity of a contract with a contractor, express or implied, erects, constructs, alters or repairs an improvement or any part thereof; or furnishes labor, skill or superintendence thereto; or supplies or hauls materials, fixtures, machinery or equipment reasonably necessary for and actually used therein; or any or all of the foregoing, whether as superintendent, builder or materialman. The term does not include an architect or engineer who contracts with a contractor or subcontractor, or a person who contracts with a materialman or a person who contracts with a subcontractor not in direct privity of a contract with a contractor.
- (6) **"Claimant"** means a contractor or subcontractor who has filed or may file a claim under this act for a lien against property.
- (7) **"Materials"** means building materials and supplies of all kinds, and also includes fixtures, machinery and equipment reasonably necessary to and incorporated into the improvement.
- (8) **"Completion of the work"** means performance of the last of the labor or delivery of the last of the materials required by the terms of the claimant's contract or agreement, whichever last occurs.
- (9) **"Labor"** includes the furnishing of skill or superintendence.

(10) **“Erection and construction”** means the erection and construction of a new improvement or of a substantial addition to an existing improvement or any adaptation of an existing improvement rendering the same fit for a new or distinct use and effecting a material change in the interior or exterior thereof.

(11) **“Alteration and repair”** means any alteration or repair of an existing improvement which does not constitute erection or construction as defined herein.

(12) **“Erection, construction, alteration or repair”** includes:

(a) Demolition, removal of improvements, excavation, grading, filling, paving and landscaping, when such work is incidental to the erection, construction, alteration or repair;

(b) Initial fitting up and equipping of the improvement with fixtures, machinery and equipment suitable to the purposes for which the erection, construction, alteration or repair was intended; and

(c) Furnishing, excavating for, laying, relaying, stringing and restringing rails, ties, pipes, poles and wires, whether on the property improved or upon other property, in order to supply services to the improvement.

(13) **“Prothonotary”** means the prothonotary of the court or courts of common pleas of the county or counties in which the improvement is situate.

(14) **“Residential property”** means property on which there is or will be constructed a residential building not more than three stories in height, not including any basement level, regardless of whether any portion of that basement is at grade level, or which is zoned or otherwise approved for residential development on which there is or will be constructed a residential building not more than three stories in height, not including any basement level, regardless of whether any portion of that basement is at grade level, planned residential development or agricultural use, or for which a residential subdivision or land development plan or planned residential development plan has received preliminary, tentative or final approval on which there is or will be constructed a residential building not more than three stories in height, not including any basement level, regardless of whether any portion of that basement is at grade level, pursuant to the act of July 31, 1968 (P.L. 805, No. 247),<sup>1</sup> known as the “Pennsylvania Municipalities Planning Code.”

(15) **“Costs of construction”** means all costs, expenses and reimbursements pertaining to erection, construction, alteration, repair, mandated off-site improvements, government impact fees and other construction-related costs, including, but not limited to, costs, expenses and reimbursements in the nature of taxes, insurance, bonding, inspections, surveys, testing, permits, legal fees, architect fees, engineering fees, consulting fees, accounting fees, management fees, utility fees, tenant improvements, leasing commissions, payment of prior filed or recorded liens or mortgages, including mechanics liens, municipal claims, mortgage origination fees and commissions, finance costs, closing fees, recording fees, title insurance or escrow fees, or any similar or comparable costs, expenses or reimbursements related to an improvement made or intended to be made to the property. For purposes of this definition, reimbursement includes any such disbursements made to the borrower, any person acting for the benefit or on behalf of the borrower or to an affiliate of the borrower.

(16) **“Department”** means the Department of General Services.

(17) **“Directory”** means the State Construction Notices Directory in section 501.1.<sup>2</sup>

(18) **“Searchable project”** means a project consisting of the erection and construction, or alteration or repair, of an improvement costing a minimum of one million five hundred thousand dollars (\$1,500,000).

(19) **“Construction notice”** means the following notices related to a searchable project:

(i) a Notice of Commencement;

(ii) a Notice of Furnishing;

(iii) a Notice of Completion; or

(iv) a Notice of Nonpayment.

(20) **“Searchable project owner”** means the owner of record of real property that is a searchable project. The term shall include the owner's agent.

**Section 49-1301. Right to Lien; Amount; Subcontractor. —**

(a) General Rule. Except as provided under subsection (b), every improvement and the estate or title of the owner in the property shall be subject to a lien, to be perfected as herein provided, for the payment of all

debts due by the owner to the contractor or by the contractor to any of his subcontractors for labor or materials furnished in the erection or construction, or the alteration or repair of the improvement, provided that the amount of the claim, other than amounts determined by apportionment under section 306(b) of this act, shall exceed five hundred dollars (\$500).

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

- (1) the owner or tenant paid the full contract price to the contractor;
- (2) the property is or is intended to be used as the residence of the owner or subsequent to occupation by the owner, a tenant of the owner; and
- (3) the residential property is a single townhouse or a building that consists of one or two dwelling units used, intended or designed to be built, used, rented or leased for living purposes. For the purposes of this paragraph, the term "townhouse" shall mean a single-family dwelling unit constructed in a group of three or more attached units in which each unit extends from foundation to roof with a yard or public way on at least two sides.

**Section 49-1302. Presumption as to Use of Materials.**—Materials for use in or upon an improvement placed on or near the property or delivered to the owner pursuant to a contract shall be presumed to have been used therein in the absence of proof to the contrary.

**Section 49-1303. Lien Not Allowed in Certain Cases.**—

(a) Persons other than contractors or subcontractors. No lien shall be allowed in favor of any person other than a contractor or subcontractor, as defined herein, even though such person furnishes labor or materials to an improvement.

(b) Public purpose. No lien shall be allowed for labor or materials furnished for a purely public purpose.

(c) Conveyance prior to lien. If the property is conveyed in good faith and for a valuable consideration prior to the filing of a claim for alterations or repairs, the lien shall be wholly lost.

(d) Leasehold premises. No lien shall be allowed against the estate of an owner in fee by reason of any consent given by such owner to a tenant to improve the leased premises unless it shall appear in writing signed by such owner that the erection, construction, alteration or repair was in fact for the immediate use and benefit of the owner.

(e) Security interests. No lien shall be allowed for that portion of a debt representing the contract price of any materials against which the claimant holds or has claimed a security interest under the Pennsylvania Uniform Commercial Code or to which he has reserved title or the right to reacquire title.

**Section 49-1304. Excessive Curtilage.**—Where an owner objects that a lien has been claimed against more property than should justly be included therein, the court upon petition may, after hearing by deposition or otherwise, limit the boundaries of the property subject to the lien. Failure to raise this objection preliminarily shall not be a waiver of the right to plead the same as a defense thereafter.

**Section 49-1305. Right to Lien in Case of Noncompletion of Work.**—Except in case of destruction by fire or other casualty, where, through no fault of the claimant, the improvement is not completed, the right to lien shall nevertheless exist.

**Section 49-1306. Consolidation or Apportionment of Claims.**—

(a) Consolidation of claims. Where a debt is incurred for labor or materials furnished continuously by the same claimant for work upon a single improvement but under more than one contract, the claimant may elect to file a single claim for the entire debt. In such case, "completion of the work" shall not be deemed to occur with respect to any of the contracts until it has occurred with respect to all of them.

(b) Apportionment of claims. Where a debt is incurred for labor or materials furnished by the same claimant for work upon several different improvements which do not form all or part of a single business or residential

plant, the claimant shall file separate claims with respect to each such improvement, with the amount of each claim determined by apportionment of the total debt to the several improvements, and in such case, the amount of each separate claim may be less than five hundred dollars (\$500), provided that the total debt exceeds five hundred dollars (\$500). In no other case shall an apportioned claim be allowed.

**Section 49-1307. Removal or Detachment of Improvement Subject to Claim.—**

(a) Removal prohibited; Effect.--No improvement subject to the lien of a claim filed in accordance with this act shall be removed or detached from the land except pursuant to title obtained at a judicial sale or by one owning the land and not named as a defendant. Any improvement otherwise removed shall remain liable to the claim filed, except in the hands of a purchaser for value.

(b) Restraint of removal by court.--The court may on petition restrain the removal of the improvement in accordance with the Pennsylvania Rules of Civil Procedure governing actions to prevent waste.

**Section 49-1401. Waiver of Lien by Claimant.—**

(a) Residential Property. A contractor or subcontractor may waive his right to file a claim against residential property by a written instrument signed by him or by any conduct which operates equitably to estop such contractor from filing a claim.

(b) Nonresidential Buildings.

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

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

**Section 49-1402. Waiver by Contractor; Effect on Subcontractor.—**

(a) General rule. To the extent that lien rights may be validly waived by a contractor or subcontractor under section 401(a) or where the contractor has posted a bond under section 401(b)(2), a written contract between the owner and a contractor, or a separate written instrument signed by the contractor, which provides that no claim shall be filed by anyone, shall be binding: but the only admissible evidence thereof, as against a subcontractor, shall be proof of actual notice thereof to him before any labor or materials were furnished by him; or proof that such contract or separate written instrument was filed in the office of the prothonotary prior to the commencement of the work upon the ground or within ten (10) days after the execution of the principal contract or not less than ten (10) days prior to the contract with the claimant subcontractor, indexed in the name of the contractor as defendant and the owner as plaintiff and also in the name of the contractor as plaintiff and the owner as defendant. The only admissible evidence that such a provision has, notwithstanding its filing, been waived in favor of any subcontractor, shall be a written agreement to that effect signed by all those who, under the contract, have an adverse interest to the subcontractor's allegation.

(b) Electronic Indexing. Notwithstanding the indexing requirements of subsection (a) in offices of the prothonotary in which such a written contract between the owner and contractor or separate written instrument is indexed electronically by means of a computer system or similar system such that the names of the contractor and owner are electronically retrievable regardless of whether the parties are designated as plaintiff or defendant, the contract or separate written instrument filed with the office of the prothonotary under subsection (a) may be indexed in the name of the contractor as defendant and the owner as plaintiff or in the name of the contractor as plaintiff and the owner as defendant.

**Section 49-1403. Release as Waiver.—**A release signed by the claimant shall not operate as a waiver of the right to file a claim for labor or materials subsequently furnished, unless it shall appear thereby that such was the express intent of the party signing the same.

**Section 49-1404. Effect of Credit or Collateral.**—The giving of credit or the receipt of evidence of indebtedness or collateral otherwise than as provided in section 303(e)<sup>1</sup> shall not operate to waive the right to file a claim, but where credit is given, no voluntary proceedings shall be taken by the claimant to enforce the lien until the credit period has expired.

**Section 49-1405. Right of Owner to Limit Claims to Unpaid Balance of Contract Price.**—Where the claims of subcontractors exceed in the aggregate the unpaid balance of the contract price specified in the contract between the owner and the contractor, then if the subcontractor has actual notice of the total amount of said contract price and of its provisions for the time or times for payment thereof before any labor or materials were furnished by him, or if such contract or the pertinent provisions thereof were filed in the office of the prothonotary in the time and manner provided in section 402,<sup>1</sup> each claim shall, upon application of the owner, be limited to its pro-rata share of the contract price remaining unpaid, or which should have remained unpaid, whichever is greatest in amount at the time notice of intention to file a claim was first given to the owner, such notice inuring to the benefit of all claimants.

**Section 49-1406. Right of Subcontractor to Rescind after Notice of Contract Provisions.**—Any provisions of a contract between the owner and the contractor, which reduce or impair the rights and remedies of a subcontractor or which postpone the time for payment by the owner to the contractor for a period exceeding four (4) months after completion of the work, shall be grounds for rescission by the subcontractor of his contract with the contractor, unless such subcontractor was given actual notice thereof prior to the time of the making of his contract with the contractor, or the contract or the pertinent provisions thereof were filed in the office of the prothonotary in the time and manner provided by section 402.<sup>1</sup> Such rescission shall not impair the right of the subcontractor to recover by lien or otherwise for work completed prior thereto.

**Section 49-1407. Contracts Not Made in Good Faith; Effect.**—A contract for the improvement made by the owner with one not intended in good faith to be a contractor shall have no legal effect except as between the parties thereto, even though written, signed and filed as provided herein, but such contractor, as to third parties, shall be treated as the agent of the owner.

**Section 49-1501. Formal Notice by Subcontractor as Condition Precedent.**—

(a), (b) Deleted by 2006, June 29, P.L. 210, No. 52, § 3, effective Jan. 1, 2007.

(b.1) Time Period of Formal Notice. No claim by a subcontractor, whether for erection or construction or for alterations or repairs, shall be valid unless, at least thirty (30) days before the same is filed, he shall have given to the owner a formal written notice of his intention to file a claim, except that such notice shall not be required where the claim is filed pursuant to a rule to do so as provided by section 506.<sup>1</sup>

(c) Contents of Formal Notice. The formal notice shall state:

- (1) the name of the party claimant;
- (2) the name of the person with whom he contracted;
- (3) the amount claimed to be due;
- (4) the general nature and character of the labor or materials furnished;
- (5) the date of completion of the work for which his claim is made;
- (6) a brief description sufficient to identify the property claimed to be subject to the lien.

(d) Service of notice. The notice provided by this section may be served by first class, registered or certified mail on the owner or his agent or by an adult in the same manner as a writ of summons in assumpsit, or if service cannot be so made then by posting upon a conspicuous public part of the improvement.

**Section 49-1501.1. State Construction Notices Directory.**—

(a) Directory. The department shall provide for an Internet website to be known as the State Construction

Notices Directory to serve as a standardized Statewide system for filing construction notices.

(b) Operational Date. The directory shall be operational by December 31, 2016. The department may establish a later effective date if it provides sufficient reasons for the delay in the implementation of the directory in a notice to the chairman and minority chairman of the Labor and Industry Committee of the Senate and the chairman and minority chairman of the Labor and Industry Committee of the House of Representatives.

(c) Notification. No later than one hundred twenty (120) days after the implementation of the directory, the department shall publish notice in the Pennsylvania Bulletin advising the public of implementation of the directory and instructions on its use. The department shall place the notice and instructions on its Internet website and take other reasonable measures to inform the general public and the construction industry of the directory and its purpose.

(d) Fees. The following shall apply:

(1) The department shall establish fees for notices filed by the searchable project owner.

(2) Fees under paragraph (1) may not in the aggregate exceed the amount reasonably necessary to implement, operate and maintain the directory.

(e) Publishing of Notices. The directory shall:

(1) Make Notices of Commencement filed under section 501.3(a)<sup>1</sup> available for a searchable project in a job-site specific format. A unique identifying number shall be assigned to each Notice of Commencement that is filed. A notice under this paragraph shall be searchable by searchable project owner name, contractor name, property address and unique identifying number.

(2) Provide copies of the filings of Notice of Furnishing under section 501.3(b) to a searchable project owner who files a notice of commencement under section 501.3(a).

(3) Provide certified hard copy printing of electronic receipts upon request for a filing under section 501.3 of a Notice of Commencement or Notice of Furnishing. The certified hard copy shall include the date, time and content of the individual filing.

(4) List all Notices of Furnishing and Notices of Completion filed with respect to a particular Notice of Commencement.

(5) Provide a verification process to allow persons filing required notices or requests for notices in the directory to confirm the proper indexing and linkage of their filings.

(f) Index. The directory must be primarily indexed by county.

**Section 1501.2. Failure to file Notice of Furnishing.**—A contract for a searchable project shall include written notice that failure to file a Notice of Furnishing under section 501.3(b) will result in the loss of lien rights. The notice shall be as follows:

A subcontractor that fails to file a Notice of Furnishing on the Department of General Services publicly accessible Internet website as required by the act of August 24, 1963 (P.L. 1175, No. 497), known as the Mechanics' Lien Law of 1963, may forfeit the right to file a mechanics lien. It is unlawful for a searchable project owner, searchable project owner's agent, contractor or subcontractor to request, suggest, encourage or require that a subcontractor not file the required notice as required by the Mechanics' Lien Law of 1963.

**Section 1501.3. Notice of Commencement and Notice of Furnishing.**—

(a) Notice of Commencement.

(1) Prior to the commencement of labor, work or the furnishing of materials for a searchable project that may give rise to a mechanics' lien under this act, the searchable project owner or agent of the searchable project owner may file a Notice of Commencement with the directory.

(2) A contractor may act as agent for the searchable project owner and file a Notice of Commencement for the searchable project owner of a searchable project if specifically authorized by contract and the searchable project owner assumes responsibility for the contractor's actions.

(3) The notice must include the following:

(i) Full name, address and e-mail address of the contractor.

(ii) Full name and location of the searchable project.

- (iii) The county in which the searchable project is located.
- (iv) The legal description of the property upon which the improvements are being made, including the tax identification number of each parcel included in the searchable project.
- (v) Full name, address and e-mail address of the searchable project owner of record of the property and the searchable project being constructed.
- (vi) If applicable, the full name, address and e-mail address of a surety for the performance and payment bonds and the bond numbers.
- (vii) The unique identifying number that is assigned to the Notice of Commencement pursuant to section 501.1(e)(1).<sup>1</sup>

(4) The searchable project owner shall also conspicuously post a copy of the Notice of Commencement at the site of a searchable project before physical work commences on the project to include the unique identifying number assigned under section 501.1(e)(1). The searchable project owner shall take reasonable measures to ensure that the Notice of Commencement remains posted at the searchable project site until completion of the project. For the purposes of this paragraph, the term “reasonable measures” means the reposting of notice by the searchable project owner within forty-eight (48) hours after becoming aware of or being notified verbally, in writing or by e-mail that the notice is not posted.

(5) The searchable project owner and the contractor shall make reasonable efforts to ensure that the Notice of Commencement is made part of contract documents provided to all subcontractors awarded work on the searchable project.

(b) Notice of Furnishing. A subcontractor that performs work or services or provides material in furtherance of a searchable project shall comply with the following if a Notice of Commencement has been filed and posted in accordance with subsection (a):

(1) File a Notice of Furnishing with the directory within forty-five (45) days after first performing work or services at the job site or first providing materials to the job site in connection with the searchable project.

(2) The notice under paragraph (1) must contain the following:

- (i) A general description of the labor or materials furnished.
- (ii) Full name and address of the person supplying the services or items under subparagraph (i).
- (iii) Full name and address of the person that contracted for the services or items under subparagraph (i).
- (iv) A description sufficient to identify the searchable project, based on the description in the Notice of Commencement.

(3) The notice under paragraph (1) must be substantially in the following form:

Notice of Furnishing

To:

- (Name of searchable project owner)
- (Address of searchable project owner)
- (Notice of Commencement Number)

Please take notice that the undersigned is performing certain work or labor or furnishing certain materials ..... to (Name and address of other contracting party) in connection with the improvement to the real property located at ..... The labor, work or materials were performed or furnished first, or will be furnished first, on ..... (date).

(Name and Address of Lien Claimant)

By

- (Name and capacity of party signing for lien claimant)
- (Address of Signing Party)
- (Date)

(c) Construction. A subcontractor that fails to substantially comply with this section forfeits the right to file a lien claim.



**Section 1501.4. Notice of Completion for Informational Purposes Only.—**

(a) General Rule. Within forty-five (45) days of the actual completion of work on a searchable project, a searchable project owner may file a Notice of Completion in the directory to be indexed with the original Notice of Commencement. The notice shall be transmitted via the directory to all subcontractors who have filed Notices of Furnishing. For the purposes of this paragraph, the term “actual completion of work” shall mean the following:

(1) The issuance of an occupancy permit to the searchable project owner, or his agent, and the acceptance by the searchable project owner, or his agent, of the work accompanied by cessation of all work on the searchable project; or

(2) The cessation of all work on the searchable project for thirty (30) consecutive days, provided that work is not resumed under the same contract.

(b) Nonpayment. Subcontractors who have not received full payment for their work, or for goods or services, on a searchable project may file a Notice of Nonpayment with the searchable project owner or the searchable project owner's agent or the subcontractor in the directory for informational purposes only. The failure to file a Notice of Nonpayment by a subcontractor shall not be construed to affect or limit their rights under this act. Filing of a Notice of Nonpayment shall not relieve a subcontractor from complying with other written notice requirements under this act.

(c) Court. A notice of completion shall not be considered by a court in determining compliance with timing requirements under this act or in determining the completion date for a timing purpose, including limitation periods or warranty obligations.

(d) Effect. The filing of a notice of completion is purely precatory and is not dispositive of any relationship among the parties.

**Section 1501.5. Notice.—**

(a) Notification. The directory shall provide notification of a filing of a notice under sections 501.3 and 501.4<sup>1</sup> to a person who requests notification of the filing of a notice for a searchable project.

(b) Requests. A person who requests the directory to provide the person with official copies of notification of the filing of a notice for a searchable project shall:

(1) provide an e-mail address, mailing address or telefax number to which notification may be sent; and

(2) be responsible for the accuracy of the e-mail address, mailing address or telefax number.

(c) Requirements. A person shall be considered to have requested notification under this section if the person files, with respect to the same searchable project that relates to the required notice, any of the following:

(1) A Notice of Commencement.

(2) A Notice of Furnishing.

(3) A Notice of Completion.

(d) Notification requirements. Notification requirements shall be fulfilled by the directory by sending the official notification to the e-mail address, mailing address or telefax number that the person provides.

(e) Official notification. A person filing a Notice of Commencement, Notice of Furnishing, Notice of Completion or related notice must verify the accuracy of information entered into the directory, regardless of whether the person files electronically, by alternate means or through a third party.

(f) Information. Each notice or other document submitted to the directory must contain:

(1) The name of the county in which the searchable project property to which the notice or other document applies is located.

(2) The tax identification number of each parcel included in the project property.

(3) The number of the building permit for the searchable project on the project property.

**Section 49-1501.6 Prohibition.—**

(a) Unlawful Acts. It shall be unlawful for a searchable project owner or the searchable project owner's agent, a contractor or subcontractor to suggest, request, encourage or require that a subcontractor not file a Notice of Furnishing as a condition of entering into, continuing, receiving or maintaining a contract for work or furnishing

of materials on a searchable project. A person that violates this subsection commits a misdemeanor of the second degree.

(b) Lien by subcontractor. A subcontractor has the right to file a lien for the work and services performed and the materials furnished under this act, irrespective of compliance with section 501.3(b),<sup>1</sup> if the subcontractor proves that the failure to comply with section 501.3(b) was directly the result of a searchable project owner, the searchable project owner's agent or the contractor violating subsection (a).

(c) Cause of Action. A subcontractor shall have a civil cause of action if the subcontractor proves that failure to comply with section 501.3(b) was the result of a searchable project owner or searchable project owner's agent, or a contractor or subcontractor, violating subsection (a) in order to recover damages for any loss or injury sustained as a result of the violation from a person who commits a violation. The civil cause of action shall only be applied to the entity that violates subsection (a). A court of competent jurisdiction may award to the subcontractor actual damages arising from the violation, reasonable attorneys fees and court costs.

(d) Abuse. A person abuses the directory if the person files a notice in the directory:

(1) Without a good faith reason to do so.

(2) With the intent to exact more payment than is due from the searchable project owner or other party.

(3) To obtain an unjustified advantage or benefit.

(e) Damages. A person who abuses the directory under subsection (d) shall be liable for the amount of actual damages or \$2,000, whichever is greater.

**Section 49-1502. Filing and Notice of Filing of Claim.—**

(a) Perfection of Lien. To perfect a lien, every claimant must:

(1) file a claim with the prothonotary as provided by this act within six (6) months after the completion of his work; and

(2) serve written notice of such filing upon the owner within one (1) month after filing, giving the court, term and number and date of filing of the claim. An affidavit of service of notice, or the acceptance of service, shall be filed within twenty (20) days after service setting forth the date and manner of service. Failure to serve such notice or to file the affidavit or acceptance of service within the times specified shall be sufficient ground for striking off the claim.

(b) Venue; property in more than one county. Where the improvement is located in more than one county, the claim may be filed in any one or more of said counties, but shall be effective only as to the part of the property in the county in which it has been filed.

(c) Manner of service. Service of the notice of filing of claim shall be made by an adult in the same manner as a writ of summons in assumpsit, or if service cannot be so made then by posting upon a conspicuous public part of the improvement.

**Section 49-1503. Contents of Claim.—**The claim shall state:

(1) the name of the party claimant, and whether he files as contractor or subcontractor;

(2) the name and address of the owner or reputed owner;

(3) the date of completion of the claimant's work;

(4) if filed by a subcontractor, the name of the person with whom he contracted, and the dates on which preliminary notice, if required, and of formal notice of intention to file a claim was given;

(5) if filed by a contractor under a contract or contracts for an agreed sum, an identification of the contract and a general statement of the kind and character of the labor or materials furnished;

(6) in all other cases than that set forth in clause (5) of this section, a detailed statement of the kind and character of the labor or materials furnished, or both, and the prices charged for each thereof;

(7) the amount or sum claimed to be due; and

(8) such description of the improvement and of the property claimed to be subject to the lien as may be reasonably necessary to identify them.

**Section 49-1504. Amendment of Claim.**—A claim may be amended from time to time without prejudice to intervening rights by agreement of the parties or by leave of court, except that no amendment shall be permitted after the time for filing a claim has expired which undertakes to:

- (1) substitute a different property than that described in the claim; or
- (2) substitute a different party with whom the claimant contracted; or
- (3) increase the aggregate amount of the claim.

**Section 49-1505. Procedure for Contesting Claim; Preliminary Objections.**—Any party may preliminarily object to a claim upon a showing of exemption or immunity of the property from lien, or for lack of conformity with this act. The court shall determine all preliminary objections. If an issue of fact is raised in such objections, the court may take evidence by deposition or otherwise. If the filing of an amended claim is allowed, the court shall fix the time within which it shall be filed. Failure to file an objection preliminarily shall not constitute a waiver of the right to raise the same as a defense in subsequent proceedings.

**Section 49-1506. Rule to File Claim.**—

(a) Entry of rule; effect. At any time after the completion of the work by a subcontractor, any owner or contractor may file a rule or rules, as of course, in the court in which said claim may be filed; requiring the party named therein to file his claim within thirty (30) days after notice of said rule or be forever barred from so doing. The rule shall be entered by the prothonotary upon the judgment index and in the mechanics' lien docket. Failure to file a claim within the time specified shall operate to wholly defeat the right to do so. If a claim be filed, it shall be entered as of the court, term and number of the rule to file the same.

(b) Effect of claim filed by subcontractor. Where a claim is filed by a subcontractor in response to such rule, the owner may give written notice thereof to the contractor in the manner set forth by section 602 of this act, and upon the giving of such notice the owner may avail himself of the remedies provided by sections 601 and 604 of this act and the contractor shall be subject to the duties set forth by section 603 of this act.

**Section 49-1507. Indexing Claims, et cetera.**—The prothonotary shall enter the claim, verdict and judgment upon the judgment index and mechanics' lien docket against the owner. When a claim, verdict or judgment is stricken, reversed or satisfied, or the name of a defendant is stricken, or an action upon the claim to reduce it to judgment is discontinued, or judgment is entered thereon in favor of the defendant, a note shall be made on the judgment index.

**Section 49-1508. Priority of Lien.**—The lien of a claim filed under this act shall take effect and have priority as follows:

- (a) Except as set forth in subsection (c), in the case of the erection or construction of an improvement, as of the date of the visible commencement upon the ground of the work of erecting or constructing the improvement.
- (b) Except as set forth in subsection (c), in the case of the alteration or repair of an improvement, as of the date of the filing of the claim.
- (c) Any lien obtained under this act by a contractor or subcontractor shall be subordinate to the following:
  - (1) A purchase money mortgage as defined in 42 Pa.C.S. § 8141(1) (relating to time from which liens have priority).
  - (2) An open-end mortgage as defined in 42 Pa.C.S. § 8143(f) (relating to open-end mortgages), where at least sixty percent (60%) of the proceeds are intended to pay or are used to pay all or part of the costs of construction.

**Section 49-1509. Effect of Forfeiture of Leasehold.**—The lien of every claim shall bind only the interest of the party named as owner of the property at the time of the contract or acquired subsequently by him, but no forfeiture or surrender of a leasehold, or tenancy, whether before or after the filing of the claim, shall operate to prejudice its lien against the fixtures, machinery or other similar property.

**Section 49-1510. Discharge of Lien or Reduction of Lien.—**

(a) Cash deposit. Any claim filed hereunder shall, upon petition of the owner or any party in interest, be discharged as a lien against the property whenever a sum equal to the amount of the claim shall have been deposited with the court in said proceedings for application to the payment of the amount finally determined to be due.

(b) Pro-rata allocation. In any case where the claim or claims are limited in the manner and to the extent provided in section 405,<sup>1</sup> the owner may deposit with the court in separate proceedings a sum equal to the total allowable amount of said claims determined in accordance with said section, whereupon the court, on petition of such owner, shall order all of said claims discharged as liens against the property, and the sum so deposited applied pro rata to the payment thereof in the amounts finally determined to be due.

(c) Refund of excess. Any excess of funds paid into court as aforesaid, over the amount of the claim or claims determined and paid therefrom, shall be refunded to the owner or party depositing same upon application for the same.

(d) Security in lieu of cash. In lieu of the deposit of any such sum or sums, approved security may be entered in such proceedings in double the amount of the required deposit, or in such lesser amount as the court shall approve, which, however, shall in no event be less than the full amount of such required deposit; and the entry of such security shall entitle the owner to have such liens discharged to the same effect as though the required sums had been deposited in court as aforesaid.

(e) Authority of court. The court, upon petition filed by any party, and after notice and hearing, may upon cause shown:

- (1) require the increase or decrease of any deposit or security;
- (2) strike off security improperly filed;
- (3) permit the substitution of security and enter an exoneration of security already given.

(f) Residential Property.

(1) A claim filed under this act with respect to an improvement to a residential property subject to section 301(b)<sup>2</sup> shall, upon a court order issued in response to a petition or motion to the court by the owner or a party in interest, be discharged as a lien against the property when the owner or tenant has paid the full contract price to the contractor.

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

**Section 49-1601. Owner's Right to Retain Funds of Contractor.—**An owner who has been served with a notice of intention to file or a notice of the filing of a claim by a subcontractor may retain out of any moneys<sup>1</sup> due or to become due to the contractor named therein, a sum sufficient to protect the owner from loss until such time as the claim is finally settled, released, defeated or discharged.

**Section 49-1602. Notice to Contractor of Claim.—**

(a) An owner served with a notice as provided by section 601<sup>1</sup> may, and if he has retained any funds due the contractor shall, give written notice thereof to the contractor named.

(b) The notice shall state:

- (1) the name of the subcontractor, the amount of the claim and the amount withheld, if any, by the owner;
- (2) that unless the contractor within thirty (30) days from service of the notice settles, undertakes to defend, or secures against the claim as provided by section 603,<sup>2</sup> the owner may avail himself of the remedies provided by section 604.<sup>3</sup>

(c) The notice may be given by the owner or his agent to the contractor personally, or to the contractor's manager, executive or principal officer or other agent, or if none of these persons can be found, by sending a copy of the notice by first class, registered or certified mail to the contractor at his last known office address.

**Section 49-1603. Contractor's Duties on Receipt of Notice.**—Upon service of the notice provided by section 602, the contractor shall within thirty (30) days from the contractor's receipt of notice:

- (1) settle or discharge the claim of the subcontractor and furnish to the owner a written copy of a waiver, release or satisfaction thereof, signed by the claimant; or
- (2) agree in writing to undertake to defend against said claim, and if the owner has not retained sufficient funds to protect him against loss, furnish the owner additional approved security to protect the owner from loss in the event the defense should be abandoned by the contractor or should not prevail; or
- (3) furnish to the owner approved security in an amount sufficient to protect the owner from loss on account of said claim.

**Section 49-1604. Additional Remedies of Owner.**—Should the contractor fail to settle, discharge or defend or secure against the claim, as provided by this act, the owner may:

- (1) pay the claim of the subcontractor, upon which payment the owner shall be subrogated to the rights of the subcontractor against the contractor together with any instrument or other collateral security held by the subcontractor for the payment thereof; or
- (2) undertake a defense against said claim in which case the contractor shall be liable to the owner for all costs, expenses and charges incurred in such defense, including reasonable attorneys' fees, whether said defense be successful or not, but the undertaking of such defense shall not affect the right of the owner to retain funds of the contractor under section 601 until the subcontractor's<sup>1</sup> claim is finally defeated or discharged.

**Section 49-1701. Procedure to Obtain Judgment.**—

(a) Practice and Procedure. The practice and procedure to obtain judgment upon a claim filed shall be governed by the Rules of Civil Procedure promulgated by the Supreme Court.

(b) Time for Commencing Action. An action to obtain judgment upon a claim filed shall be commenced within two (2) years from the date of filing unless the time be extended in writing by the owner.

(c) Venue; Property in More Than One County. Where a claim has been filed in more than one county as provided by section 502(b),<sup>1</sup> proceedings to obtain judgment upon all the claims may be commenced in any of the counties and the judgment shall be res adjudicata as to the merits of the claims properly filed in the other counties. The judgment may be transferred to such other county by filing of record a certified copy of the docket entries in the action and a certification of the judgment and amount, if any. The prothonotary of the court to which the judgment has been transferred shall forthwith index it upon the judgment index and enter it upon the mechanics' lien docket.

(d) Limitation on Time of Obtaining Judgment. A verdict must be recovered or judgment entered within five (5) years from the date of filing of the claim. Final judgment must be entered on a verdict within five (5) years. If a claim is not prosecuted to verdict or judgment, as provided above, the claim shall be wholly lost: Provided, however, That in either case, if a complaint has been or shall be filed in the cause and if the cause has been or shall be at issue, all time theretofore or thereafter consumed in the presentation and disposition of all motions and petitions of defendants, substituted defendants and intervenors in the cause, and in any appeal or appeals from any order in the cause, from the date of perfection of such appeal to the date of return of the certiorari from the appellate court to the court of common pleas, shall be excluded in the computation of the five (5) year period herein provided.

(e) Defense to Action on Claim. A setoff arising from the same transaction or occurrence from which the claim arose may be pleaded but may not be made the basis of a counterclaim.

**Section 49-1702. Effect of Judgment on Right to Personal Action.**—Nothing in this act shall alter or affect the right of a claimant to proceed in any other manner for the collection of his debt.

**Section 49-1703. Appeal from Judgment.**—From any judgment, order or decree entered by the court of common pleas under the provisions of this act or from any refusal to open a judgment entered by default, an appeal may be taken.

**Section 49-1704. Satisfaction of Claims; Penalty for Failure to Satisfy.**—It shall be the duty of a claimant upon payment, satisfaction or other discharge of the claim, verdict or judgment to enter satisfaction thereof upon the record upon payment of the costs of same. Upon failure to do so within thirty (30) days after a written request to satisfy, the court upon petition of any party in interest may order the claim, verdict or judgment satisfied and the claimant shall be subject to a penalty in favor of the party aggrieved in such sum as the court in the petition proceedings shall determine to be just, but not exceeding the amount of the claim.

**Section 49-1705. Revival of Judgment.**—It shall be the duty of a claimant upon payment, satisfaction or other discharge of the claim, verdict or judgment to enter satisfaction thereof upon the record upon payment of the costs of same. Upon failure to do so within thirty (30) days after a written request to satisfy, the court upon petition of any party in interest may order the claim, verdict or judgment satisfied and the claimant shall be subject to a penalty in favor of the party aggrieved in such sum as the court in the petition proceedings shall determine to be just, but not exceeding the amount of the claim.

**Section 49-1706. Execution upon Judgment.**—

(a) Judgment Essential to Execution. No execution shall issue against the property subject to a claim except after judgment shall have been obtained upon the claim, and within five (5) years from the date of such judgment or a revival thereof.

(b) Conformity to Rules of Civil Procedure. The practice and procedure relating to execution shall be governed by the Pennsylvania Rules of Civil Procedure relating to execution.

(c) Division of Tract. Where only a part of a single tract is subject to the lien of a mechanic's claim, and such part cannot be sold without prejudice or injury to the whole, the court on petition of the owner, claimant or any person in interest may order the entire tract sold and shall equitably distribute the proceeds of sale according to the relative value of the part bound by and that free of the claim. The court may determine the matter itself and for that purpose may receive evidence by deposition or otherwise, or may appoint an auditor to hear the evidence and report to the court.

**Section 49-1801. Severability.**—If any provision of this act or the application thereof to any person or circumstance is held invalid, the remainder of this act, and the application of such provision to other persons or circumstances, shall not be affected thereby and to this end the provisions of this act are declared to be severable.

**Section 49-1802. Effective Date.**—This act shall take effect on the first day of January, 1964, but shall not apply to liens filed prior to said date except with respect to the practice and procedure prescribed by Article VII of this act.

**Section 49-1901. Specific Repeal.**—The following act is repealed absolutely.

The act of June 4, 1901 (P.L. 431), entitled "An act defining the rights and liabilities of parties to, and regulating the effect of, contracts for work and labor to be done, and labor or materials to be furnished, to any building, bridge, wharf, dock, pier, bulkhead, vault, subway, tramway, tollroad, conduit, tunnel, mine, coal-breaker, flume, pump, screen, tank, derrick, pipe-line, aqueduct, reservoir, viaduct, telegraph, telephone, railway or railroad line; canal millrace; works for supplying water, heat, light, power, cold air, or any other substance furnished to the public; well for the production of gas, oil or other volatile or mineral substance; or other structure or improvement, of whatsoever kind or character the same may be; providing remedies for the recovery of debts due by reason of such contracts, and repealing, consolidating and extending existing laws in relation thereto.

**Section 49-1902. General Repeal.**—All other acts and parts of acts are repealed in so far as they are inconsistent herewith.

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