

No. 2009-34

AN ACT

SB 563

Amending the act of August 24, 1963 (P.L.1175, No.497), entitled "An act to codify, amend, revise and consolidate the laws relating to mechanics' liens," further providing for definitions, for waiver of lien by claimant and for waiver by contractor and effect on subcontractor.

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

Section 1. Sections 201(14), 401 and 402(a) of the act of August 24, 1963 (P.L.1175, No.497), known as the Mechanics' Lien Law of 1963, amended June 29, 2006 (P.L.210, No.52), are amended to read:

Section 201. 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:

* * *

(14) "**Residential [building] 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), known as the "Pennsylvania Municipalities Planning Code."

Section 401. Waiver of Lien by Claimant.—

(a) Residential **[Buildings] Property**.

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

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

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

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

(b) Nonresidential Buildings.

(1) Except as provided in subsection [(a)(1)] (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)(2)] (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 402. Waiver by Contractor; Effect on Subcontractor.—

(a) General Rule. **[Provided]**¹ *To the extent that* lien rights may be *validly* waived [as set forth under section 401] *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.

* * *

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

APPROVED—The 11th day of August, A.D. 2009.

EDWARD G. RENDELL

¹“(a) General Rule.—[Provided]” in enrolled bill.