

SENATE No. 2512

The Commonwealth of Massachusetts

In the Year Two Thousand Ten

An Act relative to a lien for architects, engineers, land surveyors, and site professionals.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 2A of chapter 254 of the General Laws, as appearing in the 2008
2 Official Edition, is hereby amended by inserting after the definition of "written contract", in lines
3 6 and 7, the following two definitions:-

4 “Design professional”, an architect, landscape architect, professional engineer, licensed
5 site professional, or land surveyor who is licensed or registered as such in the Commonwealth of
6 Massachusetts, and any corporation, partnership, limited liability company, or other legal entity
7 that is authorized under the laws of the Commonwealth of Massachusetts to practice and/or to
8 hold itself out as practicing any of the foregoing professions.

9 “Professional services”, services that are customarily and legally performed by or under
10 the supervision or responsible control of design professionals in the course of their professional
11 practice, including without limitation, programming, planning, surveying, site investigation,
12 analysis, assessment, design, preparation of drawings and specifications, and construction
13 administration services.

SECTION 2. Said chapter 254, as so appearing, is hereby further amended by inserting after Section 2B the following two sections:-

Section 2C. A design professional entering into a written contract with the owner of any interest in real property or with any person acting for, on behalf of, or with the consent of such owner, for the provision of professional services relating to the proposed or actual erection, alteration, repair or removal of a building, structure, or other improvement to real property, shall have a lien upon such real property, land, building, structure or improvement owned by the party with whom or on behalf of whom or with the consent of whom the contract was entered into, as appears of record on the date when notice of said contract is filed or recorded in the registry of deeds for the county or district where such land lies, to secure the payment of all amounts due or to become due to the design professional under such contract. Said notice shall be in substantially the following form:

Notice is hereby given that by virtue of a written contract dated _____, between _____, owner, and _____, design professional, said design professional is to furnish or has furnished professional services relating to the proposed or actual erection, alteration, repair or removal of a building, structure, or other improvement on a lot of land or other interest in real property described as follows:

(INSERT DESCRIPTION)

Such design professional may file or record the notice of contract at any time after the execution of the written contract whether or not the professional services under such written contract have been commenced or completed, and whether or not the erection, alteration, repair or removal of the building, structure, or other improvement to which such professional services

relate has been, or is ever, commenced or completed, but not later than the earlier of: (i) 60 days after filing or recording of the notice of substantial completion under section two A, or (ii) 90 days after such design professional or any person by, through or under him last performed professional services.

Section 2D. Any person who furnishes professional services under a written subcontract with a design professional who is entitled to enforce a lien under section 2C and whose engagement has been approved in writing by or on behalf of the owner of the interest in land to which lien relates, may file or record in the registry of deeds for the county or district where such land lies a notice of his contract in substantially the following form:

Notice is hereby given that by virtue of a written subcontract dated _____, between _____, design professional, and _____, said _____ is to furnish or has furnished professional services relating to the proposed or actual erection, alteration, repair or removal of a building, structure, or other improvement on a lot of land or other interest in real property described as follows, which services are a portion of the services furnished or to be furnished by said design professional under a written prime contract with _____, owner:

(INSERT DESCRIPTION)

As of the time of this notice, an account of said subcontract is as follows:

1. estimated or agreed contract price: _____
2. approved extra or additional services: _____
3. payments received: _____

56 The regular mailing address of the subcontract party recording or filing this notice is as
57 follows: _____.

58 Such notice of contract may be filed or recorded at any time after the execution of the
59 written subcontract whether or not the professional services under such written subcontract have
60 been commenced or completed, and whether or not the construction, alteration, repair or removal
61 of the building, structure, or other improvement to which such professional services relate has
62 been, or is ever, commenced or completed, but not later than the earlier of: (i) 60 days after filing
63 or recording of the notice of substantial completion under section two A, or (ii) 90 days after the
64 last day a design professional who is entitled to enforce a lien under section 2 or section 2C or
65 any person claiming by, through, or under him performed professional services for the project .

66 Upon filing or recording a notice, as hereinabove provided, and giving actual notice of
67 such filing to the owner, the person filing such notice shall have a lien upon the property, land,
68 building, structure or improvement owned by the party who entered into the original prime
69 contract as appears of record at the time of such filing, to secure the payment of all amounts due
70 or to become due to such person under his subcontract, regardless of the amount stated in the
71 notice of contract. Such lien shall not exceed the amount due or to become due under the
72 original prime contract as of the date actual notice of filing was given to the owner as
73 hereinabove provided.

74 SECTION 3. The first sentence of section 4 of chapter 254, as so appearing, is hereby
75 amended by inserting after the word "tools," in line 3, the following words:- "or who performs
76 professional services,"

SECTION 4. Said section 4 of chapter 254, as so appearing, is hereby amended by inserting after the word "tools," in line 12, the following words:- "or is to perform or has performed professional services"

SECTION 5. Section 4 of chapter 254, as so appearing, is hereby amended by inserting after the word "tools," in line 38, the following words:- "or performed professional services."

SECTION 6. Section 4 of chapter 254, as so appearing, is hereby amended by inserting after the word "tools," in line 52, the following words:- "and professional services"

SECTION 7. Section 4 of chapter 254, as so appearing, is hereby amended by striking out, in line 70, the word "subcontractor/vendor" and inserting in place thereof the following words:- "subcontractor/vendor/design professional"

SECTION 8. Section 4 of chapter 254, as so appearing, is hereby amended by inserting after the words "tools to," in line 72, the following words:- "or to perform professional services for,"

SECTION 9. Section 5 of the chapter 254, as so appearing, is hereby amended by inserting after the words "or other improvement of real property", in lines 2 and 3, the following words:- "or for professional services relating thereto"

SECTION 10. Section 7 of the said chapter 254, as so appearing, is hereby amended by striking out paragraph (d) and inserting in place thereof the following 2 paragraphs:-

(d) No lien under section 2C or 2D shall avail against a mortgage duly registered or recorded prior to the filing or recording of the notice of contract if and to the extent that such lien relates to professional services performed before such mortgage was registered or recorded. If

and to the extent that such lien relates to professional services performed after such mortgage was registered or recorded, such lien shall avail against such mortgage to the extent of the amount actually advanced or unconditionally committed prior to the filing or recording of the notice of contract.

(e) No lien under section 2, 2C, 2D, or 4 of this chapter shall avail as against a purchaser, other than the owner or person acting for or on behalf of, or with the consent of such owner who entered into the written contract on which the lien is based, whose deed or other instrument of title was duly registered or recorded prior to the filing or recording of such notices under said section 2, 2C, 2D, or 4.

SECTION 11. Section 8 of chapter 254, as so appearing, is hereby amended by inserting after the first sentence the following sentence:- "Liens under sections 2C and 2D shall be dissolved unless a like statement is filed or recorded at the appropriate registry of deeds within 30 days after the last day that a notice of contract may be filed or recorded under the applicable section."

SECTION 12. Section 11 of chapter 254, as so appearing, is hereby amended by inserting after the word "material", in line 6, the following words:- "or professional services"

SECTION 13. Section 13 of chapter 254, as so appearing, is hereby amended by striking out the first 2 sentences and inserting in place thereof the following sentences:-

The rights of an attaching creditor shall not prevail as against a lien under section 1, nor against the claim of a lienor where notice or notices of contract have been filed or recorded in the registry of deeds under sections 2, 2C, 2D, and 4 prior to the recording of the attachment. An attachment recorded prior to the filing or recording of the notice of contract shall prevail against

120 a lien, other than for personal labor, to the extent of the value of the buildings and land as they
121 were at the time when the labor was commenced or the material furnished or professional
122 services were commenced for which the lien is claimed, and in case of a sale under section 18
123 the court shall determine what proportion of the proceeds of the sale, as derived from the value
124 of the property at such time, shall be held subject to the attachment.

125 SECTION 14. Section 15A of chapter 254, as so appearing, is hereby amended by
126 inserting after the word "materials" in line 10, the following words:- "or professional services"

127 SECTION 15. The first sentence of section 21 of chapter 254, as so appearing, is hereby
128 amended by inserting at the end thereof the following words:- ", except that claims of lien
129 creditors under section 2C and 2D shall be paid only after payment in full of the claims of other
130 lien creditors pursuant to this chapter."

131 SECTION 16. Said chapter 254 is hereby further amended by striking out Section 23 and
132 inserting in place thereof the following section:-

133 Section 23. If the person for whom the labor or professional services have been
134 performed or furnished or the material has been furnished dies or conveys away his estate or
135 interest before the commencement of a civil action to enforce a lien, it may be commenced and
136 prosecuted against his heirs or against the persons holding the estate or interest which he had in
137 the land at the time when the labor, professional services or material was performed or furnished.
138 If the action was commenced in the lifetime of such person, it may be prosecuted against his
139 executor, administrator, heirs or assigns as if the estate or interest has been mortgaged to secure
140 the debt.

141 SECTION 17. Section 25 of chapter 254, as so appearing, is hereby amended by inserting
142 after the word “material”, in line 4, the following words:- "or professional services"

143 SECTION 18. Section 32 of chapter 254, as so appearing, is hereby amended by inserting
144 after the word “demolition”, in line 5, the following words:- ", professional services"

145 SECTION 19. Section 33 of chapter 254, as so appearing, is hereby amended by inserting
146 after the words “claiming a lien under section”, in line 3, the following words:- "2C, 2D, or"