

SENATE No. 2084

The Commonwealth of Massachusetts

—
In the Year Two Thousand Twenty-Six
—

SENATE, March 19, 2014.

The committee on Consumer Protection and Professional Licensure to whom was referred the (accompanied by bill, Senate, No. 118) of Thomas P. Kennedy for legislation relative to residential construction contracts., reports recommending that the accompanying bill (Senate, No. 2084).

For the committee,
Thomas P. Kennedy

23 to that period of payment. Before you make the last payment to your contractor, obtain an
24 affidavit from your contractor that specifies all unpaid parties who performed labor, services or
25 provided services or materials to your property. Make sure that your contractor provides you
26 with final lien releases from these parties before you make final payment.

27 SECTION 2. Chapter 149 of the General Laws is hereby amended by adding the
28 following new section:-

29 149:29F Construction Trust 1 – 4 Dwelling Units

30 A contractor shall hold all payments received from the property owner in trust, as trustee,
31 for the benefit of the building material suppliers and subcontractors in the amounts of the claims
32 due or to become due or owing from the contractor to the building material suppliers and
33 subcontractors. A contractor who knowingly fails to use the funds held in trust under this section
34 to pay the valid claims of a building material supplier or subcontractor shall be liable to any
35 building material supplier or subcontractor who successfully enforces its rights under this section
36 for all damages sustained by that building material supplier or subcontractor. Any provision in a
37 contract for construction which purports to waive or limit any provisions of this section shall be
38 void and unenforceable.

39 SECTION 3. Chapter 254, Section 2A is hereby amended by inserting after the
40 definition of “Design Professional”, the following new definition:-

41 “Due or to become due” and Due or which later become due”, the amount determined
42 notwithstanding any breach or termination of the contract, as the difference between (i) the total
43 contract price, including the value of all extra work, less payments made to the contractor as of
44 the date notice of the filing of the subcontract is given by the subcontractor to the owner, and (ii)
45 payments made to other contractors to complete the erection, alteration, repair or removal of the
46 building, structure or other improvement required by such contract, but not including
47 consequential or incidental costs or damages.

48 SECTION 4. Chapter 254, Section 4 is hereby amended by inserting at the end thereof
49 the following new text:-

50 Any person asserting that a lien under this section exceeds the amount due or to become
51 due under the original contract or a subcontract as of the date notice of the filing of the
52 subcontract is given by the subcontractor to the owner shall have the burden of proving the
53 amount due or to become due.