

# SENATE . . . . . No. 2084

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## The Commonwealth of Massachusetts

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In the Year Two Thousand Twenty-Four  
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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

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## The Commonwealth of Massachusetts

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In the Year Two Thousand Fourteen  
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An Act relative to residential construction contracts.

*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. Chapter 142, Section 2 of the General Laws, as appearing in the 2012  
2 Official Edition, is hereby amended by striking out in lines 43 and 44 the words “of any lien or  
3 security interest on the residence as a consequence of the contract.”, and inserting in place  
4 thereof the following new text:-

5           “of any security interest or the statutory mechanic’s lien rights of the building material  
6 suppliers and subcontractors who will provide labor, materials and services for the improvement  
7 of the property subject to this agreement or contract. Such notice shall include the following  
8 language in a form no less than 10 point type or larger:

9                               Notice of Security Interests and Lien Rights

10           Building material suppliers and subcontractors providing labor, materials or services to  
11 your property under this agreement or contract may, in order to secure payment for their  
12 materials and services, acquire rights to your property under the Massachusetts Mechanic’s Lien  
13 Law, Chapter 254 of the Massachusetts General Laws. Those rights may be enforced by the  
14 recording of a Notice of Contract in the Registry of Deeds for the district in which your property  
15 is located, a copy of which must be sent to you by the building material supplier or  
16 subcontractor.

17           You can protect your interests by requiring the contractor hired under this agreement or  
18 contract to provide you with a Release of Lien from each subcontractor or material supplier to  
19 protect your property from the threat of lien. Before you make any payment to the contractor, be  
20 sure you receive these lien releases from suppliers and subcontractors covering the materials  
21 used and worked performed on your property. If your contract requires partial payments before  
22 the work is completed, get a Partial Release of Lien covering all workers and materials used up

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

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

149:29F Construction Trust 1 – 4 Dwelling Units

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

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

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

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

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