

## SENATE, NO. 2512

[Senate, June 23, 2010 - New draft of Senate, No. 1806 reported from the committee on the Judiciary.]



## The Commonwealth of Massachusetts

---

IN THE YEAR OF TWO THOUSAND AND 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  
6           Commonwealth of Massachusetts, and any corporation, partnership, limited liability  
7           company, or other legal entity that is authorized under the laws of the Commonwealth of

8 Massachusetts to practice and/or to hold itself out as practicing any of the foregoing  
9 professions.

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

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

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

27 Notice is hereby given that by virtue of a written contract dated \_\_\_\_\_, between  
28 \_\_\_\_\_, owner, and \_\_\_\_\_, design professional, said design professional is to  
29 furnish or has furnished professional services relating to the proposed or actual erection,

30 alteration, repair or removal of a building, structure, or other improvement on a lot of  
31 land or other interest in real property described as follows:

32 (INSERT DESCRIPTION)

33 Such design professional may file or record the notice of contract at any time after the  
34 execution of the written contract whether or not the professional services under such  
35 written contract have been commenced or completed, and whether or not the erection,  
36 alteration, repair or removal of the building, structure, or other improvement to which  
37 such professional services relate has been, or is ever, commenced or completed, but not  
38 later than the earlier of: (i) 60 days after filing or recording of the notice of substantial  
39 completion under section two A, or (ii) 90 days after such design professional or any  
40 person by, through or under him last performed professional services.

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

46 Notice is hereby given that by virtue of a written subcontract dated \_\_\_\_\_, between  
47 \_\_\_\_\_, design professional, and \_\_\_\_\_, said \_\_\_\_\_ is to furnish or has  
48 furnished professional services relating to the proposed or actual erection, alteration,  
49 repair or removal of a building, structure, or other improvement on a lot of land or other  
50 interest in real property described as follows, which services are a portion of the services

51 furnished or to be furnished by said design professional under a written prime contract  
52 with \_\_\_\_\_, owner:

53 (INSERT DESCRIPTION)

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

55 1. estimated or agreed contract price: \_\_\_\_\_

56 2. approved extra or additional services: \_\_\_\_\_

57 3. payments received: \_\_\_\_\_

58 The regular mailing address of the subcontract party recording or filing this notice is as  
59 follows: \_\_\_\_\_.

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

69 Upon filing or recording a notice, as hereinabove provided, and giving actual notice of  
70 such filing to the owner, the person filing such notice shall have a lien upon the property,  
71 land, building, structure or improvement owned by the party who entered into the original

72 prime contract as appears of record at the time of such filing, to secure the payment of all  
73 amounts due or to become due to such person under his subcontract, regardless of the  
74 amount stated in the notice of contract. Such lien shall not exceed the amount due or to  
75 become due under the original prime contract as of the date actual notice of filing was  
76 given to the owner as hereinabove provided.

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

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

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

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

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

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

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

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

98           (d) No lien under section 2C or 2D shall avail against a mortgage duly registered or  
99 recorded prior to the filing or recording of the notice of contract if and to the extent that  
100 such lien relates to professional services performed before such mortgage was registered  
101 or recorded. If and to the extent that such lien relates to professional services performed  
102 after such mortgage was registered or recorded, such lien shall avail against such  
103 mortgage to the extent of the amount actually advanced or unconditionally committed  
104 prior to the filing or recording of the notice of contract.

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

110           **SECTION 11.** Section 8 of chapter 254, as so appearing, is hereby amended by inserting  
111 after the first sentence the following sentence:- "Liens under sections 2C and 2D shall be  
112 dissolved unless a like statement is filed or recorded at the appropriate registry of deeds within  
113 30 days after the last day that a notice of contract may be filed or recorded under the applicable  
114 section."

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

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

119           The rights of an attaching creditor shall not prevail as against a lien under section 1, nor  
120 against the claim of a lienor where notice or notices of contract have been filed or  
121 recorded in the registry of deeds under sections 2, 2C, 2D, and 4 prior to the recording of  
122 the attachment. An attachment recorded prior to the filing or recording of the notice of  
123 contract shall prevail against a lien, other than for personal labor, to the extent of the  
124 value of the buildings and land as they were at the time when the labor was commenced  
125 or the material furnished or professional services were commenced for which the lien is  
126 claimed, and in case of a sale under section 18 the court shall determine what proportion  
127 of the proceeds of the sale, as derived from the value of the property at such time, shall be  
128 held subject to the attachment.

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

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

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

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

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

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

149 **SECTION 19.** Section 33 of chapter 254, as so appearing, is hereby amended by  
150 inserting after the words "claiming a lien under section", in line 3, the following words:- "2C,  
151 2D, or"