

Department of Legislative Services
Maryland General Assembly

FISCAL NOTE

House Bill 1251 (Delegate Baldwin. *et al.*)

Economic Matters

Mechanics' Liens - Executory Contracts - Prohibited Provision

This bill prohibits an owner of real property from requiring a contractor to waive the right to claim a mechanics' lien in an executory contract relating to the construction, alteration, or repair of a building, structure, or improvement. The bill states that a provision in an executory contract between the parties that relates to the construction, alteration, or repair of an improvement and that conditions payment to the subcontractor on receipt by the contractor of payment from the owner may not abrogate or waive the right of the subcontractor to claim a mechanics' lien or sue on a contractor's bond.

Fiscal Summary

State Effect: None. Assuming that the Consumer Protection Division receives fewer than 50 complaints per year as a result of this bill, any additional workload could be handled with existing resources.

Local Effect: None.

Small Business Effect: Meaningful impact.

Fiscal Analysis

Small Business Effect: This bill will assist small contractors to collect on debts owed to them for work performed under contracts with property owners. The right to foreclose on a lien makes it more likely that a contractor will recover payments due under the contract than suing at law.

Currently, under a contract between an owner and a contractor, the courts will enforce a waiver of the contractor's right to claim a mechanics' lien. Consequently, in the event that a

contractor waives the mechanics' lien and is subsequently not paid for work performed, the contractor may not claim a mechanics' lien but may sue at law for the payment due. However, as between a contractor and a subcontractor, current statutory law prohibits the enforcement of a waiver of the subcontractor's right to claim a mechanics' lien against the contractor. Thus, a subcontractor has the choice of claiming a mechanics' lien or suing at law for the payment due. In effect, the owner may require the contractor to waive the right to a mechanics' lien, but the contractor may not require the subcontractor to waive.

By making these waiver provisions void between an owner and a contractor, this bill protects the contractor in the event that an owner defaults on payments due. For example, consider an owner who employs a contractor to make an improvement to the owner's property, defaults, and sells the property to a subsequent purchaser for value. If a contractor files a mechanics' lien prior to the sale, the purchaser is not a bona fide purchaser for value and therefore takes subject to the lien. Under the bill, the contractor has the choice of claiming a mechanics' lien on the property or suing the owner for the money due. For reasons stated above, filing a mechanics' lien is preferable to suing at law.

Information Sources: Attorney General's Office (Consumer Protection Division)

Fiscal Note History: First Reader - February 19, 1998

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