
By: **Senator Ferguson**

Introduced and read first time: February 3, 1999

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Mechanics' Liens - Subcontractors and Homeowners - Burden of Proof at**
3 **Interlocutory Stage**

4 FOR the purpose of clarifying that during the interlocutory stage of a mechanic's lien
5 case between a homeowner and a subcontractor, the subcontractor is not
6 required to show that the homeowner is indebted to the contractor; providing for
7 the application of this Act; and generally relating to mechanics' liens.

8 BY repealing and reenacting, without amendments,
9 Article - Real Property
10 Section 9-104(a)(2)
11 Annotated Code of Maryland
12 (1996 Replacement Volume and 1998 Supplement)

13 BY repealing and reenacting, with amendments,
14 Article - Real Property
15 Section 9-106
16 Annotated Code of Maryland
17 (1996 Replacement Volume and 1998 Supplement)

18 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
19 MARYLAND, That the Laws of Maryland read as follows:

20 **Article - Real Property**

21 9-104.

22 (a) (2) A subcontractor doing work or furnishing materials or both for or
23 about a single family dwelling being erected on the owner's land for his own residence
24 is not entitled to a lien under this subtitle unless, within 120 days after doing work or
25 furnishing materials for or about that single family dwelling, the subcontractor gives
26 written notice of an intention to claim a lien in accordance with subsection (a)(1) of

1 this section and the owner has not made full payment to the contractor prior to
2 receiving the notice.

3 9-106.

4 (a) (1) When a petition to establish a mechanic's lien is filed, the court shall
5 review the pleadings and documents on file and may require the petitioner to
6 supplement or explain any of the matters therein set forth. If the court determines
7 that the lien should attach, it shall pass an order that directs the owner to show cause
8 within 15 days from the date of service on the owner of a copy of the order, together
9 with copies of the pleadings and documents on file, why a lien upon the land or
10 building and for the amount described in the petition should not attach. Additionally,
11 the order shall inform the owner that:

12 (i) He may appear at the time stated in the order and present
13 evidence in his behalf or may file a counteraffidavit at or before that time; and

14 (ii) If he fails to appear and present evidence or file a
15 counteraffidavit, the facts in the affidavit supporting the petitioner's claim shall be
16 deemed admitted and a lien may attach to the land or buildings described in the
17 petition.

18 (2) If the owner desires to controvert any statement of fact contained in
19 the affidavit supporting the petitioner's claim, he must file an affidavit in support of
20 his answer showing cause. The failure to file such opposing affidavit shall constitute
21 an admission for the purposes of the proceedings of all statements of fact in the
22 affidavit supporting the petitioner's claim, but shall not constitute an admission that
23 such petition or affidavit in support thereof is legally sufficient.

24 (3) An answer showing cause why a lien should not be established in the
25 amount claimed shall be set down for hearing at the earliest possible time.

26 (b) (1) If the pleadings, affidavits and admissions on file, and the evidence,
27 if any, show that there is no genuine dispute as to any material fact and that the lien
28 should attach as a matter of law, then a final order shall be entered establishing the
29 lien for want of any cause shown to the contrary. Further, if it appears that there is no
30 genuine dispute as to any portion of the lien claim, then the validity of that portion
31 shall be established and the action shall proceed only on the disputed amount of the
32 lien claim.

33 (2) If the pleadings, affidavits and admissions on file and the evidence, if
34 any, show that there is no genuine dispute as to any material fact and that the
35 petitioner failed to establish his right to a lien as a matter of law, then a final order
36 shall be entered denying the lien for cause shown.

37 (3) If the court determines from the pleadings, affidavits and admissions
38 on file, and the evidence, if any, that the lien should not attach, or should not attach
39 in the amount claimed, as a matter of law, by any final order, but that there is
40 probable cause to believe the petitioner is entitled to a lien, the court shall enter an
41 interlocutory order which:

- 1 (i) Establishes the lien;
- 2 (ii) Describes the boundaries of the land and the buildings to which
3 the lien attaches;
- 4 (iii) States the amount of the claim for which probable cause is
5 found;
- 6 (iv) Specifies the amount of a bond that the owner may file to have
7 the land and building released from the lien;
- 8 (v) May require the claimant to file a bond in an amount that the
9 court believes sufficient for damages, including reasonable attorney's fees; and
- 10 (vi) Assigns a date for the trial of all the matters at issue in the
11 action, which shall be within a period of six months. The owner or any other person
12 interested in the property, however, may, at any time, move to have the lien
13 established by the interlocutory order modified or dissolved.

14 (4) THE COURT SHALL ENTER AN INTERLOCUTORY LIEN ON BEHALF OF
15 A SUBCONTRACTOR PETITIONER WITHOUT REQUIRING THE SUBCONTRACTOR TO
16 PROVE THAT THE OWNER IS INDEBTED TO THE CONTRACTOR.

17 (c) The amount of and the surety on any bond shall be determined and
18 approved pursuant to the Maryland Rules except as set forth in this subtitle. The
19 petitioner, or any other person interested in the property, however, if not satisfied
20 with the sufficiency of a surety or with the amount of any bond given, may, at any
21 time before entry of a final decree, apply to the court for an order requiring an
22 additional bond, and upon notice to the other parties involved, the court may order
23 the giving of such additional bond as it may deem proper. In lieu of filing bond, any
24 party may deposit money in an amount equal to the amount of the bond which would
25 otherwise be required, pursuant to the Maryland Rules.

26 (d) Until a final order is entered either establishing or denying the lien, the
27 action shall proceed to trial on all matters at issue, as in the case of any other
28 proceedings in equity.

29 SECTION 2. AND BE IT FURTHER ENACTED, That this Act applies to all
30 contracts formed on or after October 1, 1999.

31 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
32 October 1, 1999.