

SENATE No. 1806

The Commonwealth of Massachusetts

PRESENTED BY:

Karen E. Spilka

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to a lien for architects, engineers, land surveyors, and site professionals .

PETITION OF:

NAME:

Karen E. Spilka

DISTRICT/ADDRESS:

Second Middlesex and Norfolk

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

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: The General Laws are amended by striking out Chapter 254 and hereby
2 inserting in place thereof the following chapter: Chapter 254

3 Section 1. Labor, Professional Services performed; definitions, limitation on
4 lien; filing

5 (a) As used in this chapter the following words shall, unless the context clearly requires
6 otherwise, have the following meanings:—

7 (i) “Design professional” means a licensed architect, registered professional
8 engineer, registered land surveyor, and licensed site professional.

9 (ii) “Professional services” means those services performed by licensed
10 architects, registered professional engineers, registered land surveyors and licensed site
11 professionals and includes design, planning, construction administration and surveying
12 services.

13 (b) A person to whom a debt is due for personal labor or professional services performed
14 in the design, planning, construction administration, surveying, erection, alteration, repair or

removal of a building or structure upon land or improvement or alteration to real property, by virtue of an agreement with, or by consent of, the owner of such building or structure, or of a person having authority from or rightfully acting for such owner in procuring or furnishing such professional services or labor, shall, under the provisions of this chapter, other than section four, have a lien upon such building or structure and upon such interest in such real property, land, building, structure, or improvement owned by the party authorizing or consenting to said work or professional services, for not more than thirty days' work or services actually performed for the ninety days next prior to his filing a statement as provided in section eight.

A person or his assignee, agent, authorized representative or third party beneficiary, to whom amounts are due or for whose benefit amounts are computed and due for, or on the basis of, the personal labor or professional services of such person, may file a lien to secure the payment of such unpaid amounts including interest and agreed penalties for failure to pay the same.

Section 2. Written contract; notice; time for filing; form

A person entering into a written contract with the owner of any interest in real property, or with any person acting for, on behalf of, or with the consent of such owner for the whole or part of the design, planning, construction administration, surveying, erection, alteration, repair or removal of a building, structure, or other improvement to real property, or for furnishing material or rental equipment, appliances, or tools therefor, shall have a lien upon such real property, land, building, structure or improvement owned by the party with whom or on behalf of whom the contract was entered into, as appears of record on the date when notice of said contract is filed or recorded in the registry of deeds for the county or district where such land lies, to secure the payment of all labor, including construction management and general

contractor services, professional services and material or rental equipment, appliances, or tools which shall be furnished by virtue of said contract. Said notice may be filed or recorded in the registry of deeds in the county or registry district where the land lies by any person entitled under this section to enforce a lien, and shall be in substantially the following form:

Notice is hereby given that by virtue of a written contract dated ____, between ____, owner, and ____, contractor, or ____, design professional, said contractor or design professional is to furnish or has furnished labor and material or professional services or rental equipment, appliances or tools for the design, planning, construction administration, surveying, erection, alteration, repair or removal of a building, structure, or other improvement on a lot of land or other interest in real property described as follows:

(INSERT DESCRIPTION)

Such person may file or record the notice of contract at any time after execution of the written contract whether or not the date for performance stated in such written contract has passed and whether or not the work or services under such written contract has been performed, but not later than the earliest of: (i) sixty days after filing or recording of the notice of substantial completion under section two A; or (ii) ninety days after filing or recording of the notice of termination under section two B; or (iii) ninety days after such person or any person by, through or under him last performed services or performed labor or furnished labor or materials or both labor and materials.

Section 2A. Written contract; substantial completion; definitions; notice; filing; form; certified mail

As used in this chapter the following words shall, unless the context clearly requires otherwise, have the following meaning:—

“Substantial completion”, that work under the written contract is sufficiently complete so that it can be occupied or utilized for its intended use.

“Written contract”, any written contract enforceable under the laws of the commonwealth.

Upon or after substantial completion of any contract subject to the provisions of section two, the owner and contractor shall execute and file or record in the appropriate registry of deeds a notice of substantial completion in substantially the following form:

Notice of Substantial Completion

Notice is hereby given that the work performed by virtue of a written contract dated ____ between

____ as owner, and ____ ____ as contractor, for the erection, alteration, repair or removal of a

building, structure, or other improvement of real property described below, has been substantially completed as of the date of filing or recording of this notice. The lot of land or other interest in real property which is the subject of such contract is described as follows:

(Insert description)

The undersigned owner hereby states that he has served written notice of the recording or filing

of this notice of substantial completion upon every person who has filed or recorded prior to the date this notice is filed or recorded notice of contract under section four of chapter two hundred and fifty-four of the General Laws.

The undersigned contractor hereby states that he has served written notice of the recording or filing of this notice of substantial completion upon every person who has entered into a written contract directly with the contractor or who has given written notice of identification to the contractor prior to the date this notice is filed or recorded as provided in said section four of said chapter two hundred and fifty-four of the General Laws.

A copy of such notice, indicating the date of filing or recording, shall be mailed by certified mail return receipt requested by the owner to every person who has filed a notice of contract under section four and by the contractor to every person who has entered into a written contract directly with the contractor and every person who has given written notice of identification to the contractor claiming by, through, or under him as provided in section four.

The failure of the owner or contractor to give notice of the filing or recording of the notice of substantial completion to those persons so entitled shall not prejudice the rights of third parties who rely upon said notice of substantial completion in good faith and without actual knowledge of such failure of notice.

Section 2B. Termination of written contract; notice; filing; form; certified Mail

If, prior to the filing or recording in the registry of deeds and delivery of the copies of the notice of substantial completion described in section two A, any contract subject to the provisions of section two shall have been terminated, the owner shall execute and file or record in the appropriate registry of deeds a notice of termination in substantially the following form:

Notice of Termination

Notice is hereby given that a written contract dated ____ between ____ as Owner and ____ as Contractor, or ____ as Design Professional for the design, planning, construction administration or surveying services, erection, alteration, repair or removal of a building,

structure or other improvement of real property described below, has been terminated. The lot of land or other interest in real property which is the subject of such contract is described as follows:

(Insert description)

The undersigned owner hereby states that he has served written notice of the recording or filing of this notice of termination upon the contractor or design professional and every person who has filed or recorded prior to this date a notice of contract under section four of chapter two hundred and fifty-four of the General Laws.

A copy of such notice, indicating the date of filing or recording, shall be mailed by certified mail return receipt requested by the owner to every person who has filed or recorded a notice of contract under section four and to the contractor. Upon receipt of such notice from the owner, the contractor shall deliver a copy of such notice to every person who has entered into a written contract directly with the contractor or who has given to the contractor written notice of identification in accordance with said section four.

The failure of the owner or contractor to give notice of the filing or recording of the notice of termination to those persons so entitled shall not prejudice the rights of third parties who rely upon said notice of termination in good faith and without actual knowledge of such failure of notice.

Section 3. Repealed, 1996, 364

Section 4. Subcontractors; written contract; notice; filing; form; indirect contractual relationship; notice of identification. Whoever furnishes labor, including subcontractor construction management services, or who furnishes material, or both labor and material, or furnishes rental equipment, appliances or tools, under a written contract with a contractor, or

with a subcontractor of such contractor, may file or record in the registry of deeds for the county or district where such land lies a notice of his contract substantially in the following form:

Notice is hereby given that by virtue of a written contract dated ____, between ____ contractor (or subcontractor) and ____ said ____ is to furnish or has furnished labor or material, or both labor and material, or is to furnish or has furnished rental equipment, appliances or tools, in the erection, alteration, repair or removal of a building, structure or other improvement of real property by ____, contractor, for ____, owner, on a lot of land or other interest in real property described as follows:

(Insert description)

As of the date of this notice, an account of said contract is as follows:

1. contract price _____

2. agreed change orders _____

(indicate whether addition or subtraction)

3. pending change orders: _____

(indicate whether addition or subtraction)

4. disputed claims _____

(indicate whether addition or subtraction)

5. payments received _____

The regular mailing address of the party recording or filing this notice is as follows: ____

Such person may file or record the notice of contract at any time after execution of the written contract whether or not the date for performance stated in such written contract has passed and whether or not the work under such contract has been performed, but not later than the earliest of: (i) sixty days after filing or recording the notice of substantial completion under

153 section two A; or (ii) ninety days after filing or recording of the notice of termination under
154 section two B; or (iii) ninety days after the last day a person entitled to enforce a lien under
155 section two or anyone claiming by, through or under him performed or furnished labor or
156 materials or both labor and materials to the project or furnished rental equipment, appliances or
157 tools.

158 Such notice may also be filed by a person or his assignee, agent, authorized
159 representative or third party beneficiary to whom amounts are due or for whose benefit amounts
160 are computed and due for or on the basis of the labor of that person performing labor under a
161 written contract with a contractor, or with a subcontractor of such contractor and the person
162 filing such notice shall not be required to itemize the amount of the contract, the amount of
163 pending changes in the contract, the amount of outstanding claims or the amount paid in such
164 notice.

165 Upon filing or recording a notice, as hereinbefore provided, and giving actual notice to
166 the owner of such filing, the subcontractor shall have a lien upon such real property, land,
167 building, structure or improvement owned by the party who entered into the original contract as
168 appears of record at the time of such filing, to secure the payment of all labor and material and
169 rental equipment, appliances or tools which he is to furnish or has furnished for the building or
170 structure or other improvement, regardless of the amount stated in the notice of contract. Such
171 lien shall not exceed the amount due or to become due under the original contract as of the date
172 notice of the filing of the subcontract is given by the subcontractor to the owner.

173 If the person claiming a lien under this section has no direct contractual relationship with
174 the original contractor, except for liens for labor by persons defined in section one of this
175 chapter, the amount of such lien shall not exceed the amount due or to become due under the

subcontract between the original contractor and the subcontractor whose work includes the work of the person claiming the lien as of the date such person files his notice of contract, unless the person claiming such lien has, within thirty days of commencement of his performance, given written notice of identification by certified mail return receipt requested to the original contractor in substantially the following form:

Notice of Identification

Notice is hereby given to ____, as contractor, that ____, as subcontractor/vendor, has entered into a written contract with ____ to furnish labor or materials, or labor and materials, or rental equipment, appliances or tools to a certain construction project located at ____ (Street Address), ____ (Town or City), Massachusetts. The amount or estimated amount of said contract is \$____. (No amount need be stated for contracts for the rental of equipment, appliances or tools).

The amount stated in any such notice of identification shall not limit the amount of the lien. Any inaccuracy in the naming of the contractor or other information in such notice shall not affect its validity provided there shall be actual notice.

Section 4A. Design Professionals; written contract; notice; filing; form; subconsultants

Design professionals who provide professional services under a written contract with an Owner may file or record in the registry of deeds for the county or district where such land lies a notice of his contract substantially in the following form:

Notice is hereby given that by virtue of a written contract dated ____, between ____ design professional and ____ said ____ has provided design, planning, construction administration or surveying services relating to a building, structure or other improvement of real property by ____, design professional for ____, owner, on a lot of land or other interest in real property described as follows:

199 (Insert description)

200 As of the date of this notice, an account of said contract is as follows:

201 1. contract price _____

202 2. payments received _____

203 3. amount owed _____

204 The regular mailing address of the party recording or filing this notice is as follows: ____

205 Such person may file or record the notice of contract at any time after execution of the
206 written contract whether or not the date for performance stated in such written contract has
207 passed and whether or not the services under such contract have been provided, but not later than
208 the earliest of: (i) sixty days after filing or recording the notice of substantial completion under
209 section two A; or (ii) ninety days after filing or recording of the notice of termination under
210 section two B; or (iii) ninety days after the last day a person entitled to enforce a lien under
211 section two or anyone claiming by through or under him performed or furnished labor or
212 materials or both labor and materials to the project or furnished rental equipment, appliances or
213 tools.

214 Such notice may also be filed by a person or his assignee, agent, authorized
215 representative or third party beneficiary to whom amounts are due or for whose benefit amounts
216 are computed and due for or on the basis of the services of that person providing services under a
217 written contract and the person filing such notice shall not be required to itemize the amount of
218 the contract, the amount of outstanding claims or the amount paid in such notice.

219 Upon filing or recording a notice, as hereinbefore provided, the design professional shall
220 have a lien upon such real property, land, building, structure or improvement owned by the party
221 who entered into the original contract as appears of record at the time of such filing, to secure the

222 payment of all professional services provided for the building or structure or other improvement,
223 regardless of the amount stated in the notice of contract.

224 If the person claiming a lien under this section has no direct contractual relationship with
225 the owner, but is a licensed architect or registered professional engineer acting as a sub-
226 consultant, the sub-consultant shall, after filing or recording a notice, and giving actual notice to
227 the owner of such filing, have a lien upon such real property, land, building, structure or
228 improvement owned by the party who entered into the original contract with the licensed
229 architect or registered professional engineer.

230 Section 5. Enforcement of lien; procedure

231 A lien upon land for the design, planning, construction administration, or surveying
232 services, erection, alteration, repair or removal of a building or other structure or other
233 improvement of real property or a lien established under section seventy-six of chapter sixty-
234 three, section six of chapter one hundred and eighty-three A, or subsection (a) of section twenty-
235 nine of chapter one hundred and eighty-three B shall be enforced by a civil action brought in the
236 superior court for the county where such land lies or in the district court in the judicial district
237 where such land lies. The plaintiff shall bring his action in his own behalf and in behalf of all
238 other persons in interest who shall become parties. An attested copy of the complaint, which
239 shall contain a brief description of the property sufficient to identify it, and a statement of the
240 amount due, shall be filed in the registry of deeds and recorded as provided in section nine
241 within thirty days of the commencement of the action, or such lien shall be dissolved. All other
242 parties in interest may appear and have their rights determined in such action, and at any time
243 before entry of final judgment, upon the suggestion of any party in interest that any other person
244 is or may be interested in the action, or of its own motion, the court may summon such person to

appear in such cause on or before a day certain or be forever barred from any rights thereunder. The court may in its discretion provide for notice to absent parties in interest. The terms “party in interest” and “person in interest”, as used in this chapter, shall include mortgages and attaching creditors.

Section 5A. Court order authorizing sale of real estate; procedure

Section 5A. When the amount of a lien under section six of chapter 183A or under section 29 of chapter 183B has been established by a court, the court shall enter an order authorizing the sale of the real estate to satisfy such lien. The lienor may do all acts authorized by such order, but no sale pursuant to such order shall be effectual unless, previous to such sale, notice thereof has been published once in each of three successive weeks, the first publication to appear not less than twenty-one days before the date of such sale, in a newspaper published in the town where the land lies or, if no newspaper is published in such town, in a newspaper published in the county where the land lies, and this provision shall be implied in every court order for sale hereunder in which it is not expressly set forth. A newspaper which by its title page purports to be printed or published in such town, city or county, and having a circulation therein, shall be sufficient for the purpose.

For a lien under chapter 183A, such form shall be printed in substantially the following form:

SALE OF REAL ESTATE

UNDER GLM 183A:6

By virtue of a Judgment and Order of the ____ Court (docket no. ____) in favor of ____ against ____ establishing a lien pursuant to GLM 183A:6 on the real estate known as Unit ____ of the ____ Condominium for the purpose of satisfying such lien, the real estate will be sold at

268 Public Auction at ____ o'clock ____ . M. on the ____ day of ____ A.D. (insert year) at ____ . The
269 premises to be sold are more particularly described as follows:

270 Description: (Describe premises exactly as in the deed, including all references to title,
271 restrictions, encumbrances, etc.)

272 Terms of sale: (State the amount, if any, to be paid in cash by the purchaser at the time
273 and place of the sale, and the time or times for payment of the balance or the whole as the case
274 may be.)

275 Other terms to be announced at the sale.

276

277 (Signed)____ ____

278 Lienholder

279 ____ (insert year)

280 For a lien under chapter 183B, such form shall be printed in substantially the following
281 form:

282 SALE OF REAL ESTATE

283 UNDER GLM 183B:29

284 By virtue of a Judgment and Order of the ____ Court (docket no, ____) in favor of ____
285 against ____ establishing a lien pursuant to GLM 183B:29 on the time-share known as ____ of the
286 ____ for the purpose of satisfying such lien, the time-share will be sold at Public Auction at ____
287 o'clock ____ .M. on the ____ day of ____ A.D. 19__ at ____ . The premises to be sold are more
288 particularly described as follows:

289 Description: (Describe premises exactly as in the deed, including all references to title,
290 restrictions, encumbrances, etc.)

Terms of sale: (State the amount, if any, to be paid in cash by the purchaser at the time and place of the sale, and the time or times for payment of the balance or the whole as the case may be.)

Other terms to be announced at the sale.

(Signed)____

Lienholder

____ 19

Such notice of sale in the above form, published in accordance with the provisions of this section, together with such other or further notice, if any, required by the court, shall be deemed a sufficient notice of the sale and the premises shall be deemed to have been sold, and the deed thereunder shall convey the premises, subject to, and with the benefit of, all restrictions, easements, improvements, outstanding tax titles, municipal or other public taxes, assessments, and first mortgages recorded prior to the recording of the complaint, whether or not reference to such restrictions, easements, improvements, outstanding tax titles, municipal or other public taxes, assessments, or first mortgages is made in the deed; but no purchaser at such sale shall be bound to complete the purchase if there are encumbrances, other than those included in the notice of the sale, which are not stated at the sale and included in the auctioneer's contract with the purchaser. Notwithstanding the foregoing, the premises shall be deemed to have been sold, and the deed thereunder shall convey the premises, as otherwise provided above but free of said first mortgages, if as of the date of such sale there are unpaid common expense assessments, costs, or reasonable attorneys' fees the lien for which is given priority over said first mortgages in subsection (c) of section six of chapter one hundred and eighty-three A. Any sale pursuant to this section shall convey the premises free of any right of redemption.

The person or entity selling, or their attorney, may cause a copy of the notice and an affidavit, stating that the requirements of the court order and of this section have been complied with, to be recorded with a note of reference thereto on the margin of the record of the complaint previously recorded, and such affidavit or a certified copy of the record thereof shall be admitted as evidence that the sale was duly executed.

For the purposes of this section, the term “recorded” shall mean recorded in the registry of deeds or land registration office for the county or district where the land lies.

Section 6. Public property; exemption

No lien shall attach to any land, building or structure thereon owned by the commonwealth, or by a county, city, town, water or fire district.

Section 7. Mortgages; invalidity of subsequent liens

(a) No lien under section one shall avail against a mortgage duly registered or recorded unless the work or labor performed or professional services provided is in design, planning, construction administration or surveying services, erection, alteration, repair or removal of a building, structure, or other improvement to real property which design, planning, construction administration or surveying services, erection, alteration, repair, removal, or improvement was actually begun prior to the recording of the mortgage.

(b) No lien under section two shall avail as against a mortgage duly registered or recorded to the extent of amounts actually advanced or unconditionally committed (i) prior to the filing or recording of the notice of contract, and (ii) after the filing or recording of the notice of contract but within twenty-five days after the last day of the period stated in an accurate duly executed partial waiver and subordination of lien in the form required by section thirty-two,

except for the amount of retainage accurately stated in such partial waiver and subordination of lien.

(c) No lien under section four shall avail against a mortgage actually existing and duly registered or recorded to the extent of the amount actually advanced or unconditionally committed prior to the filing or recording in the registry of deeds of the notice required by section four.

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

Section 8. Statement of amount due; time for filing; dissolution of lien

Liens under sections two and four shall be dissolved unless the contractor, subcontractor, design professional or some person claiming by, through or under them, shall, not later than the earliest of: (i) ninety days after the filing or recording of the notice of substantial completion under section two A; (ii) one hundred and twenty days after the filing or recording of the notice of termination under section two B; or (iii) one hundred and twenty days after the last day a person, entitled to enforce a lien under section two or anyone claiming by, through or under him, performed or furnished labor or material or both labor and materials or provided professional services or furnished rental equipment, appliances or tools, file or record in the registry of deeds in the county or district where the land lies a statement, giving a just and true account of the amount due or to become due him, with all just credits, a brief description of the property, and the names of the owners set forth in the notice of contract. A lien under section one shall be

dissolved unless a like statement, giving the names of the owner of record at the time the work was performed or at the time of filing the statement, is filed or recorded in the appropriate registry of deeds within the ninety days provided in said section. Nothing in this section shall prohibit the filing or recording of a statement under this section prior to the filing or recording of the notices under section two A or two B.

Section 9. Notice or statement; public inspection; recording

Any notice or any statement provided for in this chapter shall remain in the custody of the register and be open to public inspection. He shall record it in a book kept therefor, but the items of the account, except the total amount claimed due, may be omitted from the record.

Section 10. Dissolution by notice

The lien of any person may, so far as his interest is concerned, be dissolved by a notice signed by him, stating that his lien is dissolved, filed in the registry of deeds where the notice of the contract is filed under which contract the lien is claimed.

Section 11. Action to enforce lien; time to commence; validity of lien

The lien shall be dissolved unless a civil action to enforce it is commenced within ninety days after the filing of the statement required by section eight. The validity of the lien shall not be affected by an inaccuracy in the description of the property to which it attaches, if the description is sufficient to identify the property, or by an inaccuracy in stating the amount due for labor or material or design, planning, construction administration or surveying services unless it is shown that the person filing the statement has willfully and knowingly claimed more than is due him.

Section 12. Written contract; recording of bond; form; enforcement

Any person, including the owner, in interest in connection with a written contract

covered by section two or section four may cause to be recorded in the registry of deeds in the county or district where the land lies a bond of a surety company authorized to do a surety business in Massachusetts and in a penal sum equal to the contract sum or, if the contract does not contain a contract sum, in a penal sum equal to that person's fair estimate of the contract sum, all as set forth in the certificate on the bond. The bond shall describe the land in such detail as is required in a common conveyance of land, and shall be in the following form:—

Know All Men By These Presents:

that we _____ of _____ in the County of _____ and Commonwealth of _____ Massachusetts, as principal, and _____ a surety company organized under the laws of _____ and authorized to do business in the Commonwealth as a surety company, are holden and stand firmly bound and obliged unto _____ Register of Deeds for the _____ District, County of _____, in the principal sum of _____ Dollars (\$) to be paid unto said Register and his successors in said office, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Whereas, said principal is interested in the erection, alteration, repair or removal of a building or structure on a certain lot of land situated within the ____ Registry District in the Commonwealth, bounded and described as follows:

(Insert description)

and desires to free said land from liens for all labor and all labor and materials entitled to lien protection under chapter 254 and amendments thereto;

NOW, THEREFORE, the condition of this obligation is such that if the Principal shall pay for all labor and for all labor and materials entitled to lien protection under chapter 254 and amendments thereto under the contract referred to in the Certificate in this bond, irrespective of any agreement made between him and the owner or any other persons now interested or who may hereinafter be interested therein, then the above written obligation shall be null and void, otherwise to remain in full force and effect.

This bond is made for the use and benefit of all persons entitled to file the documents for lien protection as provided in Massachusetts General Laws, chapter 254 and they and each of them are hereby made Obligees hereunder, and in case of the failure of the principal to carry out the provisions of this bond made for their use and benefit they and each of them may sue hereon in their own name.

Signed, sealed and delivered this ____ day of ____, (insert year).

Principal

By

Surety

By

Certificate

____, principal on the above bond, hereby certify that the (estimated) contract price for the proposed work to be performed on the land described in the above bond under a written contract between ____ and ____ dated ____, ____, (insert year), is ____ Dollars (\$).

(Signed)

After the recording of any such bond no lien under this chapter shall thereafter attach in favor of

any person entitled to the benefit of such bond and not named as a principal thereon for labor or for labor and materials performed under the contract in respect to which such bond is given.

The register of deeds shall refuse to record the said bond if it be defective in form or substance, but no party to any such bond shall be discharged by any defect therein as against any party who has in good faith allowed his lien to be dissolved by lapse of time in reliance on the bond. The bond may be enforced by a civil action in the superior court or district court brought by any party in interest. An attested copy of the complaint shall be filed and recorded in the registry of deeds.

No suit or action on the bond shall be commenced after the expiration of ninety days after the claimant filed the statement required by section 8. Such bond shall not create any rights which the claimant would not have had, or impair any defense which the obligors would have had, in an action to enforce a lien.

Section 13. Attachments

The rights of an attaching creditor shall not prevail as against a lien under section one, nor against the claim of a lienor where notice or notices of contract have been filed or recorded in the registry of deeds under sections two and four prior to the recording of the attachment. An attachment recorded prior to the filing or recording of the notice of contract shall prevail against a lien, other than for personal labor or professional services, to the extent of the value of the buildings and land as they were at the time when the labor was commenced or the material furnished or professional services were commenced for which the lien is claimed, and in case of a sale under section eighteen the court shall determine what proportion of the proceeds of the sale, as derived from the value of the property at such time, shall be held subject to the attachment. If the attaching creditor recovers judgment, the proceeds so held subject to his

attachment, or as much thereof as may be necessary, shall be applied upon his execution, and the residue, if any, shall be disposed of in the same manner as if there had been no such attachment.

If the interest of the owner of the property is attached after the filing of the notice, the proceeds of any sale of the property under said section eighteen, after discharging all prior liens and claims, shall be applied to satisfy the execution of the attaching creditor, provided the lienor or the officer making the sale has actual notice of the attachment. Several attaching creditors as between themselves shall be paid according to the order of their attachments. Liens of a trustee or trustees of a fund or funds, described in section one, providing coverage or benefits for persons shall be considered as liens for personal labor.

Section 14. Dissolution by bond recording; labor and materials; form of bond

Any person in interest may dissolve a lien under this chapter by recording or causing to be recorded in the registry of deeds in the county or district where the land lies, a bond of a surety company authorized to do business in Massachusetts and in a penal sum equal to the amount of the lien sought to be dissolved conditioned for the payment of any sum which the claimant may recover on his claim for labor or labor and materials. Upon the recording of the bond, the lien shall be dissolved. Notice of the recording shall be given to the claimant by serving on the claimant a copy of the notice of recording together with a copy of the bond by an officer qualified to serve civil process or by delivering same to the claimant. The claimant may enforce the bond by a civil action commenced within ninety days after the later of the filing of the statement required by section 8 or receipt of notice of recording of the bond, but such bond shall not create any rights which the claimant would not have had, or impair any defense which the obligors would have had, in an action to enforce a lien.

The bond shall be in the following form:

475 Know All Men By These Presents:

476 That we, ____ as principal and ____ duly organized to transact business as a surety within
477 the Commonwealth of Massachusetts, as surety, are holden and stand firmly bound and obliged
478 unto ____ in the penal sum of ____ Dollars (\$____), to the payment of which we bind ourselves, our
479 heirs, successors and assigns, jointly and severally by these presents.

480 Whereas, under date of ____, the said obligee recorded a notice of contract in the registry
481 of deeds, as Instrument #____, in Book ____ at Page ____ upon premises more fully described in
482 said notice, and

483 Whereas, the principal desires to dissolve said lien in accordance with the provisions of
484 section fourteen of chapter two hundred and fifty-four of the General Laws.

485 Now, therefore, the condition of this obligation is such that if the said principal shall pay to the
486 said obligee all sums which shall be adjudged in favor of the said obligee in an action brought
487 under the provisions of said section fourteen, this obligation shall be void, otherwise to remain in
488 full force and effect.

489 In witness whereof, the aforesaid principal and surety have executed this instrument
490 under seal
491 this ____ day of ____ (insert year).

492 Principal
493 by _____
494 _____

495 Surety
496 by _____.

497 Section 15. Dissolution by judgment

498 If it appears to the court that no person is entitled to a lien, or that every lien has been
499 discharged by payment thereof, judgment shall be entered to the effect that the lien is dissolved,
500 and a certificate to that effect shall be sent forthwith by the clerk to the register of deeds. Such
501 certificate shall be filed and recorded in the manner provided in sections eight and nine.

502 Section 15A. Application to court for order ruling on or discharging lien

503 If any person in interest, including but not limited to an owner, contractor, design
504 professional or mortgage holder, claims (a) that any person who has provided labor or materials
505 or has agreed to provide funding, financing or payment for labor or materials, refuses to continue
506 to provide such funding, financing or payments of labor or materials solely because of the filing
507 or recording of a notice of contract pursuant to section two or a statement of claim referencing a
508 lien under section one, or (b) it appears from the notice of contract or a statement of account that
509 the claimant has no valid lien by reason of the character of, or the contract for, the labor or
510 materials or rental equipment, appliances or tools furnished and for which a lien is claimed, or
511 (c) that a notice or other instrument has not been filed or recorded in accordance with the
512 applicable provisions of this chapter, or (d) that for any other reason a claimed lien is invalid by
513 reason of failure to comply with any provision of this chapter, or (e) that any party's rights are
514 foreclosed by a judgment or release, or (f) that any party wrongfully refuses to execute a notice
515 of completion as required by section two A or improperly files or records a notice of termination
516 under section two B, such person may apply to the superior court for the county where such land
517 lies or in the district court in the judicial district where such land lies, for an order (i) ruling on
518 the matter involved or (ii) summarily discharging of record the alleged lien or notice as the case
519 may be. The holder of any recorded mortgage upon the affected property shall receive notice of
520 and be entitled to appear and be heard in any proceeding brought under this section. An order of

notice to appear and show cause why the relief demanded in the complaint should not be granted shall be served upon the necessary parties no later than seven days prior to the date of the scheduled hearing. If the necessary parties cannot be found, such service may be made as the court shall direct. The application shall be made upon a verified complaint accompanied by other written proof of the facts upon which the application is made. Upon granting or denying the application, the court shall enter a final judgment on the matter involved or expeditiously order such further proceedings as are just.

Section 16. Repealed, 1973, 1114, Sec. 322

Section 17. Claims; allowance

A claim due absolutely and without condition, although not payable at the time of determination, shall be allowed with a rebate of interest to the time when it would become payable. If the owner has failed to perform his part of the contract and by reason of such failure the other party is, without his own default, prevented from completely performing his part thereof, he shall be entitled to a reasonable compensation for as much as he has performed, in proportion to the price stipulated for the whole.

Section 18. Sale of property

If a lien is established the court shall order a sale of the property to be made by an officer qualified to serve civil process. The court may order a sale of a part of the property sufficient to satisfy the claims allowed, if such part can be set off from the residue and sold without damage to the whole.

Section 19. Notice of sale

The officer shall give notice of the time and place of sale as provided for sales of land on execution or as ordered by the court.

Section 20. Redemption; limitation

An interest in land sold under this chapter may be redeemed within ninety days after such sale in the manner provided for sales of land on execution.

Section 21. Distribution of assets

If all the claims against the property covered by the lien were ascertained at the time of ordering the sale and if the proceeds of the sale are sufficient therefor, the court may order the officer to distribute them, after deducting all lawful charges and expenses of such officer, to and among the several creditors to the amount of their respective debts, with interest, or, if insufficient, to distribute the same among the lien creditors pursuant to this chapter in proportion to the amount due to each, regardless of the date upon which each such lien creditor filed a notice of contract. If all the claims were not ascertained at the time of ordering the sale or other sufficient cause is shown, the court may order the officer to bring the proceeds of the sale into court to be disposed of according to its decree. If the whole cannot be conveniently distributed at one time, the court may make successive orders of distribution. If there is a surplus of the proceeds of the sale after making all payments before mentioned, it shall be paid over to the owner of the property; but, before it is so paid over, it may be attached or taken on execution in like manner as proceeds from a sale on execution. Notwithstanding the foregoing, proceeds of the sale shall be distributed to mortgagees entitled to priority pursuant to this chapter in the amounts given priority thereunder, before proceeds are distributed to creditors whose liens arise under this chapter.

Section 22. Costs

Costs shall be in the discretion of the court and shall be paid from the proceeds of the sale or by any of the parties, as it may order.

567 Section 23. Original owner; death or conveyance of interest; action to enforce

568 lien

569 If the person for whom the labor has been performed or furnished or the material has
570 been furnished or for whom the professional services have been provided dies or conveys away
571 his estate or interest before the commencement of a civil action to enforce a lien, it may be
572 commenced and prosecuted against his heirs or against the persons holding the estate or interest
573 which he had in the land at the time when the labor or material was performed or furnished. If
574 the action was commenced in the lifetime of such person, it may be prosecuted against his
575 executor, administrator, heirs or assigns as if the estate or interest has been mortgaged to secure
576 the debt.

577 Section 24. Death of creditor; effect

578 If the creditor dies without having commenced such action, it may be commenced
579 and prosecuted by his executor or administrator, or if he dies after having commenced it, it may
580 be so prosecuted.

581 GENERAL PROVISIONS

582 Section 25. Estate less than fee simple; effect of sale

583 If the person for whom the labor or professional services have been performed or
584 with whom the original contract has been entered into for the whole or any part of the design,
585 planning, construction administration, surveying, erection, alteration, repair or removal of a
586 building or structure upon land, or for furnishing material therefor, has an estate less than a fee
587 simple in the land or if the property is subject to a mortgage or other encumbrance, the lien shall
588 bind such person's whole estate and interest in the property, and such estate or interest may be
589 sold and the proceeds applied according to this chapter.

Section 26. Remedies

This chapter shall not prevent a person entitled to a lien under it from maintaining a civil action as if he had no lien.

LIENS ON LAND RAISED OR RECLAIMED BY DREDGING

Section 27. Written contract; form of notice

A person entering into a written contract with the owner of land or flats for reclaiming or raising the level thereof by suction, hydraulic or any other form of dredging, or for furnishing material therefor, or the trustee or trustees of any fund or funds, described in section one, providing coverage or benefits for persons, shall have a lien upon the interest of the owner in said land or flats as appears of record at the date when notice of said contract is filed or recorded in the registry of deeds for the county or district where such land or flats lie, to secure the payment of all labor and material which shall thereafter be furnished by virtue of said contract. Said notice shall be in substantially the following form:

Notice is hereby given that by virtue of a written contract dated , between , owner, and , contractor, said contractor is to furnish labor and material for reclaiming or raising the level of land or flats described as follows:

Section 28. Subcontractor; written contract; notice; filing; form

Whoever, subsequent to the date of the original contract, furnishes labor or material, or both labor and material, under a written contract with a contractor contracting as provided in section twenty-seven, or with a sub-contractor of such contractor, may file in the registry of deeds for the county or district where such land or flats lie a notice of his contract substantially in the following form:

Notice is hereby given that by virtue of a written contract dated , between , contractor (or subcontractor), and , said is to furnish labor or material, or both labor and material, in the reclaiming or raising the level, by , contractor, for , owner, of land or flats described as follows:

Upon filing a notice, as hereinbefore provided, and giving actual notice to the owner of such filing, the sub-contractor shall have a lien to secure the payment of all labor and material, which he shall thereafter furnish, upon the interest of the owner, as appears of record at the time of such filing, in the lot of land or flats reclaimed or improved in the manner described in section twentyseven.

Such notice may also be filed by a person, or his assignee, agent, authorized representative or third party beneficiary to whom amounts are due or for whose benefit amounts are computed and due for or on the basis of that person performing labor under a written contract with a contractor, or with a subcontractor of such contractor.

Section 29. Laws applicable to Sec. 27 or 28

All the provisions of this chapter relative to liens for the erection, alteration, repair or removal of a building or structure or for furnishing material therefor, attaching under the provisions of section two or four, shall apply, so far as apt, to liens attaching under section twenty-seven or twenty-eight.

Section 30. Recording; duty of register of deeds

All liens for labor and notices of contract, and instruments pertaining thereto, filed as provided for in this chapter, shall be recorded by the register of deeds, who shall enter the names of the parties affected thereby in the grantor and grantee indexes.

Any notice or other instrument required or permitted to be filed or recorded by this chapter in the registry of deeds or in the land registration district of the land court that is in the form required by this chapter and executed before a notary public, justice of the peace or other officer entitled by law to take acknowledgements with respect to instruments, whether executed within or without the commonwealth, by a person purporting to hold the position of president, vice president, treasurer, clerk, secretary, or any assistant to the foregoing, principal, partner, proprietor, trustee, attorney or other similar position, of the entity entitled to record or file such instruments on behalf of such entity acting in its own capacity or as a general partner or coventurer, or as assignee, agent or authorized representative, shall be binding upon such entity and shall be entitled to be recorded or filed, and no vote of the entity affirming such authority shall be required to permit recording or filing. A certificate of the acknowledgement or other proof of due execution shall be endorsed upon or annexed to such instrument, and filed or recorded with it.

Such notices, and all other instruments required or permitted by this chapter to be filed or recorded in the registry of deeds, affecting registered land shall be filed and registered in the manner prescribed by section seventy-eight of chapter one hundred and eighty-five. Such notices, and all other instruments required or permitted by this chapter to be filed or recorded in the registry of deeds, affecting unregistered land shall be indexed in a separate book to be kept for that purpose.

If registered land is included with unregistered land in any such notice or other instrument, an attested copy thereof shall be filed with the assistant recorder and registered.

Section 31. Apportionment; priority; proceedings; public contracts

In the event that a general contractor or a subcontractor on any construction work is

657 adjudged a bankrupt, or makes a general assignment for the benefit of creditors, or if a receiver
658 is appointed on account of the insolvency of the general contractor or of a subcontractor, at a
659 time when there are sums due or which later become due from the person contracting for the
660 work on account of the work of such general contractor or when there are sums due or which
661 later become due from the general contractor on account of the work of such subcontractor, each
662 person furnishing labor or labor and materials to such general contractor or such subcontractor
663 shall have a lien each in proportion to the amount of his respective claim on all such sums due or
664 which later become due in connection with the particular construction work, provided, that a lien
665 on any such sums arising out of the recording or filing of a document or notice in accordance
666 with the provisions of this chapter or in accordance with any other applicable provisions of the
667 general laws shall have priority over any lien secured pursuant to this section, and provided
668 further, that such lien shall not take effect unless written notice thereof is given to the person
669 owing such sums. Proceedings to enforce a lien secured under this section shall be by a civil
670 action in the superior court within one year after the adjudication of bankruptcy, or the
671 assignment for the benefit of creditors or the appointment of a receiver, and the plaintiff shall
672 bring his action in his own behalf and in behalf of all other persons in interest who shall become
673 parties. All other parties in interest may appear and have their rights determined in such action,
674 and, at any time before entry of final judgment, upon the suggestion of any party in interest that
675 any other person is or may be interested in the action, or of its own motion, the court may
676 summon such person to appear in said cause on or before a day certain or be forever barred from
677 any rights thereunder. The court may in its discretion provide for notice to absent parties in
678 interest. The other provisions of this chapter shall not apply to any such civil action. The
679 provisions of this section shall not apply to any contract with the commonwealth or with any

political subdivision thereof or any other public instrumentality.

Section 32. Void and unenforceable covenants, promises, etc.; exceptions

A covenant, promise, agreement of understanding in, or in connection with or collateral to, a contract or agreement relative to the construction, alteration, repair or maintenance of a building, structure, appurtenance and appliance or other improvement to real property, including moving, demolition and excavating connected therewith, purporting to bar the filing of a notice of contract or the taking of any steps to enforce a lien as set forth in this chapter or purporting to subordinate such rights to the rights of other persons is against public policy and is void and unenforceable, but this section shall not apply to:

(1) waivers of liens given by any person named as a principal on a lien bond provided under section twelve in connection with an interim or final payment received by such persons;

(2) statements by persons entitled to file documents under this chapter of amounts due or paid to them;

(3) dissolutions of liens under section ten;

(4) partial waivers and subordinations of liens given by persons who have filed or recorded notices of contract under section two substantially in the following form with no material deviation therefrom:

Partial Waiver and Subordination of Lien

COMMONWEALTH OF MASSACHUSETTS: Date: _____

_____ COUNTY Application for Payment No: _____

OWNER: _____

CONTRACTOR: _____

LENDER/MORTGAGEE: _____

703 1. Original Contract Amount: _____

704 2. Approved Change Orders: _____

705 3. Adjusted Contract Amount: _____

706 (line 1 plus 2)

707 4. Completed to Date: _____

708 5. Less Retainage: _____

709 6. Total Payable to Date: _____

710 (line 4 less line 5)

711 7. Less Previous Payments: _____

712 8. Current Amount Due: _____

713 (line 6 less line 7)

714 9. Pending Change Orders: _____

715 10. Disputed Claims: _____

716 The undersigned who has a contract with ____ for furnishing labor or materials or both
717 labor and materials or rental equipment, appliances or tools for the erection, alteration, repair or
718 removal of a building or structure or other improvement of real property known and identified as
719 ____ located in ____ (city or town), ____ County, Commonwealth of Massachusetts and owned by
720 ____, upon receipt of ____ (\$____) in payment of an invoice/requisition/application for payment
721 dated ____ does hereby:

722 (a) waive any and all liens and right of lien on such real property for labor or materials, or
723 both labor and materials, or rental equipment, appliances or tools, performed or furnished
724 through the following date: ____ (payment period), except for retainage, unpaid agreed or pending
725 change orders, and disputed claims as stated above; and

(b) subordinate any and all liens and right of lien to secure payment for such unpaid, agreed or pending change orders and disputed claims, and such further labor or materials, or both labor and materials, or rental equipment, appliances or tools, except for retainage, performed or furnished at any time through the twenty-fifth day after the end of the above payment period, to the extent of the amount actually advanced by the above lender/mortgagee through such twenty-fifth day.

Signed under the penalties of perjury this ____ day of ____, ____.

The giving of a partial waiver and subordination of lien by any contractor under this section shall not affect the lien rights of any other person claiming a lien under any section of this chapter.

Section 33. Mortgagee's right to withhold funding, financing or payment for labor and materials

Except with respect to any construction project containing or designed to contain at least one but not more than four dwelling units, the filing or recording of documents claiming a lien under section two, or the filing or recording of a statement pursuant to section eight in furtherance of a lien arising pursuant to section one, shall not itself be grounds for a mortgagee to withhold sums for the funding, financing or payment for the labor or labor and materials for which any such notice or statement is filed or recorded or to require dissolution of such notice or statement before providing further funding, financing or payments, and any covenant, promise, agreement or understanding relative to the improvement or alteration to real property to withhold such funding, financing or payment or to require dissolution of such notice or statement before providing further funding, financing or payments solely on that ground is against public policy and void and unenforceable; provided, however, that nothing contained in this chapter shall

749 obligate a mortgagee to disburse sums for the funding, financing or payment for the labor or
750 labor and materials for which any such notice or statement is filed or recorded unless such
751 mortgagee has received an accurately completed and valid partial waiver and subordination of
752 lien in the form set forth in clause (3) of section thirty-two from the person who filed or recorded
753 such notice or statement; provided, further that nothing in this chapter shall in any manner limit
754 or restrict the right of any mortgagee to withhold any and all sums for the funding, financing, or
755 payment for labor or labor and materials based upon: (a) the failure of the owner to comply with
756 any other terms, conditions or requirements in any agreement providing for the funding of the
757 loan, the repayment of the loan or of any mortgage securing any such agreement or (b) the filing
758 or recording of documents claiming a lien under section four, if the right to withhold is contained
759 in any agreement providing for the funding of the loan, the repayment of the loan, or any
760 mortgage securing such agreement, except that such right to withhold shall not be effective to
761 bar the filing of a notice of contract or the taking of any steps to enforce a lien.