
By Mr. Kaplan of Brookline, petition of the Cobb Lumber Co. Inc. for legislation relative to liens for labor and materials on buildings and land. The Judiciary.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Fifty-Nine.

AN ACT RELATIVE TO LIENS FOR LABOR AND MATERIALS ON BUILDINGS AND LAND.

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 254 of the General Laws is hereby
2 amended by striking out section 2, as appearing in the Ter-
3 centenary Edition, and inserting in place thereof the following
4 section:—

5 *Section 2.* A person entering into a written contract with the
6 owner of land for the whole or any part of the erection, alteration,
7 repair or removal of a building or structure upon land, or for
8 furnishing material therefor, **including lumber so employed**
9 **which is not incorporated in the construction or repair**
10 **work and is not wholly or necessarily consumed or made**
11 **so worthless as to lose its identity, but only to the extent**
12 **of its purchase price less its fair salvage value,** shall have
13 a lien upon said building or structure and upon the interest of
14 the owner in said lot of land as appears of record at the date
15 when notice of said contract is filed or recorded in the registry
16 of deeds for the county or district where such land lies, to secure
17 the payment of all labor and material which shall **have been**
18 **furnished within five days of the date when such notice**
19 **is filed or which shall** thereafter be furnished by virtue of said
20 contract. Said notice may be filed or recorded by any person

21 entitled under this chapter to enforce a lien, and shall be in
22 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 **or has within five days of the date when such notice is filed furnished** labor and material for the erection, alteration, repair or removal of a building on a lot of land described as follows:—

Said contract is to be completed on or before _____ .

23 A notice of any extension of such contract, stating the date
24 to which it is extended, shall also be filed or recorded in the said
25 registry prior to the date stated in the notice of the contract for
26 the completion thereof, and may be filed by any party entitled
27 to file the original notice.

28 Such notices, and all other instruments hereinafter required to
29 be filed or recorded in the registry of deeds, affecting registered
30 land shall be filed and registered in the manner prescribed by sec-
31 tion seventy-eight of chapter one hundred and eighty-five. Such
32 notices, and all other instruments hereinafter required to be filed
33 or recorded in the registry of deeds, affecting unregistered land
34 shall be indexed in a separate book to be kept for that purpose.

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

1 SECTION 2. Said chapter 254 is hereby further amended by
2 striking out section 3, as so appearing, and inserting in place
3 thereof the following section:—

4 *Section 3.* If the notice aforesaid shall have been filed or
5 recorded in the registry of deeds, as hereinbefore provided; any
6 person who shall **have furnished within five days of such**
7 **notice** or shall thereafter furnish labor or material, **including**
8 **lumber so employed which is not incorporated in the con-**
9 **struction or repair work and is not wholly or necessarily**
10 **consumed or made so worthless as to lose its identity, but**
11 **only to the extent of its purchase price less its fair salvage**
12 **value**, or perform labor, under a contract with the contractor or
13 with any sub-contractor of said contractor, shall be entitled to
14 enforce a lien on the premises therein described for any labor

15 performed, or labor or material furnished **within five days of**
16 **such notice or** subsequent to the filing or recording of said
17 notice and prior to the date of the termination of said contract
18 as stated in said notice or notices.

1 SECTION 3. Said chapter 254 is hereby further amended by
2 striking out section 4, as so appearing, and inserting in place
3 thereof the following section: —

4 *Section 4.* Whoever, subsequent to the date of the original
5 contract, furnishes labor or material, **including lumber so em-**
6 **ployed which is not incorporated in the construction or**
7 **repair work and is not wholly or necessarily consumed or**
8 **made so worthless as to lose its identity, but only to the**
9 **extent of its purchase price less its fair salvage value,** or
10 both labor and material, or performs labor, under a written con-
11 tract with a contractor, or with a sub-contractor of such con-
12 tractor, may file in the registry of deeds for the county or district
13 where such land lies a notice of his contract substantially in the
14 following form:

Notice is hereby given that by virtue of a written contract dated _____,
between _____, contractor (or sub-contractor), and
said _____ is to furnish **or has within five days of the date when**
such notice is filed furnished labor or material, or both labor and material,
or performed labor in the erection, alteration, repair or removal of a building
or structure by _____, contractor, for _____, owner, on a lot
of land described as follows: —

Said contract is to be completed on or before _____.

15 A notice of any extension of such contract, stating the date to
16 which it is extended, shall also be filed or recorded in said registry
17 prior to the date stated in the notice of the contract for the
18 completion thereof.

19 Upon filing a notice, as hereinbefore provided, and giving
20 **[actual]** notice to the owner of such filing, the sub-contractor
21 shall have a lien to secure the payment of all labor and material,
22 which he **shall have furnished within five days of the date**
23 **when such notice is filed or** shall thereafter furnish, upon the
24 building or structure, and upon the interest of the owner, as
25 appears of record at the time of such filing, in the lot of land on

26 which said building or structure is situated. But such lien shall
27 in no event exceed the amount due or to become due under the
28 original contract when notice of the filing of the sub-contract is
29 given by the sub-contractor to the owner; and the time for the
30 performance of the contract of the sub-contractor shall not be
31 extended beyond the time for the performance of the original
32 contract and any extension thereof, if the objection thereto of
33 the owner is filed in the registry of deeds and [actual] notice
34 of such objection is given by the owner to the sub-contractor
35 within five days after the owner received notice of the filing of the
36 contract as provided in this section.

37 **Any notice required by this chapter, except the notice**
38 **required by section nineteen, may be given by any person,**
39 **by delivery of the notice or may be given by registered or**
40 **certified mail. Notice to one member of a firm or to an**
41 **officer of a corporation of the person in charge of its**
42 **business to one co-owner of real estate shall be sufficient**
43 **notice hereunder to all members of any firm or corpora-**
44 **tion or owners of such land.**

1 SECTION 4. Said chapter 254 is hereby further amended by
2 striking out section 5, as so appearing, and inserting in place
3 thereof the following section:—

4 *Section 5.* All proceedings to enforce a lien upon land for the
5 erection, alteration, repair or removal of a building or other
6 structure, shall be begun by bill in equity filed in the superior
7 court for the county where the land lies. The petitioner shall
8 bring his bill in his own behalf and in behalf of all other persons
9 in interest who shall become parties. The subpoena shall be
10 returnable not more than sixty days subsequent to the entry of
11 the bill and shall contain a brief description of the property,
12 sufficient to identify it, and a statement of the amount alleged
13 to be due. An attested copy thereof shall be filed in the registry
14 of deeds and recorded as provided in section nine, **unless be-**
15 **fore the return day a bond to dissolve the lien is, pursuant**
16 **to section fourteen, filed in the registry of deeds.** All other
17 parties in interest may appear and have their rights determined
18 in such bill, and at any time before a final decree, upon the sug-
19 gestion of any party in interest that any other person is or may

20 be interested in the suit, or of its own motion, the court may
21 issue a subpoena to such person, or a precept directing him to
22 appear in said cause on or before a certain day or be forever
23 barred from any rights thereunder. The court may in its dis-
24 cretion provide for notice to absent parties in interest. The
25 terms "party in interest" and "person in interest," as used in
26 this chapter, shall include mortgagees and attaching creditors.

1 SECTION 5. Said chapter 254 is hereby further amended by
2 striking out section 11, as so appearing, and inserting in place
3 thereof the following section: —

4 *Section 11.* The lien shall be dissolved unless a bill in equity to
5 enforce it is filed within sixty days after the filing of the state-
6 ment required by section eight. The validity of the lien shall
7 not be affected by an inaccuracy in the description of the prop-
8 erty to which it attaches, if the description is sufficient to
9 identify the property, or by an inaccuracy in stating the amount
10 due for labor or material unless it is shown that the person filing
11 the statement has wilfully and knowingly claimed more than is
12 due him. **Nor shall the lien be dissolved by virtue of an**
13 **error on the part of the lienor in complying with chapter**
14 **two hundred and fifty-four, provided such error is made**
15 **in good faith and no innocent purchaser for value has**
16 **purchased said property up to the time of the filing of the**
17 **bill in equity as required by section five hereof. Delivery**
18 **of materials upon the premises described in the notice of**
19 **contract, in pursuance of a written contract and receipted**
20 **for by the owner, or contractor, or their agents or em-**
21 **ployees shall be deemed prima facie evidence that said**
22 **materials were actually used or employed in the erection,**
23 **alteration, repair or removal of the building or structure**
24 **upon said land.**

1 SECTION 6. Said chapter 254 is hereby further amended by
2 striking out section 20, as so appearing, and inserting in place
3 thereof the following section: —

4 *Section 20.* An interest in land sold under this chapter [may
5 be redeemed, as provided for sales of land on execution.] shall
6 **forever foreclose the right of redemption.**

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REPORT OF THE

COMMISSIONERS OF THE GENERAL LAND OFFICE

IN ANSWER TO A RESOLUTION PASSED BY THE HOUSE OF REPRESENTATIVES

ON THE 14TH MARCH 1881

BY THE COMMISSIONERS

LONDON: PRINTED BY RICHARD CLAY AND COMPANY, BUNGAY, SUFFOLK.

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