

SENATE No.

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:

DISTRICT/ADDRESS:

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 inserting in
2 place thereof the following chapter: Chapter 254

3

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

6

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

9

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

12

13 (ii) “Professional services” means those services performed by licensed

14 architects, registered professional engineers, registered land surveyors and licensed site
15 professionals and includes design, planning, construction administration and surveying
16 services.

17
18 (b) A person to whom a debt is due for personal labor or professional services performed in the
19 design, planning, construction administration, surveying, erection, alteration, repair or
20 removal of a building or structure upon land or improvement or alteration to real property, by
21 virtue of an agreement with, or by consent of, the owner of such building or structure, or of a
22 person having authority from or rightfully acting for such owner in procuring or furnishing such
23 professional services or labor, shall, under the provisions of this chapter, other than section four,
24 have a lien upon such building or structure and upon such interest in such real property, land,
25 building, structure, or improvement owned by the party authorizing or consenting to said work or
26 professional services, for not more than thirty days' work or services actually performed for the
27 ninety days next prior to his filing a statement as provided in section eight.

28
29 A person or his assignee, agent, authorized representative or third party beneficiary, to whom
30 amounts are due or for whose benefit amounts are computed and due for, or on the basis of, the
31 personal labor or professional services of such person, may file a lien to secure the payment of
32 such unpaid amounts including interest and agreed penalties for failure to pay the same.

33
34 Section 2. Written contract; notice; time for filing; form

35
36 A person entering into a written contract with the owner of any interest in real

37 property, or with any person acting for, on behalf of, or with the consent of such owner for the
38 whole or part of the design, planning, construction administration, surveying, erection, alteration,
39 repair or removal of a building, structure, or other improvement to real property, or for
40 furnishing material or rental equipment, appliances, or tools therefor, shall have a lien upon such
41 real property, land, building, structure or improvement owned by the party with whom or on
42 behalf of whom the contract was entered into, as appears of record on the date when notice of
43 said contract is filed or recorded in the registry of deeds for the county or district where such
44 land lies, to secure the payment of all labor, including construction management and general
45 contractor services, professional services and material or rental equipment, appliances, or tools
46 which shall be furnished by virtue of said contract. Said notice may be filed or recorded in the
47 registry of deeds in the county or registry district where the land lies by any person entitled
48 under this section to enforce a lien, and shall be in substantially the following form:

49

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

56

57 (INSERT DESCRIPTION)

58

59 Such person may file or record the notice of contract at any time after execution of the written

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

67

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

70

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

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

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

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

79

80 Notice of Substantial Completion

81

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

83 ___ as owner, and ___ ___ as contractor, for the erection, alteration, repair or removal of a
84 building, structure, or other improvement of real property described below, has been
85 substantially completed as of the date of filing or recording of this notice. The lot of land or
86 other interest in real property which is the subject of such contract is described as follows:

87

88 (Insert description)

89

90 The undersigned owner hereby states that he has served written notice of the recording or filing
91 of this notice of substantial completion upon every person who has filed or recorded prior to the
92 date this notice is filed or recorded notice of contract under section four of chapter two hundred
93 and fifty-four of the General Laws.

94

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

100

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

106

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

111

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

113 Mail

114

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

119

120 Notice of Termination

121

122 Notice is hereby given that a written contract dated ___ between ___ as Owner and ___ as
123 Contractor, or ___ as Design Professional for the design, planning, construction
124 administration or surveying services, erection, alteration, repair or removal of a building,
125 structure or other improvement of real property described below, has been terminated. The lot of
126 land or other interest in real property which is the subject of such contract is described as
127 follows:

128

129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151

(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

152

153 Whoever furnishes labor, including subcontractor construction management services,
154 or who furnishes material, or both labor and material, or furnishes rental equipment, appliances
155 or tools, under a written contract with a contractor, or with a subcontractor of such contractor,
156 may file or record in the registry of deeds for the county or district where such land lies a notice
157 of his contract substantially in the following form:

158

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

165

(Insert description)

167

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

169 1. contract price _____

170 2. agreed change orders _____

171 (indicate whether addition or subtraction)

172 3. pending change orders: _____

173 (indicate whether addition or subtraction)

174 4. disputed claims _____

175 (indicate whether addition or subtraction)

176 5. payments received _____

177

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

179

180 Such person may file or record the notice of contract at any time after execution of the written
181 contract whether or not the date for performance stated in such written contract has passed and
182 whether or not the work under such contract has been performed, but not later than the earliest
183 of: (i) sixty days after filing or recording the notice of substantial completion under section two
184 A; or (ii) ninety days after filing or recording of the notice of termination under section two B; or
185 (iii) ninety days after the last day a person entitled to enforce a lien under section two or anyone
186 claiming by, through or under him performed or furnished labor or materials or both labor and
187 materials to the project or furnished rental equipment, appliances or tools.

188

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

195

196 Upon filing or recording a notice, as hereinbefore provided, and giving actual notice to the
197 owner of such filing, the subcontractor shall have a lien upon such real property, land, building,

198 structure or improvement owned by the party who entered into the original contract as appears of
199 record at the time of such filing, to secure the payment of all labor and material and rental
200 equipment, appliances or tools which he is to furnish or has furnished for the building or
201 structure or other improvement, regardless of the amount stated in the notice of contract. Such
202 lien shall not exceed the amount due or to become due under the original contract as of the date
203 notice of the filing of the subcontract is given by the subcontractor to the owner.

204

205 If the person claiming a lien under this section has no direct contractual relationship with the
206 original contractor, except for liens for labor by persons defined in section one of this chapter,
207 the amount of such lien shall not exceed the amount due or to become due under the subcontract
208 between the original contractor and the subcontractor whose work includes the work of the
209 person claiming the lien as of the date such person files his notice of contract, unless the person
210 claiming such lien has, within thirty days of commencement of his performance, given written
211 notice of identification by certified mail return receipt requested to the original contractor in
212 substantially the following form:

213

214

Notice of Identification

215

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

221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243

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:

(Insert description)

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

1. contract price _____
2. payments received _____
3. amount owed _____

244

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

246

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

255

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

261

262 Upon filing or recording a notice, as hereinbefore provided, the design professional shall have a
263 lien upon such real property, land, building, structure or improvement owned by the party who
264 entered into the original contract as appears of record at the time of such filing, to secure the
265 payment of all professional services provided for the building or structure or other improvement,
266 regardless of the amount stated in the notice of contract.

267

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

274

275 Section 5. Enforcement of lien; procedure

276

277 A lien upon land for the design, planning, construction administration, or surveying
278 services, erection, alteration, repair or removal of a building or other structure or other
279 improvement of real property or a lien established under section seventy-six of chapter sixty-
280 three, section six of chapter one hundred and eighty-three A, or subsection (a) of section twenty-
281 nine of chapter one hundred and eighty-three B shall be enforced by a civil action brought in the
282 superior court for the county where such land lies or in the district court in the judicial district
283 where such land lies. The plaintiff shall bring his action in his own behalf and in behalf of all
284 other persons in interest who shall become parties. An attested copy of the complaint, which
285 shall contain a brief description of the property sufficient to identify it, and a statement of the
286 amount due, shall be filed in the registry of deeds and recorded as provided in section nine
287 within thirty days of the commencement of the action, or such lien shall be dissolved. All other
288 parties in interest may appear and have their rights determined in such action, and at any time
289 before entry of final judgment, upon the suggestion of any party in interest that any other person

290 is or may be interested in the action, or of its own motion, the court may summon such person to
291 appear in such cause on or before a day certain or be forever barred from any rights thereunder.
292 The court may in its discretion provide for notice to absent parties in interest. The terms “party
293 in interest” and “person in interest”, as used in this chapter, shall include mortgages and
294 attaching creditors.

295

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

297

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

309

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

311

312

SALE OF REAL ESTATE

313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335

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

Description: (Describe premises exactly as in the deed, including all references to title, 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

___(insert year)

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

SALE OF REAL ESTATE

336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358

UNDER GLM 183B:29

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

Description: (Describe premises exactly as in the deed, including all references to title, 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

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

372
373 The person or entity selling, or their attorney, may cause a copy of the notice and an affidavit,
374 stating that the requirements of the court order and of this section have been complied with, to be
375 recorded with a note of reference thereto on the margin of the record of the complaint previously
376 recorded, and such affidavit or a certified copy of the record thereof shall be admitted as
377 evidence that the sale was duly executed.

378
379 For the purposes of this section, the term "recorded" shall mean recorded in the registry of deeds
380 or land registration office for the county or district where the land lies.

381

382 Section 6. Public property; exemption

383

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

386

387 Section 7. Mortgages; invalidity of subsequent liens

388

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

395

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

402

403 (c) No lien under section four shall avail against a mortgage actually existing and duly registered
404 or recorded to the extent of the amount actually advanced or unconditionally committed prior to

405 the filing or recording in the registry of deeds of the notice required by section four.

406

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

412

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

414

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

428 registry of deeds within the ninety days provided in said section. Nothing in this section shall
429 prohibit the filing or recording of a statement under this section prior to the filing or recording of
430 the notices under section two A or two B.

431

432 Section 9. Notice or statement; public inspection; recording

433

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

437

438 Section 10. Dissolution by notice

439

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

443

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

445

446 The lien shall be dissolved unless a civil action to enforce it is commenced within
447 ninety days after the filing of the statement required by section eight. The validity of the lien
448 shall not be affected by an inaccuracy in the description of the property to which it attaches, if
449 the description is sufficient to identify the property, or by an inaccuracy in stating the amount
450 due for labor or material or design, planning, construction administration or surveying services

451 unless it is shown that the person filing the statement has willfully and knowingly claimed more
452 than is due him.

453

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

455

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

463

464 Know All Men By These Presents:

465

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

474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496

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.

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

498 Principal

499 By

500 Surety

501 By

502 Certificate

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

506

507 (Signed)

508

509 After the recording of any such bond no lien under this chapter shall thereafter attach in favor of
510 any person entitled to the benefit of such bond and not named as a principal thereon for labor or
511 for labor and materials performed under the contract in respect to which such bond is given.

512

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

518

519 No suit or action on the bond shall be commenced after the expiration of ninety days after the

520 claimant filed the statement required by section 8. Such bond shall not create any rights which
521 the claimant would not have had, or impair any defense which the obligors would have had, in an
522 action to enforce a lien.

523

524 Section 13. Attachments

525

526 The rights of an attaching creditor shall not prevail as against a lien under section
527 one, nor against the claim of a lienor where notice or notices of contract have been filed or
528 recorded in the registry of deeds under sections two and four prior to the recording of the
529 attachment. An attachment recorded prior to the filing or recording of the notice of contract shall
530 prevail against a lien, other than for personal labor or professional services, to the extent of the
531 value of the buildings and land as they were at the time when the labor was commenced or the
532 material furnished or professional services were commenced for which the lien is claimed, and in
533 case of a sale under section eighteen the court shall determine what proportion of the proceeds of
534 the sale, as derived from the value of the property at such time, shall be held subject to the
535 attachment. If the attaching creditor recovers judgment, the proceeds so held subject to his
536 attachment, or as much thereof as may be necessary, shall be applied upon his execution, and the
537 residue, if any, shall be disposed of in the same manner as if there had been no such attachment.
538 If the interest of the owner of the property is attached after the filing of the notice, the proceeds
539 of any sale of the property under said section eighteen, after discharging all prior liens and
540 claims, shall be applied to satisfy the execution of the attaching creditor, provided the lienor or
541 the officer making the sale has actual notice of the attachment. Several attaching creditors as
542 between themselves shall be paid according to the order of their attachments. Liens of a trustee

543 or trustees of a fund or funds, described in section one, providing coverage or benefits for
544 persons shall be considered as liens for personal labor.

545

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

547

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

560

561 The bond shall be in the following form:

562

563 Know All Men By These Presents:

564

565 That we, ___ as principal and ___ duly organized to transact business as a surety within the

566 Commonwealth of Massachusetts, as surety, are holden and stand firmly bound and obliged unto
567 ___ in the penal sum of ___ Dollars (\$___), to the payment of which we bind ourselves, our
568 heirs, successors and assigns, jointly and severally by these presents.

569

570 Whereas, under date of ___, the said obligee recorded a notice of contract in the registry of
571 deeds, as Instrument #___, in Book ___ at Page ___ upon premises more fully described in said
572 notice, and

573

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

576

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

581

582 In witness whereof, the aforesaid principal and surety have executed this instrument under seal
583 this ___ day of ___ (insert year).

584

Principal

585

by_____

586

587

Surety

588

by_____.

589

590 Section 15. Dissolution by judgment

591

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

596

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

598

599 If any person in interest, including but not limited to an owner, contractor, design
600 professional or mortgage holder, claims (a) that any person who has provided labor or materials
601 or has agreed to provide funding, financing or payment for labor or materials, refuses to continue
602 to provide such funding, financing or payments of labor or materials solely because of the filing
603 or recording of a notice of contract pursuant to section two or a statement of claim referencing a
604 lien under section one, or (b) it appears from the notice of contract or a statement of account that
605 the claimant has no valid lien by reason of the character of, or the contract for, the labor or
606 materials or rental equipment, appliances or tools furnished and for which a lien is claimed, or
607 (c) that a notice or other instrument has not been filed or recorded in accordance with the
608 applicable provisions of this chapter, or (d) that for any other reason a claimed lien is invalid by
609 reason of failure to comply with any provision of this chapter, or (e) that any party's rights are
610 foreclosed by a judgment or release, or (f) that any party wrongfully refuses to execute a notice
611 of completion as required by section two A or improperly files or records a notice of termination

612 under section two B, such person may apply to the superior court for the county where such land
613 lies or in the district court in the judicial district where such land lies, for an order (i) ruling on
614 the matter involved or (ii) summarily discharging of record the alleged lien or notice as the case
615 may be. The holder of any recorded mortgage upon the affected property shall receive notice of
616 and be entitled to appear and be heard in any proceeding brought under this section. An order of
617 notice to appear and show cause why the relief demanded in the complaint should not be granted
618 shall be served upon the necessary parties no later than seven days prior to the date of the
619 scheduled hearing. If the necessary parties cannot be found, such service may be made as the
620 court shall direct. The application shall be made upon a verified complaint accompanied by other
621 written proof of the facts upon which the application is made. Upon granting or denying the
622 application, the court shall enter a final judgment on the matter involved or expeditiously order
623 such further proceedings as are just.

624

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

626

627 Section 17. Claims; allowance

628

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

635

636 Section 18. Sale of property

637

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

642

643 Section 19. Notice of sale

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

646

647 Section 20. Redemption; limitation

648

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

651

652 Section 21. Distribution of assets

653

654 If all the claims against the property covered by the lien were ascertained at the time
655 of ordering the sale and if the proceeds of the sale are sufficient therefor, the court may order the
656 officer to distribute them, after deducting all lawful charges and expenses of such officer, to and
657 among the several creditors to the amount of their respective debts, with interest, or, if

658 insufficient, to distribute the same among the lien creditors pursuant to this chapter in proportion
659 to the amount due to each, regardless of the date upon which each such lien creditor filed a
660 notice of contract. If all the claims were not ascertained at the time of ordering the sale or other
661 sufficient cause is shown, the court may order the officer to bring the proceeds of the sale into
662 court to be disposed of according to its decree. If the whole cannot be conveniently distributed at
663 one time, the court may make successive orders of distribution. If there is a surplus of the
664 proceeds of the sale after making all payments before mentioned, it shall be paid over to the
665 owner of the property; but, before it is so paid over, it may be attached or taken on execution in
666 like manner as proceeds from a sale on execution. Notwithstanding the foregoing, proceeds of
667 the sale shall be distributed to mortgagees entitled to priority pursuant to this chapter in the
668 amounts given priority thereunder, before proceeds are distributed to creditors whose liens arise
669 under this chapter.

670

671 Section 22. Costs

672

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

675

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

677 lien

678

679 If the person for whom the labor has been performed or furnished or the material has
680 been furnished or for whom the professional services have been provided dies or conveys away

681 his estate or interest before the commencement of a civil action to enforce a lien, it may be
682 commenced and prosecuted against his heirs or against the persons holding the estate or interest
683 which he had in the land at the time when the labor or material was performed or furnished. If
684 the action was commenced in the lifetime of such person, it may be prosecuted against his
685 executor, administrator, heirs or assigns as if the estate or interest has been mortgaged to secure
686 the debt.

687

688 Section 24. Death of creditor; effect

689

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

693

694 GENERAL PROVISIONS

695

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

697

698 If the person for whom the labor or professional services have been performed or
699 with whom the original contract has been entered into for the whole or any part of the design,
700 planning, construction administration, surveying, erection, alteration, repair or removal of a
701 building or structure upon land, or for furnishing material therefor, has an estate less than a fee
702 simple in the land or if the property is subject to a mortgage or other encumbrance, the lien shall
703 bind such person's whole estate and interest in the property, and such estate or interest may be

704 sold and the proceeds applied according to this chapter.

705

706 Section 26. Remedies

707

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

710

711 LIENS ON LAND RAISED OR RECLAIMED BY DREDGING

712

713 Section 27. Written contract; form of notice

714

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

723

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

727

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

729

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

735

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

740

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

746

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

750 or with a subcontractor of such contractor.

751

752 Section 29. Laws applicable to Sec. 27 or 28

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

757

758 Section 30. Recording; duty of register of deeds

759

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

763

764 Any notice or other instrument required or permitted to be filed or recorded by this chapter in the
765 registry of deeds or in the land registration district of the land court that is in the form required
766 by this chapter and executed before a notary public, justice of the peace or other officer entitled
767 by law to take acknowledgements with respect to instruments, whether executed within or
768 without the commonwealth, by a person purporting to hold the position of president, vice
769 president, treasurer, clerk, secretary, or any assistant to the foregoing, principal, partner,
770 proprietor, trustee, attorney or other similar position, of the entity entitled to record or file such
771 instruments on behalf of such entity acting in its own capacity or as a general partner or
772 coventurer, or as assignee, agent or authorized representative, shall be binding upon such entity

773 and shall be entitled to be recorded or filed, and no vote of the entity affirming such authority
774 shall be required to permit recording or filing. A certificate of the acknowledgement or other
775 proof of due execution shall be endorsed upon or annexed to such instrument, and filed or
776 recorded with it.

777
778 Such notices, and all other instruments required or permitted by this chapter to be filed or
779 recorded in the registry of deeds, affecting registered land shall be filed and registered in the
780 manner prescribed by section seventy-eight of chapter one hundred and eighty-five. Such
781 notices, and all other instruments required or permitted by this chapter to be filed or recorded in
782 the registry of deeds, affecting unregistered land shall be indexed in a separate book to be kept
783 for that purpose.

784
785 If registered land is included with unregistered land in any such notice or other instrument, an
786 attested copy thereof shall be filed with the assistant recorder and registered.

787
788 Section 31. Apportionment; priority; proceedings; public contracts

789
790 In the event that a general contractor or a subcontractor on any construction work is
791 adjudged a bankrupt, or makes a general assignment for the benefit of creditors, or if a receiver
792 is appointed on account of the insolvency of the general contractor or of a subcontractor, at a
793 time when there are sums due or which later become due from the person contracting for the
794 work on account of the work of such general contractor or when there are sums due or which
795 later become due from the general contractor on account of the work of such subcontractor, each

796 person furnishing labor or labor and materials to such general contractor or such subcontractor
797 shall have a lien each in proportion to the amount of his respective claim on all such sums due or
798 which later become due in connection with the particular construction work, provided, that a lien
799 on any such sums arising out of the recording or filing of a document or notice in accordance
800 with the provisions of this chapter or in accordance with any other applicable provisions of the
801 general laws shall have priority over any lien secured pursuant to this section, and provided
802 further, that such lien shall not take effect unless written notice thereof is given to the person
803 owing such sums. Proceedings to enforce a lien secured under this section shall be by a civil
804 action in the superior court within one year after the adjudication of bankruptcy, or the
805 assignment for the benefit of creditors or the appointment of a receiver, and the plaintiff shall
806 bring his action in his own behalf and in behalf of all other persons in interest who shall become
807 parties. All other parties in interest may appear and have their rights determined in such action,
808 and, at any time before entry of final judgment, upon the suggestion of any party in interest that
809 any other person is or may be interested in the action, or of its own motion, the court may
810 summon such person to appear in said cause on or before a day certain or be forever barred from
811 any rights thereunder. The court may in its discretion provide for notice to absent parties in
812 interest. The other provisions of this chapter shall not apply to any such civil action. The
813 provisions of this section shall not apply to any contract with the commonwealth or with any
814 political subdivision thereof or any other public instrumentality.

815

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

817

818 A covenant, promise, agreement of understanding in, or in connection with or

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

825

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

828

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

831

832 (3) dissolutions of liens under section ten;

833

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

836 deviation therefrom:

837

838 Partial Waiver and Subordination of Lien

839

840 COMMONWEALTH OF MASSACHUSETTS:

Date: _____

841 _____ COUNTY

Application for Payment No: _____

842 OWNER: _____

843 CONTRACTOR: _____

844 LENDER/MORTGAGEE: _____

845 1. Original Contract Amount: _____

846 2. Approved Change Orders: _____

847 3. Adjusted Contract Amount: _____

848 (line 1 plus 2)

849 4. Completed to Date: _____

850 5. Less Retainage: _____

851 6. Total Payable to Date: _____

852 (line 4 less line 5)

853 7. Less Previous Payments: _____

854 8. Current Amount Due: _____

855 (line 6 less line 7)

856 9. Pending Change Orders: _____

857 10. Disputed Claims: _____

858

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

865

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

870

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

876

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

878

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

881

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

884

885 Except with respect to any construction project containing or designed to contain at
886 least one but not more than four dwelling units, the filing or recording of documents claiming a
887 lien under section two, or the filing or recording of a statement pursuant to section eight in

888 furtherance of a lien arising pursuant to section one, shall not itself be grounds for a mortgagee
889 to withhold sums for the funding, financing or payment for the labor or labor and materials for
890 which any such notice or statement is filed or recorded or to require dissolution of such notice or
891 statement before providing further funding, financing or payments, and any covenant, promise,
892 agreement or understanding relative to the improvement or alteration to real property to withhold
893 such funding, financing or payment or to require dissolution of such notice or statement before
894 providing further funding, financing or payments solely on that ground is against public policy
895 and void and unenforceable; provided, however, that nothing contained in this chapter shall
896 obligate a mortgagee to disburse sums for the funding, financing or payment for the labor or
897 labor and materials for which any such notice or statement is filed or recorded unless such
898 mortgagee has received an accurately completed and valid partial waiver and subordination of
899 lien in the form set forth in clause (3) of section thirty-two from the person who filed or recorded
900 such notice or statement; provided, further that nothing in this chapter shall in any manner limit
901 or restrict the right of any mortgagee to withhold any and all sums for the funding, financing, or
902 payment for labor or labor and materials based upon: (a) the failure of the owner to comply with
903 any other terms, conditions or requirements in any agreement providing for the funding of the
904 loan, the repayment of the loan or of any mortgage securing any such agreement or (b) the filing
905 or recording of documents claiming a lien under section four, if the right to withhold is contained
906 in any agreement providing for the funding of the loan, the repayment of the loan, or any
907 mortgage securing such agreement, except that such right to withhold shall not be effective to
908 bar the filing of a notice of contract or the taking of any steps to enforce a lien.