

SENATE No. 167

The Commonwealth of Massachusetts

PRESENTED BY:

Thomas P. Kennedy

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 adoption of the accompanying bill:

An Act relative to residential construction contracts.

PETITION OF:

NAME:

Thomas P. Kennedy

DISTRICT/ADDRESS:

Second Plymouth and Bristol

SENATE No. 167

By Mr. Kennedy, a petition (accompanied by bill, Senate, No. 167) of Thomas P. Kennedy for legislation relative to residential construction contracts. Consumer Protection and Professional Licensure.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 118 OF 2013-2014.]

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

An Act relative to residential construction contracts.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 142A of the General Laws, as appearing in the 2010 Official Edition, is hereby
2 amended by inserting after Section 2, the following new section:

3 Section 2A. Residential Contracting Agreements, Notification of Lien Rights, Payments

4 All contracts for the construction of or improvements to 1 to 4 family housing units
5 between a property owner and a contractor shall be in writing and shall include a provision that
6 informs the property owner of the statutory mechanic’s lien rights of the building material
7 suppliers and the subcontractors who will provide labor, materials and services for the
8 improvement of the property subject to the contract Such provision shall include the language
9 contained in paragraph 5 hereof.

10 With each request for payment from the property owner for any labor, materials or
11 services supplied for the improvement of the real property, the contractor shall provide waivers
12 of lien from all building material suppliers and subcontractors with whom the contractor has a
13 contractual relationship or from who the contractor has received a notice of identification
14 pursuant to section four of chapter two hundred fifty four, waiving all mechanic's lien rights in
15 the owner's property for the labor, materials and services used or incorporated in the
16 improvement of the property that are included in the contractor's payment request or invoice to
17 the property owner. The contractor shall certify in writing to the property owner that the funds
18 paid by the property owner to the contractor in consideration of the lien waivers will be used by
19 the contractor to pay for the labor, materials and services for which the lien waivers were
20 provided in full.

21 The amount due or to become due under the original contract for the payment for the
22 labor, materials and services from the property owner to the contractor shall not be reduced if the
23 property owner fails to request and obtain said lien waivers prior to the disbursement of funds to
24 the contractor. Nothing in this section shall relieve the material suppliers or subcontractors from
25 the requirement to record a Notice of Contract as provided by Chapter 254, Section 4.

26 A contractor who fails to obtain the required lien waivers prior to the receipt of payment
27 from the property owner shall hold all payments received from the property owner in trust, as
28 trustee, for the benefit of the building material suppliers and subcontractors in the amounts of the
29 claims due or to become due or owing from the contractor to the building material suppliers and
30 subcontractors. A contractor who knowingly fails to use the funds held in trust under this section
31 to pay the valid claims of a building material supplier or subcontractor shall be liable to any

32 building material supplier or subcontractor who successfully enforces its rights under this section
33 for all damages sustained by that building material supplier or subcontractor.

34 All contracts for the construction of or improvement to 1 to 4 family housing units, that
35 are executed between the property owner and a contractor, shall be in writing and shall include
36 the following provision in no less than ten point bold type or larger, directly above the space
37 provided for the signature:

38 Building material suppliers and subcontractors providing labor, materials or services to
39 your property may acquire rights the property under the Massachusetts mechanic's lien law,
40 Chapter 254 of the Massachusetts General Laws. Those rights may be enforced by the recording
41 of a Notice of Contract in the Registry of Deeds for the district in which your property is located,
42 a copy of which must be sent to you by the building material supplier or subcontractor. Those
43 mechanic's lien rights may be waived by a building material supplier or subcontractor by a
44 waiver of mechanic's lien signed by the building material supplier or subcontractor under the
45 pains and penalties of perjury.

46 Any provision in a contract for the construction of or improvement to 1 to 4 family
47 housing units which purports to waive or limit any provision of this section shall be void and
48 unenforceable as against public policy.