

FILED

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2014



ENROLLED

House Bill No. 202

(By Mr. Speaker, (Mr. Miley)
and Delegate Armstead)
(By Request of the Executive)



Passed May 21, 2014

In effect from passage.

HB 202

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E N R O L L E D

OFFICE WEST VIRGINIA
SECRETARY OF STATE

H. B. 202

(BY MR. SPEAKER, (MR. MILEY)

AND DELEGATE ARMSTEAD)

[BY REQUEST OF THE EXECUTIVE]

[Passed May 21, 2014; in effect from passage.]

AN ACT to amend and reenact §38-2-21 and §38-2-34 of the Code of West Virginia, 1931, as amended, as contained in chapter one hundred fifteen, Acts of the Legislature, regular session, 2014, all relating to delaying the effective date of the affirmative defense to an action to enforce a mechanic's lien.

Be it enacted by the Legislature of West Virginia:

That §38-2-21 and §38-2-34 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 2. MECHANICS' LIENS.

§38-2-21. Effect of payment by owner to contractor or subcontractor.

- 1 (a) No payment by the owner to any contractor or
- 2 subcontractor of any part or all of the contract price for the

3 erection and construction of any building, structure or
4 improvement appurtenant to a building, structure or
5 improvement or for any part or section of a work may affect,
6 impair or limit the lien of the subcontractor, laborer, or
7 materialman or furnisher of machinery or other necessary
8 material or equipment, as provided in this article, except as
9 otherwise provided in this article.

10 (b) Notwithstanding any provisions of this code to the
11 contrary, beginning on July 1, 2015, it is an affirmative defense,
12 or an affirmative partial defense, as the case may be, in any
13 action to enforce a lien pursuant to this article that the owner is
14 not indebted to the contractor or is indebted to the contractor for
15 less than the amount of the lien sought to be perfected, when:

16 (1) The property is an existing single-family dwelling;

17 (2) The property is a residence constructed by the owner or
18 under a contract entered into by the owner prior to its occupancy
19 as the owner's primary residence; or

20 (3) The property is a single-family, owner-occupied
21 dwelling, including a residence constructed and sold for
22 occupancy as a primary residence. This subdivision does not
23 apply to a developer or builder of multiple residences except for
24 the residence that is occupied as the primary residence of the
25 developer or builder.

**§38-2-34. Time within which suit to enforce lien may be brought;
right of other lienors to intervene.**

1 (a) Unless an action to enforce any lien authorized by this
2 article is commenced in a circuit court within six months after
3 the person desiring to avail himself or herself of the court has
4 filed his or her notice in the clerk's office, as provided in this
5 article, the lien shall be discharged; but an action commenced by
6 any person having a lien shall, for the purpose of preserving the
7 same, inure to the benefit of all other persons having a lien under

8 this article on the same property, and persons may intervene in
9 the action for the purpose of enforcing their liens.

10 (b) Notwithstanding any provisions of this code to the
11 contrary, beginning on July 1, 2015, it is an affirmative defense,
12 or an affirmative partial defense, as the case may be, in any
13 action to enforce a lien pursuant to this article that the owner is
14 not indebted to the contractor or is indebted to the contractor for
15 less than the amount of the lien sought to be perfected, when:

16 (1) The property is an existing single-family dwelling;

17 (2) The property is a residence constructed by the owner or
18 under a contract entered into by the owner prior to its occupancy
19 as his or her primary residence; or

20 (3) The property is a single-family, owner-occupied
21 dwelling, including a residence constructed and sold for
22 occupancy as a primary residence. This subdivision does not
23 apply to a developer or builder of multiple residences except for
24 the residence that is occupied as the primary residence of the
25 developer or builder.

26 (c) As used in subsection (b):

27 (1) 'Dwelling' or 'residence' means any building or structure
28 intended for habitation, in whole or part, and includes, but is not
29 limited to, any house, apartment, mobile home, house trailer,
30 modular home, factory-built home and any adjacent
31 outbuildings.

32 (2) 'Outbuilding' means any building or structure which
33 adjoins, is part of, belongs to, or is used in connection with a
34 dwelling, and shall include, but not be limited to, any garage,
35 shop, shed, barn or stable.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Danny Wells

Chairman, House Committee

[Signature]

Chairman, Senate Committee

Originating in the House.

In effect from passage.

Bryan M. Bay

Clerk of the House of Delegates

Joseph M. Minard

Clerk of the Senate

[Signature]

Speaker of the House of Delegates

[Signature]

President of the Senate

The within is approved this the 29th
day of May, 2014.

Earl Ray Tomblin
Governor

PRESENTED TO THE GOVERNOR

MAY 23 2014

Time 7:40 pm