VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 43-1 and 43-4.01 of the Code of Virginia, relating to mechanics' and materialmen's liens.

[S 105]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 43-1 and 43-4.01 of the Code of Virginia are amended and reenacted as follows:

§ 43-1. Definitions.

As used in this chapter, the term "general contractor" includes contractors, laborers, mechanics, and persons furnishing materials, who contract directly with the owner, and the term "subcontractor" includes all such contractors, laborers, mechanics, and persons furnishing materials, who do not contract with the owner but with the general contractor. As used in this chapter, the term "owner" shall not be construed to mean any person holding bare legal title under an instrument to secure a debt or indemnify a surety. As used in this chapter, the term "mechanics' lien agent" means a person (i) designated in writing by the owner of real estate or a person authorized to act on behalf of the owner of such real estate and (ii) who consents ~~in writing~~ to act, as the owner's designee for purposes of receiving notice pursuant to § 43-4.01. Such person shall be an attorney at law licensed to practice in the Commonwealth, a title insurance company authorized to write title insurance in the Commonwealth or one of its subsidiaries or licensed title insurance agents, or a financial institution authorized to accept deposits and to hold itself out to the public as engaged in the banking or savings institution business in the Commonwealth or a service corporation, subsidiary or affiliate of such financial institution. Any such person may perform mechanics' lien agent services as any legal entity. Provided that nothing herein shall be construed to affect pending litigation.

§ 43-4.01. Posting of building permit; identification of mechanics' lien agent in building permit; notice to mechanics' lien agent; effect of notice.

A. The building permit for any one- or two-family residential dwelling unit issued pursuant to the Uniform Statewide Building Code shall be conspicuously and continuously posted on the property for which the permit is issued until all work is completed on the property. The permit shall be posted on the property before any labor is performed or any material furnished on the property for which the building permit is issued. *Nothing herein shall be construed to prohibit a permit being amended after it has been initially issued to name a mechanics' lien agent or a new mechanics' lien agent.*

B. If~~, at the time of issuance,~~ the building permit contains the name, mailing address, and telephone number of the mechanics' lien agent as defined in § 43-1, any person entitled to claim a lien under this title may notify the mechanics' lien agent *then named on the permit or amended permit* that he seeks payment for labor performed or material furnished by registered or certified mail or by physical delivery. Such notice shall contain (i) the name, mailing address, and telephone number of the person sending such notice, (ii) the building permit number on the building permit, (iii) a description of the property as shown on the building permit, and (iv) a statement that the person filing such notice seeks payment for labor performed or material furnished. A return receipt or other receipt showing delivery of the notice to the addressee or written evidence that such notice was delivered by the postal service or other carrier to but not accepted by the addressee shall be prima facie evidence of receipt. An inaccuracy in the notice as to the description of the property shall not bar a person from claiming a lien under this title or filing a memorandum or otherwise perfecting or enforcing a lien as provided in subsection C if the property can otherwise be reasonably identified from the description.

In the event that the mechanics' lien agent dies, resigns, or otherwise becomes unable or unwilling to serve during the construction period, the owner or the general contractor shall immediately appoint a successor mechanics' lien agent with all the rights, duties, and obligations of the predecessor mechanics' lien agent. ~~The~~ *An amended* permit shall be displayed as provided in subsection A. Until such time as the successor is named and displayed as provided, notice given hereunder to the predecessor mechanics' lien agent at the address shown shall be deemed good notice, notwithstanding the fact that the agent may have died, resigned or become otherwise unable or unwilling to serve.

C. Except as provided otherwise in this subsection, no person other than a person claiming a lien under subsection B of § 43-3 may claim a lien under this title or file a memorandum or otherwise perfect and enforce a lien under this title with respect to a one or two family residential dwelling unit if such person fails to notify any mechanics' lien agent identified on the building permit in accordance with subsection B above (i) within thirty days of the first date that he performs labor or furnishes

material to or for the building or structure or (ii) within thirty days of the date such a permit is issued, if such labor or materials are first performed or furnished by such person prior to the issuance of a building permit. However, the failure to give any such notices within the appropriate thirty-day period as required by the previous sentence shall not bar a person from claiming a lien under this title or from filing a memorandum or otherwise perfecting and enforcing a lien under this title, provided that such lien is limited to labor performed or materials furnished on or after the date a notice is given by such person to the mechanics' lien agent in accordance with subsection B above. A person performing labor or furnishing materials with respect to a one or two family residential dwelling unit on which a building permit is not posted at the time he first performs his labor or first furnishes his material *or, if posted, does not state the name of the mechanics' lien agent,* shall determine from appropriate authorities whether a permit of the type described in subsection B above has been issued, ~~and~~ the date on which it is issued, *and the name of the mechanics' lien agent, if any, that has been appointed*. The issuing authority shall maintain the mechanics' lien agent information in the same manner and in the same location in which it maintains its record of building permits issued.

No person shall be required to comply with this subsection as to any memorandum of lien which is recorded prior to the issuance of a building permit nor shall any person be required to comply with this subsection when the building permit does not designate a mechanics' lien agent.

D. Unless otherwise agreed in writing, the only duties of the mechanics' lien agent shall be to receive notices delivered to him pursuant to subsection B and to provide any notice upon request to a settlement agent, as defined in § 6.1-2.10, involved in a transaction relating to the residential dwelling unit.

E. Mechanics' lien agents are authorized to enter into written agreements with third parties with regard to funds to be advanced to them for disbursement, and the transfer, disbursement, return and other handling of such funds shall be governed by the terms of such written agreements.

F. A mechanics' lien agent as defined in § 43-1 may charge a reasonable fee for services rendered in connection with administration of notice authorized herein and the disbursement of funds for payment of labor and materials for the construction or repair of improvements on real estate.