

12103631D

HOUSE BILL NO. 317

Offered January 11, 2012

Prefiled January 10, 2012

A *BILL to amend and reenact § 43-4.01 of the Code of Virginia, relating to mechanics' lien agent; building permit.*

Patron—Ingram

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 43-4.01 of the Code of Virginia is amended and reenacted as follows:**

§ 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 (i) any one- or two-family residential dwelling unit or (ii) any improvements to real estate for which the building permit application states a value for such improvements of \$5 million or less 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 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. 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 (i) a one- or two-family residential dwelling unit or (ii) any improvements to real estate for which the building permit application states a value for such improvements of \$5 million or less if such person fails to notify any mechanics' lien agent identified on the building permit in accordance with subsection B ~~above~~ (i) within ~~thirty~~ 30 days of the first date that he performs labor or furnishes material to or for the building or structure or (ii) (b) within ~~thirty~~ 30 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~~ 30-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 (1) a one- or two-family residential dwelling unit or (2) any improvements to real estate for which the building permit application states a value for such improvements of \$5 million or less on which a building permit is not posted at the time he first performs his labor or first furnishes his material or, if

INTRODUCED

HB317

59 posted, does not state the name of the mechanics' lien agent, shall determine from appropriate authorities
60 whether a permit of the type described in subsection B ~~above~~ has been issued, the date on which it is
61 issued, and the name of the mechanics' lien agent, if any, that has been appointed. The issuing authority
62 shall maintain the mechanics' lien agent information in the same manner and in the same location in
63 which it maintains its record of building permits issued.

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

67 D. Unless otherwise agreed in writing, the only duties of the mechanics' lien agent shall be to receive
68 notices delivered to him pursuant to subsection B and to provide any notice upon request to a settlement
69 agent, as defined in § 55-525.8, involved in a transaction relating to the residential dwelling unit.

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

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