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HOUSE BILL NO. 1265

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 10, 2012)

(Patron Prior to Substitute—Delegate Purkey)

*A BILL to amend and reenact § 43-4.01 of the Code of Virginia, relating to mechanics' liens; notice.***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 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. 1. If ~~the~~ The building permit ~~contains~~ for any one- or two-family residential dwelling unit shall contain the name, mailing address, and telephone number of the mechanics' lien agent as defined in § 43-1, ~~any~~ if one is designated. If no mechanics' lien agent is designated, the permit shall contain the name and mailing address of the owner as defined in § 43-1.

2. 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.~~

3. Any person intending to perfect a lien under this title against a one- or two-family residential dwelling unit shall notify the mechanics' lien agent or, if no mechanics' lien agent has been designated, the owner at least 30 days prior to filing a memorandum of lien. Such notice shall be addressed to the mechanics' lien agent, if designated, named on the permit or amended permit, or addressed to the owner at the address listed on the building permit. Such notice shall be sent by registered or certified mail and 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, (iv) a statement that the person sending such notice intends to file a lien on the property, and (v) the amount for which the person sending such notice intends to file a memorandum of lien.

4. A return receipt or other receipt showing delivery of the notice to the mechanics' lien agent or owner, 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 or the amount of the lien 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 this section if the property can otherwise be reasonably identified from the description.

5. 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 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

60 with ~~subsection B above~~ *subdivision B 2* (i) within ~~thirty~~ 30 days of the first date that he performs labor
61 or furnishes material to or for the building or structure or (ii) within ~~thirty~~ 30 days of the date such a
62 permit is issued, if such labor or materials are first performed or furnished by such person prior to the
63 issuance of a building permit. However, the failure to give any such notices within the appropriate
64 ~~thirty-day~~ 30-day period as required by the previous sentence shall not bar a person from claiming a lien
65 under this title or from filing a memorandum or otherwise perfecting and enforcing a lien under this
66 title, provided that such lien is limited to labor performed or materials furnished on or after the date a
67 notice is given by such person to the mechanics' lien agent in accordance with ~~subsection B above~~
68 *subdivision B 2*. A person performing labor or furnishing materials with respect to a one or two family
69 residential dwelling unit on which a building permit is not posted at the time he first performs his labor
70 or first furnishes his material or, if posted, does not state the name of the mechanics' lien agent, shall
71 determine from appropriate authorities whether a permit of the type described in subsection B above has
72 been issued, the date on which it is issued, and the name of the mechanics' lien agent, if any, that has
73 been appointed. The issuing authority shall maintain the mechanics' lien agent *and owner* information in
74 the same manner and in the same location in which it maintains its record of building permits issued.

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

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

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

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