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HOUSE BILL NO. 2409

Offered January 9, 2019

Prefiled January 8, 2019

A BILL to amend and reenact §§ 43-4, 43-5, 43-8, and 43-10 of the Code of Virginia, relating to mechanic's liens; forms.

Patron—Adams, L.R.

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 43-4, 43-5, 43-8, and 43-10 of the Code of Virginia are amended and reenacted as follows:

§ 43-4. Perfection of lien by general contractor; recordation and notice.

A general contractor, or any other lien claimant under §§ 43-7 and 43-9, in order to perfect the lien given by § 43-3, provided such lien has not been barred by § 43-4.01 C, shall file a memorandum of lien at any time after the work is commenced or material furnished, but not later than 90 days from the last day of the month in which he last performs labor or furnishes material, and in no event later than 90 days from the time such building, structure, or railroad is completed, or the work thereon otherwise terminated. The memorandum shall be filed in the clerk's office in the county or city in which the building, structure or railroad, or any part thereof is located. The memorandum shall show the names and addresses of the owner of the property sought to be charged, and of the claimant of the lien, the amount and consideration of his claim, and the time or times when the same is or will be due and payable, and the date from which interest is claimed, verified by the oath of the claimant, or his agent, including a statement declaring his intention to claim the benefit of the lien, and giving a brief description of the property on which he claims a lien. The memorandum shall also contain the claimant's license or certificate number issued by the Board for Contractors pursuant to Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1, if any, and the date such license or certificate was issued and the date such license or certificate expires. It shall be the duty of the clerk in whose office the memorandum is filed to record and index the same as provided in § 43-4.1, in the name of the claimant of the lien and of the owner of the property. From the time of such recording and indexing all persons shall be deemed to have notice thereof. A lien claimant who is a general contractor, and not lien claimants under §§ 43-7 and 43-9, also shall file along with the memorandum of lien, a certification of mailing of a copy of the memorandum of lien on the owner of the property at the owner's last known address. The cost of recording the memorandum shall be taxed against the person found liable in any judgment or decree enforcing such lien. The lien claimant may file any number of memoranda but no memorandum filed pursuant to this chapter shall include sums due for labor or materials furnished more than 150 days prior to the last day on which labor was performed or material furnished to the job preceding the filing of such memorandum. However, any memorandum may include (i) sums withheld as retainages with respect to labor performed or materials furnished at any time before it is filed, but not to exceed 10 percent of the total contract price and (ii) sums which are not yet due because the party with whom the lien claimant contracted has not yet received such funds from the owner or another third party. The time limitations set forth herein shall apply to all labor performed or materials furnished on construction commenced on or after July 1, 1980. An inaccuracy in the memorandum as to the claimant's license or certificate number, if any, the date such license or certificate was issued, or the date such license or certificate expires shall not bar a person from perfecting a lien if the claimant can otherwise be reasonably identified in the records of the Board for Contractors.

§ 43-5. Sufficiency of memorandum and affidavit required by § 43-4.

The memorandum and affidavit required by § 43-4 shall be sufficient if substantially in form and effect as follows:

Memorandum for Mechanic's Lien Claimed by General Contractor.

Name of owner: \_\_\_\_\_

Address of owner: \_\_\_\_\_

Name of claimant: \_\_\_\_\_

Address of claimant: \_\_\_\_\_

Contractor license or certificate number of claimant (if applicable): \_\_\_\_\_

Issuance date of license or certificate (if applicable): \_\_\_\_\_

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Expiration date of license or certificate (if applicable):

If no contractor license or certificate number is included, the claimant certifies that such a valid license or certificate is not required by law for the work done for which the benefit of a lien is claimed.

1. Type of materials or services furnished: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

2. Amount claimed: \$ \_\_\_\_\_

*If any part of the Principal Amount claimed is not due as of the date of this mechanic's lien, identify the date or event upon which it will be due and the sum(s) to which the due date(s) or event(s) apply:* \_\_\_\_\_

3. Type of structure on which work done or materials furnished:

4. Brief description and location of real property:

\_\_\_\_\_

5. Date from which interest on the above amount is claimed:

Date: \_\_\_\_\_

It is the intent of the claimant to claim the benefit of a lien.

The undersigned hereby certifies that he has mailed a copy of this memorandum of lien to the owner of the property at the owner's last known address: \_\_\_\_\_ (address), on \_\_\_\_\_ (date of mailing).

\_\_\_\_\_ (Name of claimant).

Affidavit.

State of Virginia,

County (or city) of \_\_\_\_\_, to wit:

I, \_\_\_\_\_ (notary or other officer) for the county (or city) aforesaid, do certify that \_\_\_\_\_ claimant, or \_\_\_\_\_, agent for claimant, this day made oath before me in my county (or city) aforesaid that \_\_\_\_\_ (the owner) is justly indebted to claimant in the sum of \_\_\_\_\_ dollars, for the consideration stated in the foregoing memorandum, and that the same is payable as therein stated.

Given under my hand this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_ (Notary Public or Magistrate, et cetera.)

**§ 43-8. Sufficiency of memorandum, affidavit and notice required by § 43-7.**

The memorandum, affidavit and notice required by § 43-7 shall be sufficient if substantially in form and effect as follows:

Memorandum for Mechanic's Lien Claimed by Subcontractor.

Name of owner: \_\_\_\_\_

Address of owner: \_\_\_\_\_

Name of general contractor (if any): \_\_\_\_\_

Name of claimant: \_\_\_\_\_

Address of claimant: \_\_\_\_\_

Contractor license or certificate number of claimant (if applicable):

\_\_\_\_\_

Issuance date of license or certificate (if applicable):

\_\_\_\_\_

Expiration date of license or certificate (if applicable):

\_\_\_\_\_

If no contractor license or certificate number is included, the claimant certifies that such a valid license or certificate is not required by law for the work done for which the benefit of a lien is claimed.

1. Type of materials or services furnished: \_\_\_\_\_

\_\_\_\_\_

2. Amount claimed: \$ \_\_\_\_\_

*If any part of the Amount claimed is not due as of the date of this mechanic's lien, identify the date or event upon which it will be due and the sum(s) to which the due date(s) or event(s) apply:* \_\_\_\_\_

3. Type of structure on which work done or materials furnished:

\_\_\_\_\_

4. Brief description and location of real property:

\_\_\_\_\_

5. Date from which interest on above amount is claimed:

Date: \_\_\_\_\_

It is the intent of the claimant to claim the benefit of a lien.

\_\_\_\_\_, (Name of claimant).

Affidavit.

State of Virginia,

County (or city) of \_\_\_\_\_ to wit:

I, \_\_\_\_\_ (notary or other officer) for the county (or city) aforesaid, do certify that \_\_\_\_\_, claimant, or \_\_\_\_\_, agent for claimant, this day made oath before me in my county (or city) aforesaid that \_\_\_\_\_ is justly indebted to claimant in the sum of \_\_\_\_\_ dollars, for the consideration stated in the foregoing memorandum, and that the same is payable as therein stated.

Given under my hand this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_, (Notary Public or Magistrate, et cetera.)

Notice.

To \_\_\_\_\_ (owner).

You are hereby notified that \_\_\_\_\_ (general contractor) is indebted to me in the sum of \_\_\_\_\_ dollars (\$\_\_\_\_\_) with interest thereon from the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, for work done (or materials furnished, as the case may be,) in and about the construction (or removal, etc.,) of a \_\_\_\_\_ (describe structure, whether dwelling, store, or etc.,) which he has contracted to construct (or remove, etc.,) for you or on property owned by you in the county (or city) of \_\_\_\_\_, and that I have duly recorded a mechanic's lien for the same.

Given under my hand this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_, (Subcontractor).

**§ 43-10. Sufficiency of memorandum, affidavit and notice required by § 43-9.**

The memorandum, affidavit and notice required by § 43-9 shall be sufficient if substantially in form and effect as follows:

Memorandum for Mechanic's Lien Claimed by Sub-subcontractor.

Name of owner: \_\_\_\_\_

Address of owner: \_\_\_\_\_

Name of general contractor (if any) and subcontractor: \_\_\_\_\_

Name of claimant: \_\_\_\_\_

Address of claimant: \_\_\_\_\_

Contractor license or certificate number of claimant (if applicable): \_\_\_\_\_

Issuance date of license or certificate (if applicable): \_\_\_\_\_

Expiration date of license or certificate (if applicable): \_\_\_\_\_

If no contractor license or certificate number is included, the claimant certifies that such a valid license or certificate is not required by law for the work done for which the benefit of a lien is claimed.

1. Type of materials or services furnished: \_\_\_\_\_

2. Amount claimed: \$\_\_\_\_\_

*If interest is claimed upon the Principal Amount claimed, identify the date(s) or event(s) from when interest is claimed, the sum to which interest is applied, and the rate of such interest:* \_\_\_\_\_

3. Type of structure on which work done or materials furnished: \_\_\_\_\_

4. Brief description and location of real property: \_\_\_\_\_

5. Date from which interest on above amount is claimed: \_\_\_\_\_

Date: \_\_\_\_\_

It is the intent of the claimant to claim the benefit of a lien.

\_\_\_\_\_, (Name of claimant).

\_\_\_\_\_, (Signature of claimant or agent for claimant).

Affidavit.

State of Virginia,

County (or city) of \_\_\_\_\_, to wit:

I, \_\_\_\_\_ (notary or other officer) for the county (or city) aforesaid do certify that

182 \_\_\_\_\_ claimant, or \_\_\_\_\_, agent for claimant, this day made oath  
183 before me in my county (or city) aforesaid that \_\_\_\_\_ is justly indebted to claimant in  
184 the sum of \_\_\_\_\_ dollars for the consideration stated in the foregoing memorandum, and  
185 that the same is payable as therein stated.

186 Given under my hand this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.  
187 \_\_\_\_\_ (Notary Public or Magistrate, et cetera.)

188 Notice.

189 To \_\_\_\_\_ (owner) and \_\_\_\_\_ (general contractor):

190 You are hereby notified that \_\_\_\_\_, a subcontractor under you, said  
191 \_\_\_\_\_ (general contractor) for the construction (or removal, etc.,) of a  
192 \_\_\_\_\_ (describe structure) for you, or on property owned by you, said  
193 \_\_\_\_\_ (owner) is indebted to me in the sum of \_\_\_\_\_ dollars  
194 (\$\_\_\_\_\_) with interest thereon from the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, for work  
195 done (or materials furnished) in and about the construction (or removal, etc.,) of  
196 \_\_\_\_\_ (naming structure), situate in the county (or city) of \_\_\_\_\_  
197 Virginia, and that I have duly recorded a mechanic's lien for the same.

198 Given under my hand this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.  
199 \_\_\_\_\_ (Sub-subcontractor).