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HOUSE BILL NO. 1913

Offered January 9, 2013

Prefiled January 8, 2013

A BILL to amend and reenact §§ 43-3, 43-4, 43-4.01, 43-5, 43-8, and 43-10 of the Code of Virginia, relating to mechanics' liens; licensed contractors.

Patron—Surovell

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 43-3, 43-4, 43-4.01, 43-5, 43-8, and 43-10 of the Code of Virginia are amended and reenacted as follows:

§ 43-3. Lien for work done and materials furnished; waiver of right to file or enforce lien.

A. All persons performing labor or furnishing materials of the value of \$150 or more, including the reasonable rental or use value of equipment, for the construction, removal, repair or improvement of any building or structure permanently annexed to the freehold, and all persons performing any labor or furnishing materials of like value for the construction of any railroad, shall have a lien, if perfected as hereinafter provided, upon such building or structure, and so much land therewith as shall be necessary for the convenient use and enjoyment thereof, and upon such railroad and franchises for the work done and materials furnished, subject to the provisions of § 43-20. But when the claim is for repairs or improvements to existing structures only, no lien shall attach to the property repaired or improved unless such repairs or improvements were ordered or authorized by the owner, or his agent.

If the building or structure being constructed, removed or repaired is part of a condominium as defined in § 55-79.41 or under the Horizontal Property Act (§§ 55-79.1 through 55-79.38), any person providing labor or furnishing material to one or more units or limited common elements within the condominium pursuant to a single contract may perfect a single lien encumbering the one or more units which are the subject of the contract or to which those limited common elements pertain, and for which payment has not been made. All persons providing labor or furnishing materials for the common elements pertaining to all the units may perfect a single lien encumbering all such condominium units. Whenever a lien has been or may be perfected encumbering two or more units, the proportionate amount of the indebtedness attributable to each unit shall be the ratio that the percentage liability for common expenses appertaining to that unit computed pursuant to subsection D of § 55-79.83 bears to the total percentage liabilities for all units which are encumbered by the lien. The lien claimant shall release from a perfected lien an encumbered unit upon request of the unit owner as provided in subsection B of § 55-79.46 upon receipt of payment equal to that portion of the indebtedness evidenced by the lien attributable to such unit determined as herein provided. In the event the lien is not perfected, the lien claimant shall upon request of any interested party execute lien releases for one or more units upon receipt of payment equal to that portion of the indebtedness attributable to such unit or units determined as herein provided but no such release shall preclude the lien claimant from perfecting a single lien against the unreleased unit or units for the remaining portion of the indebtedness.

B. Any person providing labor or materials for site development improvements or for streets, stormwater facilities, sanitary sewers or water lines for the purpose of providing access or service to the individual lots in a development or condominium units as defined in § 55-79.41 or under the Horizontal Property Act (§§ 55-79.1 through 55-79.38) shall have a lien on each individual lot in the development for the fractional part of the total value of the work contracted for by the claimant in the subdivision as is obtained by using "one" as the numerator and the number of lots being developed as the denominator and in the case of a condominium on each individual unit in an amount computed by reference to the liability of that unit for common expenses appertaining to that condominium pursuant to subsection D of § 55-79.83; provided, however, no such lien shall be valid as to any lot or condominium unit unless the person providing such work shall, prior to the sale of such lot or condominium unit, file with the clerk of the circuit court of the jurisdiction in which such land lies a document setting forth a full disclosure of the nature of the lien which may be claimed, the total value of the work contracted for by the claimant in the subdivision and the portion thereof allocated to each lot as required herein, and a description of the development or condominium, and shall, thereafter, comply with all other applicable provisions of this chapter. "Site development improvements" means improvements which are provided for the development, such as project site grading, traffic signalization, and installation of electric, gas, cable, or other utilities, for the benefit of the development rather than for an individual lot. In determining the individual lots in the development for the purpose of allocating value of the work

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59 contracted for by the claimant, parcels of land within the development which are common area, or
60 which are being developed for the benefit of the development as a whole and not for resale, shall not be
61 included in the denominator of the disclosure statement.

62 Nothing contained herein shall be construed to prevent the filing of a mechanics' lien under the
63 provisions of subsection A, or require the lien claimant to elect under which subsection the lien may be
64 enforced.

65 C. Any right to file or enforce any mechanics' lien granted hereunder may be waived in whole or in
66 part at any time by any person entitled to such lien. In the event that payments are made to the
67 contractor without designating to which lot the payments are to be applied, the payments shall be
68 deemed to apply to any lot previously sold by the developer such that the remaining lots continue to
69 bear liability for an amount up to but not exceeding the amount set forth in any disclosure statement
70 filed under the provisions of subsection B.

71 *D. A person who performs labor or furnishes materials without a valid license or certificate issued*
72 *by the Board of Contractors pursuant to Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1, or without the*
73 *proper class of license for the value of the work to be performed, when such a license or certificate is*
74 *required by law for the labor performed or materials furnished shall not be entitled to a lien pursuant*
75 *to this section.*

76 **§ 43-4. Perfection of lien by general contractor; recordation and notice.**

77 A general contractor, or any other lien claimant under §§ 43-7 and 43-9, in order to perfect the lien
78 given by § 43-3, provided such lien has not been barred by § 43-4.01 C, shall file a memorandum of
79 lien at any time after the work is commenced or material furnished, but not later than 90 days from the
80 last day of the month in which he last performs labor or furnishes material, and in no event later than
81 90 days from the time such building, structure, or railroad is completed, or the work thereon otherwise
82 terminated. The memorandum shall be filed in the clerk's office in the county or city in which the
83 building, structure or railroad, or any part thereof is located. The memorandum shall show the names of
84 the owner of the property sought to be charged, and of the claimant of the lien, the amount and
85 consideration of his claim, and the time or times when the same is or will be due and payable, verified
86 by the oath of the claimant, or his agent, including a statement declaring his intention to claim the
87 benefit of the lien, and giving a brief description of the property on which he claims a lien. *The*
88 *memorandum shall also contain the claimant's license or certificate number issued by the Board of*
89 *Contractors pursuant to Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1, if any, and the date such license*
90 *or certificate was issued and the date such license or certificate expires.* It shall be the duty of the clerk
91 in whose office the memorandum is filed to record and index the same as provided in § 43-4.1, in the
92 name of the claimant of the lien and of the owner of the property. From the time of such recording and
93 indexing all persons shall be deemed to have notice thereof. A lien claimant who is a general contractor,
94 and not lien claimants under §§ 43-7 and 43-9, also shall file along with the memorandum of lien, a
95 certification of mailing of a copy of the memorandum of lien on the owner of the property at the
96 owner's last known address. The cost of recording the memorandum shall be taxed against the person
97 found liable in any judgment or decree enforcing such lien. The lien claimant may file any number of
98 memoranda but no memorandum filed pursuant to this chapter shall include sums due for labor or
99 materials furnished more than 150 days prior to the last day on which labor was performed or material
100 furnished to the job preceding the filing of such memorandum. However, any memorandum may include
101 (i) sums withheld as retainages with respect to labor performed or materials furnished at any time before
102 it is filed, but not to exceed 10 percent of the total contract price and (ii) sums which are not yet due
103 because the party with whom the lien claimant contracted has not yet received such funds from the
104 owner or another third party. The time limitations set forth herein shall apply to all labor performed or
105 materials furnished on construction commenced on or after July 1, 1980.

106 **§ 43-4.01. Posting of building permit; identification of mechanics' lien agent in building permit;**
107 **notice to mechanics' lien agent; effect of notice.**

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

114 B. If the building permit contains the name, mailing address, and telephone number of the mechanics'
115 lien agent as defined in § 43-1, any person entitled to claim a lien under this title may notify the
116 mechanics' lien agent then named on the permit or amended permit that he seeks payment for labor
117 performed or material furnished by registered or certified mail or by physical delivery. Such notice shall
118 contain (i) the name, mailing address, and telephone number of the person sending such notice, (ii) *the*
119 *person's license or certificate number issued by the Board of Contractors pursuant to Chapter 11*
120 *(§ 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, (iii) the building permit number on the building permit, ~~(iii)~~ (iv) a description of the property as shown on the building permit, and ~~(iv)~~ (v) 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 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~~ 30 days of the first date that he performs labor or furnishes material to or for the building or structure or (ii) 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 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, 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 § 55-525.8, 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.

§ 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):

Expiration date of license or certificate

192 It is the intent of the claimant to claim the benefit of a lien.
193 The undersigned hereby certifies that he has mailed a copy of this
194 memorandum of lien to the owner of the property at the owner's last
195 known address: (address), on
196 (date of mailing).
197 (Name of claimant).

200 State of Virginia,
201 County (or city) of, to wit:

212 Given under my hand this the day of, 20...
213 (Notary Public or
214 Magistrate, et cetera.)

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

218 Memorandum for Mechanic's Lien Claimed by Subcontractor.
219 Name of owner:
220 Address of owner:
221 Name of general contractor (if any):
222 Name of claimant:
223 Address of claimant:
224 Contractor license or certificate number of claimant
225 (if applicable):
226 Issuance date of license or certificate
227 (if applicable):
228 Expiration date of license or certificate
229 (if applicable):
230 1. Type of materials or services furnished:
231
232 2. Amount claimed: \$
233 3. Type of structure on which work done or materials furnished:
234
235 4. Brief description and location of real property:
236
237 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 (i), 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 and (ii) if no contractor
license or certificate number is included in the foregoing memorandum,
such a valid license or certificate is not required by law for the work
done or the materials furnished for which the benefit of a lien is claimed.

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):

1. Type of materials or services furnished:

.....

2. Amount claimed: \$

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

.....

4. Brief description and location of real property:

294
295 5. Date from which interest on above amount is claimed:
296 Date:
297 It is the intent of the claimant to claim the benefit of a lien.
298 (Name of claimant).
299 (Signature of claimant or agent for claimant).
300
301 Affidavit.
302 State of Virginia,
303 County (or city) of, to wit:
304 I, (notary or other officer) for the county
305 (or city) aforesaid do certify that claimant,
306 or, agent for claimant, this day made oath
307 before me in my county (or city) aforesaid that (i)
308 is justly indebted to claimant in the sum of dollars
309 for the consideration stated in the foregoing memorandum, and that
310 the same is payable as therein stated and (ii) if no contractor
311 license or certificate number is included in the foregoing memorandum,
312 such a valid license or certificate is not required by law for the work
313 done or the materials furnished for which the benefit of a lien is claimed.
314 Given under my hand this the day of, 20...
315 (Notary Public or
316 Magistrate, et cetera.)
317
318 Notice.
319 To (owner) and (general
320 contractor):
321 You are hereby notified that, a subcontractor
322 under you, said (general contractor) for the
323 construction (or removal, etc.,) of a (describe
324 structure) for you, or on property owned by you, said
325 (owner) is indebted to me in the sum of dollars (\$)
326 with interest thereon from the day of, 20...
327 for work done (or materials furnished) in and about the construction
328 (or removal, etc.,) of said (naming structure),
329 situate in the county (or city) of Virginia,
330 and that I have duly recorded a mechanic's lien for the same.
331 Given under my hand this the day of, 20...
332 (Sub-subcontractor).