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HOUSE BILL NO. 2409

House Amendments in [] — February 4, 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 Prior to Engrossment—Delegate 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): _____

Expiration date of license or certificate (if applicable): _____

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59
60 If no contractor license or certificate number is included, the claimant certifies that such a valid
61 license or certificate is not required by law for the work done for which the benefit of a lien is claimed.

62 1. Type of materials or services furnished: _____

63 _____

64 _____

65 _____

66 _____

67 2. Amount claimed: \$ _____

68 *If any part of the [~~Principal~~] Amount claimed is not due as of the date of this mechanic's lien,*
69 *identify the date or event upon which it will be due and the sum(s) to which the due date(s) or event(s)*
70 *apply:* _____

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

72 _____

73 4. Brief description and location of real property:

74 _____

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

76 Date: _____

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

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

81 _____ (Name of claimant).

82 Affidavit.

83 State of Virginia,

84 County (or city) of _____, to wit:

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

90 Given under my hand this the _____ day of _____, 20____

91 _____ (Notary Public or Magistrate, et cetera.)

92 **§ 43-8. Sufficiency of memorandum, affidavit and notice required by § 43-7.**

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

95 Memorandum for Mechanic's Lien Claimed by Subcontractor.

96 Name of owner: _____

97 Address of owner: _____

98 Name of general contractor (if any): _____

99 Name of claimant: _____

100 Address of claimant: _____

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

102 _____

103 Issuance date of license or certificate (if applicable):

104 _____

105 Expiration date of license or certificate (if applicable):

106 _____

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

109 1. Type of materials or services furnished: _____

110 _____

111 2. Amount claimed: \$ _____

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

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

116 _____

117 4. Brief description and location of real property:

118 _____

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

120 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 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).

_____. (Signature of claimant or agent for claimant).

Affidavit.

State of Virginia,

County (or city) of _____, to wit:

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

187 Given under my hand this the _____ day of _____, 20____.
188 _____ (Notary Public or Magistrate, et cetera.)

189 Notice.

190 To _____ (owner) and _____ (general contractor):

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

199 Given under my hand this the _____ day of _____, 20____.
200 _____ (Sub-subcontractor).