



LAWS OF ALASKA

1978

Source

CSSSHB 739 (Commerce)

Chapter No.

175

AN ACT

Relating to materialmen and mechanics liens; and providing for an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 34.35.050 is repealed and re-enacted to read:

Sec. 34.35.050. LIEN FOR LABOR OR MATERIALS FURNISHED. A person has a lien, only to the extent provided under this chapter, to secure the payment of his contract price if he

(1) performs labor upon real property at the request of the owner or his agent for the construction, alteration, or repair of a building or improvement;

(2) is a trustee of an employee benefit trust for the benefit of individuals performing labor on the building or improvement and has a direct contract with the owner or his agent for direct payments into the trust;

(3) furnishes materials that are delivered to real property under a contract with the owner or his agent which are incorporated in the construction, alteration or repair of a building or improvement;

(4) furnishes equipment that is delivered to and used upon real property under a contract with the owner or his agent for the construction, alteration or repair of a building or improvement;

(5) performs services under a contract with the owner or his agent in connection with the preparation of plans, surveys, or architectural or engineering plans or drawings for the construction, alteration or repair of a building or improvement, whether or not actually implemented on that property; or

(6) is a general contractor.

* Sec. 2. AS 34.35.060(a) is repealed and re-enacted to read:

(a) Except as provided in (c) of this section, an encumbrance which is properly recorded shall be preferred to a lien created under secs. 50 - 120 of this chapter unless the claim of lien under sec. 70 of this chapter or notice of right to lien under sec. 64 of this chapter has been recorded before the encumbrance. The preference granted for a prior mortgage or deed of trust under this section applies without regard to when the sums are disbursed or whether the disbursements are required under the terms of a loan agreement.

* Sec. 3. AS 34.35.060(c) is amended to read:

(c) A lien created by secs. 50 - 120 of this chapter in favor of an individual actually performing labor upon a building or other improvement in its original construction or of a trustee of an employee benefit trust for those individuals is preferred to a prior encumbrance upon the land on which the building or other improvement is constructed.

* Sec. 4. AS 34.35 is amended by adding new sections to read:

Sec. 34.35.062. CONSTRUCTION FINANCING. (a) Any lender providing construction financing where there is not a payment bond of at least 50 per cent of the amount of construction financing shall observe the following procedures:

(1) Draws against construction financing shall be made only after certification of job progress to the lender by the general contractor, if any, and the owner. The form of the certification may be prescribed by the lender.

(2) Any claimant described in sec. 50 of this chapter who has not received payment within 20 days after the date for payment required by his contract or employee benefit trust agreement or, if no date for payment is specified, then 30 days after the labor, materials, services, or equipment are first furnished, may within 20 days thereafter give a stop-payment notice of the sums due for which the claimant may claim a lien under sec. 95 of this chapter.

(3) The stop-payment notice shall be given to the lender and to the owner. The stop-payment notice shall state in substance

(A) the name of the person ordering the labor, materials, services, or equipment;

(B) a sufficient legal description of the real property being improved or developed;

(C) a description of the labor, materials, services or equipment furnished, or obligation owed to an employee benefit trust;

(D) the name, business address and telephone number of the claimant; and

(E) the sum due and not yet paid under the claimant's contract which may include an amount not to exceed 50 per cent of the principal amount of the claim for interest, reasonable costs, and attorney fees.

(4) After receipt of a stop-payment notice under this section, the lender shall withhold from the next and subsequent draws sufficient money to pay the amount claimed in the stop-payment notice.

(5) Sums withheld under a stop-payment notice may not be disbursed by the lender except under the terms of a written agreement signed by the claimant, owner and general contractor or by order of a court of competent jurisdiction.

(b) If a lender fails to comply with the provisions of (a)(4) or (5) of this section, the lender shall be liable to the claimant for an amount equal to the sum disbursed in violation of those subsections or the sum ultimately determined to be due the claimant by a court of competent jurisdiction, whichever is less.

(c) Within 30 days after filing a stop-payment notice the claimant may file an action in a court of competent jurisdiction to obtain the sums claimed in the stop-payment notice. The complaint shall be accompanied by a bond in an amount equal to the amount claimed with sufficient sureties as approved by the court. The claimant shall give notice to the lender that the action has been filed and include a copy of the bond filed with the action. If a claimant fails to file an action under this subsection and to serve notice of the filing and a copy of the bond upon the lender within 30 days after filing the stop notice, or to execute a written agreement under (a)(5) of this section, the lender may disburse the money withheld under the claimant's stop-payment notice without incurring liability to the claimant.

Sec. 34.35.064. NOTICE OF RIGHT TO LIEN. (a) At any time after entering into a contract, a claimant other than a prime contractor or an individual as defined in sec. 120(10) of this chapter shall give a notice of right to lien to the owner and the lender. The notice of right to lien shall be in writing, state that it is a notice of a right to assert a lien against a building or other improvement for labor, materials, services, or equipment furnished in connection with construction, alteration, or repair of the building or other improvement, and contain

(1) a legal description sufficient for identification of the real property upon which the building or other improvement is located;

(2) the name of the owner;

(3) the name and address of the claimant;

(4) the name and address of the person with whom the claimant contracted;

(5) a general description of the labor, materials, services, or equipment provided or to be provided;

(6) a statement that the claimant may be entitled to record a claim of lien; and

(7) the following statement in type no smaller than that used in providing the information required by (1) - (6) of this subsection:

WARNING: Unless provision has been made for payment of this claim, you may be liable for payment directly to this claimant, notwithstanding the fact that payment has been made to a prime contractor or other party.

(b) Upon request from an owner, lender, or prime contractor, a claimant who has given a notice of right to lien under this section shall disclose to the requester within five days his most recent accounting of the amount due and unpaid to that claimant under the terms of his contract and a description of labor, materials, services, or equipment which the claimant reasonably anticipates furnishing.

Sec. 34.35.067. RECORDING NOTICE OF RIGHT TO LIEN. A notice of right to lien may be recorded by a claimant at any time after entering into a contract for labor, material, service or equipment furnished in connection with the construction, alteration or repair of a building or other improvement. The notice shall be recorded in the same manner as specified for the recording of a claim of lien under sec. 70 of this chapter.

* Sec. 5. AS 34.35.070(a) is repealed and re-enacted to read:

Sec. 34.35.070. CLAIM OF LIEN. (a) A claimant may record a claim of lien after a notice of right to lien is given by that claimant except that a claimant who is not required to give a notice of right to lien under sec. 64(a) of this chapter may record a claim of lien after entering into a contract for the construction, alteration, or repair of a building or improvement. A claim of lien may not be recorded later than the time specified under (b) of this section.

* Sec. 6. AS 34.35.070(c) is repealed and re-enacted to read:

(c) The lien shall be verified by the oath of the claimant or another person having knowledge of the facts and state

(1) the real property subject to the lien, with a legal description sufficient for identification;

(2) the name of the owner;

(3) the name and address of the claimant;

(4) the name and address of the person with whom

the claimant contracted;

(5) a general description of the labor, materials, services, or equipment furnished for the construction, alteration, or repair, and the contract price of the labor, materials, services, or equipment;

(6) the amount due to the claimant for the labor, materials, services, or equipment; and

(7) the date the last labor, materials, services, or equipment were furnished.

* Sec. 7. AS 34.35 is amended by adding a new section to read:

Sec. 34.35.071. NOTICE OF COMPLETION. (a) The owner of real property which may be subject to a lien under secs. 50 - 120 of this chapter may announce the date of completion of a building or other improvement on his property by

(1) recording a notice of completion after completion of the construction, alteration or repair of the building or other improvement in the office of the recorder of the district in which the building or other improvement is situated; and

(2) giving notice at least five days before the recording of the notice of completion to all claimants who have given a notice of right to lien or a stop-payment notice to the owner and the lender prior to 10 days before recording a notice of completion. The notice shall include a copy of the notice of completion and a statement advising claimants that a notice of completion will be recorded not earlier than five days after the date of the notice.

(b) The notice of completion shall be signed and verified by the owner, and shall state

(1) the date of completion of the building or other improvement;

(2) the name and address of the owner;

(3) the nature of the interest or estate of the owner;

(4) the legal description of the property sufficient for identification; and

(5) the name of the general contractor.

(c) Notwithstanding the provisions of sec. 70(a) and (b) of this chapter, a claimant who has received a notice as provided in (a)(2) of this section shall record his claim of lien no later than 10 days after the date the notice of completion is recorded. Any claimant who has given notice of right to lien and who is entitled to receive but who has not received the notice required under (a)(2) of this section, shall have the period specified in sec. 70(b) of this chapter to record his claim of lien.

(d) A notice of completion is not effective if

recorded before completion.

(e) Labor, materials, services, or equipment furnished after a notice of completion is recorded to satisfy warranty obligations or to remedy defective or unsatisfactory construction, alterations or repairs for which no additional consideration is owed to the person furnishing the additional labor, materials, services, or equipment does not result in lien liability under secs. 50 - 120 of this chapter.

(f) After recording a condominium declaration as provided in AS 34.07 (Horizontal Property Regimes Act), an owner may record a notice of completion under this section as to each apartment after completion of the original construction of each condominium apartment.

* Sec. 8. AS 34.35.072 is amended to read:

Sec. 34.35.072. BOND. If the owner of the property sought to be charged with a claim of lien under secs. 50 - 120 of this chapter, or a prime contractor or subcontractor disputes the correctness or validity of the claim of lien brought under secs. 50 - 120 of this chapter, he may record either before or after the commencement of an action to enforce the claim of lien, in the office of the recorder in which district the claim of lien was recorded, a bond executed by a person authorized to issue surety bonds in this state under AS 21, a financial institution licensed under AS 06, or a national bank authorized under the federal banking laws, in the penal sum equal to one and one-half times the amount of the claim of lien, which bond shall guarantee the payment of the sum which the lien claimant has claimed, together with the lien claimant's reasonable cost of suit in the action, if he recovers on the claim of lien. If the owner records a bond under this section, the property described in the bond is freed from the effect of a claim of lien under secs. 50 - 120 of this chapter and an action brought to foreclose the claim of lien. The principal on the bond may be the owner of the property, the prime contractor or a subcontractor who is affected by the claim of lien.

* Sec. 9. AS 34.35.090 is amended to read:

Sec. 34.35.090. PAYMENT TO CONTRACTOR. A payment by the owner of a building or structure to a prime contractor or subcontractor, made before 90 days from the completion of the building, is not valid to defeat or discharge a lien created by secs. 50 - 120 of this chapter in favor of other claimants, unless the payment is distributed among the other claimants. If a payment is distributed in part only, then the payment is valid only to the extent it is distributed.

* Sec. 10. AS 34.35.095 is amended to read:

Sec. 34.35.095. AMOUNT OF LIEN. (a) A prime contractor may recover upon a lien recorded by him only the amount due to him according to the terms of his contract, after deducting all claims of other persons claiming through him for work done and materials furnished.

(b) A claimant other than a prime contractor or an

individual described in sec. 120(10) of this chapter may recover upon a lien recorded by him an amount not to exceed that portion of the unpaid contract price attributable to labor, materials, services or equipment furnished within 10 days before, and at any time after, the claimant gives a notice of right to lien under sec. 64 of this chapter.

(c) An individual described in sec. 120(10) of this chapter may recover upon a lien recorded by him only the amount due to him according to the terms of his employment.

* Sec. 11. AS 34.35.100(a) is amended to read:

(a) Where a lien is recorded under secs. 50 - 120 of this chapter for work done or materials furnished to a prime contractor, the prime contractor shall defend an action at his own expense, and during the pendency of the action the owner may withhold from the prime contractor the amount of money for which the lien is recorded.

* Sec. 12. AS 34.35.100(b) is amended to read:

(b) If judgment is given against the owner or his property upon the liens, the owner may deduct from the amount due or to become due by him to the prime contractor the amount of the judgment and costs.

* Sec. 13. AS 34.35.100(c) is amended to read:

(c) If the amount of the judgment and costs exceeds the amount due by the owner to the prime contractor, or if the owner settles with that contractor in full, the owner may recover back from the prime contractor an amount paid by the owner in excess of the contract price, and for which the prime contractor was originally liable.

* Sec. 14. AS 34.35.110(a) is amended to read:

(a) An action to enforce a lien created by secs. 50 - 120 of this chapter shall be brought in the superior court. The pleadings, process, practice, and procedure are the same as in other cases. Each claimant is entitled to execution for the balance due him after distribution. The clerk of the superior court, upon demand, shall issue the execution after the return of the officer making the execution showing the balance due.

* Sec. 15. AS 34.35 is amended by adding new sections to read:

Sec. 34.35.112. PAYMENT OF CLAIMANT'S LIENS. (a) If more than one lien created under secs. 50 - 120 of this chapter is claimed against property, the court in its judgment shall declare the rank of each lien or class of liens in the following order:

(1) all persons other than prime contractors or subcontractors with lien rights under sec. 50(1) of this chapter;

(2) the trustees of employment benefit trusts for persons described in (1) of this subsection;

(3) all materialmen other than prime contractors or subcontractors;

(4) subcontractors, including persons described in sec. 50(5) of this chapter;

(5) the general contractor.

(b) For purposes of secs. 50 - 120 of this chapter, if the proceeds of sale of the property are insufficient to pay the lien claims of all persons who have recorded a claim of lien,

(1) the liens of all individuals with lien rights under sec. 50(1) of this chapter shall first be paid in full, or pro rata if the proceeds are insufficient to pay them in full;

(2) the liens of trustees of employment benefit trusts for persons described in (1) of this subsection shall be paid in full or pro rata if the proceeds are insufficient to pay them in full;

(3) the liens of materialmen, other than a prime contractor or subcontractor, shall be paid in full or pro rata if the proceeds are insufficient to pay them in full;

(4) out of the remainder the subcontractors, including prime contractors other than the general contractor, shall be paid in full, or pro rata if the remainder is insufficient to pay them in full; and

(5) the balance shall be paid to the general contractor; a general contractor is entitled to execution for the balance due him after distribution.

Sec. 34.35.117. WAIVER OF LIEN RIGHTS. (a) Except as provided under (b) of this section, a written waiver of lien or stop-payment notice rights created under secs. 50 - 120 of this chapter signed by a claimant requires no consideration and is valid and binding. A waiver permitted under this section may not relate to labor, materials, services or equipment furnished after the date the waiver is signed by the claimant.

(b) An individual described in sec. 120(10) of this chapter may not waive his right to claim a lien under secs. 50 - 120 of this chapter. A waiver which purports to waive the lien rights of that individual or class of individuals is void.

Sec. 34.35.118. CLAIMANT LIABILITY. A claimant shall be liable for any loss, cost or expense, including reasonable attorney fees, to any persons injured by an unjust, excessive or premature stop-payment notice or claim of lien.

Sec. 34.35.119. WAIVER OF LIENS ON UNSOLD CONDOMINIUM APARTMENTS. (a) Liens created under secs. 50 - 120 of this chapter arising out of original construction which becomes subject to the Horizontal Property Regimes Act (AS 34.07) before the first sale of any portion of the property after commencement of construction shall be subject to the provisions of this section.

(b) Subject to (c) of this section, a claimant who claims a lien against the entire building shall release that portion of his lien claim which relates to a particular condominium apartment selected by the owner of the unsold condominium apartments after the claimant receives a partial payment of his lien claim which is equal to 115 per cent of the amount determined by:

(1) dividing the surface area of the common areas and facilities attendant to the condominium apartment by the surface area of all common areas and facilities of the building; and

(2) multiplying the result obtained in (1) of this subsection by the total amount of the claimant's lien claim.

(c) A lien claimant is not required to waive a portion of his lien claim under this section unless the amount of indebtedness secured by a prior encumbrance against the building held by a construction lender is also reduced by an amount calculated in the same manner as provided in (b) of this section.

* Sec. 16. AS 34.35.120 is amended by adding new paragraphs to read:

(3) "completion" means the cessation of the performance of labor or services or the furnishing of material or equipment on the building or other improvement to be constructed, altered or repaired and includes, but is not limited to, the following:

(A) the occupation or use by the owner or his agent of the building or other improvement constructed, altered or repaired accompanied by cessation of the furnishing of labor, services, material, or equipment on the building or improvement;

(B) the acceptance by the owner or his agent of the construction, alteration or repair after labor, service, material, or equipment is furnished; or

(C) the issuance of a certificate of occupancy for a building by a general law or home rule municipality empowered to issue that certificate accompanied by cessation of the furnishing of labor, services, material, or equipment on the building or improvement;

(4) "construction financing" means that portion of money secured by an encumbrance to finance original construction of a building or other improvement on, or development of, real property, but does not include

(A) funds to acquire real property;

(B) funds to pay principal amortization of encumbrances with priority over the encumbrance securing the construction financing;

(C) funds to pay loan, commitment, title, legal, closing, recording or appraisal fees on the

construction loan;

(5) "contract price" means the amount agreed upon by the contracting parties for furnishing services, labor, materials or equipment covered by the contract, increased or diminished by the price of change orders, extras, or amounts attributable to altered specifications; if no price is agreed upon by the contracting parties, "contract price" means the reasonable value of all services, labor, materials, or equipment covered by the contract;

(6) "draws" means periodic disbursements of construction financing by a lender;

(7) "encumbrance" means a mortgage, deed of trust, or lien arising other than under secs. 50 - 120 of this chapter;

(8) "general contractor" means a person who is a prime contractor and who has the responsibility for supervising all other contractors furnishing labor, materials, services or equipment in connection with the construction, alteration or repair of a building or other improvement;

(9) "give notice" means to mail a notice required under secs. 50 - 120 of this chapter by first-class mail and by using a form of mail requiring a signed receipt, or to deliver the notice and obtain a receipt signed by the person to whom it is directed or his agent; a notice is effective when given or delivered

(A) to a lender at the address designated in the encumbrance securing that lender;

(B) to an owner at his last known address;

(C) to a prime contractor at his last known address;

(D) to a potential lien claimant at the address specified in a stop-payment notice or notice of right to lien or claim of lien;

(10) "individual" means a natural person who actually performs labor upon a building or other improvement as an employee of the owner or any contractor furnishing labor, materials, services, or equipment for the construction, alteration or repair of a building or other improvement;

(11) "lender" means any person providing construction financing;

(12) "owner" means a person who owns the building or other improvement and who enters into a contract, express or implied, for the construction, alteration or repair of a building or improvement;

(13) "potential lien claimant" or "claimant" means any person entitled to assert lien rights under secs. 50 - 120 of this chapter;

(14) "prime contractor" means a person who enters

into a contract directly with an owner for the construction, alteration or repair of a building or improvement on the owner's property;

(15) "subcontractor" means a person who enters into a contract with a prime contractor for the construction, alteration or repair of a building or other improvement.

* Sec. 17. AS 34.35.495 is amended to read:

Sec. 34.35.495. WAIVER OF LIEN. Except as provided under secs. 117 and 119 of this chapter, no agreement by a person mentioned in secs. 10 - 425 of this chapter to waive his right to acquire a lien provided in secs. 10 - 425 of this chapter is valid.

* Sec. 18. AS 34.07.110 is amended by adding a new subsection to read:

(b) A partial waiver of lien claims created under AS 34.35.050 - 34.35.120 (mechanics liens) on unsold apartments may be obtained by following the procedures specified in AS 34.35.119.

* Sec. 19. AS 34.35.040, 34.35.060(b) and 34.35.070(d) and (e) are repealed.

* Sec. 20. (a) This Act is inapplicable to liens arising out of construction, alteration or repair projects commenced before the effective date of this Act claimed by claimants whose furnishing or delivery of labor, materials, services or equipment is completed within 120 days after the effective date of this Act.

(b) This Act is applicable to

(1) lien claims arising out of construction, alteration or repair projects commenced after the effective date of this Act;

(2) lien claims arising out of construction, alteration or repair projects commenced before the effective date of this Act in favor of claimants who first furnish labor, materials, services, or equipment after 120 days after the effective date of this Act; and

(3) liens arising out of construction, alteration or repair projects commenced before the effective date of this Act claimed by claimants whose furnishing or delivery of labor, materials, services or equipment is first furnished before and continues beyond 120 days after the effective date of this Act; however, in order to preserve the right to claim a lien for labor, materials, services or equipment furnished or delivered, the claimant must give a notice of right to lien required under AS 34.35.064 contained in sec. 4 of this Act within 130 days after the effective date of this Act; a notice of right to lien given under this paragraph is effective for all labor, materials, services or equipment furnished from the date of commencement of the claimant's portion of the construction, alteration or repair project.

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* Sec. 21. This Act takes effect immediately in accordance with AS 01.10.070(c).