

Introduced: 3/2/79
Referred: Commerce

1 IN THE SENATE

BY THE COMMERCE COMMITTEE
BY REQUEST

2 SENATE BILL NO. 234

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to materialmen's and mechanics' liens;
7 and providing for an effective date."

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

9 * Section 1. AS 34.35.064(a) is amended to read:

10 (a) After [AT ANY TIME AFTER] entering into a contract, a claimant
11 may [OTHER THAN A PRIME CONTRACTOR OR AN INDIVIDUAL AS DEFINED IN AS
12 34.35.120(10) SHALL] give a notice of right to lien to the owner and the
13 lender. The notice of right to lien shall be in writing, state that it
14 is a notice of a right to assert a lien against a building or other
15 improvement for labor, materials, services, or equipment furnished in
16 connection with construction, alteration, or repair of the building or
17 other improvement, and contain

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

20 (2) the name of the owner;

21 (3) the name and address of the claimant;

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

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

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

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

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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.

* Sec. 2. AS 34.35 is amended by adding new sections to read:

Sec. 34.35.068. TIME PERIODS FOR CLAIMING LIENS. (a) If a notice of completion is not recorded by the owner as provided in AS 34.35.071, a claim of lien shall be recorded not later than 90 days after the claimant

- (1) completes his construction contract;
- (2) ceases to labor on the owner's property for any cause; or
- (3) ceases to furnish labor, material, services or equipment for the construction, alteration or repair of the owner's property.

(b) If a notice of completion is recorded by the owner as provided in AS 34.35.071,

(1) the following shall record a claim of lien or a notice of right to lien not later than 10 days after the notice of completion is recorded:

- (A) a claimant who has received advance notification of the date that the notice of completion is recorded as provided in AS 34.35.071(a)(2);
- (B) a claimant who has not given a notice of right to lien as permitted in AS 34.35.064;

(2) the following shall record a claim of lien not later than the time specified in (a)(1) - (3) of this section:

- (A) a claimant who records a notice of right to lien within the period specified in (1) of this subsection;
- (B) a claimant who has given a notice of right to lien but who has not received advance notice of the date that the notice

1 of completion is recorded by the owner as provided in AS 34.35.-
2 071(a)(2).

3 (c) A claim of lien is enforceable only if recorded by a claimant
4 within the time specified in (a) or (b) of this section.

5 Sec. 34.35.069. ACKNOWLEDGEMENT OF RIGHT TO LIEN. (a) A person
6 other than an individual as defined in AS 34.35.120(10) may not claim a
7 lien under AS 34.35.050 - 34.35.120 for furnishing labor, materials,
8 services, or equipment to a person other than the owner of the real
9 property being improved unless at the time he records a claim of lien as
10 provided in AS 34.35.070 or a notice of right to lien as provided in
11 AS 34.35.067, he also records an authenticated copy of an acknowledgment
12 of right to lien received from the owner.

13 (b) An acknowledgment of right to lien must be signed by the
14 owner, be denominated "acknowledgment of right to lien", and state:

15 (1) the effective date of the acknowledgment;

16 (2) the name of the person to whom the acknowledgment is
17 directed;

18 (3) the name and address of the owner;

19 (4) the name and address of the lender providing construction
20 financing;

21 (5) the name and address of the person who is to furnish
22 labor, materials, services, or equipment;

23 (6) the real property being or intended to be improved or
24 directly benefited, with a legal description sufficient for identifica-
25 tion;

26 (7) a brief description of the labor, materials, services, or
27 equipment to be furnished to the person named in (5) of this subsection;

28 (8) that the owner acknowledges the right of the person to
29 claim a lien to secure payment for the cost of labor, materials, ser-

1 vices, or equipment furnished by the person named in (5) of this subsec-
2 tion for the construction, alteration, or repair of improvements on the
3 owner's real property.

4 (c) An acknowledgment of right to lien may state its duration. If
5 no duration is stated, the duration of an acknowledgment of right to
6 lien is one year from the effective date stated in the acknowledgment.

7 (d) Unless an acknowledgment of right to lien states that the
8 owner will acknowledge lien rights only for certain types or quantities
9 of labor, materials, services, or equipment, the acknowledgment applies
10 to all labor, services, materials, or equipment furnished to the person
11 named in the acknowledgment and used in the construction, alteration or
12 repair of the owner's real property.

13 * Sec. 3. AS 34.35.070(a) is amended to read:

14 (a) Subject to the provisions of AS 34.35.069(a), a [A] claimant
15 [MAY RECORD A CLAIM OF LIEN AFTER A NOTICE OF RIGHT TO LIEN IS GIVEN BY
16 THAT CLAIMANT EXCEPT THAT A CLAIMANT WHO IS NOT REQUIRED TO GIVE A
17 NOTICE OF RIGHT TO LIEN UNDER AS 34.35.064(a)] may record a claim of
18 lien after entering into a contract for the construction, alteration, or
19 repair of a building or improvement. A claim of lien may not be re-
20 corded later than the time specified under AS 34.35.068 [(b) OF THIS
21 SECTION].

22 * Sec. 4. AS 34.35.095(a) is amended to read:

23 (a) Except as provided in (c) of this section, a claimant [A PRIME
24 CONTRACTOR] may recover upon a lien recorded by him only the amount due
25 to him according to the terms of his contract, after deducting all
26 claims of other persons claiming through him for work done and materials
27 furnished.

28 * Sec. 5. AS 34.35.112 is amended to read:

29 Sec. 34.35.112. PAYMENT OF CLAIMANT'S LIENS. (a) If more than

1 one lien created under AS 34.35.050 - 34.35.120 is claimed against
2 property, the court in its judgment shall declare the rank of each lien
3 or class of liens in the following order:

4 (1) all persons other than prime contractors or subcontrac-
5 tors with lien rights under AS 34.35.050(1);

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

8 (3) all materialmen [OTHER THAN PRIME CONTRACTORS OR SUB-
9 CONTRACTORS];

10 (4) subcontractors, including prime contractors other than
11 the general contractor and persons described in AS 34.35.050(5);

12 (5) the general contractor.

13 (b) For purposes of AS 34.35.050 - 34.35.120, if the proceeds of
14 sale of the property are insufficient to pay the lien claims of all
15 persons who have recorded a claim of lien,

16 (1) the liens of all individuals with lien rights under
17 AS 34.35.050(1) shall first be paid in full, or pro rata if the proceeds
18 are insufficient to pay them in full;

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

22 (3) the liens of materialmen [, OTHER THAN A PRIME CONTRACTOR
23 OR SUBCONTRACTOR,] shall be paid in full or pro rata if the proceeds are
24 insufficient to pay them in full;

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

28 (5) the balance shall be paid to the general contractor; a
29 general contractor is entitled to execution for the balance due him

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after distribution.

* Sec. 6. AS 34.35 is amended by adding a new section to read:

Sec. 34.35.114. OBLIGATION OF CLAIMANT AND LENDER TO PROVIDE INFORMATION. (a) A prime contractor, on request, shall provide the following information within five days to any person entitled to claim a lien through him:

(1) a description of the real property being improved sufficient to identify the property;

(2) the name and address of the owner with whom the prime contractor contracted;

(3) the name and address of the lender providing construction financing; and

(4) whether there is a payment bond and, if so, the name of the surety.

(b) At the request of any person who may claim a lien through him, a claimant other than a prime contractor shall provide within five days, the name of the person who contracted for the furnishing by the claimant of the labor, materials, services or equipment from which a lien claim may arise.

(c) A lender who receives a notice of right to lien which contains a legal description of the owner's real property different from that on file with the lender shall, within five working days after receiving the notice, advise the sender in writing of the deficiencies in the notice of right to lien.

(d) A lender who receives a notice of right to lien which designates a person as an owner who is not receiving construction financing from the lender shall, within five working days after receiving the notice, advise the sender in writing that the lender is not providing construction financing to the owner named in the notice of right to

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(c) A person who fails to provide information as required by this section or who furnishes incorrect information which causes a claimant to fail to realize on a lien is liable to the requesting party for actual damages or \$200, whichever is greater.

* Sec. 7. AS 34.35.120(14) and (15) are amended to read:

(14) "prime contractor" means a person who enters into a contract directly with an owner to furnish labor, materials, services, or equipment for the construction, alteration or repair of a building or other improvement on the owner's real property;

(15) "subcontractor" means a person who enters into a contract with a prime contractor to furnish labor, services, or equipment for the construction, alteration or repair of a building or other improvement on the owner's real property and does not include a materialman.

* Sec. 8. AS 34.35.120 is amended by adding a new paragraph to read:

(16) "materialman" means a person who furnishes materials used in the construction, alteration or repair of the owner's real property.

* Sec. 9. AS 34.35.070(b), 34.35.071(c) and 34.35.095(b) are repealed.

* Sec. 10. This Act takes effect immediately in accordance with AS 01.-10.070(c).