

Original sponsor: Commerce Committee
by request

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For Today's Calendar

1 IN THE SENATE

BY THE FINANCE COMMITTEE

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HOUSE CS FOR SENATE BILL NO. 234 (Finance) am H

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IN THE LEGISLATURE OF THE STATE OF ALASKA

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ELEVENTH LEGISLATURE - FIRST SESSION

5

A BILL

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For an Act entitled: "An Act relating to materialmen's and mechanics' liens."

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

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

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(a) After [AT ANY TIME AFTER] entering into a contract, a claimant

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may [OTHER THAN A PRIME CONTRACTOR OR AN INDIVIDUAL AS DEFINED IN AS

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34.35.120(10) SHALL] give a notice of right to lien to the owner and the

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lender. The notice of right to lien shall be in writing, state that it

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is a notice of a right to assert a lien against a building or other

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improvement for labor, materials, services, or equipment furnished in

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connection with construction, alteration, or repair of the building or

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other improvement, and contain

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(1) a legal description sufficient for identification of the

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real property upon which the building or other improvement is located;

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(2) the name of the owner;

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(3) the name and address of the claimant;

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

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contracted;

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(5) a general description of the labor, materials, services,

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or equipment provided or to be provided;

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(6) a statement that the claimant may be entitled to record a

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claim of lien; and

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(7) the following statement in type no smaller than that used

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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,

1 you may be liable for payment directly to this claimant, notwith-
2 standing the fact that payment has been made to a prime contractor
3 or other party.

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

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

9 (1) completes his construction contract; or

10 (2) ceases to furnish labor, material, services or equip-
11 ment for the construction, alteration or repair of the owner's pro-
12 perty.

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

15 (1) the following shall record a claim of lien or a notice of
16 right to lien not later than 15 days after the notice of completion is
17 recorded:

18 (A) a claimant who has received advance notification of
19 the date that the notice of completion is recorded as provided in
20 AS 34.35.071(a)(2);

21 (B) a claimant who has not given a notice of right to
22 lien as permitted in AS 34.35.064;

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

25 (A) a claimant who records a notice of right to lien
26 before or within the period specified in (1) of this subsection;

27 (B) a claimant who has given a notice of right to lien
28 but who has not received advance notice of the date that the notice
29 of completion is recorded by the owner as provided in AS 34.35.-

1 071(a)(2).

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

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

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

- 14 (1) the effective date of the acknowledgment;
15 (2) the name of the person to whom the acknowledgment is
16 directed;
17 (3) the name and address of the owner;
18 (4) the name and address of the lender providing construction
19 financing;
20 (5) the name and address of the person who is to furnish
21 labor, materials, services, or equipment;
22 (6) the real property being or intended to be improved or
23 directly benefited, with a legal description sufficient for identifica-
24 tion;
25 (7) a brief description of the labor, materials, services, or
26 equipment to be furnished to the person named in (5) of this subsection;
27 (8) that the owner acknowledges the right of the person to
28 claim a lien to secure payment for the cost of labor, materials, ser-
29 vices, or equipment furnished by the person named in (5) of this subsec-

1 tion for the construction, alteration, or repair of improvements on the
2 owner's real property.

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

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

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

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

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

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

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

28 Sec. 34.35.112. PAYMENT OF CLAIMANT'S LIENS. (a) If more than
29 one lien created under AS 34.35.050 - 34.35.120 is claimed against

1 property, the court in its judgment shall declare the rank of each lien
2 or class of liens in the following order:

3 (1) all persons other than prime contractors or subcontractors
4 with lien rights under AS 34.35.050(1);

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

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

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

11 (5) the general contractor.

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

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

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

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

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

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

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

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

6 (1) a description of the real property being improved suffi-
7 cient to identify the property;

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

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

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

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

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

24 (d) A lender who receives a notice of right to lien which desig-
25 nates a person as an owner who is not receiving construction financing
26 from the lender shall, within five working days after receiving the
27 notice, advise the sender in writing that the lender is not providing
28 construction financing to the owner named in the notice of right to
29 lien.

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(e) An owner or his agent 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.