

Introduced: 1/22/86
Referred: Labor & Commerce
and Judiciary

BY COTTEN, SZYMANSKI, PHILLIPS
AND NAVARRE

1 IN THE HOUSE

2 HOUSE BILL NO. 494

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to liens for labor or materials
7 furnished."

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

9 * Section 1. AS 34.35.060(a) is amended to read:

10 (a) Except as provided in (c) and (e) of this section, an encum-
11 brance that [WHICH] is properly recorded is [SHALL BE] preferred to a
12 lien created under AS 34.35.050 - 34.35.120 unless the claim of lien
13 under AS 34.35.070 or notice of right to lien under AS 34.35.064 has
14 been recorded before the encumbrance. The preference granted for a
15 prior mortgage or deed of trust under this section applies without
16 regard to when the sums are disbursed or whether the disbursements are
17 required under the terms of a loan agreement, except the preference
18 does not apply to sums disbursed by the lender in violation of AS 34.-
19 35.062.

20 * Sec. 2. AS 34.35.060 is amended by adding a new subsection to read:

21 (e) Except as provided in (c) of this section, a lien created by
22 AS 34.35.050 - 34.35.120 for original construction has equal priority
23 with a prior recorded encumbrance upon the land on which the building
24 or other improvement is constructed.

25 * Sec. 3. AS 34.35.062(a) is amended to read:

26 (a) A lender providing construction financing where there is not
27 a payment bond of at least 50 percent of the amount of construction
28 financing shall observe the following procedures:

29 (1) draws [DRAWS] against construction financing shall be

1 made only after certification of job progress to the lender by the
2 general contractor, if any, and the owner; if the construction financ-
3 ing involves more than one parcel of property, the lender and owner
4 shall certify which parcel the draw is allocated to and the owner and
5 general contractor shall certify that the draw will be applied for
6 construction on that parcel; each certification shall be signed and
7 verified; a copy of each certificate shall be made available by the
8 lender on request to a claimant under AS 34.35.050; [. THE FORM OF
9 THE CERTIFICATION MAY BE PRESCRIBED BY THE LENDER.]

10 (2) a [A] claimant under [DESCRIBED IN] AS 34.35.050 who
11 has not received payment for [WITHIN 20 DAYS AFTER THE DATE FOR PAY-
12 MENT REQUIRED BY THE CONTRACT OR EMPLOYEE BENEFIT TRUST AGREEMENT OR,
13 IF NO DATE FOR PAYMENT IS SPECIFIED, THEN 30 DAYS AFTER] the labor,
14 materials, services, or equipment [ARE FIRST] furnished, may [WITHIN
15 20 DAYS THEREAFTER] give a direct-payment [STOP-PAYMENT] notice of the
16 sums due for which the claimant may claim a lien under AS 34.35.095;
17 [.]

18 (3) a direct-payment [THE STOP-PAYMENT] notice shall be
19 given to the lender and to the owner and [. THE STOP-PAYMENT NOTICE]
20 shall include [STATE IN SUBSTANCE]

21 (A) the name of the person ordering the labor, mate-
22 rials, services, or equipment;

23 (B) a sufficient legal description of the real prop-
24 erty being improved or developed;

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

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

1 (E) the sum due and not yet paid under the claimant's
2 contract; [WHICH MAY INCLUDE AN AMOUNT NOT TO EXCEED 50 PERCENT
3 OF THE PRINCIPAL AMOUNT OF THE CLAIM FOR INTEREST, REASONABLE
4 COSTS, AND ATTORNEY FEES.]

5 (4) after [AFTER] receipt of a direct-payment [STOP-PAY-
6 MENT] notice under this section, the lender shall withhold from the
7 next and subsequent draws sufficient money to pay the amount claimed
8 in the [STOP-PAYMENT] notice; [.]

9 (5) upon receipt of a direct-payment notice the owner may
10 give a notice of objection to the claimant and the lender; unless the
11 lender receives the notice of objection within 10 days after receipt
12 of the direct-payment notice, the lender shall disburse directly to
13 the claimant sums withheld under (4) of this subsection; if a notice
14 of objection is received within the 10-day period, the lender shall
15 disburse the sums jointly to the claimant and the owner [SUMS WITHHELD
16 UNDER A STOP-PAYMENT NOTICE MAY NOT BE DISBURSED BY THE LENDER EXCEPT
17 UNDER THE TERMS OF A WRITTEN AGREEMENT SIGNED BY THE CLAIMANT, OWNER
18 AND GENERAL CONTRACTOR OR BY ORDER OF A COURT OF COMPETENT
19 JURISDICTION].

20 * Sec. 4. AS 34.35.062(b) is amended to read:

21 (b) If a lender fails to comply with the provisions of (a)(4)
22 or (5) of this section, the lender is [SHALL BE] liable to the claiman
23 or owner for an amount equal to the sum disbursed in violation of
24 those paragraphs [SUBSECTIONS] or the sum ultimately determined to be
25 due the claimant or owner by a court of competent jurisdiction,
26 whichever is less.

27 * Sec. 5. AS 34.35.062 is amended by adding a new subsection to read:

28 (d) After the date of receipt of a direct-payment notice the
29 lender may not withhold or disburse loan proceeds in satisfaction of

1 the owner's obligations to the lender until payment of the amount
2 claimed in the notice has been made to the claimant.

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

4 Sec. 34.35.063. NOTICE OF INTENT TO FURNISH LABOR, MATERIALS,
5 SERVICES, OR EQUIPMENT. Before furnishing labor, materials, services,
6 or equipment for the improvement of real property, a person may give
7 notice of intent to furnish the labor, materials, services, or equip-
8 ment. The notice shall be given to the lender, or, if none, to the
9 owner of record of the property or the owner's agent. If notice is
10 given in accordance with this section, the owner has the burden of
11 proof to show that the owner did not know of or consent to the fur-
12 nishing of labor, materials, services, or equipment for the improve-
13 ment of the property in an action involving a lien on the property
14 under AS 34.35.050 - 34.35.120. Otherwise the claimant has the burden
15 of proof to show that the owner knew of and consented to the furnish-
16 ing of labor, materials, services, or equipment.

17 * Sec. 7. AS 34.35.068(b) is amended to read:

18 (b) If a notice of completion is recorded by the owner as pro-
19 vided in AS 34.35.071,

20 (1) the following shall record a claim of lien or a notice
21 of right to lien not later than 30 [15] days after the notice of
22 completion is recorded:

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

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

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

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

3 (B) a claimant who has given a notice of right to lien
4 but who has not received advance notice of the date that the
5 notice of completion is recorded by the owner as provided in
6 AS 34.35.071(a)(2).

7 * Sec. 8. AS 34.35.070(a) is amended to read:

8 (a) A [SUBJECT TO THE PROVISIONS OF AS 34.35.069(a), A] claimant
9 may record a claim of lien after entering into a contract for the
10 construction, alteration, or repair of a building or improvement. A
11 claim of lien may not be recorded later than the time specified under
12 AS 34.35.068.

13 * Sec. 9. AS 34.35.071(a) is amended to read:

14 (a) The owner of real property that may be subject to a lien
15 under AS 34.35.050 - 34.35.120 may announce the date of completion of
16 a building or other improvement on the property by

17 (1) recording a notice of completion after completion of
18 the construction, alteration or repair of the building or other im-
19 provement in the office of the recorder of the district in which the
20 building or other improvement is situated; and

21 (2) giving notice at least 15 [FIVE] days before the re-
22 cording of the notice of completion to all claimants who have given a
23 notice of right to lien or a direct-payment [STOP-PAYMENT] notice to
24 the owner and the lender prior to 20 [10] days before recording a
25 notice of completion; the notice must include a copy of the notice of
26 completion and a statement advising claimants that a notice of com-
27 pletion will be recorded not earlier than 15 [FIVE] days after the
28 date of the notice.

29 * Sec. 10. AS 34.35.114(e) is amended to read:

1 (e) An owner, [OR] an agent of the owner, or a lender who fails
2 to provide information as required by this section or who furnishes
3 incorrect information that [WHICH] causes a claimant to fail to real-
4 ize on a lien is liable to the requesting party for actual damages or
5 \$200, whichever is greater.

6 * Sec. 11. AS 34.35.117(a) is amended to read:

7 (a) Except as provided under (b) of this section, a written
8 waiver of lien or direct-payment [STOP-PAYMENT] notice of rights
9 created under AS 34.35.050 - 34.35.120 signed by a claimant requires
10 no consideration and is valid and binding. A waiver permitted under
11 this section may not relate to labor, materials, services or equipment
12 furnished after the date the waiver is signed by the claimant.

13 * Sec. 12. AS 34.35.118 is amended to read:

14 Sec. 34.35.118. CLAIMANT AND OWNER LIABILITY. A claimant or
15 owner is [SHALL BE] liable for a [ANY] loss, cost or expense, includ-
16 ing reasonable attorney fees, to a person [ANY PERSONS] injured by an
17 unjust, excessive or premature direct-payment [STOP-PAYMENT] notice,
18 notice of completion, or claim of lien.

19 * Sec. 13. AS 34.35.120(9) is amended to read:

20 (9) "give notice" means to mail a notice required under
21 AS 34.35.050 - 34.35.120 by first-class mail and by using a form of
22 mail requiring a signed receipt, or to deliver the notice and obtain a
23 receipt signed by the person to whom it is directed or an agent of
24 that person; a notice is effective when given or delivered to

25 (A) [TO] a lender at the address designated in the
26 encumbrance securing that lender;

27 (B) [TO] an owner at the last known address of the
28 owner;

29 (C) [TO] a prime contractor at the last known address

1 of the prime contractor;

2 (D) [TO] a potential lien claimant at the address
3 specified in a direct-payment [STOP-PAYMENT] notice or notice of
4 right to lien or claim of lien;

5 * Sec. 14. AS 34.35.062(c) and 34.35.069 are repealed.