

Offered: 4/21/86
Referred: Rules

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1 IN THE HOUSE BY THE JUDICIARY COMMITTEE
2 CS FOR HOUSE BILL NO. 494 (Judiciary)
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 material
7 furnished."
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:
9 * Section 1. AS 34.35.062 is repealed and reenacted to read:
10 Sec. 34.35.062. CONSTRUCTION FINANCING. (a) A claimant to whom
11 payment for the labor, material, service, or equipment furnished for a
12 project is past due may give the lender a stop-lending notice. The
13 claimant shall at the same time give a copy of the notice to the owner
14 and to each prime contractor with whom or through whom the claimant or
15 the claimant's debtor has contracted. A stop-lending notice shall
16 (1) instruct the lender to stop disbursing, advancing, or
17 otherwise providing construction financing for the project;
18 (2) be verified by the claimant;
19 (3) state the claimant's name, address, and telephone
20 number;
21 (4) describe the labor, material, service, or equipment
22 furnished by the claimant and state the name of the person to whom
23 furnished;
24 (5) describe the real property improved by the labor,
25 material, service, or equipment and state the name of the person the
26 claimant believes to be the owner of the real property;
27 (6) state the amount due and unpaid to the claimant for the
28 labor, material, service, or equipment.
29 (b) A stop-lending notice is binding upon a lender from the time

1 the lender has received it and had a reasonable opportunity to act
2 upon it until it expires or is revoked. A notice expires on the 91st
3 day after it is received by the lender unless the claimant has com-
4 menced an action on the claim that is the subject of the notice before
5 that day and the lender has received written notification of the
6 action. A stop-lending notice may be revoked at any time in writing
7 signed by the claimant. Expiration or revocation of a notice extin-
8 guishes the liability of the lender to the claimant under (c) of this
9 subsection.

10 (c) A lender who disburses, advances, or otherwise provides
11 construction financing for a project after it is the subject of a
12 stop-lending notice is liable to the claimant in an amount equal to
13 the lowest of the following amounts:

14 (1) the amount of construction financing disbursed, ad-
15 vanced, or otherwise provided by the lender after receipt of the
16 claimant's stop-lending notice; if there are two or more stop-lending
17 notices when the disbursement occurs, the lender's liability to each
18 claimant is based on the claimant's ranking under AS 34.35.112;

19 (2) the amount owed to the claimant, including interest,
20 costs, and attorney's fees, for labor, material, service, or equipment
21 furnished for the project by the claimant as established by a written
22 agreement signed on or after the date of the stop-lending notice by
23 the claimant, the owner and the prime contractor with whom or through
24 whom the claimant or the claimant's debtor has contracted or by a
25 final judgment in an action in which the owner, the claimant and the
26 claimant's debtor are named and, if necessary, served parties;

27 (3) 150 percent of the amount stated in the stop-lending
28 notice.

29 (d) Within 10 days after receiving the written agreement or a

1 certified copy of the judgment under (c)(2) of this section estab-
2 lishing the amount owed to a claimant from whom it has a binding
3 stop-lending notice, a lender shall send to the claimant a verified
4 statement showing, by date and amount, all construction financing
5 provided by the lender for the project. Except as provided in (e) of
6 this section, the lender shall include with the statement payment in
7 the amount of the lender's liability to the claimant under (c) of this
8 section.

9 (e) If there are two or more claimants to whom a lender is or
10 may be liable under (c) of this section and the lender is uncertain as
11 to the amount of its liability or possible liability to each, the
12 lender may bring an action to require the claimants to interplead
13 their claims.

14 (f) A draw against construction financing may be made only after
15 certification of job progress is delivered to the lender by the owner.
16 The form of the certification may be prescribed by the lender and
17 shall include

18 (1) a statement of the progress of the project, including
19 the percentage of completion of the project;

20 (2) the name, address, and telephone number of each prime
21 contractor who has furnished labor, material, service, or equipment
22 for the project;

23 (3) the amount owed by the owner to each listed prime
24 contractor; and

25 (4) the portion of the draw that the owner will pay to each
26 listed prime contractor.

27 (g) The owner shall use each draw as indicated in the certifi-
28 cates given by them to the lender under (f) of this section. The
29 lender may not be required to verify the information in a certificate

1 and is not liable for an error in a certificate.

2 (h) An owner who intentionally fails to apply construction
3 financing proceeds as indicated by the certificate required under (f)
4 of this section is guilty of a class A misdemeanor. The penalty
5 provided under this subsection does not replace any other penalty that
6 may be provided for by law for the same conduct.

7 (i) Within 10 days after being requested, a lender shall provide
8 a person who has given the lender a stop-lending notice with a copy of

9 (1) each certificate received by the lender under (f) of
10 this section; and

11 (2) a verified certificate stating the amount of construc-
12 tion financing proceeds committed by the lender for the project that
13 have not been disbursed by the lender.

14 (j) The lender may not provide construction financing proceeds
15 for payment of indebtedness of the owner that is not incurred for the
16 project.

17 * Sec. 2. AS 34.35.064(a) is amended to read:

18 (a) Before furnishing labor, material, service, or equipment for
19 a project, a person [AFTER ENTERING INTO A CONTRACT, A CLAIMANT] may
20 give a notice of right to lien to the owner or owner's agent [AND THE
21 LENDER]. If the notice is given in accordance with this section, the
22 owner has the burden of proof to show that the owner did not know of
23 or consent to the furnishing of the labor, material, service, or
24 equipment by the claimant in an action to foreclose the claimant's
25 lien on the property under AS 34.35.050 - 34.35.120. Otherwise the
26 claimant has the burden of proof to show that the owner knew of and
27 consented to the furnishing of the labor, material, service, or equip-
28 ment. The notice of right to lien shall be in writing, state that it
29 is a notice of a right to assert a lien against real property [A

1 BUILDING OR OTHER IMPROVEMENT] for labor, materials, services, or
2 equipment furnished in connection with a project [CONSTRUCTION, ALTER-
3 ATION, OR REPAIR OF THE BUILDING OR OTHER IMPROVEMENT], and contain
4 (1) a legal description sufficient for identification of
5 the real property [UPON WHICH THE BUILDING OR OTHER IMPROVEMENT IS
6 LOCATED];
7 (2) the name of the owner;
8 (3) the name and address of the claimant;
9 (4) the name and address of the person with whom the claim-
10 ant contracted;
11 (5) a general description of the labor, materials, ser-
12 vices, or equipment provided or to be provided;
13 (6) a statement that the claimant may be entitled to record
14 a claim of lien; and
15 (7) the following statement in type no smaller than that
16 used in providing the information required by (1) - (6) of this
17 subsection: WARNING: Unless provision is [HAS BEEN] made for payment
18 of sums that may be due to the undersigned, your above property may be
19 subject to foreclosure to satisfy those sums even though you may pay
20 [THIS CLAIM, YOU MAY BE LIABLE FOR PAYMENT DIRECTLY TO THIS CLAIMANT,
21 NOTWITHSTANDING THE FACT THAT PAYMENT HAS BEEN MADE TO] a prime con-
22 tractor or other person for the labor, material, service, or equipment
23 furnished by the undersigned [PARTY].

24 * Sec. 3. AS 34.35.067 is amended to read:

25 Sec. 34.35.067. RECORDING NOTICE OF RIGHT TO LIEN. A notice of
26 right to lien may be recorded by a claimant at any time after the
27 claimant enters [ENTERING] into a contract for or first furnishes
28 labor, material, service, or equipment [FURNISHED] in connection with
29 a project [THE CONSTRUCTION, ALTERATION OR REPAIR OF A BUILDING OR

1 OTHER IMPROVEMENT]. The notice shall be recorded in the same manner
2 as specified for the recording of a claim of lien under AS 34.35.070.

3 * Sec. 4. AS 34.35.070(a) is amended to read:

4 (a) A [SUBJECT TO THE PROVISIONS OF AS 34.35.069(a), A] claimant
5 may record a claim of lien after entering into a contract for a proj-
6 ect [THE CONSTRUCTION, ALTERATION, OR REPAIR OF A BUILDING OR IMPROVE-
7 MENT]. A claim of lien may not be recorded later than the time spec-
8 ified under AS 34.35.068.

9 * Sec. 5. AS 34.35.071(a) is amended to read:

10 (a) The owner of real property that may be subject to a lien
11 under AS 34.35.050 - 34.35.120 may announce the date of completion of
12 the project [A BUILDING OR OTHER IMPROVEMENT ON THE PROPERTY] by

13 (1) recording a notice of completion after completion of
14 the project [CONSTRUCTION, ALTERATION OR REPAIR OF THE BUILDING OR
15 OTHER IMPROVEMENT] in the office of the recorder of the district in
16 which the real property [BUILDING OR OTHER IMPROVEMENT] is situated;
17 and

18 (2) giving notice at least five days before the recording
19 of the notice of completion to all claimants who have given a notice
20 of right to lien or a stop-lending [STOP-PAYMENT] notice to the owner
21 and the lender prior to 10 days before recording a notice of comple-
22 tion; the notice must include a copy of the notice of completion and a
23 statement advising claimants that a notice of completion will be
24 recorded not earlier than five days after the date of the notice.

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

26 Sec. 34.35.074. CIVIL SUITS. (a) A person injured by a viola-
27 tion of AS 34.35.050 - 34.35.120 may bring a civil action

28 (1) except as provided in AS 34.35.062(c), for actual and
29 consequential damages that are proximately caused by the violation

1 plus costs, including reasonable attorney's fees;

2 (2) to enjoin the violation, and if the person prevails,
3 the person shall be awarded costs, including reasonable attorney's
4 fees.

5 (b) A claimant who files a stop-lending notice or has a claim of
6 lien recorded under AS 34.35.075 and who fails to promptly remove the
7 stop-lending notice or claim of lien from the record upon receiving
8 payment in full on the claim or discovering that the stop-lending
9 notice or claim of lien is in error, unjust, premature or excessive is
10 liable for actual and consequential damages caused by the filing of
11 the stop-lending notice or improperly recorded claim of lien plus
12 costs, including reasonable attorney's fees.

13 * Sec. 7. AS 34.35.080(a) is amended to read:

14 (a) A lien provided for in AS 34.35.050 - 34.35.120 does not
15 bind real property [A BUILDING, STRUCTURE, OR OTHER IMPROVEMENT] for
16 more than six months after the claim of lien is recorded [FILED],
17 unless an action is commenced in [SUIT IS BROUGHT BEFORE] the proper
18 court to enforce the lien within

19 (1) [WITHIN] that time; [,] or

20 (2) [WITHIN] six months after recording of an extension
21 notice in the same recording office within the original six-month
22 period showing the recording date and the book and page or instrument
23 number of the initial claim of lien, and the balance owing.

24 * Sec. 8. AS 34.35.080 is amended by adding a new subsection to read:

25 (c) A lien whose duration is extended by commencement of an
26 action under (a) of this section is void as against a person who,
27 after the commencement of the action and without knowledge or actual
28 notice of its pendency, acquires an interest in the subject property
29 in good faith for valuable consideration, unless a notice of the

1 pendency of the action has been duly filed for record before the time
2 the person's conveyance is duly filed for record. Notice of the
3 pendency of the action shall conform to the requirements of AS 09.45.-
4 790.

5 * Sec. 9. AS 34.35.112 is amended to read:

6 Sec. 34.35.112. PAYMENT OF CLAIMANT'S LIENS. (a) If more than
7 one lien created under AS 34.35.050 - 34.35.120 is claimed against
8 property, the court in its judgment shall declare the rank of each
9 lien or class of liens in the following order:

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

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

14 (3) all materialmen and subcontractors;

15 (4) [SUBCONTRACTORS, INCLUDING] prime contractors other
16 than the general contractor [AND PERSONS DESCRIBED IN AS 34.35.050-
17 (5)];

18 (5) the general contractor.

19 (b) For purposes of AS 34.35.050 - 34.35.120, if the proceeds of
20 the foreclosure sale of the property are insufficient to pay the lien
21 claims of all persons who have recorded claims [A CLAIM] of lien, the

22 (1) [THE] liens of all individuals with lien rights under
23 AS 34.35.050(1) shall first be paid in full, or pro rata if the pro-
24 ceeds are insufficient to pay them in full;

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

28 (3) [THE] liens of materialmen and subcontractors shall be
29 paid in full or pro rata if the proceeds are insufficient to pay them

1 in full;

2 (4) liens of persons described in AS 34.35.050(5) and [OUT
3 OF THE REMAINDER THE SUBCONTRACTORS, INCLUDING] prime contractors,
4 other than the general contractor, shall be paid in full [,] or pro
5 rata if the remainder is insufficient to pay them in full; and

6 (5) lien of the general contractor [THE BALANCE] shall be
7 paid out of [TO THE GENERAL CONTRACTOR; A GENERAL CONTRACTOR IS ENTI-
8 TLED TO EXECUTION FOR] the balance [DUE AFTER DISTRIBUTION].

9 * Sec. 10. AS 34.35.112 is amended by adding a new subsection to read:

10 (c) For purposes of AS 34.35.050 - 34.35.120, if the proceeds of
11 the foreclosure sale of the property are sufficient to pay the lien
12 claims of all persons who have recorded claims of lien, the balance
13 shall be paid to the person who owned the property before the foreclo-
14 sure sale.

15 * Sec. 11. AS 34.35.114(c) is repealed and reenacted to read:

16 (c) A person who receives a stop-lending notice or notice of
17 right to lien identifying a project for which the person is not the
18 lender shall notify the claimant in writing within 10 days after
19 receipt of the notice that the person is not the lender.

20 * Sec. 12. AS 34.35.114(d) is repealed and reenacted to read:

21 (d) A claimant shall, within 10 days after receipt of a request,
22 provide an owner or lender to whom the claimant has given a stop-lend-
23 ing notice or notice of right to lien a written statement of the
24 amount due to the claimant and unpaid.

25 * Sec. 13. AS 34.35.117(a) is amended to read:

26 (a) Except as provided under (b) of this section, a written
27 waiver of lien or stop-lending [STOP-PAYMENT] notice of rights created
28 under AS 34.35.050 - 34.35.120 signed by a claimant requires no con-
29 sideration and is valid and binding. A waiver permitted under this

1 section may not relate to labor, materials, services, or equipment
2 furnished after the date the waiver is signed by the claimant.

3 * Sec. 14. AS 34.35.120(4) is amended to read:

4 (4) "construction financing" means [THAT PORTION OF] money
5 loaned or other credit extended to an owner secured by an encumbrance
6 on real property to finance a project on that [ORIGINAL CONSTRUCTION
7 OF A BUILDING OR OTHER IMPROVEMENT ON, OR DEVELOPMENT OF,] real prop-
8 erty [, BUT DOES NOT INCLUDE

9 (A) FUNDS TO ACQUIRE REAL PROPERTY;

10 (B) FUNDS TO PAY PRINCIPAL AMORTIZATION OF ENCUM-
11 BRANCES WITH PRIORITY OVER THE ENCUMBRANCE SECURING THE CONSTRUC-
12 TION FINANCING;

13 (C) FUNDS TO PAY LOAN, COMMITMENT, TITLE, LEGAL,
14 CLOSING, RECORDING OR APPRAISAL FEES ON THE CONSTRUCTION LOAN];

15 * Sec. 15. AS 34.35.120(9) is amended to read:

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

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

23 (B) [TO] an owner at the last known address of the
24 owner;

25 (C) [TO] a prime contractor at the last known address
26 of the prime contractor;

27 (D) [TO] a potential lien claimant at the address
28 specified in a stop-lending [STOP-PAYMENT] notice or notice of
29 right to lien or claim of lien;

1 * Sec. 16. AS 34.35.120(13) is amended to read:

2 (13) "owner" means a person who owns real property or a
3 possessory interest in real property [THE BUILDING OR OTHER IMPROVE-
4 MENT] and who enters into a contract, express or implied, for a proj-
5 ect on that property [THE CONSTRUCTION, ALTERATION OR REPAIR OF A
6 BUILDING OR IMPROVEMENT];

7 * Sec. 17. AS 34.35.120 is amended by adding a new paragraph to read:

8 (17) "project" means construction, alteration, or repair of
9 an improvement on real property or work done to enhance the real
10 property itself.

11 * Sec. 18. AS 34.35.069, 34.35.080(b), 34.35.114(e), and 34.35.118 are
12 repealed.