

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 86/2

4217 SLAB HB 494 1697



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11/24/89
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HB

494

HB 494

An Act relating to liens for labor or material furnished

COMPARISON TO EXISTING LAW

Existing Law

HB 494

AS 34.35.062

Stop-payment notice expires
30 days after being received.

Claimant must wait 20-30 days
after payment is overdue to file
a stop-payment notice.

Claimant must put up a bond equal
to the amount on the stop-payment
notice when taking a case to court.

A certification of job progress
is required from the owner
to the lender prior to the
disbursal of funds. The
lender may prescribe the form of
the certificate.

Changes reference to
stop-payment notice to
stop-lending notice.
Notice does the same
thing.

Stop-lending notice expires
90 days after being received.

A stop-lending notice may be
filed anytime after a payment
is overdue.

Deletes the bond requirement.

Job progress certification is
still required and certain
items are specified that must
be included in the
certificate.

New section. Details the
lenders liability when
they disburse funds that
are the subject of a stop-
lending notice.

New section. Requires draw to
be applied to it's stated
purpose.

New section. Makes it at
least a class A misdemeanor
when an owner misdirects a
construction financing draw.

New section. A lender may
not disburse funds to pay for
any debts that were not
incurred to finance the cost
of the project.

Existing Law

HB 494

AS 34.35.064(a)

Details the requirements for giving a notice of right to lien.

Adds language stating that if one properly files a notice of right to lien the burden of proof is on the owner to show he did not know of nor consent to labor or material furnished.

AS 34.35.067

A person may record a notice of right to lien after entering a contract to furnish labor or material.

A person may record a notice of right to lien after entering a contract or furnishing labor or material.

AS 34.35.071(a)

Technical change.

AS 34.35.074

New section.

New section. Provides for civil actions being brought by persons injured in their business or property by a violation of any provision of the lien act.

AS 34.35.080(a)

Technical change.

AS 34.35.080(c)

New subsection.

New subsection. Requires a claimant to record that he has brought suit to keep the lien active. Unless it is recorded the claimant could lose the claim to a subsequent good faith purchaser who doesn't know of the claimants action.

AS 34.35.112

Ranks priority of lien claims in a court judgement and foreclosure.

Ranks priority of lien claims in a court judgement and foreclosure and gives subcontractors equal status with materialmen.

Existing Law

HB 494

AS 34.35.112(c)

New subsection.

When there are sufficient funds provided by a foreclosure sale to pay off all lien claims the balance will be paid to the person who owned the property.

AS 34.35.114(c)

When a lender receives a stop-payment notice on a project for which they are not a lender they must notify the sender within five days.

When a lender receives a stop-lending notice or notice of right to lien on a project for which they are not a lender they must notify the claimant within 10 days.

AS 34.35.114(d)

A lender who receives a notice of right to lien on a project for which they are not a lender must notify the sender within five days.

A claimant shall provide a written statement of the amount due and unpaid within 10 days of being requested to by an owner or lender to whom the claimant has given a stop-lending notice.

AS 34.35.117(a)

Technical change.

AS 35.35.069

Requires a claimant to have an acknowledgement of right to lien from an owner in order for their claim of lien to be valid.

Repealed.

AS 34.35.080(b)

A lien may not be continued in force for more than one year from the date of the filing of the original lien notice.

Repealed. (Conflicts with other parts of the statute).

AS 34.35.114(e)

Provides for penalties to an owner for failing to provide information.

Repealed. (Covered by new civil suit section).

AS 34.35.118

Provides for penalties to a claimant for filing an unjust excessive or premature stop-payment notice.

Repealed. (Incorporated into civil suit section).

CHAIRMAN'S INFORMATION: CSHB 494 (Jud)

- 1) BILL TITLE: "An act relating to liens for labor or materials furnished."
 - a) Introduced: Rep Cotten
 - b) Co-sponsors:

- 2) INTENT: This measure seeks to strengthen and clarify the existing lien law, and addresses problems being experienced by suppliers and subcontractors with receiving payment for labor or materials furnished.

FISCAL NOTE: 0

- 3) ADDITIONAL REFERRALS: ~~to~~ Rules
- 4) PUBLIC HEARINGS:
 - a) Sponsor:
 - b) Public Witnesses:
- 5) BILL ACTION:
 - a) Hold in committee?
 - b) Assign to sub committee for further review?
 - c) Move from committee?
 - d) Close public hearings?
- 6) COMMITTEE ACTION?
 - a) amendments?
 - b) CS adoption? Need to adopt the L&C SCS.

CS HB 494 (JUD)
SECTIONAL ANALYSIS

SECTION 1

page 1, ln 10

(a) Revises 34.35.062 to more clearly and accurately state the present "stop-payment" rule. "Stop-payment" is changed to "stop-lending."

Eliminates the current requirement that a claimant wait 20-30 days after an account becomes delinquent before giving a stop payment notice to the lender.

page 1, ln 29

(b) Changes to 90 days (from 30) the time within which a claimant may bring suit after filing a stop-payment notice. Eliminates the present requirement that the claimant must provide a bond.

page 2, ln 10

(c) Addresses the lender's liabilities when they disburse funds that are the subject of a binding stop-lending notice.

page 2, ln 29

(d) Requires a lender to send a verified statement to the claimant showing all construction financing provided to the owner or owner's agent within ten days of receiving a certified copy of a judgment establishing the amount owed a claimant.

page 3, ln 9

(e) Allows a lender to bring an action requiring claimants to interplead their claims when there are two or more claimants and the lender is uncertain of the amount of its liability.

page 3, ln 14

(f) A lender may not provide a draw to the owner or an agent of the owner until the owner has provided a certification of job progress which must include the portion of the draw that the owner will pay to each listed prime contractor.

page 3, ln 27

(g) Requires draw to be applied pursuant to the required certificate. The lender is not required to verify the information and is not liable for any error in the certificate.

page 4, ln 2

(h) It is a class A misdemeanor for an owner to intentionally fail to apply construction financing draws in accordance with the required certificate.

page 4, ln 7

(i) When requested a lender is required to provide a person who has given a notice of right to lien a copy of certificates submitted under subsection (f) and a verified certificate stating the undisbursed funds available for the project.

page 4, line 14

(j) A lender may not disburse funds to pay for any debts that were not incurred to finance the cost of the project.

Section 2

page 4, ln 17

(a) Notices of right to lien given to the owner shift the burden to the owner to prove that he was not aware of and did not consent to the improvements to his property. The notice may be given before furnishing labor or material.

Revises the required warning in the notice of Right to Lien to more correctly alert the owner of the significance of the notice.

Section 3

page 5, ln 24

Clarifies recording of notice of right to lien.

Section 4

page 6, ln 3

Technical change relating to section 3.

Section 5

page 6, ln 9

Technical change.

Section 6

page 6, ln 25

(a) Civil actions may be brought for actual damages and actual attorney fees by a person who is injured in its business or property by a violation of any provision of the lien act.

page 7, ln 5

(b) Penalizes a claimant who does not remove a lien or stop-lending notice once payment has been made in full or for not removing an erroneous, unjust, premature or excessive stop-lending notice or claim of lien.

Section 7

page 7, ln 13

Technical change.

Section 8

page 7, ln 24

Requires a claimant to record notice that he has brought suit to keep the lien alive. Unless it is recorded the claimant could lose his lien to a subsequent good faith purchaser who doesn't know of the claimant's action.

Section 9

page 8, ln 5

Subcontractors are given equal status with suppliers in sharing foreclosure sale proceeds.

Section 10

page 9, ln 9

When there are sufficient funds provided by a foreclosure sale to pay off all lien claims the balance will be payed to the person who owned the property.

Section 11

page 10, ln 15

Clarifies responsibility of a lender wrongly named in a stop-lending notice.

Section 12

page 9, ln 20

Clarifies claimants responsibility in providing information to an owner or lender who has been served a stop-lending notice.

Section 13

page 9, ln 25

Technical change.

Sections 14 - 17

page 10, ln 3

Definitions.

Section 18

page 11, ln 11

Repeals acknowledgement of right to lien.

Repeals penalty to owner for failing to provide information. (Is covered by Civil Suits, Section 6)

Repeals claimant liability for filing unjust or premature stop-payment notice. (Is incorporated into Civil Suits, Section 6(b))

ALASKANS

FOR

LIEN LAW REFORM

LIEN LAW HISTORY

In 1979 certain amendments were made to the Alaska Lien Laws which have caused large monetary losses to material suppliers and sub-contractors. The intent of these amendments was to expedite loan closings on the sale of real property and also to assure that no liens could be attached after the property was sold. In a joint meeting held between suppliers, sub-contractors, title companies, and lending institutions it was agreed that this new bill would allow the lending institutions to be secured by a first deed of trust on their interim construction financing which gave them priority over all liens or encumbrances which may be recorded by a material supplier or sub-contractor.

In exchange for giving up a historical priority position, suppliers and sub-contractors were to be provided a vehicle by which they could put the lending institution on notice that they were a supplier of record, and in so doing, protect the suppliers interest. The methods provided to material suppliers and sub-contractors under the new law were:

1. Notice of Right to Lien and
2. Stop Payment Notice

The intent of the "Notice of Right to Lien" was to inform the lending institution, and the property owner, that a supplier or sub-contractor had provided materials or services to a specific project and they may have a claim on the interim construction financing. The further intent of this notice was to guarantee that the lending institution would monitor the disbursing of interim construction funds to assure that persons who had given them a "Notice of Right to Lien" would be paid from each draw.

The "Stop Payment Notice" amendment was added as an additional method for securing a payment, when past due from interim construction financing. The intent of this amendment was to cause the lending institution to withhold the amount claimed by the material supplier or sub-contractor from the next draw and to disburse the funds directly to the claimant.

Since there is no liability on the part of the lending institution for failing to disregard the intent of these amendments, they have been circumvented to a large degree. Interim construction draws are being disbursed directly to the contractor with no assurance that the material supplier or sub-contractor will be paid. In many instances the contractor will use these funds for purposes other than paying his suppliers or sub-contractors.

A "Stop Payment Notice" rarely accomplishes the purpose for which it was intended. The lending institutions in many instances interpret this notice as indication that the contractor is in financial trouble and they will call the loan; thereby stopping all draw requests until the liens are removed or the loan is satisfied. Or they may just hold the notice for a period of 30 days at which time the current law mandates that a law suit be instigated to collect the debt. In addition, the current law mandates that a claimant must provide a bond equal to the amount of the claim. With the current cost of bonding, legal fees and the length of time it takes to get a court date a claimant will rarely recover the amount owed to him. Interestingly enough the lending institutions continue making draws to satisfy their interest charges.

A "Claim of Lien" in many instances has no value. The lending institution has priority over all other encumbrances through their First Deed of Trust position. In the event of foreclosure the lending institutions First Deed of Trust must be paid in its entirety before any other claims can be satisfied, in spite of the fact that the lending institution may have disbursed construction funds directly to the contractor with no regard to a supplier, or sub-contractors "Notice of Right to Lien".

POSITION

The suppliers and sub-contractors position is really quite simple:

We should have the right to reasonably expect to be compensated for the materials supplied and work performed that adds value to someone else's property, and in the event this does not occur we have equal opportunity for recovery under the law.

The trade off or "trust me legislation" of 1979 is simply not working.

Lending institutions are in the best position to review and determine a contractor's financial capability. They have or can have complete access to a contractor's financial information because they control the purse strings. However, loan officers have little or no incentive under existing law to control disbursements so as to assure that suppliers and sub-contractors are paid. At a minimum all they need do is assure that the materials are incorporated into the real estate before they disburse to the contractor. Whether the contractor pays the suppliers or the sub-contractors is really of little concern, because they (the lending institution) are always in first position. This enables them to foreclose and extinguish the liens of suppliers and sub-contractors in the event the contractor ultimately fails to perform. When an institution fails to exercise good control of funds, it is difficult to understand why their investment should be given priority at the expense of suppliers and sub-contractors.

There is no viable vehicle for a supplier or sub-contractor to compel a lending institution to disburse loan draws for materials purchased or work performed.

When the supplier or sub-contractor attempts to utilize a stop payment, or otherwise involve the loan officers, typically the lending institutions' first reaction is to draw down available proceeds to cover interest and other charges or even to call the loan.

Conclusion. The make up of the lending institutions as well as the environment under which the legislation was drafted in 1979, differs from that of today and perhaps is one of the prime reasons requiring a change in this legislation.

It is evident that the current law is not working. The unusual large numbers of business failures, bankruptcy's, and foreclosures bear this out. If some form of protection for sub-contractors and material suppliers is not legislated, there will continue to be many bankruptcy's and foreclosures. In addition, the cost of construction will increase dramatically due to the increase in cost of materials and services to cover the losses sustained through the inequities in the existing law.

**CASE HISTORY
EXAMPLE**

PROJECT	Residential Units - Fairbanks
LENDER	Bank
ACCOUNT PROFILE	Customer for several years Slow payment record

HISTORY. Because of previous problems with this customer and before supplier would enter into an agreement to sell the project, the lending institution agreed to monitor the loan and disburse funds direct to the supplier. After the project was in process the account went 30 days past due and was closed. The supplier contacted the bank was told they (the bank) were working on the draws and payment would be sent in about 10 days. Additionally, the bank requested that the account be left open.

When the account was (45) days past due and no payment received, the supplier again called the bank and was told the loan officer was on vacation. Again the bank requested that the account remain open and that if the materials were allowed to go they would cover the purchases. The supplier was also told there were more than enough funds to cover the balance due. A check would be cut as soon as the loan officer returned.

When the account was (60) days past due the supplier closed the account. The bank was contacted. The loan officer met with supplier, who was again advised that they were working on draws that would bring the account current. The loan officer requested that the account still be left open. Supplier recorded claim of liens.

When the account was (70) days past due the bank filed foreclosure with no advance notice to supplier.

ACTION TAKEN. Timely recorded Notice of Right to Lien and notified lender. Filed Claim of Liens totaling \$214,000.

RESULTS. Without notice bank filed foreclosure notices. Bank offered supplier \$85,000 in settlement. Customer filed bankruptcy. Loan officer resigned from his position at the bank.

SUMMARY. Under the existing law supplier filed all proper documents, and additionally had the assurance of the lending institution that they would disburse directly to them. The supplier had no other recourse except to sue the lending institution or settle because of the first position given the bank under the present lien law.

1986 - PROPOSED AMENDMENTS TO THE LAW

- Abolishment of Acknowledgement of Right to Lien
- Adoption of a Direct-Payment Notice which requires the owner's construction lender to make a direct payment to the claimant from the next construction draw, unless the owner timely objects to the Notice, in which case the lender is required to make a joint payment to the claimant and owner and leave it up to them to work out their disputes.
- Claimants other than individual laborers are given equal priority with a prior-recorded deed of trust for construction financing in cases of original construction. Individual laborers (excluding individual sub-contractors) and trustees of employment benefit trusts for such laborers continue to have priority over prior-recorded deeds of trust.
- The deadline is extended for recording a Notice of Right to Lien or Claim of Lien after a Notice of Completion is recorded to give the latter job trades more time to prepare their statements and determine if they have a payment problem.

ALASKANS FOR LIEN LAW REFORM

MAILING LIST

AA-I Heating and A/C, Inc.
P.O. Box 872405
Wasilla, Alaska 99687

BUILDING PRODUCTS SUPPLY
P.O. BOX 92716
ANCHORAGE, ALASKA 99509

Kingsfield Roofing
1402 East 15th Avenue
Anchorage, Alaska 99501

ACE DRYWALL
6727 GREENWOOD
ANCHORAGE, ALASKA 99518

CENTRAL PAVING PRODUCTS
1301 EAST 64TH AVENUE
ANCHORAGE, ALASKA 99518

Klondike Painting
412 West Potter
Anchorage, Alaska 99518

ALASKA BRICK COMPANY
7800 LAKE OTIS PARKWAY
ANCHORAGE, ALASKA 99507

Diamond Masonry
1121 West 77th Avenue
Anchorage, Alaska 99518

Livermore Acoustics, Inc.
3302 Dorbrandt
Anchorage, Alaska 99503

Alaska Builders Cache
901 Orca
Anchorage, Alaska 99501

Dionede Enterprises
710 Bonanza Avenue
Anchorage, Alaska 99518

Lukes Concrete
P.O. Box 112248
Anchorage, Alaska 99511

Alaska Insulation Supply, Inc.
Alaska Insulation Specialities
261 East 56th Avenue Bldg B
Anchorage, Alaska 99518

DON ABEL BUILDING SUPPLIES
P.O. BOX 2116
JUNEAU, ALASKA 99803

M-W Drilling
P.O. Box 110378
Anchorage, Alaska 99511

Alaska Plumbing & Heating
P.O. Box 2119
Anchorage, Alaska 99510

Electric Distributor, Inc.
1884 East Third Avenue
Anchorage, Alaska 99508

Madison Lumber & Hardware
2557 Tongass Avenue
Ketchikan, Alaska 99901

Alaska Quality Insulators
8100 Petersburg Street #1
Anchorage, Alaska 99501

Gensco, Inc.
1824 Ship Avenue
Anchorage, Alaska 99501

MatSu Insulation Systems
P.O. Box 870385
Wasilla, Alaska 99687

ANCHORAGE SAND AND GRAVEL
1813 EAST FIRST AVENUE
ANCHORAGE, ALASKA 99501

HCI STEEL ROOFING
P.O. BOX 871466
WASILLA, ALASKA 99687

Moore Mechanical
5001 Eagle Street
Anchorage, Alaska 99503

Anchorage Tank
2700 Porcupine Dr.
Anchorage, Alaska 99501

Homsteaders Cache, Inc.
P.O. Box 393
Big Lake, Alaska 99687

Preservative Paint Co.
245 Post Road
Anchorage, Alaska 99501

Artistic Tile Company
P.O. Box 92929
Anchorage, Alaska 99509

Juneau Ready Mix
P.O. Box 270
Juneau, Alaska 99802

RAIN PROOF ROOFING COMPANY
2201 EAST 84TH COURT
ANCHORAGE, ALASKA 99507

Builders Millwork Supply
999 East Tudor Road
Anchorage, Alaska 99503

Kenai Supply
6407 Arctic Spur Road

Rasco/Rasmussen Company
P.O. Box 110030

<p>Rasmussen Asphalt Maint. P.O. Box 110209 Anchorage, Alaska 99518</p>	<p>Redi Electric 6151 A Street Anchorage, Alaska 99518</p>	<p>S&A Enterprises P.O. Box 110454 Anchorage, Alaska 99511</p>
<p>Spenard Builders Supply P.O. Box 871250 Wasilla, Alaska 99687</p>	<p>SPFNARD BUILDERS SUPPLY, INC. 840 K STREET SUITE 200 ANCHORAGE, ALASKA 99501</p>	<p>SUPERIOR MILLWORK 8401 BRAYTON DRIVE ANCHORAGE, ALASKA 99507</p>
<p>UNITED BUILDING SUPPLY P.O. BOX 190809 ANCHORAGE, ALASKA 99519</p>	<p>BUILDING TRADES UNION 4300 BONIFACE PARKWAY ANCHORAGE, ALASKA 99504</p>	<p>CONST CREDIT MGT SERVICE 4155 Tudor Centre #101 ANCHORAGE, ALASKA 99508</p>
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<p>A-1 Glass Route 1 Box 94 Kenai, Alaska 99611</p>	<p>Acme Fence Company 10360 Nigh Anchorage, Alaska 99515</p>	<p>Alaska Mechanical, Inc. P.O. Box 3-4048 Anchorage, Alaska 99501</p>
<p>A-1 Specialities Box 3112 Soldotna, Alaska 99669</p>	<p>Alaska Art Tile 6330 Arctic Blvd Anchorage, Alaska 99502</p>	<p>Alaska Road Runner SRA 2 Box 6720 Chugiak, Alaska 99567</p>
<p>A&A Roofing P.O. Box 314 Fairbanks, Alaska 99707</p>	<p>Alaska Building Exchange Attn: Steve McDermott 165 East 56th Anchorage, Alaska 99518</p>	<p>Alaska Steel Company 1200 West Dowling Road Anchorage, Alaska 99518</p>
<p>AB Tool Rental P.O. Box 871610 Wasilla, Alaska 99687</p>	<p>Alaska Counter Fitters P.O. Box 2591 Soldotna, Alaska 99669</p>	<p>Alaska Truss 6325 Petersburg Anchorage, Alaska 99507</p>
<p>A-Bob Plumbing & Heating 649 West 54th Avenue Anchorage, Alaska 99502</p>	<p>Alaska Diversified Electric P.O. Box 1290 Palmer, Alaska 99645</p>	<p>Alaska Underground Electric 8141 Dimond Hook Anchorage, Alaska 99507</p>
<p>A&E Concrete 2140 East Dimond Blvd Anchorage, Alaska 99507</p>	<p>Alaska Drywall Interiors 7651 Little Bend Circle Anchorage, Alaska 99507</p>	<p>A'can Electric, Inc. P.O. Box 91456 Anchorage, Alaska 99509</p>
<p>A-Plus Redi Mix P.O. Box 6390 Anchorage, Alaska 99502</p>	<p>Alaska Fence Company 400 W. International Airport</p>	<p>Allied Enterprises 1421 East 8th Avenue</p>

Alchem, Inc. 3617 Strawberry Anchorage, Alaska 99502	Arnell Construction 2013 Hillcrest Circle Anchorage, Alaska 99503	Bower Painting P.O. Box 557 Juneau, Alaska 99803
Allen Excavating, Inc. 1217 East 7Jrd Avenue Anchorage, Alaska 99502	ASC Pacific 1200 A West Dowling Anchorage, Alaska 99518	Bradison's Painting 4601 VanBuren Anchorage, Alaska 99503
Alpine Drywall 1307 East 74th Avenue Anchorage, Alaska 99502	August Corporation P.O. Box 3172 Juneau, Alaska 99803	Brady Floor Covering 145 East 5th Avenue Anchorage, Alaska 99501
Alyeska Electric, Inc. 184 East 53rd Avenue Anchorage, Alaska 99502	B&E Electric 8317 Wilcox Street Anchorage, Alaska 99502	Budget Building Supply 12790 Old Seward Hwy Anchorage, Alaska 99515
America Rents 3600 Arctic Blvd Anchorage, Alaska 99503	Bailey Rent All, Inc. 6871 Old Seward Highway Anchorage, Alaska 99502	Builders Supply 8600 Airport Blvd Juneau, Alaska 99801
Amfac Supply 400 Post Road Anchorage, Alaska 99501	The Ballard Company Box 1929 Soldotna, Alaska 99669	Burbeck Roofing P.O. Box 2238 Fairbanks, Alaska 99707
Anchor Drywall, Inc. P.O. Box 876825 Wasilla, Alaska 99687	Barney's Drywall P.O. Box 1449 Kenai, Alaska 99611	Busch Concrete Constructio P.O. Box 870854 Wasilla, Alaska 99687
Anchorage Glass Company 3933 Spenard Road Anchorage, Alaska 99503	Belarde Concrete Company 6611 Greenwood Anchorage, Alaska 99502	Cabinets by Schnell 6235 Nielson Way Anchorage, Alaska 99502
Anchorage Roofing Company P.O. Box 110217 Anchorage, Alaska 99511	Bell Roofing Company P.O. Box: 7008 Nikishka, Alaska 99635	Cameron Plumbing P.O. Box 2720 Juneau, Alaska 99803
Anixter Company 1125 Orca Anchorage, Alaska 99501	Best Transit Mix 10819 Spur Highway #479 Kenai, Alaska 99611	Capital City Roofing P.O. Box 210102 Auke Bay, Alaska 99821
Arctic Carpet	Big Sky Masonry 3301 Patterson	Caribou Woodworks Box 874794

Central Plumbing & Heating 212 E. International Airport Anchorage, Alaska 99518	Curtis Plumbing & Heating Box 73 Eagle River, Alaska 99577	Design North P.O. Box 517 Douglas, Alaska 99824
Chucks Backhoe, Inc. 15345 Old Seward Hwy Anchorage, Alaska 99516	Custom Drywall 1200 East 76th Suite 1214 Anchorage, Alaska 99502	Dingbat Electric Box 1053 Eagle River, Alaska 99507
Circle C Mechanical 7900 King Anchorage, Alaska 99502	DH Plumbing 7741 King Street Anchorage, Alaska 99502	Dompier & Sons, Inc. P.O. Box 91365 Anchorage, Alaska 99509
City Electric 819 Orca Anchorage, Alaska 99501	DNR Plumbing & Heating Box 875466 Wasilla, Alaska 99687	Doors & Windows Unlimate P.O. Box 978 Soldotna, Alaska 99669
Clay's Cabinet Mfg P.O. Box 220132 Anchorage, Alaska 99522	D&S Concrete P.O. Box 110451 Anchorage, Alaska 99511	Electric Doctor 1207 West 47th Avenue Anchorage Alaska 99503
Coastal Machinery P.O. Box A-8 Ward Cove, Alaska 99928	David H Contractors 13836 Lake Otis Pkwy Anchorage, Alaska 99516	Excell Construction 12100 Industry Way Anchorage, Alaska 99515
Cochran Electric 746 West 12th Juneau, Alaska 99801	Debarr Building Supply 6189 Debarr Road Anchorage, Alaska 99504	F&E Fence Company P.O. Box 1126 Palmer, Alaska 99645
Comer Overhead Door S.R.A. Box 6081-D Palmer, Alaska 99645	Debenham Electric 4502 Lois Drive Anchorage, Alaska 99503	Fenestra Decor P.O. Box 871308 Wasilla, Alaska 99687
Cooke Excavating SRA Box 6228 Palmer, Alaska 99645	Decor Industries 4263 Minnesota Anchorage, Alaska 99503	Fletcher Excavating Box 663 Soldotna, Alaska 99669
Cork's Masonry P.O. Box 872582 Wasilla, Alaska 99687	Decor Lighting 1601 East Dimond Blvd Anchorage, Alaska 99507	Flor Corp 201 East 51st Avenue Anchorage, Alaska 99503
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Integrity Roofing
P.O. Box 8424
Anchorage, Alaska 99504

Jordans Carpet Center
126 W. International
Anchorage, Alaska 99518

Greatland Plumbing
7021 Driftwood
Anchorage, Alaska 99502

Insulate Alaska
P.O. Box 100483
Anchorage, Alaska 99511

Inlet Glass
Pouch 7032
Anchorage, Alaska 99510

Jones Tool Rental
P.O. Box 770869
Eagle River, Alaska 99577

Great Land, Inc.
7021 Driftwood
Anchorage, Alaska 99502

Industrial Roofing
9415 Laperouse
Juneau, Alaska 99801

Johnson & Sons Insulator
P.O. Box 1316
Soldotna, Alaska 99669

Glass of Alaska
704 West 26th Avenue
Anchorage, Alaska 99503

Robert Huck, NFIB
3445 Rosella
Anchorage, Alaska 99504

Jacks Home
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Anchorage, Alaska 99504

Golden North Sales Co.
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J&M Welding
P.O. Box 1213
Palmer, Alaska 99645

Gallagher Electric, Inc.
SR B Box 7257
Palmer, Alaska 99645

James Ryder

~~G&J Flooring Construction
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Harri Plumbing & Heating
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Juneau, Alaska 99801

J&E Drywall
3320 West 70th
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Fuller O'Brien
707 Gambell Street
Anchorage, Alaska 99501

Hardrives, Inc.
2800 East Huffman
Anchorage, Alaska 99516

J-D Glass
8411 Airport Blvd
Juneau, Alaska 99801

Frontier Paving Company

Kattak Plumbing & Heating
P.O. Box 2329
Palmer, Alaska 99645

K&W Acoustic
6912 Foothills Drive
Anchorage, Alaska 99504

Interior Wall Systems
Pouch 8408
Anchorage, Alaska 99508

International Bldg Supply
1840 W. International
Anchorage, Alaska 99518

Gudenau & Company
Box 2945
Kodiak, Alaska 99615

Halmer Electric
P.O. Box 771745
Eagle River, Alaska 99577

Frontier Paving Company
P.O. Box 775029
Eagle River, Alaska 99577

uchs Electric, Inc.
601 East Dimond Blvd

Land Title Company
Attn: James McKillop
333 West 4th Suite 319
Anchorage, Alaska 99501

Lajeunesse Acoustics
2120 East 73rd #1
Anchorage, Alaska 99507

L&H Plumbing
2315 East 72nd
Anchorage, Alaska 99507

L&H Enterprises
P.O. Box 111593
Anchorage, Alaska 99511

LA Enterprises
P.O. Box 110454
Anchorage, Alaska 99511

Don Brandl

Art Kohanes
P.O. Box 870791
Wasilla, Alaska 99687

Klondike-Alaska, Inc.
P.O. Box 671028
Chugiak, Alaska 99567

Kelly Electric
Box 569
Kenai, Alaska 99611

Keil Interior Const
Box 100

Mechanical Contractors
1415 Spar Avenue
Anchorage, Alaska 99501

McPherson Furnace & Equip.
6721 Arctic Spur Road
Anchorage, Alaska 99518

Richard V. Lewis

Mayberry Roofing
P.O. Box 3062
Juneau, Alaska 99803

Mat-Valley Electric
P.O. Box 871477
Wasilla, Alaska 99687

Bill Hathaway

Mastercraft Kitchens
4660 Stuart Way
Anchorage, Alaska 99503

Mards Plumbing & Heating
6636 Rosewood
Anchorage, Alaska 99502

Mammoth Roofing
P.O. Box 1742
Palmer, Alaska 99645

Lovelace Excavating
15140 Curvell Drive
Anchorage, Alaska 99516

Lawson Sheet Metal
7339 Arctic Blvd
Anchorage, Alaska 99501

Northern Landscaping & Const
P.O. Box 1212
Palmer, Alaska 99645

Lloyd Hood

Northern Construction
P.O. Box 210232
Auke Bay, Alaska 99821

NCP Construction, Ltd.
118 East International
Anchorage, Alaska 99518

Norms Cabinets
Box 51
Eagle River, Alaska 99577

Norcoast Mechanical
6136 MacKay
Anchorage, Alaska 99502

Mt. McKinley Fence Company
5901 Lake Otis Parkway
Anchorage, Alaska 99507

Momentum Enterprises
551 West 54th Avenue
Anchorage, Alaska 99502

Mechanical Drywall
8500 Walker Circle
Anchorage, Alaska 99502

Pella Products
600 West 41st Ave
Anchorage, Alaska 99503

Pauls Plumbing
P.O. Box 2300
Juneau, Alaska 99803

Paragon Partitions
2311 S. View Dr.
Anchorage, Alaska 99502

Pacific Construction Systems
6600 Wes Way
Anchorage, Alaska 99502

The Overhead Door Men
P.O. Box 15000-40
Wasilla, Alaska 99687

Joe Adamson

Northwood Sheetrock Service
13041 Admiralty Place
Anchorage, Alaska 99515

Northern Roofing Company
3605 Arctic Blvd #449
Anchorage, Alaska 99503

Northern Mechanical
2809 Iris Drive
Anchorage, Alaska 99503

Quality Construction
1125 I Street
Anchorage, Alaska 99501

Frosser Excavating
7100 Homer Drive
Anchorage, Alaska 99518

Proctor Sales, Inc.
5401 Cordova St. #303
Anchorage, Alaska 99518

Al Colon

Precision Acoustics
8212 Sea Cliff St.
Anchorage, Alaska 99502

Pioneer Insulation Co.
P.O. Box 2027
Palmer, Alaska 99645

PETERSON CRANE
1207 Second Street
Douglas, Alaska 99824

Perserverance Glass
P.O. Box 2799
Juneau, Alaska 99803

Peninsula Roofing
P.O. Box 433
Soldotna Alaska

Duncan Scott
P.O. Box 100239
Anchorage, Alaska 99510

Saw Tooth Construction
P.O. Box 3133
Palmer, Alaska 99645

Greg DePompeo

SAJ Const Contractors
8221 Dimond Hook
Anchorage, Alaska 99507

Route Drywall
13421 Venus
Anchorage, Alaska 99515

Roger's Plumbing and Heating
P.O. Box 87-1067
Wasilla, Alaska 99687

Roger Heikes

Robinson Millwork
P.O. Box 3030
Wasilla, Alaska 99687

Raven Electric
8010 Schoon Street
Anchorage, Alaska 99518

Scott Mechanical Route 1 Box 2507 Chugiak, Alaska 99567	Superior Roofing Box 2006 Fairbanks, Alaska 99707	Wasilla Drywall P.O. Box 870515 Wasilla, Alaska 99687
Senco Alaska, Inc. 877 East Dowling Anchorage, Alaska 99518	Tanner & Sons Electric Box 871172 Wasilla, Alaska 99687	Weatherguard Roofing 200 West 34th #371 Anchorage, Alaska 99503
Septic Systems Specialist P.O. Box 872048 Wasilla, Alaska 99687	Terrace Kitchens 5520 Lake Otis #105 Anchorage, Alaska 99507	WESTERN INSULFOAM CORP 628 WESTERN DRIVE ANCHORAGE, ALASKA 99501
Sheetmetal, Inc. 6130 Nielsen Way Anchorage, Alaska 99502	Tom's Plumbing and Heating 3100 Mountain View Drive Anchorage, Alaska 99501	Western Sheet Metal 2604 Seward Highway Anchorage, Alaska 99503
Shelvie Supply P.O. Box 7014 Nikishka, Alaska 99635	Union Electric 202 East 26th Avenue Anchorage, Alaska 99503	Wheaton Water Wells, Inc. P.O. Box 871218 Wasilla, Alaska 99687
Silver Bow Construction P.O. Box 126 Juneau, Alaska 99802	Uresco Construction Mat. P.O. Box 1778 Kent, Washington 98032	Wi-Ak Mechanical P.O. Box 874216 Wasilla, Alaska 99687
Stickleys Plumbing P.O. Box 874470 Wasilla, Alaska 99687	Urquhart, Inc. 3305 Woodland Park Dr. Anchorage, Alaska 99503	Wickham Plumbing Box 44 Palmer, Alaska 99645
Simpson & Son Trucking 10006 Crazy Horse Dr. Juneau, Alaska 99801	Valley Drywall Box 771091 Eagle River, Alaska 99577	Wiker Roofing P.O. Box 91687 Anchorage, Alaska 99509
Stark-Lewis Company 1445 East 8th Avenue Anchorage, Alaska 99501	Valley Doors Box 872005 Wasilla, Alaska 99687	Willow Hardware P.O. Box 9 Willow, Alaska 99688
Stolt Electric 940 East Sixth Ave Anchorage, Alaska 99501	Valley Lumber 8525 Old Dairy Road Juneau, Alaska 99801	Winters Electric P.C. Box 2540 Juneau, Alaska 99803
Superior Plumbing & Heating 8861 Elim Anchorage, Alaska 99507	Valley Masonry S.R.B. Box 7495	Wolverine Supply 1020 Edwards Street Anchorage, Alaska 99504

Albertson Roofing
P.O. Box 91722
Anchorage, Alaska 99509

McDonald Roofing
1136 East 66th Avenue
Anchorage, Alaska 99507

Johnson Roofing
2921 Brandywine
Anchorage, Alaska 99502

Frontier Roofing
12201 Avion Street
Anchorage, Alaska 99516

Denali Roofing Co.
8903 Honeysuckle
Anchorage, Alaska 99502

Advanced Roofing
2009 Stonegate Circle
Anchorage, Alaska 99517

Big State Contracting
P.O. Box 111456
Anchorage, Alaska 99511

Alaska Shake and Shingle
3300 West Dimond Blvd.
Anchorage, Alaska 99502

General Roofing
119 East 54th Avenue
Anchorage, Alaska 99518

Antone Mechanical Inc.
5520 Lake Cir #104
Anchorage, Alaska 99507

Aurora Plumbing & Heating
2948 Kimberlie Court
Anchorage, Alaska 99508

Bay Mechanical
11711 South Gambell
Anchorage, Alaska 99515

Circle C Mechanical
2220 Cimabar
Anchorage, Alaska 99507

D H Plumbing and Heating
7741 King Street
Anchorage, Alaska 99502

International Mechanical
646 East Dowling Road
Anchorage, Alaska 99518

Crown Plumbing and Heating
2411 East 88th Avenue
Anchorage, Alaska 99502

Warner Plumbing and Htg.
8361 East 5th Avenue
Anchorage, Alaska 99508

M & K Mechanical Inc.
1107 East 70th Avenue
Anchorage, Alaska 99518

Sears Sewer and Drain
2835 Rose
Anchorage, Alaska 99508

Price's Plumbing & Htg.
1524 East Dowling Road
Anchorage, Alaska 99507

R & R Plumbing & Heating
6303 Rosewood
Anchorage, Alaska 99518

M & H Plumbing & Heating
8901 Toloff
Anchorage, Alaska 99507

Skoglund Company, Inc.
301 East 56th Avenue
Anchorage, Alaska 99518

South Central Plumbing
4902 Kobuk Avenue
Anchorage, Alaska 99508

Stephens Mechanical Inc.
7339 Arctic Blvd.
Anchorage, Alaska 99515

Sunburst Plumbing Inc.
503 West 58th Avenue
Anchorage, Alaska 99518

Totem Plumbing
2031 Paxson Drive
Anchorage, Alaska 99508

Tri-State Plumbing Inc.
8031 Briarwood
Anchorage, Alaska 99507

Independent Electric Co.
150 West Dowling Road
Anchorage, Alaska 99518

Arctic Alaska Electric
6300 Petersburg
Anchorage, Alaska 99507

Northern Lights Electric
620 East 57th Place

Northern Lights Electric
620 East 57th Place
Anchorage, Alaska 99518

Shelton Electric Co. Inc.
1720 East 59th Avenue
Anchorage, Alaska 99507

Tsunami Electric
2121 Abbott Road
Anchorage, Alaska 99507

Roberts Electric
3412 Wentworth Street
Anchorage, Alaska 99508

Commercial Electric
4425 East 6th Avenue
Anchorage, Alaska 99504

Fischbach and Moore of
300 East 54th Avenue
Anchorage, Alaska 99518

Cochran Electric Co. Inc.
700 East 46th Street
Anchorage, Alaska 99503

Pioneer Door Inc.
310 East 1st Avenue
Anchorage, Alaska 99510

Northwest Door of Anchorage
7120 Old Seward Highway
Anchorage, Alaska 99515

Overhead Door of Anchorage
2927 Doris Place
Anchorage, Alaska 99503

Stanley Door of Alaska
7348 Abbott Loop Road
Anchorage, Alaska 99507

Earls Custom Painting
541 East 25th Avenue
Anchorage, Alaska 99503

Anchorage Painting Co.
6642 Rosewood Street
Anchorage, Alaska 99502

Ahn's Enterprise-Painting
P.O. Box 200024
Anchorage, Alaska 99520

Asia Painting
5403 Arctic Blvd.
Anchorage, Alaska 99502

Hugo's Painting Co.
P.O. Box 101099
Anchorage, Alaska 99510

Final Touch
1528 East 14th Avenue #2
Anchorage, Alaska 99504

DLM Painting
3510 Tanglewood Place
Anchorage, Alaska 99503

Northern Painting Contr.
2900 Boniface #435
Anchorage, Alaska 99504

Superior Construction
2990 Brandywine Avenue
Anchorage, Alaska 99502

Maxim's Painting
P.O. Box 110823
Anchorage, Alaska 99511

Nordine Painting
8030 Northwind Unit A
Anchorage, Alaska 99504

Sunrise Drywall
33 Prince's Peace
Eagle River, Alaska 99577

R&T Construction, Inc.
7501 Cranberry Street
Anchorage, Alaska 99502

Alaskans for Lien Law Reform Mailing List

Unocal
Box 7600
Kenai, Alaska 99611

Superstructures Inc.
224 Kenai Ave.
Soldotna, Alaska 99669

Peninsula Welding Inst.
Route 1 Box 345
Kenai, Alaska 99611

Morgan Steel
P.O. Box 1889
Kenai, Alaska 99611

Marathon Oil Co.
Drawer 370
Kenai, Alaska 99611

Litwin Corp.
P.O. Box 710
Kenai, Alaska 99611

~~Kenai Supply
P.O. Box 1729
Kenai, Alaska 99611~~

Kenai Service & Repair
10819 Spur Highway #361
Kenai, Alaska 99611

Kenai Air Alaska
155 Granite Point Co.
Kenai, Alaska 99611

Herndon & Herndon Inc.
P.O. Box 262
Homer, Alaska 99603

G. White & Son Co.
Box 7143
Kenai, Alaska 99635

Buddy's Garage
P.O. Box 751
Soldotna, Alaska 99669

ARCO Oil & Gas
Box 1400
Kenai, Alaska 99611

The Welding Shop
P.O. Box 2028
Fairbanks, Alaska 99707

Seward Steel Works
P.O. Box 1954
Seward, Alaska 99664

H & H Contractors
P.O. Box 60610
Fairbanks, Alaska 99706

Brown Construction Co.
P.O. Box 1313
Kenai, Alaska 99611

Fairbanks Machine
2250 Van Horne
Fairbanks, Alaska 99701

Shower Construction
218 S. Hoyt Street
Anchorage, Alaska 99504

Mid Valley Material
Attn: Rick Wike
P.O. Box 873809
Wasilla, Alaska 99687

Joe Hayes
P.O. Box 101821
Anchorage, Alaska 99510

Interpace Brick
1520 Elcadore Circle
Anchorage, Alaska 99507

Pacific Plumbing
Attn: Rick Bain
6260 Old Seward Highway
Anchorage, Alaska 99518

Yellow Electric Ltd.
Attn: Kent Lee Woodman
1658 East 59th Avenue
Anchorage, Alaska 99507

TESTIMONY OF

ALASKA CHAPTER
THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA
TO
SENATE LABOR AND COMMERCE COMMITTEE
ON
LIEN LAW REFORM
CS HB494

MAY 6, 1986

AGC-ALASKA ON BEHALF OF OUR OVER 700 MEMBER FIRMS APPRECIATES THE OPPORTUNITY TO COMMENT ON CS HB494.

AGC-ALASKA MEMBERS REPRESENT PROBABLY THE WIDEST CROSS SECTION OF THE COMMERCIAL CONSTRUCTION INDUSTRY BESIDES INDIVIDUAL MEMBERS WHO ARE EXCLUSIVELY ENGAGED AS SUPPLIERS, SUBCONTRACTORS, ENGINEERS OR ARCHITECTS. MANY OF OUR GENERAL CONTRACTOR MEMBERS ARE ENGAGED AS SUBCONTRACTORS OR MATERIAL SUPPLIERS ON SOME PROJECTS.

TODAY AGC-ALASKA IS IN THE POSITION OF TESTIFYING ON A BILL, WHICH MANY INDIVIDUALS IN THE CONSTRUCTION INDUSTRY FAVOR. WITH RESERVATION, AGC-ALASKA SUPPORTS CS HB494 IN ITS PRESENT FORM; HOWEVER WE ARE OF THE BELIEF THAT THE SOLUTIONS PROPOSED IN CS HB494 ARE MERELY "BAND-AIDS ON MAJOR WOUNDS" AND THAT THE PROBLEMS CREATED IN SOME INSTANCES MAY EQUAL THE PROBLEMS SOLVED. AGC-ALASKA BELIEVES THAT THE ENTIRE LIEN LAW SYSTEM SHOULD BE REWRITTEN AFTER A STUDY BY AN INTERIM COMMITTEE.

OUR COMMENTS, INCLUDING A SUMMARY OF PROVISIONS IN EXISTING LAW AND HB 494 FOLLOW.

THE FIRST VERSION OF THIS LEGISLATION (SUPPORTED BY A COALITION OF SUPPLIERS AND SUBCONTRACTORS) ADDRESSED THREE AREAS OF THE EXISTING LIEN LAW --

- 1) WHO CAN CLAIM A LIEN
- 2) THE ABILITY TO IMPACT CONSTRUCTION DRAWS
- 3) PRIORITY OF LIENS.

WHO CAN CLAIM A LIEN

EXISTING LAW. A PERSON WITHOUT A DIRECT CONTRACT WITH AN OWNER (MOST SUBCONTRACTORS AND SUPPLIERS) MAY NOT CLAIM A LIEN UNLESS AN "ACKNOWLEDGMENT OF RIGHT TO LIEN" SIGNED BY THE OWNER IS OBTAINED BY THE OWNER (AN EXCEPTION TO THIS REQUIREMENT IS AN INDIVIDUAL CLAIMING A LABOR LIEN FOR WORK HE PERSONALLY PERFORMED). WITHOUT THE EXISTENCE OF A LIEN LAW THERE IS NO RIGHT TO SUE AN OWNER BECAUSE NO CONTRACT EXISTS BETWEEN THE OWNER AND A SUBCONTRACTOR OR SUPPLIER.

ORIGINAL PROPOSAL (HB494). THE "ACKNOWLEDGMENT OF RIGHT TO LIEN" REQUIREMENT WAS ELIMINATED. THUS, ANYONE SUPPLYING LABOR, MATERIALS, SERVICES OR EQUIPMENT COULD FILE A LIEN. THERE WAS NO REQUIREMENT THAT THE OWNER EVEN KNOW THE CLAIMANT WAS ONE OF THE PERSONS SUPPLYING THE LABOR, MATERIALS, SERVICES OR EQUIPMENT. ALSO, THE ORIGINAL BILL ADDED AN OPTIONAL "NOTICE OF INTENT TO FURNISH LABOR, MATERIALS, SOURCES OR EQUIPMENT." THE PURPORTED

EFFECT IS TO SHIFT THE BURDEN OF PROOF IN ANY ACTION BASED ON A LIEN. HOWEVER, IT DID NOT LIMIT THE ABILITY OF ANYONE TO FILE A LIEN. FURTHER, THIS PROVISION DID NOT REQUIRE A LIEN CLAIMANT TO PROVE THAT THE OWNER KNEW OR CONSENTED TO THE CLAIMANT SUPPLYING THE MATERIALS, SERVICES OR EQUIPMENT.

CURRENT PROPOSAL (CSHB494). STILL ELIMINATES THE "ACKNOWLEDGMENT OF RIGHT TO LIEN" REQUIREMENT. THUS, ANYONE WHO SUPPLIED LABOR, MATERIALS, SERVICES OR EQUIPMENT MAY FILE A LIEN. THERE IS NO REQUIREMENT THAT THE OWNER EVEN KNOW THE CLAIMANT WAS ONE OF THE PERSONS SUPPLYING THE LABOR, MATERIALS, SERVICES OR EQUIPMENT. THE ORIGINALLY PROPOSED "NOTICE OF INTENT TO FURNISH LABOR, MATERIALS, SOURCES OR EQUIPMENT" IS DROPPED. INSTEAD THE PROPOSAL AMENDS THE "NOTICE OF RIGHT TO LIEN" SECTION TO ACCOMPLISH MUCH THE SAME PURPOSE. THE SAME PROBLEMS REMAIN -- THE CURRENT VERSION DOES NOT LIMIT THE ABILITY OF ANYONE TO FILE A LIEN. FURTHER, THIS PROVISION DOES NOT REQUIRE A LIEN CLAIMANT TO PROVE THAT THE OWNER KNOW OR CONSENTED TO THE CLAIMANT SUPPLYING THE MATERIALS, SERVICES OR EQUIPMENT.

EFFECT OF CURRENT PROPOSAL. THE CURRENT PROPOSAL ELIMINATES ONE OF THE MORE UNFAIR ASPECTS OF EXISTING LAW -- THE "ACKNOWLEDGMENT OF RIGHT TO LIEN." UNFORTUNATELY, IT DOES NOT PROPOSE A SUBSTITUTE TO ADDRESS THE CONCERNS WHICH SPAWNED THE "ACKNOWLEDGMENT" IN 1979.

UNDER THE FORMER LAW PROPOSAL LIENS WERE VERY PREVALENT, LITIGATION FLOURISHED AND UNCERTAINTY REIGNED.

A MAJOR CAUSE WAS THE FORMER LAW'S FAILURE TO IDENTIFY POTENTIAL LIEN CLAIMANTS. LIEN CLAIMANTS WOULD LITERALLY COME OUT OF THE "WOOD WORK" 90 DAYS AFTER A JOB WAS FINISHED AND ALL KNOWN SUBCONTRACTORS AND SUPPLIERS WERE PAID. THE "ACKNOWLEDGMENT OF RIGHT TO LIEN" WAS AN ATTEMPT TO SOLVE THIS PROBLEM.

UNFORTUNATELY, IT WAS OVERREACTIVE LEGISLATION. UNDER THE "ACKNOWLEDGMENT OF RIGHT TO LIEN" LIENS ARE NOT PREVALENT FOR THE MAIN REASON THAT NOBODY CAN FILE ONE. BY THE TIME MOST SUBCONTRACTORS OR SUPPLIERS ARE INVOLVED IN A PROJECT THERE IS LITTLE REASON WHY AN OWNER WOULD SIGN AN "ACKNOWLEDGMENT OF RIGHT TO LIEN."

ALTERNATIVE PROPOSAL

ELIMINATING THE "ACKNOWLEDGMENT OF RIGHT TO LIEN" MERELY SWINGS THE PENDULUM BACK TO THE OTHER SIDE. AGC-ALASKA PROPOSES A SYSTEM WHICH MAY KEEP THE PENDULUM MORE CENTERED. AS A CONDITION OF FILING A LIEN, ANY SUBCONTRACTOR OR SUPPLIER MUST HAVE PROVIDED WRITTEN NOTICE TO THE OWNER WITHIN 10 DAYS OF FIRST STARTING WORK OR SUPPLYING MATERIALS. THIS NOTICE, SIMILAR TO THAT REQUIRED IN THE STATE OF WASHINGTON, WOULD BE BY CERTIFIED MAIL (SEE ATTACHED SAMPLE LETTER) AND RECORDING WOULD NOT BE REQUIRED. THE NOTICE WOULD FORM A CHECK LIST TO ENSURE THAT ALL POTENTIAL CLAIMANTS ARE PAID BEFORE FUNDS ARE DISBURSED. THE

SYSTEM IDENTIFIES ALL SUBCONTRACTORS AND SUPPLIERS AND ENCOURAGES PAYMENT TO AVOID THE LATTER FILING OF LIENS. THIS SYSTEM ADDRESSES SOME OF THE CONCERNS WHICH BROUGHT ABOUT THE "ACKNOWLEDGMENT OF RIGHT TO LIEN" BUT IT DOES NOT REQUIRE THE OWNER'S OR ANYONE ELSE'S CONSENT.

WHY SUCH A SYSTEM IS NOT CONTAINED IN THE CURRENT PROPOSAL IS UNCLEAR. THE FEBRUARY 26, 1986 TESTIMONY TO THE HOUSE LABOR AND COMMERCE COMMITTEE BY THE COALITION OF SUBCONTRACTORS AND SUPPLIERS SUGGESTD AMENDING THE BILL TO REQUIRE A MANDATORY RECORDING OF A NOTICE OF RIGHT TO LIEN; AND LATER AMENDMENTS CONSIDERED BY HOUSE JUDICIARY CONSIDERED SUCH AMENDMENTS.

FOR WHATEVER REASON THE FACT REMAINS THAT THE PROPOSED LEGISLATION MERELY RETURNS US TO THE DAYS OF YESTERDAYS PROBLEMS AND PROVIDES YET ANOTHER "LAWYERS RELIEF ACT."

THE ABILITY TO IMPACT CONSTRUCTION DRAWS

EXISTING LAWS. UNDER EXISTING LAW A "STOP PAYMENT NOTICE" CAN BE GIVEN BY A LIEN CLAIMANT TO THE LENDING INSTITUTION, IF PAYMENT IS MORE THAN 20 DAYS OVERDUE. HOWEVER, TO STOP PAYMENT FOR MORE THAN 30 DAYS THE CLAIMANT MUST FILE SUIT WITHIN THAT 30 DAY PERIOD.

ORIGINAL PROPOSAL (HB 494). THE ORIGINAL HB 494 SUBSTITUTED A "DIRECT PAYMENT NOTICE" FOR THE EXISTING "STOP PAYMENT NOTICE." UNDER THE PROPOSED "DIRECT PAYMENT NOTICE" THE LENDING INSTITUTION MUST PAY THE CLAIMANT DIRECTLY UNLESS AN OBJECTION IS RECEIVED BY THE OWNER WITHIN 10 DAYS. IF AN OBJECTION IS RECEIVED THE LENDER MUST DISTRIBUTE THE MONEY DIRECTLY TO THE CLAIMANT AND THE OWNER.

CURRENT PROPOSAL (CS HB494). THE CURRENT PROPOSAL SUBSTITUTES A "STOP LENDING NOTICE" FOR THE EXISTING "STOP PAYMENT NOTICE" AND THE FORMERLY PROPOSED "DIRECT PAYMENT NOTICE." THE "STOP LENDING NOTICE" WHILE SIMILAR TO THE EXISTING "STOP PAYMENT NOTICE" PROVIDES A MORE WORKABLE FORMAT FOR THE UNPAID SUBCONTRACTOR AND SUPPLIER. THE 30 DAYS TO FILE SUIT IS EXTENDED TO 90 DAYS AND A PROCEDURE IS ESTABLISHED FOR THE OWNER TO CERTIFY CONSTRUCTION DRAWS.

PRIORITY OF LIENS

EXISTING LAW. UNDER EXISTING LAW A PRIOR ENCUMBRANCE IS PREFERRED TO A LIEN (EXCEPT A LIEN BY AN INDIVIDUAL ACTUALLY PERFORMING LABOR).

ORIGINAL PROPOSAL (HB 494). AMENDMENTS WERE PROPOSED TO GIVE EQUAL PRIORITY TO ALL LIENS FOR "ORIGINAL" CONSTRUCTION WITH A PRIOR RECORDED ENCUMBRANCE.

CURRENT PROPOSAL (CS HB494). NO CHANGE IN THE EXISTING LAW IS PROPOSED.

EFFECT OF CURRENT LAW. A LENDER MAY MAKE DISBURSEMENTS TO OWNERS WHO ARE IN TROUBLE BECAUSE OF THE SECURITY PROVIDED BY THEIR DEEDS OF TRUST. A FAILED CONSTRUCTION PROJECT USUALLY RESULTS IN NO EQUITY FOR LIENS FILED BY SUBCONTRACTORS, SUPPLIERS OR GENERAL CONTRACTORS.

SUMMARY

DEVISING A SYSTEM TO ADDRESS THE CONCERNS OF THE OWNERS, BANKERS, GENERAL CONTRACTORS, SUBCONTRACTORS, SUPPLIERS, AND INDIVIDUAL LABORERS INVOLVED IN CONSTRUCTION PROJECTS IS NOT SIMPLE. THERE IS LITTLE ARGUMENT THAT THE PRESENT SYSTEM SUFFERS IN MANY AREAS. AGC-ALASKA SUGGESTS A LOOK AT THE ENTIRE SYSTEM WITH THE OBJECTIVE OF DEVISING A SYSTEM THAT ENCOURAGES PROMPT PAYMENT TO ALL FACTORS OF THE CONSTRUCTION INDUSTRY.

REPRESENTATIVE
SAM COTTEN
DISTRICT 15



P.O. BOX 296, EAGLE RIVER, AK 99577
POUCH V, JUNEAU, AK 99811

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

MEMO

TO: Senator Fred Zharoff, Chairman
Senate Labor & Commerce Committee

FROM: Rep. Sam Cotten *sc*

DATE: April 28, 1986

RE: HB 494, An Act relating to liens for labor or materials
furnished.

I would greatly appreciate it if you could schedule HB 494 for a hearing in your committee as soon as possible.

The purpose of the bill is to clarify and strengthen the existing lien law. It was introduced at the request of a coalition of suppliers and subcontractors because of increasing problems they are having with being paid for labor or material they provide.

The Judiciary substitute represents a compromise between the suppliers and subcontractors, lending institutions and the builders.

Main points of the bill are:

1. Clarifies the existing procedure available to suppliers and subcontractors. Changes the "stop-payment" notice to a "stop-lending" notice.
2. Eliminates the current requirement that a claimant wait 20-30 days after an account becomes delinquent before he can give a stop-lending notice to the lender.
3. Allows a claimant to bring suit within 90 days of filing a stop-lending notice rather than 30. Removes the requirement the claimant put up a bond when taking a case to court.
4. Before disbursing funds a lender must have a certificate from the owner involved with the project providing specific information on the project including where a draw is to be applied.

5. An owner is guilty of class A misdemeanor for "intentionally" failing to apply financing draws to their stated purpose. This does not replace any other penalty that may be provided for by law for the same conduct.
6. Filing a notice of right to lien is optional.

A notice may be given to the owner any time before furnishing labor, material, service or equipment for improvement of the property. If given properly the burden of proof is on the owner to show that he/she did not know of or consent to improvements on his/her property.

A notice may be recorded anytime after the claimant enters into a contract or first furnishes labor, etc.

7. Civil actions may be brought for actual and consequential damages by a person who is injured in its business or property by a violation of any provision of the lien act.

A claimant is liable for actual and consequential damages if they fail to remove a stop-lending notice or claim of lien when payment is made in full or an error is discovered.

8. Subcontractors are given equal status with suppliers in sharing foreclosure sale proceeds.
9. Clarifies definitions.
10. Repeals the acknowledgement of right to lien provision.

SCS CHANGES
P 3, LINE 28;

P 7, LINES 5
6
7
11

P 8, LINE 15

WORK DRAFT

WORK DRAFT

WORK DRAFT

Cook
5/2/86

Original sponsors: Cotten, {zymanski,
Phillips, et al

1 IN THE HOUSE

2 SENATE CS FOR CS FOR 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 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 the owner 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 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 gives a stop-lending notice or has a claim of
6 lien recorded under AS 34.35.075 and who fails to promptly revoke the
7 stop-lending notice or remove the claim of lien from the record upon
8 receiving payment in full on the claim or discovering that the stop-
9 lending notice or claim of lien is in error, unjust, premature or
10 excessive is liable for actual and consequential damages caused by
11 giving the stop-lending notice or improperly recorded claim of lien
12 plus 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

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

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

Sec. 34.35.112. PAYMENT OF CLAIMANT'S LIENS. (a) If more than one lien created under AS 34.35.050 - 34.35.120 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 AS 34.35.050(1);
- (2) the trustees of employment benefit trusts for persons described in (1) of this subsection;
- (3) all materialmen and subcontractors;
- (4) persons described in AS 34.35.050(5) and [SUBCONTRACTORS, INCLUDING] prime contractors, other than the general contractor [AND PERSONS DESCRIBED IN AS 34.35.050(5)];
- (5) the general contractor.

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

- (1) [THE] liens of all individuals with lien rights under AS 34.35.050(1) 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 and subcontractors shall be paid in full or pro rata if the proceeds are insufficient to pay them

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in full;

(4) liens of persons described in AS 34.35.050(5) and [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) lien of the general contractor [THE BALANCE] shall be paid out of [TO THE GENERAL CONTRACTOR; A GENERAL CONTRACTOR IS ENTITLED TO EXECUTION FOR] the balance [DUE AFTER DISTRIBUTION].

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

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

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

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

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

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

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

(a) Except as provided under (b) of this section, a written waiver of lien or stop-lending [STOP-PAYMENT] notice of rights created under AS 34.35.050 - 34.35.120 signed by a claimant requires no consideration 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;

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

(13) "owner" means a person who owns real property or a possessory interest in real property [THE BUILDING OR OTHER IMPROVEMENT] and who enters into a contract, express or implied, for a project on that property [THE CONSTRUCTION, ALTERATION OR REPAIR OF A BUILDING OR IMPROVEMENT];

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

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

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

Offered: 4/21/86
Referred: Rules

Original sponsors: Cotten, Szymanski,
Phillips, et al

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
furnished."

7

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

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payment for the labor, material, service, or equipment furnished for a

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project is past due may give the lender a stop-lending notice. The

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claimant shall at the same time give a copy of the notice to the owner

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and to each prime contractor with whom or through whom the claimant or

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the claimant's debtor has contracted. A stop-lending notice shall

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(1) instruct the lender to stop disbursing, advancing, or

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otherwise providing construction financing for the project;

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(2) be verified by the claimant;

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(3) state the claimant's name, address, and telephone

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number;

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(4) describe the labor, material, service, or equipment

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furnished by the claimant and state the name of the person to whom

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furnished;

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(5) describe the real property improved by the labor,

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material, service, or equipment and state the name of the person the

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claimant believes to be the owner of the real property;

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(6) state the amount due and unpaid to the claimant for the

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labor, material, service, or equipment.

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(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 34.35.070 - 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 o_
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.

025. Parties to foreclosure. In an action to foreclose a by AS 34.35.005 — 34.35.425, all persons personally lien holders whose claims have been filed, and all other sted in the matter in controversy or the property sought with the lien may be made parties. Persons who are not bound by the proceedings. (§ 26-9-6 ACLA 1949)

References. — 53 Am. Jur.
ns, §§ 359-373.

030. Lien claim against different properties. If a lien or the same labor against two separate kinds of property ned by different persons, the court shall determine the h kind of property and designate which shall be sold ge the amount of the lien claim. (§ 26-9-7 ACLA 1949)

035. Several judgment for each claimant. In an ce a lien judgment shall be given in favor of each person or the amount due the person, and the court shall order ct to the lien to be sold by the peace officer in the same roperty is sold on execution, or in any manner that the proper. The proceeds of the sale shall be apportioned to each judgment pro rata, if the amount is insufficient to l. (§ 26-9-8 ACLA 1949)

040. Order of priority and payment. [Repealed, § 19 ch For current law see AS 34.35.112.]

045. Lienor's action on contract. Except as otherwise ded, nothing in AS 34.35.005 — 34.35.425 may be event a lienor under a contract from maintaining an lienor has no lien for the security of the debt and the action does not prejudice rights under AS 34.35.005 — 9-11 ACLA 1949)

NOTES TO DECISIONS

by statute create a y, and a lienor has the ay of his lien or by an hell v. Beaver Dredg- 6 (1935).

Where the lien fails, the claimant may nevertheless have a personal judgment against the defendant personally liable in the cause. Mitchell v. Beaver Dredging Co., 8 Alaska 566 (1935).

Article 2. Mechanics and Materialmen.

Section	Section
50. Lien for labor or materials furnished	90. Payment to contractor
55. Land subject to lien	95. Amount of lien
60. Priorities	100. Action against contractor on lien
62. Construction financing	105. Materials not subject to process
64. Notice of right to lien	110. Actions to enforce liens
65. Notice of nonresponsibility	112. Payment of claimant's liens
67. Recording notice of right to lien	114. Obligation of claimant and lender to provide information
68. Time periods for claiming liens	115. Persons considered agent of owner
69. Acknowledgment of right to lien	117. Waiver of lien rights
70. Claim of lien	118. Claimant liability
71. Notice of completion	119. Waiver of liens on unsold common interest community units
72. Bond	120. Definitions
75. Record and index of claim	
80. Duration of lien	
85. Lien for improving lot or street	

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 the contract price if the person

(1) performs labor upon real property at the request of the owner or the agent of the owner 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 the agent of the owner for direct payments into the trust;

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

(5) performs services under a contract with the owner or the agent of the owner 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. (§ 26-1-1 ACLA 1949; am § 1 ch 20 SLA 1949; am § 1 ch 14 SLA 1953; am § 1 ch 57 SLA 1959; am § 1 ch 106 SLA 1967; am § 1 ch 175 SLA 1978)

NOTES TO DECISIONS

Editor's notes. — Many of the cases annotated below were decided under this section as it existed before the 1978 amendment.

Constitutionality of lien laws. — See *Nordstrom v. Sivertsen-Johnsen Mining & Dredging Co.*, 5 Alaska 210 (1915).

The mechanic's lien law of Alaska was adopted originally from the lien law of Oregon. *Arctic Lumber Co. v. Borden*, 211 F. 50 (9th Cir.), cert. denied, 235 U.S. 704, 35 S. Ct. 209, 59 L. Ed. 433 (1914).

Alaska mechanic's lien laws were derived from those of Oregon. *Vanara v. Ketchikan Spruce Mills*, Sup. Ct. Op. No. 441 (File No. 829), 432 P.2d 618 (1967).

The purpose of legislatures in enacting mechanic's and materialman's lien laws is for the protection of the mechanic, insuring to him the fruits of his labor and providing the materialman with a speedy and efficacious mode of collecting his pay for materials furnished. *Jorgensen Co. v. Sheldon*, 2 Alaska 607 (1905).

And to secure lien priority of payment. — It is the purpose of the lien law to secure priority of payment of the price and value of work performed and materials furnished in erecting and repairing a building or other structure. *Cascaden v. Wimbish*, 161 F. 241 (9th Cir. 1908).

This article relating to mechanics' liens should be liberally construed. *Russell v. Hayner*, 130 F. 90 (9th Cir. 1904); *Arctic Lumber Co. v. Borden*, 211 F. 50 (9th Cir.), cert. denied, 235 U.S. 704, 35 S. Ct. 209, 59 L. Ed. 433 (1914). But see *Goldstein v. Noble*, 6 Alaska 282 (1920).

The evident spirit and purpose of this article is to do substantial justice to all parties who may be affected by its provisions, and the courts should avoid unfriendly strictness and mere technicality. *Russell v. Hayner*, 130 F. 90 (9th Cir. 1904).

Mechanic's lien statutes are to be liberally construed, with a view to effect substantial justice, and the fact that the lien claimant includes in his claim an item of his services for which the law gives him no lien will not defeat the lien if due to an honest mistake, and his lien in such a case may be enforced pro tanto if the true amount for which he is entitled to a lien may be segregated from the remainder. *Pioneer Mining Co. v. Delamotte*, 185 F. 752 (9th Cir. 1911).

Except to protect against undue se-

verity. — Where the particular enactment deals fairly and equitably with both the owner and the laborer, the liberal interpretation seems to be the rule adopted; but where the statute seems to be unnecessarily severe upon one, and in favor of the other, resulting in manifest injustice, the courts have endeavored to relieve the severity, holding the party favored to a strict compliance with the statute. *Jorgensen Co. v. Sheldon*, 2 Alaska 607 (1905).

And parts upon which existence of lien depends should be strictly construed. — The safe and proper rule of construction of mechanic's lien statutes is that, while the remedial portions of these statutes should be liberally construed, with a view to avoid defeating the purpose of the statute, yet those parts upon which the right to the existence of a lien depend, being in derogation of the common law, should be strictly construed. *Morris v. March*, 3 Alaska 140 (1906).

They must be substantially complied with. — A mechanic's lien is purely of statutory creation, and can only be maintained by a substantial observance and compliance with the provisions of the statute. Whatever is made necessary to the existence of the lien must be performed, or the attempt to create it will be futile. A substantial adherence to the terms of the statute in the notice of the lien is indispensable. *Russell v. Hayner*, 130 F. 90 (9th Cir. 1904).

Thus, this section should be strictly construed. *Rivers v. Pastro*, 11 Alaska 491 (1918).

A strained construction to bring a person within this section is not permissible. *Rivers v. Pastro*, 11 Alaska 491 (1918).

Prior law construed. — This section as it existed prior to 1978 prohibited the creation of a valid mechanic's lien prior to the commencement of work on the site and the effectuation of visible improvements to the property. *Turkko-Korman Engineers v. Penland Ventures*, Sup. Ct. Op. No. 2757 (File No. 6489), 673 P.2d 769 (1983). See now paragraph (5), which allows liens for work done in the preparation of plans "whether or not [they were] actually implemented."

This article is not, of its own terms, made applicable to public property. *University of Alaska v. Simpson Bldg. Supply Co.*, Sup. Ct. Op. No. 1113 (File No. 2196), 530 P.2d 1317 (1975).

As to immunity of real property of University of Alaska from lien attachment or foreclosure, see *University of Alaska v. Simpson Bldg. Supply Co.*, Sup. Ct. Op. No. 1113 (File No. 2196), 530 P.2d 1317 (1975).

The landowner must have actual knowledge of the construction before his interest can be subjected to a materialman's lien. *Vanara v. Ketchikan Spruce Mills*, Sup. Ct. Op. No. 441 (File No. 829), 432 P.2d 618 (1967).

If the materialman relies on both the credit of the purchaser and the security of the building, the materialman can assert a lien. *Dannemiller v. AMFAC Distribution Corp.*, Sup. Ct. Op. No. 1452 (File No. 2895), 566 P.2d 645 (1977).

Materialperson must demonstrate that materials furnished were generally incorporated into the building or project. *Dannemiller v. AMFAC Distribution Corp.*, Sup. Ct. Op. No. 1452 (File No. 2895), 566 P.2d 645 (1977).

No requirement that materialman see that every piece used in structure. — In the foreclosure of a materialman's lien, the materialman should not be required to watch the progress of a structure to see that every piece of material supplied by him was used therein, and if some of the material has been used elsewhere, it rests with the defendant to show that fact. *Dannemiller v. AMFAC Distribution Corp.*, Sup. Ct. Op. No. 1452 (File No. 2895), 566 P.2d 645 (1977).

A materialperson has a burden to show by a preponderance that its materials were generally used in a project, but it need not show that each and every item was incorporated. *Dannemiller v. AMFAC Distribution Corp.*, Sup. Ct. Op. No. 1452 (File No. 2895), 566 P.2d 645 (1977).

A mechanic's lien will attach to property for an improvement not placed thereon if it has a physical or beneficial connection therewith and is essential to the convenient and comfortable use of the premises. *Mitford v. Prior*, 353 F.2d 550 (9th Cir. 1965).

Lots in a subdivision are lienable for an engineer's labor on the subdivision's water and sewerage system. *Mitford v. Prior*, 353 F.2d 550 (9th Cir. 1965).

Effect of agreement establishing partnership. — For the purposes of this section, an agreement establishing a partnership or joint venture does not affect one party's standing to file a lien against the other party's land. *Urban Dev. Co. v. Dekreon*, Sup. Ct. Op. No. 1083 (File No. 2028), 526 P.2d 325 (1974).

The meaning properly attaching to the word "contractor" as used in this section is one who has charge of the construction of the building, alteration, or repair by direction of or contract with the owner or his agent duly authorized to contract for him. *Morris v. Marsh*, 3 Alaska 140 (1906).

A lien of a contractor may include an item for supervision and overhead. *Clay v. Sandal*, Sup. Ct. Op. No. 74 (File Nos. 60 (a), (b), 369 P.2d 890 (1962)).

Labor for which lien is claim must come within statute. — While mechanic's lien statutes are to be liberally construed, so that their purpose may not be frustrated, and with a view to effecting substantial justice, yet, unless the labor performed for which the lien is claimed is such as comes within the contemplation of the statute, there can be no valid lien. *Noble v. Gustafson*, 204 F. 69 (9th Cir. 1913).

This section and AS 34.35.070 must be read and construed together, and as applied to an original contractor, in computing the time from which he must file his claim of lien, they provide that he must file it within 90 days from the date of the completion of his contract or within 90 days from the date of the construction of the building, or any part of such construction, under the contract. *Bloom McCluskey*, 7 Alaska 349 (1925).

There must be employment by the owner of the building or his agent. — To authorize a lien under the provisions of this section, there must be an employment by the owner of the building, or his authorized agent, and the employment of contractors by one who was occupying the land under a contract of purchase, does not constitute the employment contemplated by this section. *Russell v. Hayner*, 130 F. 90 (9th Cir. 1904).

Or owner must know of and fail to disclaim improvement. — If the person in charge is not in fact the agent of the owner, the interest of the owner shall, nevertheless, be liable for the improvement if it is constructed with his knowledge and he fails to post the required notice disclaiming responsibility. *Cascaden v. Wimbish*, 161 F. 241 (9th Cir. 1908).

Person in charge is prima facie owner's agent. — This section, AS 34.35.055 and 34.35.065, construed together, mean that the person in charge of the work shall prima facie be deemed to be the agent of the owner, and the prop-

erty of the latter shall be charged with the lien under the express provisions of this section. *Cascaden v. Wimbish*, 161 F. 241 (9th Cir. 1908). See AS 34.35.115.

Lessee is not owner's agent. — A lessee, contracting for improvements upon the demised premises, does not, merely by virtue of his relation as lessee, contract as the agent of the lessor, so as to subject the property to mechanics' liens therefor. *Morris v. Marsh*, 3 Alaska 140 (1906).

And lien is limited to leasehold unless owner fails to give notice of nonresponsibility. — If the work is done for a lessee of the property, liability is confined to the leasehold estate, if the owner had no knowledge of the construction of the improvement, or if, having such knowledge, he gave notice that he would not be responsible. *Cascaden v. Wimbish*, 161 F. 241 (9th Cir. 1908).

Or unless lease authorizes lessee to improve or improvements revert. — It is the general rule that where a lease contains a provision authorizing the lessee to make improvements by deducting the cost thereof from the rent, or where part of the consideration of the lease is the making by the lessee of improvements which become a part of the realty, or that the improvements made by the lessee shall revert to the lessor, a mechanic's lien may attach to the property for work done or materials furnished, pursuant to a contract with the lessee. *Arctic Lumber Co. v. Borden*, 211 F. 50 (9th Cir.), cert. denied, 235 U.S. 704, 35 S. Ct. 209, 59 L. Ed. 433 (1914).

It will attach to building erected by lessee that is to revert to lessor. — Where a lease provided that construction of a business building on the property by the lessee was a part of the consideration, but also provided that the building was to "attach to the said realty as a part thereof and become the property of lessor" upon the expiration or termination of the lease, as to a materialman's lien, the building had become an integral part of the leasehold estate, and was not an item of personal property to be considered separately from the realty upon which it was constructed and the lessee's interest in that realty. *Clay v. Sandal*, Sup. Ct. Op. No. 74 (File Nos. 60 (a), (b)), 369 P.2d 890 (1962).

French of contract bars enforcement of lien for work performed. — Where a contractor fails to perform a considerable part of the work required by his contract, his failure, regardless of his

intentions, constitutes a bar to his enforcement of a lien for the work performed. *Gillis v. Gillette*, 13 Alaska 55, 181 F.2d 872 (9th Cir. 1950).

As where contract is willfully abandoned before completion. — See *Gillis v. Gillette*, 13 Alaska 55, 181 F.2d 872 (9th Cir. 1950).

Burden of proof on lien claimant to show compliance with statute. — Where the allegations of the complaint in regard to the work done upon a claim and the character thereof were put in issue by the answer, the burden of the proof is on the lien claimant to show by legally sufficient evidence the accrual of the lien under the terms of the statute which creates it, as well as under the terms of the contract under which the work was done. *Pioneer Mining Co. v. Delamotte*, 185 F. 752 (9th Cir. 1911).

Bare statement that other projects were being completed by a construction company at the same time that a particular project's modular units were being manufactured is insufficient, under the supreme court's precedents, to raise a triable issue of fact as to whether the material furnished to the construction company was actually incorporated into the particular project. *University of Alaska v. Simpson Bldg. Supply Co.*, Sup. Ct. Op. No. 1113 (File No. 2196), 530 P.2d 1317 (1975).

A house builder's employee cannot recover back wages directly against the home buyers under a theory that the employee was a third-party beneficiary to a contract between the builder and the buyer. *State v. Osborne*, Sup. Ct. Op. No. 2034 (File No. 4385), 607 P.2d 369 (1980).

Applied in *Kel Weatherstrip Co. v. Rankin*, 15 Alaska 204, 124 F. Supp. 575 (D. Alaska 1954).

Quoted in *Irvine v. McDougall*, 5 Alaska 220 (1915); *Mitchell v. Beaver Dredging Co.*, 8 Alaska 566 (1935); *Brand v. First Fed. Sav. & Loan Ass'n*, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

Cited in *First Nat'l Bank v. Stout*, 9 Alaska 400 (1938); *Spalding v. Martin*, 241 F. 372 (9th Cir. 1917).

Collateral references. — 53 Am. Jur. 2d, *Mechanics' Liens*, § 1 et seq.

"Owner" within meaning of mechanic's lien statutes. 2 ALR 791; 95 ALR 1095.

Lien for labor or material entering into rejected work. 16 ALR 981.

Right to mechanic's lien. 83 ALR 11.

Inception of lien. 83 ALR 925.

Mechanics' liens; mortgagee-lender's duty, in disbursing funds, to protect mortgagor against outstanding or potential mechanics' liens against the mortgaged property. 30 ALR 6th 134.

Sec. 34.35.055. Land subject to lien. (a) The land upon which a building or other improvement described in AS 34.35.050 is constructed, together with a convenient space about the building or other improvement or so much as is required for the convenient use and occupation of it (to be determined by the judgment of the court at the time of the foreclosure of the lien), and the mine on which the work is performed or for which the material is furnished is also subject to the lien created by AS 34.35.050 — 34.35.120 if, at the time the work is started or the materials for the building or other improvements are first furnished, the land belongs to the person who causes the building or other improvement to be constructed, altered, or repaired.

(b) If the person owns less than a fee simple estate in the land, then only the interest of the person in it is subject to the lien.

(c) If the interest is a leasehold interest, and the holder forfeits the rights of the holder to it, the purchaser of the building or improvement and leasehold term, or so much of it as remains unexpired at a sale under AS 34.35.050 — 34.35.120 is considered to be the assignee of the leasehold term, and may pay the lessor all arrears of rent or other money and costs due under the lease.

(d) If the lessor regains possession of the land and property, or obtains judgment for the possession of it before the commencement of the construction, alteration, or repair of the building or other improvement, the purchaser may only remove the building or other improvement within 30 days after the purchase, and the owner of the land shall receive the rent due payable out of the proceeds of the sale, according to the terms of the lease, down to the time of the removal. (§ 26-1-2 ACLA 1949)

NOTES TO DECISIONS

The object of this section is to declare to what land the lien shall extend. *Cascaden v. Wimbish*, 161 F. 241 (9th Cir. 1908).

The legislature intended to confer the right of lien upon every laborer or mechanic whose work tends to improve lands or mines. *Morris v. Marsh*, 3 Alaska 140 (1906).

The purpose of extending a statutory lien to the land is because the value of the land is increased when a material person provides labor or material for a structure which is attached to the

land. The lien should extend to the land, which is benefited by the material person. *Dannemiller v. AMFAC Distribution Corp.*, Sup. Ct. Op. No. 1452 (File No. 2895), 566 P.2d 645 (1977).

Complaint is defective unless it alleges labor went to improvement. — The absence of an allegation that the labor went to the improvement of the owner's lands or mines is of itself fatal to the complaint. *Morris v. Marsh*, 3 Alaska 140 (1906).

And so is lien notice. — A lien notice simply to the effect that materials were

furnished and labor was done "in connection with the work done upon the claims" does not comply with the statute. *Guldstein v. Noble*, 6 Alaska 282 (1920).

A lien on a building for materials furnished cannot include another structure against which a lien is not filed, and into the construction, alteration, and repairs of which some or all of the materials were employed or used. *Hurr v. House*, 3 Alaska 641 (1909).

The general rule is that a lessee cannot impose any charge upon the reversion or estate of the lessor thereof. *Morris v. Marsh*, 3 Alaska 140 (1906).

Nor does the fact that the lessor acquiesces in the improvement by the lessee subject his reversion to the mechanics' liens therefor. *Morris v. Marsh*, 3 Alaska 140 (1906).

Unless lessor fails to give notice of nonresponsibility or his agent causes improvement. -- This section, AS 34.35.050 and AS 34.35.065, construed together, mean that the person in charge of the work shall prima facie be deemed to be the agent of the owner, and the property of the latter shall be charged with the lien under the express provisions of AS 34.35.050; that, if the person in charge is not in fact such agent, the interest of the owner shall, nevertheless, be liable for the improvement if it is constructed with his knowledge, and he fails to post the required notice disclaiming responsibility; and that, if the work is done for a lessee of the property, liability is confined to the

leasehold estate, if the owner had no knowledge of the construction of the improvement, or if, having such knowledge, he gave notice that he would not be responsible. *Cascaden v. Windish*, 161 F. 241 (9th Cir. 1908). See AS 34.35.115.

To determine whether or not modular units are sufficiently attached to the land on which they are situated, the supreme court will look to the following elements: (1) physical annexation, (2) adaptation to use with real property, (3) intention to annex to realty, (4) relationship of the claiming parties, (5) the relative difficulty of removal, (6) the nature of the article annexed, and (7) whether the fact of the annexation is open and apparent. *Dannemiller v. AMFAC Distribution Corp.*, Sup. Ct. Op. No. 1452 (File No. 2895), 566 P.2d 615 (1977).

Applied in *Torkko Korman Engineers v. Penland Ventures*, Sup. Ct. Op. No. 2757 (File No. 6480), 673 P.2d 769 (1983).

Quoted in *Jorgensen Co. v. Sheldon*, 2 Alaska 607 (1905).

Stated in *Brand v. First Fed. Sav. & Loan Ass'n*, Sup. Ct. Op. No. 658 (File No. 1119, 1154), 478 P.2d 829 (1970).

Collateral references. -- 53 Am. Jur. 2d, Mechanics' Liens, §§ 28-48.

Public property as subject to lien. 26 ALR 326.

Vendor's interest as subject to mechanic's lien. 58 ALR 911; 102 ALR 233.

Quantity or area of land around improvement which may be subject to lien. 84 ALR 123.

Sec. 34.35.060. Priorities. (a) Except as provided in (c) of this section, an encumbrance which is properly recorded shall be preferred to a lien created under AS 34.35.050 — 34.35.120 unless the claim of lien under AS 34.35.070 or notice of right to lien under AS 34.35.064 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.

(b) [Repealed, § 19 ch 175 SLA 1978.]

(c) A lien created by AS 34.35.050 — 34.35.120 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.

(d) In enforcing the lien, the building or other improvement may be sold separately from the land. When sold separately, the purchaser may remove the building or other improvement within a reasonable time after the sale, not to exceed 30 days, upon the payment to the owner of the land of a reasonable rent for its use from the date of its purchase to the time of removal. If removal is prevented by legal proceedings, the 30 days does not begin to run until the final determination of the proceedings in the court of first resort, or in the appellate court if appeal is taken. (§ 26-1-3 ACLA 1949; am § 1 ch 111 SLA 1953; am § 1 ch 7 SLA 1955; am §§ 2, 3, 19 ch 175 SLA 1978)

NOTES TO DECISIONS

Editor's notes. — The cases annotated below were decided under this section as it existed prior to the 1978 amendment, which, among other things, rewrote subsection (a) and repealed subsection (b), which provided when a lien created by AS 34.35.050 — 34.35.126 was preferred to a lien, mortgage, or other encumbrance which is unrecorded.

Legislative Intent. — The legislative intent is to limit the priority granted generally to situations where the construction preceded all other construction in and upon a given area of vacant or cleared land. *Lynch v. McCann*, Sup. Ct. Op. No. 659 (File No. 1142), 478 P.2d 835 (1970).

In the case of "original construction," the legislature intended to subordinate to some extent the principle of first in time, first in right, to a social interest in securing mechanics' liens. *Brand v. First Fed. Sav. & Loan Ass'n*, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

For purposes of this section, a deed of trust and a mortgage are not differentiated. *Thorpe Constr. Co. v. Irvin & Co.*, 367 P. Supp. 87 (D. Alaska 1973).

This section protects the security of a mortgagee or beneficiary of a deed of trust against mechanics' liens so long as his encumbrance attaches and is recorded before the mechanics' lienor commences his labor or furnishes materials, except where "original construction" is performed. *Brand v. First Fed. Sav. & Loan Ass'n*, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

A beneficiary of a deed of trust whose interest attaches and who records before

any alteration or repair begins or materials are furnished has priority over a mechanics' lienor, except in the case of original construction under this section. *Brand v. First Fed. Sav. & Loan Ass'n*, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

Scheme of priorities not overcome by posting notices of nonresponsibility. — Mortgagees and beneficiaries of deeds of trust need not post notices of nonresponsibility, and if they do, the notices do not overcome the scheme of priorities established in this section. *Brand v. First Fed. Sav. & Loan Ass'n*, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

A mechanics' lienor has priority over the beneficiary of a deed of trust in the case of original construction under subsection (c), regardless of whether the beneficiary of the deed of trust posts a notice of nonresponsibility. *Brand v. First Fed. Sav. & Loan Ass'n*, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

The legislature, in subsection (c), provided that mechanics' lienors performing original construction should have priority over earlier security interests. The scheme of priorities ordered by the legislature in the circumstances of original construction would be defeated if beneficiaries of deeds of trust could attain priority over mechanics' lienors by posting notices of nonresponsibility. *Brand v. First Fed. Sav. & Loan Ass'n*, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

Construction lenders can protect themselves from mechanics' liens in

several ways: They may require their contractors or borrowers to put up a cushion of perhaps a tenth of the loan to be disbursed by the construction lender before the loan funds are disbursed; they may make all payments directly to subcontractors and suppliers; they may make disbursements to the contractors only on production of receipts and lien waivers from the subcontractors and suppliers. *Brand v. First Fed. Sav. & Loan Ass'n*, Sup. Ct. Op. No. 658 (File Nos. 1119, 1151), 478 P.2d 829 (1970).

Prior encumbrancers who had loaned money on the security of bare land would not be substantially harmed if laborers and materialmen had priority when they made improvements, and construction lenders can protect themselves. *Brand v. First Fed. Sav. & Loan Ass'n*, Sup. Ct. Op. No. 658 (File Nos. 1119, 1151), 478 P.2d 829 (1970).

Priority under subsection (c). — Under subsection (c) a subsequent mechanic's lien is prior in right to a preexisting mortgage only if the work was "original construction." *Thorpe Constr. Co. v. Irvin & Co.*, 367 F. Supp. 87 (D. Alaska 1973).

A new addition to a building was not original construction within the intent of subsection (c). *Lynch v. McCann*, Sup. Ct. Op. No. 659 (File No. 1142), 478 P.2d 835 (1970).

Where the addition was an addition to a preexisting building, and was of relatively small size, and could not be removed without greatly damaging the premises as they were before the addition was added, the mechanics' liens were subordinate to the prior recorded deeds of trusts. *Lynch v. McCann*, Sup. Ct. Op. No. 659 (File No. 1142), 478 P.2d 835 (1970).

Lynch v. McCann only case discussing "original construction". — *Lynch v. McCann*, Sup. Ct. Op. No. 659 (File No. 1142), 478 P.2d 835 (1970) is the only case discussing "original construction," a term unique to Alaska's laws. *Thorpe Constr. Co. v. Irvin & Co.*, 367 F. Supp. 87 (D. Alaska 1973).

But it established no clear test. — *Lynch v. McCann*, Sup. Ct. Op. No. 659 (File No. 1142), 478 P.2d 835 (1970) established no clear test for original construction, but stated such standard "must await decisional delineation." *Thorpe Constr. Co. v. Irvin & Co.*, 367 F. Supp. 87 (D. Alaska 1973).

Suggested guideline for "original construction". — The supreme court in

Lynch v. McCann, Sup. Ct. Op. No. 659 (File No. 1142), 478 P.2d 835 (1970) suggested as a guide "line for determining "original construction" where the construction preceded all other construction in and upon a given area of vacant or cleared land. *Thorpe Constr. Co. v. Irvin & Co.*, 367 F. Supp. 87 (D. Alaska 1973).

Where a building was apparently a separate structure and not constructed as a part of a smaller existing building and on the building permit issued by the Greater Anchorage Area Borough, the construction was described as "new" as opposed to other boxes entitled "alteration," "addition," "repairs," and "other," although the building was designed architecturally to be connected to the existing peanut farm and to conform and blend with it architecturally, the federal district court concluded that the federal district building constituted "original construction." *Thorpe Constr. Co. v. Irvin & Co.*, 367 F. Supp. 87 (D. Alaska 1973).

The lien of a secured party was not treated as an "interest in the land" for purposes of AS 34.35.063, the notice of nonresponsibility section, since, if it were so treated, a secured party could obtain priority over a mechanic's lien on original construction. *Brand v. First Fed. Sav. & Loan Ass'n*, Sup. Ct. Op. No. 658 (File Nos. 1119, 1151), 478 P.2d 829 (1970).

Issue arising from a discrepancy in the amount of liens was not critical to determining the priority of such liens. *Thorpe Constr. Co. v. Irvin & Co.*, 367 F. Supp. 87 (D. Alaska 1973).

The fluctuation of the market values of mortgage securities cannot alter the priorities between a lienor and mortgagee. *Copper River Lumber Co. v. Clark*, 3 Alaska 635 (1909).

A mechanic's lien, not perfected at the time a federal tax lien attaches, is inferior to the government lien. *Kel Weatherstrip Co. v. Rankin*, 15 Alaska 204, 124 F. Supp. 555 (D. Alaska 1954).

As against the United States, a mechanic's lien must be specific, and what is a specific lien is a federal question. *Kel Weatherstrip Co. v. Rankin*, 15 Alaska 204, 124 F. Supp. 555 (D. Alaska 1954).

And a lien is not specific until the lienor reduces it to possession. *Kel Weatherstrip Co. v. Rankin*, 15 Alaska 204, 124 F. Supp. 555 (D. Alaska 1954).

"Specificity" requires that the lien be attached to certain property by reducing it to possession, on the theory that the United States has no claim against prop-

erty no longer in the possession of the debtor. Until such possession, it remains a general lien. *Kel Weatherstrip Co. v. Rankin*, 15 Alaska 204, 124 F. Supp. 555 (D. Alaska 1954).

Federal law controls when a lien of the United States is involved. *Thorpe Constr. Co. v. Irvin & Co.*, 367 F. Supp. 87 (D. Alaska 1973).

Subsection (c) not adopted by federal district court. — In determining the content of federal common law in order to establish priority between a deed of trust assigned to and recorded by the Small Business Administration and a subsequent mechanic's lien by alleged actions of furnishing labor and materials for an improvement to the property in question, the federal district court would not adopt subsection (c) of this section, which is a distinctly minority codification of mechanic's lien laws and would grant non-government parties rights beyond the Federal Tax Lien Act. *Thorpe Constr. Co. v. Irvin & Co.*, 367 F. Supp. 87 (D. Alaska 1973).

A mechanic has a lien upon the land paramount to all rights accruing after the commencement of his work. *Copper River Lumber Co. v. Clark*, 3 Alaska 635 (1909).

Formerly, a lien for alteration or repair, as well as original construction, took precedence even of a prior mortgage. *Wagner v. Shaw*, 6 Alaska 647 (1922). See *First Nat'l Bank v. Vasey*, 14 Alaska 114, 114 F. Supp. 913 (D. Alaska 1953).

Section is not intended to confiscate another's security. — Although the purpose of this section is to give a mechanic's

lien to the full extent of the claim upon the property improved, the legislature did not intend in accomplishing that result to confiscate security already belonging to another. *Wagner v. Shaw*, 6 Alaska 647 (1922).

No prior recorded mortgage prevails as to land. — A mechanic's lien cannot attach to the land on which a prior mortgage, duly recorded, exists at the time the lumber was furnished for the building. *Copper River Lumber Co. v. Clark*, 3 Alaska 635 (1909).

But section discovers building subject to lien from land subject to prior mortgage. — A lien is given, not on the materials as such, but on the buildings or improvements in the construction of which the materials are used. The operation of the statute, in case there is a prior mortgage of the land, is to discover the improvements from the land or realty by giving a superior lien on such improvements and conferring on the purchaser the right to remove them. *Copper River Lumber Co. v. Clark*, 3 Alaska 635 (1909).

Where all parties seek sale, severability of building is immaterial. — Where all mortgagees and holders of materialmen's liens pray that the property be sold to satisfy their liens, the question of severability of the building is not material. *First Nat'l Bank v. Vasey*, 14 Alaska 114, 114 F. Supp. 913 (D. Alaska 1953).

Applied in *Bank of Wrangell v. Alaska Asiatic Lumber Mills, Inc.*, 12 Alaska 338, 81 F. Supp. 1 (D. Alaska 1919).

Collateral references. — 53 Am. Jur. 2d, Mechanics' Liens, §§ 263-283.

Sec. 34.35.062. Construction financing. (a) A 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) A claimant described in AS 34.35.050 who has not received payment within 20 days after the date for payment required by the 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 AS 34.35.095.

(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. (§ 4 ch 175 SLA 1978)

Sec. 34.35.064. Notice of right to lien. (a) After entering into a contract, a claimant may 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 the most recent accounting of the amount due and unpaid to that claimant under the terms of the contract and a description of labor, materials, services, or equipment which the claimant reasonably anticipates furnishing. (§ 4 ch 175 SLA 1978; am § 1 ch 61 SLA 1979)

Sec. 34.35.065. Notice of nonresponsibility. (a) A building or improvement mentioned in AS 34.35.050 constructed with the knowledge of the owner of the land or the person having or claiming an interest in the land is considered to be constructed at the instance of the owner or person having or claiming the interest.

(b) The interest owned or claimed is subject to a lien filed in accordance with AS 34.35.050 — 34.35.120, unless (1) the owner or person having or claiming an interest in the land gives notice within three days after the owner or other person obtains knowledge of the construction, alteration or repair that the owner or other person will not be responsible for it, by posting a notice to that effect in writing in some conspicuous place upon the land or upon the building or other improvement located on the land; (2) the notice is signed by the owner

or person having or claiming an interest in the land in the presence of two attesting witnesses or acknowledged by the owner or other person before a notary public; (3) the posting of notice is attested to by a witness; and (4) an attested or notarized copy of the notice is recorded with the recorder of the recording district in which the land, building or other improvement is located within three days after the posting of the notice. (§ 26-1-4 ACLA 1949; am § 1 ch 71 SLA 1961)

NOTES TO DECISIONS

Editor's notes. — The cases cited below were decided before revision of much of this chapter in 1978 and 1979.

Alaska mechanic's lien laws were derived from those of Oregon. *Vaara v. Ketchikan Spruce Mills*, Sup. Ct. Op. No. 111 (File No. 829), 432 P.2d 618 (1967).

Section enacted for protection of owner. — The notice of nonresponsibility section is designed to protect owners who do not investigate work done on the land, such as lessors whose lessees independently investigate the furnishing of labor or materials. *Brand v. First Fed. Sav. & Loan Ass'n*, Sup. Ct. Op. No. 658 (File No. 1119, 1154), 478 P.2d 829 (1970).

The landowner must have actual knowledge of the construction before his interest can be subjected to a materialman's lien. *Vaara v. Ketchikan Spruce Mills*, Sup. Ct. Op. No. 441 (File No. 829), 432 P.2d 618 (1967).

As yet undetermined in this jurisdiction is whether knowledge of intended construction would be sufficient to bring into operation the provisions of subsections (a) and (b). *Vaara v. Ketchikan Spruce Mills*, Sup. Ct. Op. No. 441 (File No. 829), 432 P.2d 618 (1967).

Owner is protected if work is not done at his instance. — The provisions of this section are for the benefit and protection of the owner in cases where the work is not done and the material is not furnished at his instance, or at the instance of his agent. *Arctic Lumber Co. v. Borden*, 211 F. 50 (9th Cir.), cert. denied, 235 U.S. 704, 35 S. Ct. 209, 59 L. Ed. 433 (1914).

But he may not post notice if work is so done. — It is not the intention of the law, nor is it the purport thereof, that when in fact the work is done, and the material is furnished at the owner's instance, he may prevent a lien upon his property by posting the notice referred to in this section. *Arctic Lumber Co. v.*

Borden, 211 F. 50 (9th Cir.), cert. denied, 235 U.S. 704, 35 S. Ct. 209, 59 L. Ed. 433 (1914).

The words "at the instance" of the owner signify at the notion of consent, at least, knowledge of *Cribb v. Caskey*, 4 Alaska 250 (1910).

Employment by owner of his agent is necessary. — To bind the building under a mechanic's lien for labor and materials furnished, there must be an employment by the owner of the building or his authorized agent. *Cribb v. Caskey*, 4 Alaska 250 (1910).

Person in charge of work must be employed by owner to be statutory agent. — To constitute the contractor, subcontractor, architect, builder, or other person having charge of the construction, alteration, or repair, in whole or in part, of any building, the statutory agent of the owner, such person must have been employed directly or indirectly at the instance of the owner, or his conventional agent. *Cribb v. Caskey*, 4 Alaska 250 (1910).

But such person is prima facie owner's agent. — This section, AS 34.35.050 and 34.35.055, construed together, mean that the person in charge of the work shall prima facie be deemed to be the agent of the owner, and the property of the latter shall be charged with the lien under the express provisions of AS 34.35.050. *Cascaden v. Wimbish*, 161 F. 241 (9th Cir. 1908). See AS 34.35.115.

And if he is not, knowledge and failure to post notice made owner liable. — If the person in charge is not in fact such agent, the interest of the owner shall, nevertheless, be liable for the improvement if it is constructed with his knowledge and he fails to post notice disclaiming responsibility. *Cascaden v. Wimbish*, 161 F. 241 (9th Cir. 1908).

Complaint must allege such knowledge. — Allegation of a complaint fails to

meet the requirement of this section that does not impute knowledge of the construction of any building or improvement. *Morris v. Marsh*, 3 Alaska 140 (1906).

Knowledge of the contract of employment and consent to its terms is not tantamount to knowledge of the actual construction of the improvement, even though the terms of the agreement may have contemplated its construction. *Morris v. Marsh*, 3 Alaska 140 (1906).

However, actual or positive knowledge is not required by this section. *Labay v. Northern Mining & Trading Co.*, 5 Alaska 131 (1914).

Since knowledge may be implied, knowledge in a legal sense may be positive or implied. The implication of knowledge arises when the party to be charged is shown to have had knowledge of such facts and circumstances as would lead him by the exercise of due diligence to a knowledge of the principal fact. *Labay v. Northern Mining & Trading Co.*, 5 Alaska 131 (1914).

Lien attaches to building constructed by lessee as part of leasehold.

— Where a lease provided that construction of a business building on the property by the lessee was a part of the consideration, but also provided that the building was to "attach to the said realty as a part thereof and become the property of lessor" upon the expiration or termination of the lease, as to a materialman's lien, the building had become an integral part of the leasehold estate, and was not an item of personal property to be considered separately from the realty upon which it was constructed and the lessee's interest in that realty. *Clay v. Sandul*, Sup. Ct. Op. No. 74 (File Nos. 60 (a), (b)), 369 P.2d 890 (1962).

But is confined to leasehold if owner posts notice. — If the work is done for a lessee of the property, liability is confined to the leasehold estate, if the owner had no knowledge of the construction of the improvement, or if, having such knowledge, he gave notice that he would not be responsible. *Cascaden v. Wimbish*, 161 F. 241 (9th Cir. 1908).

Mortgagees and beneficiaries of deeds of trust are not required to post notices of nonresponsibility in order to protect a given statutory priority. *Lynch v. McCann*, Sup. Ct. Op. No. 659 (File No. 1142), 478 P.2d 835 (1970).

A beneficiary of a deed of trust is not a "person having or claiming an interest in the land" within the intend-

ment of this section. *Lynch v. McCann*, Sup. Ct. Op. No. 659 (File No. 1142), 478 P.2d 835 (1970).

The beneficiary of a deed of trust is not a "person having or claiming an interest in the land" for purposes of this section, and is not protected against superior mechanics' liens by posting and recording notices of nonresponsibility. *Brand v. First Fed. Sav. & Loan Ass'n*, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

Scheme of priorities not overcome by posting notices of nonresponsibility. Mortgagee and beneficiary of deed of trust need not post notice of nonresponsibility, and if they do, the notices do not overcome the scheme of priorities established in AS 34.35.060. *Brand v. First Fed. Sav. & Loan Ass'n*, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

A mechanics' lien has priority over the beneficiary of a deed of trust in the case of original construction under AS 34.35.060 regardless of whether the beneficiary of the deed of trust posts a notice of nonresponsibility. *Brand v. First Fed. Sav. & Loan Ass'n*, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

The legislature, in AS 34.35.060 (a), provided that mechanics' liens performing original construction should have priority over earlier security interests. The scheme of priorities ordered by the legislature in the circumstances of original construction would be defeated if beneficiaries of deeds of trust could attain priority over mechanics' lienors by posting notices of nonresponsibility. *Brand v. First Fed. Sav. & Loan Ass'n*, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

The lien of a secured party was not treated as an "interest in the land" for purposes of this section, the notice of nonresponsibility section, since if it were so treated a secured party could attain priority over a mechanics' lienor on original construction. *Brand v. First Fed. Sav. & Loan Ass'n*, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

Sufficiency of posting of notice. — See *Turner v. Enstrom*, 5 Alaska 118 (1914).

Applied in *Russell v. Hayner*, 130 F. 90 (9th Cir. 1904); *Stephenson v. Ketchikan Spruce Mills, Inc.*, Sup. Ct. Op. No. 332 (File No. 546), 412 P.2d 496 (1966).

Quoted in *Jorgensen Co. v. Sheldon*, 2 Alaska 607 (1905).

Stated in *Donaldson v. Henning*, 4 Alaska 612 (1913).
Cited in *Spalding v. Martin*, 241 F. 372 (9th Cir. 1917).
Collateral references. — Notice of non-responsibility, 123 ALR 7.

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 AS 34.35.070 (§ 4 ch 175 SLA 1978).

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 the construction contract; or
 - (2) 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 15 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) of this section:

(A) a claimant who records a notice of right to lien before or 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 of completion is recorded by the owner as provided in AS 34.35.071(a)(2).

(c) A claim of lien is enforceable only if recorded by a claimant within the time specified in (a) or (b) of this section. (§ 2 ch 61 SLA 1979)

NOTES TO DECISIONS

Editor's notes. — The cases annotated below were decided under AS 34.35.070 as it existed prior to the 1978 amendment. Former subsection (b) of that section concerned the time period for claiming liens.

Time for filing is mandatory. — No liberal construction is permitted to be applied to the mandatory requirement that the claim of lien must be filed within the specified time, in order that it may become an actual lien, instead of a claim, and may charge the property with a special statutory liability. *Irvine v. McIlougall*, 5 Alaska 300 (1915), *rev'd* on other grounds, 4 Alaska Fed. 430, 245 F. 888 (9th Cir. 1916).

A notice of lien must show that it was filed within the time prescribed by statute. *Bloom v. McCluskey*, 7 Alaska 349 (1925).

A lien is not effective or valid until a written claim of lien has been filed for record with the recorder of the recording district in which the property is situated, within 90 days from completion of the service or delivery of supplies. *Brooks v. R & M Consultants, Inc.*, Sup. Ct. Op. No. 2107 (File No. 4922), 613 P.2d 268 (1980).

Time for filing contractor's lien may run from construction of part of building. — This section and AS 34.35.050 must be read and construed together, and as applied to an original contractor, in computing time from which he must file his claim of lien, they provide that he must file it within 90 days from the date of the completion of his contract or within 90 days from the date the construction of the building, or any part of such construction, under the contract. *Bloom v. McCluskey*, 7 Alaska 349 (1925).

And lien for materials may be filed before building is completed. — There is no prejudice to any substantial right of the owner of the building in the filing of a lien at any time after the material is furnished, and before the completion of the building, and a lien filed before the completion of the building is not filed

prematurely. *Arctic Lumber Co. v. Borden*, 211 F. 50 (9th Cir.), *cert. denied*, 245 U.S. 704, 35 S. Ct. 209, 59 L. Ed. 411 (1917).

The fact that the cost of the last items furnished is small in comparison with the overall cost of a building does not defeat a lien, where it appears that the furnishing of the materials was done in good faith and in the normal course of business, and not for the purpose of extending the time to file a claim of lien. *Stephenson v. Ketchikan Spruce Mills, Inc.*, Sup. Ct. Op. No. 332 (File No. 5466), 412 P.2d 496 (1966).

Lien for extra labor and materials must be filed 90 days after furnishing. — A lien for extra labor and materials supplied under an agreement separate from the original contract is required to be filed within 90 days after cessation of the labor and the furnishing of the materials described in the claim of lien. *Gillis v. Gillette*, 13 Alaska 55, 184 F.2d 872 (9th Cir. 1950).

After filing, lien dates back to commencement of work. — Although the exact time the lien arises is not spelled out, the clear import of this section is that after the mechanic's claim is filed a lien arises which dates back to the commencement of the work and is to be given preference over any encumbrance or lien attaching after work commences. *Kel Weatherstrip Co. v. Rankin*, 15 Alaska 204, 124 F. Supp. 555 (D. Alaska 1954).

Initial recrudescence of mechanic's lien claim constitutes inquiry notice of the lien to a subsequent purchaser; a mechanic's lien claimant, in order to protect his lien, does not have to record a notice of his pendency when he later files suit to foreclose the lien. *First Nat'l Bank v. Dent*, Sup. Ct. Op. No. 2839 (File No. 7728), 683 P.2d 722 (1984).

Lien claim held to have been timely filed. — See *Mitford v. Prior*, 353 F.2d 550 (9th Cir. 1965).

Sec. 34.35.069. Acknowledgment of right to lien. (a) A person other than an individual as defined in AS 34.35.120 may not claim a lien under AS 34.35.050 — 34.35.120 for furnishing labor, materials, services, or equipment to a person other than the owner of the real property being improved unless at the time the person records a claim of lien as provided in AS 34.35.070 or a notice of right to lien as provided in AS 34.35.067, the person also records an authenticated

copy of an acknowledgment of right to lien received from the owner.

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

- (1) the effective date of the acknowledgment;
- (2) the name of the person to whom the acknowledgment is directed;
- (3) the name and address of the owner;
- (4) the name and address of the lender providing construction financing;
- (5) the name and address of the person who is to furnish labor, materials, services, or equipment;
- (6) the real property being or intended to be improved or directly benefited, with a legal description sufficient for identification;
- (7) a brief description of the labor, materials, services, or equipment to be furnished to the person named in (5) of this subsection;
- (8) that the owner acknowledges the right of the person to claim a lien to secure payment for the cost of labor, materials, services, or equipment furnished by the person named in (5) of this subsection for the construction, alteration, or repair of improvements on the owner's real property.

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

(d) Unless an acknowledgment of right to lien states that the owner will acknowledge lien rights only for certain types or quantities of labor, materials, services, or equipment, the acknowledgment applies to all labor, services, materials, or equipment furnished to the person named in the acknowledgment and used in the construction, alteration or repair of the owner's real property. (§ 2 ch 61 SLA 1979)

Sec. 34.35.070. Claim of lien. (a) Subject to the provisions of AS 34.35.069(a), a claimant 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 AS 34.35.068.

(b) *[Repealed, § 9 ch 61 SLA 1979.]*

(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.

(d) *[Repealed, § 19 ch 175 SLA 1978.]*

(e) *[Repealed, § 19 ch 175 SLA 1978.]*

(f) A violation of the provisions of this section places the violator in the position of guarantor regarding another person who suffers damages which are proximately caused by the violation. (§ 26-1-5 A.C.L.A. 1949; am § 1 ch 89 SLA 1974; am §§ 1, 2 ch 123 SLA 1977; am §§ 5, 6, 19 ch 175 SLA 1978; am §§ 3, 9 ch 61 SLA 1979)

NOTES TO DECISIONS

Editor's notes. — Many of the cases annotated in the notes below were decided under this section as it existed prior to the 1978 amendment.

No lien exists until the claim of lien is filed as prescribed by this section. *Irvine v. McJougall*, 5 Alaska 300 (1915), *rev'd on other grounds*, 4 Alaska Fed. 430, 235 F. 898 (9th Cir. 1916).

Construction of introductory language of subsection (c) mandated. — A construction of subsection (c)(5) as it existed prior to the 1978 amendment (now the introductory language of subsection (c)) which requires that the claim of lien be verified by the oath of the claimant or another person having knowledge of the facts as essential to the existence of the lien, is mandated. *H.A.M.S. Co. v. Electrical Contractors*, Sup. Ct. Op. No. 1415 (File No. 2871), 563 P.2d 258, modified on other grounds, 566 P.2d 1012 (1977).

Policy considerations underlying verification requirement. — The requirement of verification is reflective of the legislature's awareness that a claim of lien adversely affects the title to the property and its alienability; that the claim of lien can have an injurious impact on the credit of the owner of the property which is subjected to the lien; and that the claim of lien can be used as a vehicle to coerce settlement from the owner of the property. *H.A.M.S. Co. v. Electrical Contractors*, Sup. Ct. Op. No. 1415 (File No. 2871), 563 P.2d 258, modified on other grounds, 566 P.2d 1012 (1977); *Brooks v.*

H & M Consultants, Inc., Sup. Ct. Op. No. 2107 (File No. 4922), 613 P.2d 268 (1980).

Reasonable basis exists for verification requirement. — In light of the important policy considerations underlying the verification requirement, there exists a reasonable basis for the legislature's determination that the significance of filing a lien claim be made clear to the lien claimant through the requirement of verification and the possibility of perjury prosecution for verifying a false lien claim. *H.A.M.S. Co. v. Electrical Contractors*, Sup. Ct. Op. No. 1415 (File No. 2871), 563 P.2d 258, modified on other grounds, 566 P.2d 1012 (1977); *Brooks v. H & M Consultants, Inc.*, Sup. Ct. Op. No. 2107 (File No. 4922), 613 P.2d 268 (1980).

And no latitude is permitted concerning such requirement. — Generally, some latitude is permitted by statutes as to the form in which the oath or affirmation as to the truth of the contents of the lien claim may be administered, and substantial compliance with such form is often sufficient. However, there is a significant distinction between those portions of Alaska mechanics' liens statutes which are remedial in nature, and those portions which articulate mandatory conditions precedent to the very creation and existence of the lien. It is the latter aspect of Alaska's mechanics' and materialmen's lien statutory provisions which is at issue in a case concerning whether an affiant or claimant must swear to the truth of the contents of the

claim. *H.A.M.S. Co. v. Electrical Contractors*, Sup. Ct. Op. No. 1415 (File No. 2871), 563 P.2d 258, modified on other grounds, 566 P.2d 1012 (1977).

The operative, substantive requirement of subsection (e) is that the claim be verified; that the verification be "by oath of the claimant" simply describes the means or procedure to be followed in verifying the claim. Therefore, substantial compliance with the formal requirement of an oath is sufficient. *Anchorage Sand & Gravel Co. v. Woodbridge*, Sup. Ct. Op. No. 2213 (File No. 4765), 619 P.2d 1014 (1980).

Verification requirement substantially unchanged. — Although Alaska's mechanics' and materialmen's statutes have been substantially revised in recent years, the verification requirement of subsection (e) of this section has remained substantially unchanged. *Anchorage Sand & Gravel Co. v. Woodbridge*, Sup. Ct. Op. No. 2213 (File No. 4765), 619 P.2d 1014 (1980).

Claims of lien are not valid liens where there is failure to meet the verification requirements — of subsection (e)(5) as it existed prior to the 1978 amendment (now the introductory language of subsection (e)). *H.A.M.S. Co. v. Electrical Contractors*, Sup. Ct. Op. No. 1415 (File No. 2871), 563 P.2d 258, modified on other grounds, 566 P.2d 1012 (1977).

No particular form of oath or affirmation is required — by Alaska law, other than that when a notary certifies an oath or affirmation, the oath or affirmation must be made in the notary's presence. *Anchorage Sand & Gravel Co. v. Woodbridge*, Sup. Ct. Op. No. 2213 (File No. 4765), 619 P.2d 1014 (1980).

What is verification. — A verification is a sworn statement of the truth of the facts stated in the instrument which is verified. *H.A.M.S. Co. v. Electrical Contractors*, Sup. Ct. Op. No. 1415 (File No. 2871), 563 P.2d 258, modified on other grounds, 566 P.2d 1012 (1977).

When a lien claimant, in the presence of a notary, affixes his signature to a written statement incorporating the necessary elements of a claim of lien, and the notary certifies this act, claimant has substantially complied with the requirement of an "oath." *Anchorage Sand & Gravel Co. v. Woodbridge*, Sup. Ct. Op. No. 2213 (File No. 4765), 619 P.2d 1014 (1980).

A verification differs from an acknowledgment — in that the latter is a

method of authenticating an instrument by showing that it was the act of the person executing it. *H.A.M.S. Co. v. Electrical Contractors*, Sup. Ct. Op. No. 1415 (File No. 2871), 563 P.2d 258, modified on other grounds, 566 P.2d 1012 (1977).

An acknowledgment is not sufficient to satisfy a mechanic's lien statute which requires verification of the claim of lien by the claimant. *H.A.M.S. Co. v. Electrical Contractors*, Sup. Ct. Op. No. 1415 (File No. 2871), 563 P.2d 258, modified on other grounds, 566 P.2d 1012 (1977).

Corporate acknowledgments affixed to the claims of lien do not constitute substantial compliance with the verification requirement of subsection (e)(5) of this section as it existed prior to the 1978 amendment (now the introductory language of subsection (e)) under AS 31.35.020. *H.A.M.S. Co. v. Electrical Contractors*, Sup. Ct. Op. No. 1415 (File No. 2871), 563 P.2d 258, modified on other grounds, 566 P.2d 1012 (1977).

Lien claim need not contain a statement that the labor and materials were furnished at the request of the owner. *Cutting v. Bullock*, 13 Alaska 269, 188 F.2d 837 (9th Cir. 1951).

Statement of demand must be true. — It is necessary that the statement of the lienor's demand contained in the notices should be the true amount due, after making deductions for all just credits and offsets, but it is not necessary that such shall be expressly stated in the notices filed. *Irvine v. McDougall*, 4 Alaska 702 (1913).

Inclusion of improper item voids lien. — Where a lien claimant includes in his lien statement an item not embraced in the statutory lien, for labor, such as for expenses of transportation, he loses his lien. *Bloom v. McCluskey*, 7 Alaska 319 (1925).

Unless mistake is honest and items may be separated. — The fact that a lien claimant includes in his claim, through an honest mistake, a claim for services for which the statute gives him no lien, will not defeat the lien for other services within the statute also claimed, if the two can be separated. *Irvine v. McDougall*, 5 Alaska 220 (1915); citing *Pioneer Mining Co. v. Dehaene*, 185 F. 752 (9th Cir. 1911).

Failure to include names of all owners does not invalidate notice. — While this section requires that the notice of lien recorded shall contain the names of the owners, or reputed owners, of the

ground upon which the lien is claimed, it is well established that failure to include all of the owners does not render the notice invalid, but that it may be enforced against the owners named. *Turner v. Enstrom*, 5 Alaska 118 (1914).

The only effect of the omission of the name of any owner is to exempt his interest from the operation of the lien. *Turner v. Enstrom*, 5 Alaska 118 (1914).

Nor does failure to include district where property is located void notice. — It must appear somewhere in the complaint that the property sought to be charged with the lien is situated within the jurisdiction of the court, but it does not necessarily follow that the notices of lien are absolutely void, simply because they do not contain the name of the mining district or political division in which the mining claim is situated. *Irvine v. McDougall*, 4 Alaska 702 (1913).

To hold that notices of lien are absolutely void for the reason that they do not contain the name of the precinct in which a quartz mining claim is located, when the precinct is named in the complaint to which the several notices are attached as exhibits, would be a failure to give to the notices of lien the liberal construction to which they are entitled in order that the very purpose of the statute may not be defeated. *Irvine v. McDougall*, 5 Alaska 220 (1915).

If description is otherwise sufficient. — It is not absolutely necessary that the name of the state or territory, or of the legal subdivision thereof, wherein the premises to be charged are situated, be contained in the notice of lien, provided there is sufficient in the notice, taken in connection with all the circumstances and the place where the notice is filed or recorded, to apprise parties dealing with the property that a lien is claimed thereon. *Irvine v. McDougall*, 4 Alaska 702 (1913).

Description of property sought to be charged with lien held sufficient. — See *Peca v. Huddleston*, 5 Alaska 241 (1915).

Complaint must show notice complies with this section. — Since this section requires that the notice of lien filed with the recorder set out certain facts, where the plaintiff's allegation as to the notice of the lien fails to show that the notice filed contains these statements, such statements would not even substantially comply with the statute, and hence the lien would not be created. *Jorgensen Co. v. Sheldon*, 2 Alaska 607 (1905).

Or notice should be pleaded verbatim. — Not only should plaintiffs state the essential facts, as required by this section, but the better practice would be to plead the notice verbatim or attach a copy thereof and make it a part of the complaint. *Jorgensen Co. v. Sheldon*, 2 Alaska 607 (1905).

Substantial compliance with the verification requirement is sufficient. *Stephenson v. Kotchikan Spruce Mills, Inc.*, Sup. Ct. Op. No. 342 (File No. 586), 412 P.2d 196 (1966).

The form of oath followed by the words "subscribed and sworn to before me," and the notary public's signature, amounts in substance to a certificate by the notary that the claim of lien was verified by the oath of the claimant. *Stephenson v. Kotchikan Spruce Mills, Inc.*, Sup. Ct. Op. No. 342 (File No. 586), 412 P.2d 196 (1966).

Lack of claimant's signature on lien following form of oath held not to invalidate lien. — See *Stephenson v. Kotchikan Spruce Mills, Inc.*, Sup. Ct. Op. No. 342 (File No. 586), 412 P.2d 196 (1966).

Rule for testing sufficiency of complaint is stricter than for testing notice itself. — While mechanic's lien statutes are to be liberally construed, with a view to effecting substantial justice, a different rule should be followed in determining the effect of the pleading in an action to foreclose a lien, especially where the pleading is questioned at an early stage of the action, from the rule to be followed in determining the sufficiency of a notice of lien, which the lienor cannot correct or amend after the time limited for filing has expired. The complaint in an action of this kind should state all the ultimate facts necessary to be established upon the trial. *Irvine v. McDougall*, 4 Alaska 702 (1913).

Burden is on lien claimant to prove compliance with section. — The claimant of a mechanic's or laborer's lien has the burden of proof to show by legally sufficient evidence the accrual of the lien under the terms of the statute which creates it as well as under the terms of the contract under which the work was done. *Irvine v. McDougall*, 5 Alaska 220 (1915); citing *Pioneer Mining Co. v. Delamotte*, 185 F. 752 (9th Cir. 1911).

Cases to which verification requirement applicable. — The decision in *H.A.M.S. Co. v. Electrical Contractors*, Sup. Ct. Op. No. 1415 (File No. 2871), 563 P.2d 258 (1977), requiring verification

that the facts stated in lien claims are true, will be otherwise applicable only to the following cases: 1. Cases in which trial was commenced prior to May 6, 1977, but which have not been submitted to the trier of fact for decision; 2. Cases in which prior to submission to the trier of fact for decision there has been an express objection that the verification attached to a lien claim fails to meet the requirements of subsection (c)(5) as it existed prior to the 1978 amendment how the introductory language of subsection (c); 3. Cases in which the trial commences after the date of our opinion; and 4. Cases pending on direct appeal on the date of our opinion, in which objection was made in the trial court and thereafter asserted as an issue on appeal that the verification attached to a lien claim fails to meet the requirements of subsection (c)(5) as it existed prior to the 1978 amendment. *H.A.M.S. Co. v. Electrical Contractors*, Sup. Ct. Op. No. 1115 (File No. 2971), 566 P.2d 1012 (1977).

Subsection (f) contains only the language of guaranty, not of a liability. *Industrial Power & Lighting Corp. v. Western Modular Corp.*, Sup. Ct. Op. No. 2259 (File Nos. 1163, 4176, 623 P.2d 291 (1981)).

Intent of subsection (f). — If the legislature had meant subsection (f) to encompass claims in the nature of disparagement of title free from the defense of privilege, that intention would have been more directly expressed and

language of guaranty would not have been utilized. *Industrial Power & Lighting Corp. v. Western Modular Corp.*, Sup. Ct. Op. No. 2259 (File Nos. 1163, 4176, 623 P.2d 291 (1981)).

The term "guarantor" as used in the statute does not express the liability of a wrongdoer to his victim except in the special case where the victim is prevented from collecting a debt owed by another because of the wrongdoer's act. *Industrial Power & Lighting Corp. v. Western Modular Corp.*, Sup. Ct. Op. No. 2259 (File Nos. 1163, 4176, 623 P.2d 291 (1981)).

Applicability of subsection (f). With the repeal in 1978 of subsections (d) and (e) of this section, the supreme court of Alaska recognizes that it is difficult, though perhaps not impossible, to imagine a situation to which subsection (f) would apply. *Industrial Power & Lighting Corp. v. Western Modular Corp.*, Sup. Ct. Op. No. 2259 (File Nos. 1163, 4176, 623 P.2d 291 (1981)).

Construction of former subsections (d) and (e). — See *Frontier Rock & Sand, Inc. v. Heritage Ventures, Inc.*, Sup. Ct. Op. No. 2029 (File No. 1000), 607 P.2d 361 (1980).

Quoted in *Johnson v. State*, Sup. Ct. Op. No. 1609 (File No. 3235), 577 P.2d 766 (1978).

Cited in *Tuckko Korman Engineers v. Penland Ventures*, Sup. Ct. Op. No. 2757 (File No. 6189), 673 P.2d 769 (1983).

Collateral references. — 53 Am. Jur. 2d, *Mechanics' Liens*, § 167-247.

Sec. 34.35.071. Notice of completion. (a) The owner of real property that may be subject to a lien under AS 34.35.050 — 34.35.120 may announce the date of completion of a building or other improvement on the 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 must 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 must 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) *(Repealed, § 9 ch 61 SLA 1979.)*

(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 AS 34.35.050 — 34.35.120.

(f) [Effective January 1, 1986] After recording a common interest community declaration under AS 34.08, an owner may record a notice of completion under this section as to each unit after completion of the original construction of each unit of the common interest community. (§ 7 ch 175 SLA 1978; am § 9 ch 61 SLA 1979; am § 2 ch 95 SLA 1985)

Effect of amendments. — The 1985 amendment, effective January 1, 1986, in subsection (f) substituted "common interest community" for "condominium," "under AS 34.08" for "as provided in AS 34.07.010 — 34.07.460 (Horizontal Property Regimes Act)," "unit" for "apartment," and "unit of the common interest community" for "condominium apartment."

Editor's notes. — Prior to January 1, 1986, subsection (f) reads: "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. 34.35.072. Bond. If the owner of the property sought to be charged with a claim of lien under AS 34.35.050 — 34.35.120, or a prime contractor or subcontractor disputes the correctness or validity of the claim of lien brought under AS 34.35.050 — 34.35.120, the owner or contractor 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 the claimant 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 AS 34.35.050 — 34.35.120 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. (§ 2 ch 89 SLA 1974; am § 8 ch 175 SLA 1978)

Sec. 34.35.075. Record and index of claim. The recorder shall record the claim in a book kept for that purpose. The records shall be indexed as deeds and other conveyances are required by law to be indexed. The recorder is entitled to the same fees allowed by law for recording deeds and other instruments. (§ 26-16 ACLA 1949)

Collateral references. — 53 Am. Jur. 2d, Mechanics' Liens, § 186

Sec. 34.35.080. Duration of lien. (a) A lien provided for in AS 34.35.050 — 34.35.120 does not bind a building, structure, or other improvement for more than six months after the lien is filed, unless suit is brought before the proper court to enforce the lien

(1) within that time, or

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

(b) A lien may not be continued in force for more than one year from the date of the filing of the original lien notice. (§ 26-1-7 ACLA 1949; am § 1 ch 50 SLA 1955; am § 3 ch 123 SLA 1977)

NOTES TO DECISIONS

Protection of lien. — A mechanic's lien claimant, in order to protect his lien, does not have to record a notice of his pendency when he later files suit to foreclose the lien; the initial recordation of the mechanic's lien claim constitutes inquiry notice of the lien to a subsequent purchaser; and the lien claimant may amend his complaint to add, as a defendant in the action, the subsequent purchaser of the burdened real property under Civ. R. 25(c). *First Nat'l Bank v. Dent*,

Sup. Ct. Op. No. 2839 (File No. 7729), 683 P.2d 722 (1984).

Applied in *Frontier Rock & Sand, Inc. v. Heritage Ventures, Inc.*, Sup. Ct. Op. No. 2029 (File No. 4000), 607 P.2d 361 (1980).

Quoted in *State v. Osborne*, Sup. Ct. Op. No. 2034 (File No. 4385), 607 P.2d 369 (1980).

Collateral references. — 53 Am. Jur. 2d, Mechanics' Liens, § 251.

Sec. 34.35.085. Lien for improving lot or street. A person who, at the request of the owner of a lot in the state, grades, fills in, or improves the lot or the street in front of or adjoining the lot has a lien upon the lot for work done and materials furnished. The provisions of AS 34.35.050 — 34.35.120 for securing and enforcing the mechanic's lien apply to the lien provided by this section. (§ 26-1-8 ACLA 1949)

NOTES TO DECISIONS

A municipal corporation is a person under the provisions of this section. *Town of Nome v. Lang*, 1 Alaska 593 (1902).

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 AS 34.35.050 — 34.35.120 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. (§ 26-1-9 ACLA 1949; am § 9 ch 175 SLA 1978)

NOTES TO DECISIONS

Applied in *Frontier Rock & Sand, Inc. v. Heritage Ventures, Inc.*, No. 2029 (File No. 4000), 607 P.2d 361 (1980).

Collateral references. — 53 Am. Jur. 2d, Mechanics' Liens, § 325 et seq.

Sec. 34.35.095. Amount of lien. (a) Except as provided in (c) of this section, a claimant may recover upon a lien recorded by the claimant only the amount due to the claimant according to the terms of the contract, after deducting all claims of other persons claiming through the claimant for work done and materials furnished.

(b) *[Repealed, § 9 ch 61 SLA 1979.]*

(c) An individual described in AS 34.35.120(10) may recover upon a lien recorded by the individual only the amount due according to the terms of the employment. (§ 26-1-10 ACLA 1949; am § 10 ch 175 SLA 1978; am §§ 4, 9 ch 61 SLA 1979)

NOTES TO DECISIONS

Insurance during working period may be liable item. — Cost of fire insurance to cover the premises during the working period was properly a liable item where by the terms of the construction contract the contractor was to furnish all labor and materials, including subcontractor's services, with the exception of plumbing and heating. *Clay v. Sandal*, Sup. Ct. Op. No. 74 (File Nos. 60 (a), (b), 369 P.2d 890 (1962)).

As may subcontractor's services if contractor is bound to furnish them. — Provision of this section that a contractor is entitled to recover upon a lien filed by him only such amount as may be due to him according to the terms of his contract limits a contractor's lien recovery to the amount called for by his contract, but would include subcontractor's services if, by the terms of his contract, the contractor was responsible for the furnishing of

such services. *Clay v. Sandal*, Sup. Ct. Op. No. 74 (File Nos. 60 (a), (b), 369 P.2d 890 (1962)).

In absence of contract, limit of recovery is reasonable value of labor and material. — By this section the maximum a contractor may establish as a lien cannot exceed the amount due to him under the terms of his contract, but there must be a contract with the person from whom the contract lien recovery is sought or someone privity to him, otherwise the contractor's lien recovery may be limited to the reasonable value of the labor and material furnished. *Clay v. Sandal*, Sup. Ct. Op. No. 74 (File Nos. 60 (a), (b), 369 P.2d 890 (1962)); *Moore v. Alaska Metal Bldgs., Inc.*, Sup. Ct. Op. No. 515 (File No. 962), 418 P.2d 581 (1966).

Collateral references. — Contractor as party is entitled to enforce mechanic's lien. 109 ALR 123.

Sec. 34.35.100. Action against contractor on lien. (a) Where a lien is recorded under AS 34.35.050 — 34.35.120 for work done or materials furnished to a prime contractor, the prime contractor shall defend an action at the expense of the prime contractor, 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.

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

(c) If the amount of the judgment and costs exceeds the amount due by the owner to the prime contractor, and 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. (§ 26-1-10 ACLA 1949; am §§ 11 — 13 ch 175 SLA 1978)

Sec. 34.35.105. Materials not subject to process. When a mechanic, artisan, machinist, builder, lumber merchant, contractor, laborer, or other person furnishes or procures materials for use in the construction, alteration, or repair of a building or other improvement, the materials are not subject to attachment, execution, or other legal process to enforce a debt due by the purchaser of the materials except a debt due for the purchase money thereof, so long as the materials have been or are about to be applied in good faith to the construction,

alteration, or repair of the building, or other improvement. (§ 26-1-11 ACLA 1949)

Sec. 34.35.110. Actions to enforce liens. (a) An action to enforce a lien created by AS 34.35.050 — 34.35.120 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 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.

(b) In an action under AS 34.35.050 — 34.35.120 the court shall, upon entering judgment for the plaintiff, allow as a part of the costs all money paid for the filing and recording of the lien and a reasonable amount as attorney fees. An action to enforce a lien created by AS 34.35.050 — 34.35.120 has preference upon the calendar of civil actions of the court and shall be tried without unnecessary delay.

(c) In an action to enforce a lien created by AS 34.35.050 — 34.35.120 all persons personally liable and all lienholders whose claims have been filed for record under AS 34.35.070 shall be made parties; all other persons interested in the matter in controversy or in the property sought to be charged with the lien may be made parties. However, those persons who are not made parties are not bound by the proceedings. The proceedings upon the foreclosure of a lien created by AS 34.35.050 — 34.35.120 shall, as nearly as possible, conform to the proceedings of a foreclosure of a mortgage lien upon real property. (§ 26-1-13 ACLA 1949; am § 14 ch 175 SLA 1978)

NOTES TO DECISIONS

Constitutionality. — The Ninth Circuit has held that provision for the award of costs and attorney's fees only to lien claimants was constitutionally permissible. *Brand v. First Fed. Sav. & Loan Ass'n*, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

There is no ground for saying that the allowance of reasonable attorney fees in the lien law is unconstitutional. *Cascaden v. Wimbish*, 161 F. 241 (9th Cir. 1908).

Origin. — This section was taken, without significant change, from the laws of Oregon. *Brand v. First Fed. Sav. & Loan Ass'n*, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

At the time this section was adopted for the Territory of Alaska, and subsequent thereto, the courts of Oregon had consistently held that the lien claimant carried

the burden of both alleging and proving the reasonable amount of attorney's fees he was entitled to on foreclosure. Absent these prerequisites, it was held that the claimant was not entitled to an award of attorney's fees. It further appears that the statutes were construed as granting some discretion in the courts in regard to the determination of a reasonable attorney's fee. *Brand v. First Fed. Sav. & Loan Ass'n*, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

The apparent purpose of this section is to facilitate enforcement by mechanics' lienors of their rights by giving them an assurance of costs and attorney's fees if they prevail in their foreclosure actions. *Brand v. First Fed. Sav. & Loan Ass'n*, Sup. Ct. Op. No. 658 (File Nos. 1119, 1154), 478 P.2d 829 (1970).

AS 34.35.005 (b) applies to liens provided for in AS 34.35.050 — 34.35.125. *Brand v. First Fed. Sav. & Loan Ass'n*, Sup. Ct. Op. No. 658 (File Nos. 1119, 1151), 478 P.2d 829 (1970).

While subsection (b) of this section applies only to mechanics' liens provided for in AS 34.35.050 — 34.35.120, *Brand v. First Fed. Sav. & Loan Ass'n*, Sup. Ct. Op. No. 658 (File Nos. 1119, 1151), 478 P.2d 829 (1970).

Constructive notice of lien. — A bank given a deed of trust on property against which a mechanic's lien is claimed does not have constructive notice of the lien unless the claimant has recorded a notice of its pendency. *First Nat'l Bank v. Dent*, Sup. Ct. Op. No. 2839 (File No. 7729), 693 P.2d 722 (1984).

Provisions as to parties; state law generally applicable. — The provisions of this section as to parties seem to be only a statement of the law applicable to all actions. *Donaldson v. Henning*, 4 Alaska 612 (1913).

Grantee of deed recorded after foreclosure suit is commenced is not indispensable party. — Where, when suit to foreclose a mechanic's lien was commenced, the trial court had before it the record owner and the reputed owner, and had jurisdiction to proceed to hear and determine the questions presented as to the rights and obligations of the parties

properly before it, the subsequent recording of a deed of the property to a minor, not served with process, could not divest the court of such jurisdiction as had already attached. *Cutting v. Bullerbeck*, 13 Alaska 269, 188 F.2d 837 (9th Cir. 1951).

Proper parties. — All persons personally liable, all lienholders whose claims have been duly filed, and all other persons interested in the matter in controversy or in the property sought to be charged with the lien, may, under this section, be made parties. *Jorgensen Co. v. Sheldon*, 2 Alaska 607 (1905).

Set off. — In an action to enforce a mechanic's lien, the plaintiff was not entitled to costs and an attorney's fee because he only prevailed on one count of his complaint, and costs and attorney's fees for his successful count were set off against those costs and attorney's fees to which the defendant was entitled under AS 09.60.016 because of its successful defense against the other counts of the complaint. *Brand v. First Fed. Sav. & Loan Ass'n*, Sup. Ct. Op. No. 658 (File Nos. 1119, 1151), 478 P.2d 829 (1970).

Quoted in *Nordstrom v. Sivertsen-Johnson Mining & Dredging Co.*, 5 Alaska 210 (1915); *Mitchell v. Beaver Dredging Co.*, 8 Alaska 566 (1915).

Collateral references. — 53 Am. Jur. 2d, Mechanics' Liens, § 339 et seq.

Sec. 34.35.112. Payment of claimant's liens. (a) If more than one lien created under AS 34.35.050 — 34.35.120 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 AS 34.35.050(1);
- (2) the trustees of employment benefit trusts for persons described in (1) of this subsection;
- (3) all materialmen;
- (4) subcontractors, including prime contractors other than the general contractor and persons described in AS 34.35.050(5);
- (5) the general contractor.

(b) For purposes of AS 34.35.050 — 34.35.120, 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 AS 34.35.050(1) 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 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 after distribution. (§ 15 ch 175 SLA 1978; am § 5 ch 61 SLA 1979)

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 the prime contractor:

(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 a claimant other than a prime contractor, the claimant 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 lien.

(e) An owner or an agent of the owner 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. (§ 6 ch 61 SLA 1979)

Sec. 34.35.115. **Persons considered agent of owner.** Every contractor, subcontractor, architect, builder, or other person having charge of the construction, alteration or repair, in whole or in part, of a building or other improvement as provided in AS 34.35.050 and 34.35.085, is considered to be the agent of the owner for the purposes of AS 34.35.050 — 34.35.120. (§ 26-1-14 ACLA 1949)

NOTES TO DECISIONS

Applied in *Muford v. Proc.* 353 F.2d 550 (9th Cir. 1965)

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 AS 34.35.050 — 34.35.120 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 AS 34.35.120(10) may not waive right to claim a lien under AS 34.35.050 — 34.35.120. A waiver which purports to waive the lien rights of that individual or class of individuals is void. (§ 15 ch 175 SLA 1978)

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. (§ 15 ch 175 SLA 1978)

Sec. 34.35.119. **Waiver of liens on unsold common interest community units [Effective January 1, 1986].** (a) A lien created under AS 34.35.050 — 34.35.120 arising out of original construction that becomes subject to AS 34.07 or AS 34.08 before the first sale of a unit within a common interest community 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 an entire common interest community shall release that portion of the lien claim that relates to a particular unit within a common interest community selected by the owner of the unsold common interest community units after the claimant receives a partial payment of the lien claim that is equal to 115 percent of the amount determined

(1) if the common interest community has been established under AS 34.07 by

(A) dividing the surface area of the common areas and facilities attendant to the common interest community unit by the surface area of all common areas and facilities of the common interest community building; and

(B) multiplying the result obtained in (A) of this subsection by the total amount of the claimant's lien claim;

(2) by the vested interest in the common expenses if the common interest community has been established under AS 34.08.

(c) A lien claimant is not required to waive a portion of the lien claim under this section unless the amount of indebtedness secured by a prior encumbrance against the common interest community building held by a construction lender is also reduced by an amount calculated in the same manner as provided in (b) of this section. (§ 15 ch 175 SLA 1978; am § 3 ch 95 SLA 1985)

Effect of amendments. — The 1985 amendment, effective January 1, 1986, rewrote this section.

Editor's notes. — Prior to January 1, 1986, this section reads: "(a) Liens created under AS 34.35.050 — 34.35.120 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. 34.35.120. **Definitions.** In AS 34.35.050 — 34.35.120

(1) "building or other improvement," includes a wharf, bridge, ditch, flume, tunnel, fence, well, land clearing, machinery, aqueduct to create hydraulic power, or for mining or other purposes, and all other structures and superstructures;

(2) "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 an agent of the owner 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 an agent of the owner 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;

(3) "construction, alteration, or repair", includes partial construction, and all repairs done in and upon a building or other 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 AS 34.35.050 — 34.35.120;

(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 AS 34.35.050 — 34.35.120 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 an agent of that person; 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 the last known address of the owner;

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

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

(13) "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;

(14) "potential lien claimant" or "claimant" means any person entitled to assert lien rights under AS 34.35.050 — 34.35.120;

(15) "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;

(16) "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. (§ 26-1-12 ACLA 1949; am § 2 ch 57 SLA 1959; am § 16 ch 175 SLA 1978; am §§ 7, 8 ch 61 SLA 1979)

Revisor's notes. — Reorganized in 1985 to alphabetize the defined terms.

NOTES TO DECISIONS

Quoted in *Lynch v. McCann*, Sup. Ct. Op. No. 659 (File No. 1142), 478 P.2d 835 (1970).

Cited in *Vaara v. Ketchikan Spruce Mills*, Sup. Ct. Op. No. 441 (File No. 829), 432 P.2d 618 (1967).

Collateral references. — Canals, ditches and wells as within term of Mechanic's Lien Law descriptive of improvement. 92 ALR 753

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CSHB 494 (L&C)
 Title : "An Act relating to liens for labor or material furnished"
 Sponsor : Cotten, Szymanski, et al.
 Requestor : Labor & Commerce
 Date of Request : 3/19/86

FISCAL DETAIL

Agency Affected : Labor
 BRU : Labor Standards & Safety
 Components : Wage and Hour

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

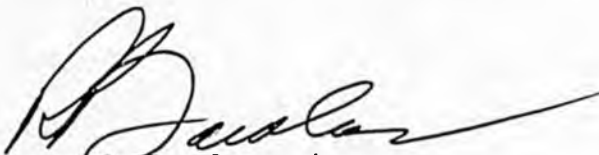
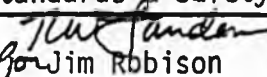
FUNDING : (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by :  Robert J. Bacolas, Director
 Division : Labor Standards & Safety Phone : 465-4870
 Date : 3/21/86
 Approved by Commissioner  Jim Robison Date : 3/21/86
 Agency : Labor

Distribution (by Agency preparing fiscal note):

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