

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

AN ACT

RELATING TO LIENS; EXEMPTING ORIGINAL CONTRACTORS FROM
PRE-LIEN NOTICE REQUIREMENTS; ALLOWING ORIGINAL CONTRACTORS
TO CANCEL LIENS; ALLOWING ORIGINAL CONTRACTORS TO DEPOSIT
SECURITY FOR THE CANCELING OF LIENS; ALLOWING USE OF
ARBITRATION TO ENFORCE LIENS; ADDRESSING CONTINGENT PAYMENT
CLAUSES; REQUIRING CONTRACTORS TO DEFEND ALL LIEN CLAIMS
EXCEPT THOSE DUE TO THE CONTRACTOR IN CASE OF OWNER
NONPAYMENT; CLARIFYING FEES AND COSTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 48-2-2.1 NMSA 1978 (being Laws 1990,
Chapter 92, Section 2, as amended) is amended to read:

"48-2-2.1. PROCEDURE FOR PERFECTING CERTAIN MECHANICS'
AND MATERIALMEN'S LIENS.--

A. The provisions of Subsections B through D of
this section do not apply to claims of liens made on
residential property containing four or fewer dwelling units,
to claims of liens made by an original contractor or to
claims of liens made by mechanics or materialmen who contract
directly with the original contractor. For purposes of this
section, "original contractor" means a contractor that
contracts directly with the owner.

B. No lien of a mechanic or a materialman claimed
in an amount of more than five thousand dollars (\$5,000) may

1 be enforced by action or otherwise unless the lien claimant
2 has given notice in writing of the claimant's right to claim
3 a lien in the event of nonpayment and that notice was given
4 not more than sixty days after initially furnishing work or
5 materials, or both, by either certified mail, return receipt
6 requested, facsimile with acknowledgement or personal
7 delivery to:

8 (1) the owner or reputed owner of the
9 property upon which the improvements are being constructed;
10 or

11 (2) the original contractor, if any.

12 C. If the owner or the original contractor claims
13 lack of notice as a defense to the enforcement of a lien
14 described in Subsection B of this section, the owner or
15 contractor shall show that upon the request of the mechanic
16 or materialman that the owner or contractor furnished to the
17 lien claimant not more than five days after such request was
18 made:

19 (1) the original contractor's name, address
20 and license number, if there is an original contractor on the
21 project;

22 (2) the owner's name and address;

23 (3) a description of the property or a
24 description sufficiently specific for actual identification
25 of the property; and

1 (4) the name and address of any bonding
2 company or other surety that is providing either a payment or
3 performance bond for the project.

4 D. The notice required to be given by the claimant
5 pursuant to the provisions of Subsection B of this section
6 shall contain:

7 (1) a description of the property or a
8 description sufficiently specific for actual identification
9 of the property;

10 (2) the name, address and phone number, if
11 any, of the claimant; and

12 (3) the name and address of the person with
13 whom the claimant contracted or to whom the claimant
14 furnished labor or materials, or both.

15 E. A person required by the provisions of
16 Subsection B of this section to give notice to enforce the
17 person's claim of lien may elect not to give the notice, but
18 may give the required notice at a later time. If the person
19 elects to do so, the lien shall apply only to the work
20 performed or materials furnished on or after the date thirty
21 days prior to the date the notice was given. The provisions
22 of Subsections C and D of this section apply to any notice
23 given under this subsection."

24 Section 2. Section 48-2-9 NMSA 1978 (being Laws 1975,
25 Chapter 68, Section 1) is amended to read:

1 "48-2-9. PETITION TO CANCEL LIEN--SECURITY.--

2 A. The owner of any building, mining claim,
3 improvement or structure subject to a lien under Sections
4 48-2-1 through 48-2-17 NMSA 1978 or an original contractor
5 having a contract with that owner may petition the district
6 court for the county in which the property or a part of it is
7 located for an order canceling the lien.

8 B. Upon the filing of the petition, the district
9 court judge shall examine the lien claimant's recorded
10 demands and determine an amount sufficient to satisfy the
11 recorded demands and any other damages, court costs or
12 attorney fees that may be recovered by the lien claimant.
13 Security, in the amount set by the judge and of a type
14 approved by the judge, shall be deposited by the owner of the
15 property or original contractor with the district court
16 conditioned on the payment of any sum found to be validly due
17 to the lien claimant. An owner or original contractor may
18 not provide a single security for the cancellation of the
19 lien of more than one claimant.

20 C. When the security is deposited under this
21 section, the judge of the district court shall immediately
22 issue an order canceling the lien and shall notify the county
23 clerk with whom the lien was filed. Upon the recording of
24 the order, the county clerk shall mark the filed lien as
25 canceled. When an order is issued under this subsection, the

1 claimant's lien attaches to the security and is enforceable
2 as to the security in the district court in which it is
3 deposited to the same extent as any other lien provided for
4 in Sections 48-2-1 through 48-2-17 NMSA 1978."

5 Section 3. Section 48-2-10 NMSA 1978 (being Laws 1880,
6 Chapter 16, Section 9, as amended) is amended to read:

7 "48-2-10. LIMITATION OF ACTION TO ENFORCE.--No lien
8 provided for in Sections 48-2-1 through 48-2-17 NMSA 1978
9 remains valid for a longer period than two years after the
10 claim of lien has been filed unless proceedings have been
11 commenced in a court of competent jurisdiction or in binding
12 arbitration within that time to enforce the lien. A
13 contingent payment clause in a contract shall not be
14 construed as a waiver of the right to file and enforce a
15 mechanic's or materialman's lien pursuant to Sections 48-2-1
16 through 48-2-17 NMSA 1978."

17 Section 4. Section 48-2-12 NMSA 1978 (being Laws 1880,
18 Chapter 16, Section 12, as amended) is amended to read:

19 "48-2-12. CONTRACTOR LIABLE FOR LIENS OF
20 SUBCONTRACTORS.--The contractor shall be entitled to recover
21 upon a lien filed by the contractor only such amount as may
22 be due to the contractor according to the terms of the
23 contract, after deducting all claims of subcontractors under
24 the contractor who have filed liens for work done and
25 materials furnished, and during the pendency of the action,

1 the owner may withhold from the contractor the amount of
2 money for which the lien is filed unless the lien was
3 asserted as a result of the owner's failure to pay the
4 contractor for work done and materials furnished, and in case
5 of judgment against the owner or the owner's property upon
6 the lien, the owner shall be entitled to deduct from any
7 amount due or to become due by the owner to the contractor
8 the amount of the judgment. If the amount of the judgment
9 exceeds the amount due by the owner to the contractor, or if
10 the owner settles with the contractor in full, the owner
11 shall be entitled to recover back from the contractor any
12 amount paid by the owner, in excess of the contract price,
13 and for which the contractor was originally the party
14 liable."

15 Section 5. Section 48-2-14 NMSA 1978 (being Laws 1880,
16 Chapter 16, Section 14, as amended) is amended to read:

17 "48-2-14. JOINDER OF ACTIONS--ATTORNEY FEES--COSTS.--
18 Any number of persons claiming liens may join in the same
19 action, and when separate actions are commenced, the court
20 may consolidate them. A prevailing party in a dispute
21 arising out of or relating to a lien action is entitled to
22 recover from the other party the reasonable attorney fees,
23 costs and expenses incurred by the prevailing party."