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HOUSE BILL 202

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

INTRODUCED BY

Jane E. Powdrell-Culbert

AN ACT

RELATING TO LIENS; PROVIDING THAT A MECHANIC'S OR A MATERIALMAN'S LIEN SHALL NOT BE ENFORCEABLE UNLESS THE CLAIMANT HAS AT LEAST THIRTY DAYS PRIOR TO TAKING ACTION TO ENFORCE THE LIEN GIVEN TO THE PROPERTY OWNER OR REPUTED OWNER NOTICE IN WRITING THAT THE CLAIMANT HAS FILED A LIEN; PROVIDING THAT A MECHANIC'S OR A MATERIALMAN'S LIEN SHALL NOT BE ENFORCEABLE UNLESS THE CLAIMANT HAS GIVEN NOTICE OF THE RIGHT TO FILE A LIEN TO THE PROPERTY OWNER OR REPUTED OWNER WITHIN SIXTY DAYS AFTER FURNISHING THE WORK OR MATERIALS.

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.--

underscored material = new
[bracketed material] = delete

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

9 A. No lien of a mechanic or a materialman may be
10 enforced by action or otherwise unless the lien claimant has at
11 least thirty days prior to taking action to enforce the lien
12 given notice in writing that the claimant has filed a lien by
13 either certified mail, return receipt requested, facsimile with
14 acknowledgment or personal delivery to the owner or reputed
15 owner of the property upon which the improvements have been or
16 are being constructed.

17 B. The notice required to be given by the claimant
18 pursuant to the provisions of Subsection A of this section
19 shall contain:

20 (1) a description of the property or a
21 description sufficiently specific for actual identification of
22 the property;

23 (2) the name, address and phone number of the
24 claimant; and

25 (3) the name and address of the person with

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1 whom the claimant contracted or to whom the claimant furnished
2 labor or materials, or both.

3 [B.] C. No lien of a mechanic or a materialman
4 [~~claimed in an amount of more than five thousand dollars~~
5 ~~(\$5,000)~~] may be enforced by action or otherwise unless the
6 lien claimant has given notice in writing of the claimant's
7 right to claim a lien in the event of nonpayment and that
8 notice was given not more than sixty days after initially
9 furnishing work or materials, or both, by either certified
10 mail, return receipt requested, facsimile with
11 [~~acknowledgement~~] acknowledgment or personal delivery to [~~(1)~~]
12 the owner or reputed owner of the property upon which the
13 improvements are being constructed [~~or~~

14 ~~(2) the original contractor, if any].~~

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

22 [~~(1) the original contractor's name, address~~
23 ~~and license number, if there is an original contractor on the~~
24 ~~project;~~

25 ~~(2)] (1) the owner's name and address;~~

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[bracketed material] = delete

1 [~~3~~] (2) a description of the property or a
2 description sufficiently specific for actual identification of
3 the property; and

4 [~~4~~] (3) the name and address of any bonding
5 company or other surety that is providing either a payment or
6 performance bond for the project.

7 [~~D~~] E. The notice required to be given by the
8 claimant pursuant to the provisions of Subsection [~~B~~] C of this
9 section shall contain:

10 (1) a description of the property or a
11 description sufficiently specific for actual identification of
12 the property;

13 (2) the name, address and phone number [~~if~~
14 ~~any~~] of the claimant; and

15 (3) the name and address of the person with
16 whom the claimant contracted or to whom the claimant furnished
17 labor or materials, or both.

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

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~~[bracketed material] = delete~~

1 given under this subsection."

2 SECTION 2. EFFECTIVE DATE.--The effective date of the
3 provisions of this act is July 1, 2020.

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