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HOUSE BILL 343

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

Jane E. Powdrell-Culbert and Phelps Anderson

AN ACT

RELATING TO LIENS; REQUIRING THAT THE COUNTY CLERK OF THE COUNTY IN WHICH A LIEN OF A MECHANIC OR A MATERIALMAN IS RECORDED SHALL, WITHIN TEN BUSINESS DAYS OF RECORDATION, MAIL A COPY OF THE LIEN TO THE OWNER OF RECORD OF THE REAL PROPERTY ENCUMBERED BY THE LIEN; PROVIDING FOR A FEE.

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--FEES---

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

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1 of liens made by mechanics or materialmen who contract directly
2 with the original contractor. For purposes of this section,
3 "original contractor" means a contractor that contracts
4 directly with the owner.

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

14 (1) the owner or reputed owner of the property
15 upon which the improvements are being constructed; or

16 (2) the original contractor, if any.

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

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

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

2 (3) a description of the property or a
3 description sufficiently specific for actual identification of
4 the property; and

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

8 D. The notice required to be given by the claimant
9 pursuant to the provisions of Subsection B of this section
10 shall contain:

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

14 (2) the name, address and phone number, if
15 any, of the claimant; and

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

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

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1 Subsections C and D of this section apply to any notice given
2 under this subsection.

3 F. The county clerk of the county in which a lien
4 of a mechanic or a materialman is recorded shall, within ten
5 business days of recordation, mail a copy of the lien to the
6 owner of record of the real property encumbered by the lien.
7 The county clerk may charge the person recording the lien a fee
8 of not more than twenty-five dollars (\$25.00) for providing a
9 copy of the lien to the real property owner."

10 SECTION 2. EFFECTIVE DATE.--The effective date of the
11 provisions of this act is July 1, 2019.