

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 300

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

AN ACT

RELATING TO LIENS; CLARIFYING THE CONTENTS OF A LIEN CLAIM TO
ENSURE A CLAIM IS NOT INVALID, FRIVOLOUS OR CLEARLY EXCESSIVE.

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

Section 1. Section 48-2-6 NMSA 1978 (being Laws 1880,
Chapter 16, Section 6, as amended) is amended to read:

"48-2-6. TIME FOR FILING LIEN CLAIM--CONTENTS.--

A. Every original contractor, within one hundred
[and] twenty days after the completion of [his] a contract, and
every [person] claimant, except the original contractor,
desiring to claim a lien pursuant to Sections 48-2-1 through
[48-2-19] 48-2-17 NMSA 1978 [must] shall, within ninety days
after the completion of any building, improvement or structure
or after the completion of the alteration or repair [thereof]
of the building, improvement or structure or the performance of

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1 any labor in a mining claim, file for record with the county
2 clerk of the county in which ~~[such]~~ the property or some part
3 ~~[thereof]~~ of it is situated a claim containing a statement of
4 ~~[his]~~ demands, after deducting all just credits and offsets.

5 B. The claim shall ~~[state]~~ include:

6 (1) the name of the owner or reputed owner, if
7 known; ~~[and also]~~

8 (2) the name of the person by whom ~~[he]~~ the
9 claimant was employed or to whom ~~[he]~~ the claimant furnished
10 the materials; ~~[and shall include]~~

11 (3) a statement of the terms, time given and
12 the conditions of the contract; ~~[and also]~~

13 (4) a description of the property to be
14 charged with the lien, sufficient for identification ~~[The claim~~
15 ~~must be verified by the oath of himself or of some other~~
16 person];

17 (5) the name of the claimant and an address to
18 which payment, response or service of process is to be sent to
19 the claimant; and

20 (6) a sworn statement by the claimant under
21 penalty of perjury stating that the claim is:

22 (a) filed with the consent of the owner
23 or reputed owner;

24 (b) pursuant to a contract between the
25 owner or reputed owner and the claimant;

1 (c) pursuant to an equitable or
2 constructive lien; or

3 (d) pursuant to state or federal law.

4 C. A claimant shall mail within ten days by
5 registered or certified mail, return receipt requested, a copy
6 of the lien claim acknowledged by the county clerk and subject
7 to the claimant's sworn statement to:

8 (1) the owner or reputed owner; and

9 (2) the original contractor, if any."

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

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

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