

SENATE BILL NO. 114
INTRODUCED BY L. LARSON

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CONSTRUCTION LIEN LAWS; DEFINING "ORIGINAL CONTRACTOR"; PROVIDING THAT A PERSON WHO NEEDS TO BE LICENSED FOR SERVICES PERFORMED PURSUANT TO A REAL ESTATE IMPROVEMENT CONTRACT WHO IS NOT LICENSED MAY NOT FILE A NOTICE OF A RIGHT TO CLAIM A LIEN; REVISING CONSTRUCTION LIEN NOTICE REQUIREMENTS; AND AMENDING SECTIONS 71-3-522, 71-3-523, AND 71-3-531, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 71-3-522, MCA, is amended to read:

"71-3-522. Definitions. As used in this part, the following definitions apply:

(1) "Commencement of work" means the date of the first visible change in the physical condition of the real estate caused by the first person furnishing services or materials pursuant to a particular real estate improvement contract.

(2) "Construction lien" or "lien" means a lien against real estate arising under this part.

(3) (a) "Contract price" means the amount agreed upon by the contracting parties for performing services and furnishing materials covered by the contract, increased or diminished by:

(i) the price of change orders or extras;

(ii) any amounts attributable to altered specifications; or

(iii) a breach of contract, including but not limited to defects in workmanship or materials.

(b) If ~~no~~ a price is not agreed upon by the contracting parties, the contract price means the reasonable value of all services or materials covered by the contract.

(4) (a) "Contracting owner" means a person who owns an interest in real estate and who, personally or through an agent, enters into an express or implied contract for the improvement of the real estate.

(b) For the purpose of determining whether a person is a contracting owner, agency is presumed, in the absence of clear and convincing evidence to the contrary:

(i) between employer and employee;

(ii) between spouses;

(iii) between joint tenants; and

(iv) among tenants in common.

(5) "Original contractor" means a contractor who contracts directly with the contracting owner.

~~(5)~~(6) (a) "Real estate improvement contract" means an agreement to perform services, including labor, or to furnish materials for the purpose of producing a change in the physical condition of the real estate, including:

(i) alteration of the surface by excavation, fill, change in grade, or change in a shore, bank, or flood plain of a stream, swamp, or body of water;

(ii) construction or installation on, above, or below the surface of land;

(iii) demolition, repair, remodeling, or removal of a structure previously constructed or installed;

(iv) seeding, sodding, or other landscape operation;

(v) surface or subsurface testing, boring, or analysis; and

(vi) preparation of plans, surveys, or architectural or engineering plans or drawings for any change in the physical condition of the real estate, regardless of whether they are used to produce a change in the physical condition of the real estate.

(b) For the purpose of claiming a construction lien, a real estate improvement contract does not include:

(i) a contract for the mining or removal of timber, minerals, gravel, soil, sod, or things growing on the land or a similar contract in which the activity is primarily for the purpose of making the materials available for sale or use; or

(ii) a contract for the planting, cultivation, or harvesting of crops or for the preparation of the soil for the planting of crops."

Section 2. Section 71-3-523, MCA, is amended to read:

"71-3-523. Who may claim a construction lien -- limitation. (1) A Subject to the provisions of subsection (2), a person who furnishes services or materials pursuant to a real estate improvement contract may claim a construction lien, only to the extent provided in this part, to secure the payment of his the contract price.

(2) A person who is required to be licensed under Title 37 for services that the person provides pursuant to a real estate improvement contract and who is not licensed may not file a notice of a right to claim a lien under the provisions of this part."

Section 3. Section 71-3-531, MCA, is amended to read:

"71-3-531. Notice of right to claim lien required -- exceptions. (1) The following are not required to give notice of a right to claim a lien as required by this section:

(a) ~~a person~~ an original contractor who furnishes services or materials directly to the owner at the owner's request;

(b) a wage earner or laborer who performs personal labor services for a person furnishing any service or material pursuant to a real estate improvement contract;

(c) a person who furnishes services or materials pursuant to a real estate improvement contract that relates to a dwelling for five or more families; and

(d) a person who furnishes services or materials pursuant to a real estate improvement contract that relates to an improvement that is partly or wholly commercial in character.

(2) A person who may claim a construction lien pursuant to this part shall give notice of the right to claim a lien to the contracting owner in order to claim a lien.

(3) Except as provided in subsection (4), ~~this~~ the notice may not be given later than 20 days after the date on which the services or materials are first furnished to the contracting owner. If notice is not given within this period, a lien is enforceable only for the services or materials furnished within the 20-day period before the date on which notice is given.

(4) When payment for services or materials furnished pursuant to a real estate improvement contract, excluding a contract on an owner-occupied residence, is made by or on behalf of the contracting ~~party~~ owner from funds provided by a regulated lender and secured by an interest, lien, mortgage, or encumbrance for the purpose of paying the particular real estate improvement being liened, the notice required by this section may not be given later than 45 days after the date on which the services or materials are first furnished to the contracting owner. If notice is not given within this period, a lien is enforceable only for the services or materials furnished within the 45-day period before the date on which notice is given.

(5) The notice of the right to claim a lien must be sent to the contracting owner by certified mail or delivered personally to the owner. Notice by certified mail is effective on the date on which the notice is mailed. If the notice is delivered personally to the contracting owner, written acknowledgment of receipt must be obtained from the contracting owner. A person may not claim a construction lien unless the person has complied with this subsection.

(6) (a) A person who may claim a lien shall also file with the clerk and recorder of the county in which the improved real estate is located a copy of the notice of the right to claim a lien, in the form required by 71-3-532. This copy may not be filed later than 5 business days after the date on which the notice of the right to claim a lien is given to the contracting owner.

(b) The county clerk and recorder may allow the notice of the right to claim a lien to be electronically filed.

(c) The notice filed with the clerk and recorder for the purpose of public notice is effective for 1 year from the date of filing. The notice lapses upon the expiration of the 1-year period unless the person who may claim a lien files with the clerk and recorder a 1-year continuation of the notice prior to the date on which the notice lapses. The clerk and recorder may remove the notice from the public record when it lapses.

(d) The continuation statement must include:

- (i) the clerk and recorder's file number of the notice;
- (ii) the date on which the notice originally was filed; and
- (iii) the name of the person to whom the original notice was given.

(e) If a notice of a right to claim a lien is required under this section, a person may not claim a construction lien pursuant to this part unless there is an unexpired notice of right to claim a construction lien or an unexpired continuation notice filed with the clerk and recorder at the time that the person files the lien.

(7) A contracting owner shall provide in the construction contract with the original contractor:

- (a) a street address or legal description that is sufficient to identify the real estate being improved; and
- (b) the name and address of the contracting owner.

~~(7)(8)~~ At the request of any subcontractor or material supplier who may claim a lien through ~~a person~~ an original contractor providing services or materials to a contracting owner, the ~~person~~ original contractor shall furnish to the requestor within 5 business days:

- (a) a street address or legal description sufficient to identify the real estate being improved; and
- (b) the name and address of the contracting owner."

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