

AN ACT

*Codification
District of
Columbia
Official Code*

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend An Act to establish a code of law for the District of Columbia to clarify the scope of the right to obtain and enforce a mechanic's lien; to modify the requirements for filing a notice of intent to enforce a lien, including those for a commercial property; to establish greater notice requirements; to clarify the rights and limitations of subcontractors filing mechanic's liens; and to require the Mayor issue rules.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA,
That this act may be cited as the "Mechanic's Lien Amendment Act of 2005".

Sec. 2. Chapter 40 of An Act to establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1384; D.C. Official Code § 40-301.01 *et seq.*), is amended as follows:

(a) A new section 1238a is added to read as follows:

"Sec. 1238a. Definitions.

"For the purposes of this chapter, the term:

"(1) "Home improvement" means the repair, remodeling, alteration, conversion, or modernization of, or addition to, residential real property.

"(2) "Home improvement contract" means any written agreement, in a form that has been approved by the Department of Consumer and Regulatory Affairs, entered into between the same contractor and the same homeowner within any 12-month period for home improvement for a specific price. For the purposes of this section, the contract price for a home improvement contract shall be the contract price for all contracts during any 12-month period with respect to a home improvement.

"(3) "Land records" means the property records maintained by the Office of

the Recorder of Deeds of the District of Columbia.

“(4) “Notice amount” means a written notice of amounts due to a contractor, subcontractor, materialman, or supplier for a project.

“(5) “Notice of intent” means a notice of intention to enforce a lien against the owner’s property for a project.

“(6) “Owner” means an owner either in fee simple or a lesser estate, a lessee, or a prospective purchaser in possession under a contract of sale authorized to contract for a project.

“(7) “Project” means any work or materials provided by a contractor for the erection, construction, improvement, repair of, or addition to any real property in the District of Columbia at the direction of an owner, or an owner’s authorized agent, or the placing of any engine, machinery, or other thing therein or in connection therewith so as to become a fixture, though capable of being detached.”.

Amend
§ 40-301.01

(b) Section 1237 (D.C. Official Code § 40-301.01) is amended to read as follows:

“Sec. 1237. Mechanic’s lien.

“Every building erected, improved, added to, or repaired at the direction of the owner, or the owner’s authorized agent, and the land on which the same is erected, intended to be used in connection therewith, or necessary to the use and enjoyment thereof, to the extent of the right, title, and interest, at that time existing, of the owner, shall be subject to a lien in favor of the contractor who contracted with the owner, in the amount of the contract price or, in the absence of an express contract, the reasonable value of the project; provided, that to enforce the lien, the contractor claiming the lien shall record in the land records a notice of intent and comply with the other procedures prescribed in this chapter.”.

Amend
§ 40-301.02

(c) Section 1238 (D.C. Official Code § 40-301.02) is amended to read as follows:

“Sec. 1238. Notice.

“(a)(1) A contractor desiring to enforce the lien shall record in the land records a notice of intent that identifies the property subject to the lien and states the amount due or to become due to the contractor. The notice of intent shall be recorded within 90 days after the earlier of the completion or termination of the project. If the notice of intent is not recorded in the land records within 90 days after the earlier of the completion or termination of the project, the contractor’s lien shall terminate upon the expiration of the 90-day period. A notice of intent that does not comply with subsection (b) of this section shall be void.

“(2) Any contractor who records timely a notice of intent in accordance with subsection (a)(1) of this section, shall send to the owner, by certified mail to the current address (or if not available in the local public records, the last known address) of the owner, a copy of the notice of intent within 5 business days after the date of its recordation in the land records. If the certified mail is returned to the contractor

unclaimed or undelivered, the contractor shall post a copy of the recorded notice of intent at or on the affected real property in a location generally visible from some entry point to the real property.

“(b) The notice of intent shall include the following:

“(1) The name and address of the contractor or the contractor’s registered agent;

“(2) The name and address of the owner or the owner’s registered agent;

“(3) The name of the party against whose interest a lien is claimed and the amount claimed, less any credit for payments received up to and including the date of the notice of intent;

“(4) A description of the work done, including the dates that work was commenced and completed;

“(5) A description of the material furnished, including the dates that material was first and last delivered;

“(6) A legal description and, to the extent available, a street address of the real property;

“(7)(A) To the extent available under applicable law, if the contractor is an entity organized under the laws of the District of Columbia or is doing business in the District of Columbia within the meaning of applicable District law:

“(i) A copy of the contractor’s current license to do business in the District issued by the Department of Consumer and Regulatory Affairs; and

“(ii) A certificate of good standing from the Department of Consumer and Regulatory Affairs issued within 180 days prior to the date of the filing of the notice of intent; or

“(B) To the extent available under applicable law, if the contractor is an individual or an entity organized under laws other than those of the District of Columbia, and is not doing business in the District of Columbia within the meaning of applicable District laws but is required to be licensed by a governmental entity:

“(i) A copy of the contractor’s current license to do business issued by the government of the other jurisdiction; and

“(ii) A certificate evidencing the contractor’s good standing in its place of business or state of incorporation issued by the other jurisdiction;

“(8) If the project is provided under a home improvement contract, a copy of the home improvement contract; and

“(9)(A) A sworn, notarized statement affirming under penalty of perjury and upon personal knowledge that:

“(i) The contents of the notice of intent are true and correct to the best of the contractor’s information and belief; and

“(ii) The contractor has a right to recover the amount

Amend
§ 40-303.01

claimed.

“(B) If a notice of intent is executed by an authorized representative or counsel of the contractor, he or she shall attach evidence of his or her authority to execute the notice of intent on behalf the contractor and shall affirm that the notice of intent is true and correct to the best of the affiant’s knowledge and belief.”.

(d) Section 1239 (D.C. Official Code § 40-303.01) is amended to read as follows:

Amend
§ 40-303.02

“Sec. 1239. Subcontractor’s lien – generally.

“Any person directly employed by a contractor described by section 1237 (any such contractor also referred to herein as original contractor), whether the person is a subcontractor, materialman, or laborer, to furnish work or materials for the completion of the project, shall be entitled to the same rights and subject to the same obligations as the original contractor under this chapter, subject to the conditions and limitations set forth in this chapter.”.

(e) Section 1240 (D.C. Official Code § 40-303.02) is amended to read as follows:

“Sec. 1240. Conditions and limitations.

“(a) A lien in favor of parties so employed by the original contractor shall be subject to the terms and conditions of the contract, if any, between the owner and the original contractor except any terms and conditions therein that relate to the original contractor’s right to waive liens on behalf of the parties employed. The lien of the parties shall be limited to the amount due, or to become due, but unpaid to the original contractor and shall be satisfied, in whole or in part, out of that amount only. If the original contractor, by reason of any breach by the original contractor of his, her, or its agreement with the owner, shall be entitled to recover less than the amount agreed upon between them, the liens of the parties employed by the original contractor shall be enforceable only to the extent of the reduced amount.

“(b) If the owner, in good faith, has paid the original contractor in full for the project of the original contract (and the amount of the payment is not disputed by the original contractor), the parties employed by the original contractor shall not be entitled to a lien on the owner’s real property to recover any amounts due and owing for their work or materials provided for the erection, construction, improvement, repair of, or addition to the real property; provided, that if a subcontractor, materialman, or supplier notifies the owner in writing of amounts due to the subcontractor, materialman, or supplier (“notice amount”) while the owner has a balance due and owing or to become due and owing to the original contractor that is not less than the notice amount, the notice of the notice amount shall be prima facie evidence that any payment thereafter by the owner to the original contractor was not made in good faith. Any provision in a contract, purchase order, or similar document that prohibits a subcontractor, materialman, or supplier from contacting or communicating with an owner shall be void to the extent it prevents compliance with the notice requirements of this subsection.”.

Amend
§ 40-303.08

Amend
§ 40-303.13

(f) Section 1246 (D.C. Official Code § 40-303.08) is amended by striking the phrase “premises be sold” and inserting the phrase “owner’s interest in the premises be sold” in its place.

Amend
§ 40-303.14

(g) Section 1251 (D.C. Official Code § 40-303.13) is amended to read as follows:
“Sec. 1251. When suit to be commenced.

Amend
§ 40-303.16a

“(a)(1) Any person with a lien and who has recorded a valid notice of intent shall only enforce the lien by:

Amend
§ 40-303.20a

“(A) Filing suit under section 1246 to enforce the lien at anytime within 180 days after the date that the notice of intent is recorded in the land records; and

“(B) Recording, within 10 days of filing suit, a notice of pendency of action in accordance with section 556a(b) in the land records.

“(2) Failure to file suit within the 180-day period or to file timely a notice of pendency of action shall terminate the lien.”.

(h) Section 1252 (D.C. Official Code § 40-303.14) is amended by striking the word “ground” and inserting the word “land” in its place.

(i) Section 1254a (D.C. Official Code § 40-303.16a) is repealed.

(j) Section 1258a (D.C. Official Code § 40-303.20a) is amended to read as follows:

“(a) The Mayor shall promulgate rules to implement this chapter. The proposed rules shall be transmitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the rules within the 45-day review period, the rules shall be deemed disapproved.

“(b) The Mayor shall issue rules to implement the provisions of the Mechanic’s Lien Amendment Act of 2005, passed on 2nd reading on July 6, 2005 (Enrolled version of Bill 16-105), within 180 days of its effective date.”.

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December

ENROLLED ORIGINAL

24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

**Chairman
Council of the District of Columbia**

**Mayor
District of Columbia**