

HOUSE BILL NO. 752
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee for Courts of Justice
on _____)
(Patron Prior to Substitute—Delegate Runion)

A BILL to amend and reenact §§ 43-3, 43-4, and 43-20 of the Code of Virginia, relating to mechanics' liens; liens attaching to property; memorandum of lien.

Be it enacted by the General Assembly of Virginia:

1. That §§ 43-3, 43-4, and 43-20 of the Code of Virginia are amended and reenacted as follows:

§ 43-3. Lien for work done and materials furnished; waiver of right to file or enforce lien.

A. All persons performing labor or furnishing materials of the value of \$150 or more, including the reasonable rental or use value of equipment, for the construction, removal, repair or improvement of any building or structure permanently annexed to the freehold, and all persons performing any labor or furnishing materials of like value for the construction of any railroad, shall have a lien, if perfected as hereinafter provided, upon such building or structure, and so much land therewith as shall be necessary for the convenient use and enjoyment thereof, and upon such railroad and franchises for the work done and materials furnished, subject to the provisions of § 43-20. ~~But when the claim is for repairs or improvements to existing structures only, no lien shall attach to the property repaired or improved unless such repairs or improvements were ordered or authorized by the owner, or his agent.~~

If the building or structure being constructed, removed or repaired is part of a condominium as defined in § 55.1-1900 or under the Horizontal Property Act (§ 55.1-2000 et seq.), any person providing labor or furnishing material to one or more units or limited common elements within the condominium pursuant to a single contract may perfect a single lien encumbering the one or more units which are the subject of the contract or to which those limited common elements pertain, and for which payment has not been made. All persons providing labor or furnishing materials for the common elements pertaining to all the units may perfect a single lien encumbering all such condominium units. Whenever a lien has been or may be perfected encumbering two or more units, the proportionate amount of the indebtedness attributable to each unit shall be the ratio that the percentage liability for common expenses appertaining to that unit computed pursuant to subsection D of § 55.1-1964 bears to the total percentage liabilities for all units which are encumbered by the lien. The lien claimant shall release from a perfected lien an encumbered unit upon request of the unit owner as provided in subsection B of § 55.1-1908 upon receipt of payment equal to that portion of the indebtedness evidenced by the lien attributable to such unit determined as herein provided. In the event the lien is not

perfected, the lien claimant shall upon request of any interested party execute lien releases for one or more units upon receipt of payment equal to that portion of the indebtedness attributable to such unit or units determined as herein provided but no such release shall preclude the lien claimant from perfecting a single lien against the unreleased unit or units for the remaining portion of the indebtedness.

B. Any person providing labor or materials for site development improvements or for streets, stormwater facilities, sanitary sewers or water lines for the purpose of providing access or service to the individual lots in a development or condominium units as defined in § 55.1-1900 or under the Horizontal Property Act (§ 55.1-2000 et seq.) shall have a lien on each individual lot in the development for the fractional part of the total value of the work contracted for by the claimant in the subdivision as is obtained by using "one" as the numerator and the number of lots being developed as the denominator and in the case of a condominium on each individual unit in an amount computed by reference to the liability of that unit for common expenses appertaining to that condominium pursuant to subsection D of § 55.1-1964, provided, however, that no such lien shall be valid as to any lot or condominium unit unless the person providing such work shall, prior to the sale of such lot or condominium unit, file with the clerk of the circuit court of the jurisdiction in which such land lies a document setting forth a full disclosure of the nature of the lien which may be claimed, the total value of the work contracted for by the claimant in the subdivision and the portion thereof allocated to each lot as required herein, and a description of the development or condominium, and shall, thereafter, comply with all other applicable provisions of this chapter. "Site development improvements" means improvements which are provided for the development, such as project site grading, traffic signalization, and installation of electric, gas, cable, or other utilities, for the benefit of the development rather than for an individual lot. In determining the individual lots in the development for the purpose of allocating value of the work contracted for by the claimant, parcels of land within the development which are common area, or which are being developed for the benefit of the development as a whole and not for resale, shall not be included in the denominator of the disclosure statement.

Nothing contained herein shall be construed to prevent the filing of a mechanics' lien under the provisions of subsection A, or require the lien claimant to elect under which subsection the lien may be enforced.

C. Any right to file or enforce any mechanics' lien granted hereunder may be waived in whole or in part at any time by any person entitled to such lien, except that a general contractor, subcontractor, lower-tier subcontractor, or material supplier may not waive or diminish his lien rights in a contract in advance of furnishing any labor, services, or materials. A provision that waives or diminishes a general contractor's,

subcontractor's, lower-tier subcontractor's, or material supplier's lien rights in a contract executed prior to providing any labor, services, or materials is null and void. In the event that payments are made to the contractor without designating to which lot the payments are to be applied, the payments shall be deemed to apply to any lot previously sold by the developer such that the remaining lots continue to bear liability for an amount up to but not exceeding the amount set forth in any disclosure statement filed under the provisions of subsection B.

D. A person who performs labor without a valid license or certificate issued by the Board for Contractors pursuant to Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1, or without the proper class of license for the value of the work to be performed, when such a license or certificate is required by law for the labor performed shall not be entitled to a lien pursuant to this section.

§ 43-4. Perfection of lien by general contractor; recordation and notice.

A general contractor, or any other lien claimant under §§ 43-7 and 43-9, in order to perfect the lien given by § 43-3, provided such lien has not been barred by § 43-4.01 C, shall file a memorandum of lien at any time after the work is commenced or material furnished, but not later than ~~90~~ 120 days from the last day of the month in which he last performs labor or furnishes material, and in no event later than ~~90~~ 120 days from the time such building, structure, or railroad is completed, or the work thereon otherwise terminated. The memorandum shall be filed in the clerk's office in the county or city in which the building, structure or railroad, or any part thereof is located. The memorandum shall show the names and addresses of the owner of the property sought to be charged, and of the claimant of the lien, the amount and consideration of his claim, the time or times when the same is or will be due and payable, and the date from which interest is claimed, verified by the oath of the claimant, or his agent, including a statement declaring his intention to claim the benefit of the lien, and giving a brief description of the property on which he claims a lien. The memorandum shall also contain the claimant's license or certificate number issued by the Board for Contractors pursuant to Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1, if any, and the date such license or certificate was issued and the date such license or certificate expires. It shall be the duty of the clerk in whose office the memorandum is filed to record and index the same as provided in § 43-4.1, in the name of the claimant of the lien and of the owner of the property. From the time of such recording and indexing all persons shall be deemed to have notice thereof. A lien claimant who is a general contractor, and not lien claimants under §§ 43-7 and 43-9, also shall file along with the memorandum of lien, a certification of mailing of a copy of the memorandum of lien on the owner of the property at the owner's last known address. The cost of recording the memorandum shall be taxed against the person found liable in any judgment or decree enforcing such lien. The lien

claimant may file any number of memoranda ~~but no memorandum filed pursuant to this chapter shall include sums due for labor or materials furnished more than 150 days prior to the last day on which labor was performed or material furnished to the job preceding the filing of such memorandum. However, any~~ Any memorandum may include (i) sums withheld as retainages with respect to labor performed or materials furnished at any time before it is filed, but not to exceed 10 percent of the total contract price and (ii) sums which are not yet due because the party with whom the lien claimant contracted has not yet received such funds from the owner or another third party. The time limitations set forth herein shall apply to all labor performed or materials furnished on construction commenced on or after July 1, 1980. An inaccuracy in the memorandum as to the claimant's license or certificate number, if any, the date such license or certificate was issued, or the date such license or certificate expires shall not bar a person from perfecting a lien if the claimant can otherwise be reasonably identified in the records of the Board for Contractors.

§ 43-20. Extent of lien where owner has less than fee in land.

~~Subject to the provisions of § 43-3, if the person who shall cause a building or structure to be erected or repaired owns less than a fee simple estate in the land, then only his interest therein shall be subject to liens created under this chapter.~~ When the vendee under a contract for the sale of real estate causes a building or structure to be erected or repaired on the land which is the subject of the contract and the owner has actual knowledge of such erection or repairs, the interest of the owner in the land shall be subject to liens created under this chapter; and for the purposes of § 43-21, the interest of such an owner in the land, to the extent of the unpaid purchase price, shall be deemed to be a recorded purchase money deed of trust lien created at the time the contract of sale was fully executed. As used in this section, "a contract for the sale of real estate" shall not include a lease of real estate containing an option to purchase the leased real estate or an option to purchase real estate unless the option is enforceable against the optionee.