

**TENTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE**

***PUBLIC LAW NO. 10-65***  
**H.B. NO. 10-254, HS1, SD1**

**THIRD SPECIAL SESSION, 1996**

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**AN ACT**

To provide for mechanics' liens to aid construction contractors and suppliers in securing payment of debts.

**BE IT ENACTED BY THE TENTH NORTHERN MARIANAS COMMONWEALTH LEGISLATURE:**

Section 1. Findings. The Legislature finds that there is no mechanics' lien law in effect in the Commonwealth, and that mechanics' lien laws can be found in Guam and in most if not all of the fifty states. The Legislature finds that mechanics' liens help ensure the payment to construction contractors and material suppliers of monies due in an expeditious and cost effective fashion. The Legislature finds that because the Commonwealth has no mechanics' lien law, collection actions brought by contractors and suppliers are subject to the rules regulating all collection actions, the time it takes to recover is extensive, recoveries are often very limited, and that the end result is that construction costs are increased for everyone in the Commonwealth. The Legislature finds that in the absence of a mechanics' lien law, qualified contractors and suppliers are discouraged from doing business in the Commonwealth and participating in the development of Commonwealth projects, thereby increasing the cost of construction in the Commonwealth because competition is limited.

Section 2. Definitions. As used in this part, unless a different meaning clearly appears from the context:

(a) "Furnishing of materials" includes supplying of: materials incorporated in the improvement or substantially consumed in construction operations or specially fabricated for incorporation in the improvement; building materials used during construction but not remaining in the improvement, diminished by the salvage value of the materials; transportation to bring the materials to the site of the improvement; tools, appliances, or machinery (but not including hand tools), used during the construction but not in excess of the reasonable rental value for the period of actual use.

The delivery of materials to the site of the improvement or the delivery of materials other than to the site of the improvement, but upon the written statement

by the general contractor of the contractor's agents that the materials are for a particular improvement, shall be prima facie evidence of incorporation of the materials in the improvement.

(b) "General contractor" means a person who enters into a contract with the owner for the improvement of real property.

(c) "Improvement" includes the construction, repair, alteration, of or addition to any building, structure, road, utility, railroad, or other undertaking or appurtenances thereto, and includes any building, construction, erection, demolition, excavation, grading, paving, filling in, landscaping, seeding, sodding, and planting, or any part thereof existing, built, erected, placed, made, or done on real property, or removed therefrom, for its benefit.

(d) "Labor" includes professional services rendered in furnishing the plans for or in the supervision of the improvement.

(e) "Lien" means the lien provided in Section 3.

(f) "Owner" means the owner of the real property or of any interest therein who enters into a contract for the improvement thereof and who may be the owner in fee of the real property or of a lesser estate therein, the lessee for a term of years therein, the person having any right, title, or interest in the real property which may be sold under legal process, or a vendee in possession under a contract for the purchase of the real property or of any such right, title, or interest therein.

(g) "Person" includes natural persons, partnerships, corporations, firms, unincorporated associations, joint ventures, and any other party recognized at law as a person.

(h) "Visible commencement of operations" means the first actual work of improvement as part of a continuous operation, or the first delivery to the site of materials to be used as part of a continuous operation in the improvement, of such manifest and substantial character as to notify interested persons that the real property is being improved or is about to be improved.

(i) "Licensed construction contractor" means any person who has been issued a business license by the CNMI government to carry out construction or other improvements of real property.

Section 3. Mechanics' Liens. Any licensed construction contractor, or supplier of construction material for the improvement of real property, shall have a lien upon the improvement, as well as upon the interest of the owner of the improvement in the real property

upon which the same is situated, or for the benefit of which the same was constructed, for the price agreed to be paid. Individual laborers shall have no right to a mechanics' lien except through their employer in cases in which the employer is a licensed construction contractor.

Section 4. Filing Claims.

(a) Notice. Any licensed construction contractor or construction material supplier claiming a lien shall apply therefore to the Superior Court. Such "Application For a Lien" shall be accompanied by a written "Notice Of Lien" setting forth the alleged facts by virtue of which the claimant claims a lien, and shall be accompanied by any filing fee required by the court. A copy of the Application and Notice shall be served in the manner prescribed by law for service of summons upon the owner of the property and any person with an interest therein and upon the party or parties who contracted for the improvement. The Application shall set forth the amount of the claim, the work or material furnished, a description of the property sufficient to identify the same, the return date to the court, and any matter necessary for a clear understanding of the claim.

(b) Return of Notice. The Application for a Lien and Notice of Lien shall be returnable not less than three nor more than ten days after service. On the return day, a hearing shall be held by the court to determine whether probable cause exists to permit the lien to attach to the property. Any person to whom notice is required to be given shall be permitted to offer testimony and documentary evidence on the issue of whether probable cause exists to permit the lien to attach. If the person who contracted for the improvement from which the requested lien arises claims a set-off against the lienor, or if any person to whom notice is required to be given otherwise disputes the amount of the requested lien, the court shall hear and receive all admissible evidence offered and shall only permit the attachment of a lien in the net amount which the court determines is the reasonable probable outcome of any such dispute. The return day hearing may be continued at the order of the court so that the entire controversy need not be determined on the originally scheduled return day, however the court shall handle all actions filed under this Act on an expedited schedule. The lien shall not attach to the property until the court finds probable cause exists and so orders. No such order shall be entered before the Application and Notice have been served on the party contracting for the improvement and that party has been given an opportunity to appear at the hearing.

(c) Time for filing. The Application for a Lien and Notice of Lien shall be filed not later than sixty (60) days after the date of completing of the improvement against

which it is filed. The term “date of completion” as used in this section means the time when the owner, general contractor or material supplier for the improvement completes the delivery of a notice upon all other parties attesting that the contracted work on the improvement has been completed or has been abandoned due to non-payment from the owner; provided that notice of completion shall not be effective for any purpose unless prior to the notice there has been substantial completion of the improvement, delivery of the materials, or the improvement has been actually abandoned. “Substantial completion” with regard to material suppliers means that all materials contracted for have been delivered to the job site. The delivery of the notice of completion shall not be construed as an admission by any party that the improvement has been satisfactorily completed. If a valid notice of completion is not delivered within one year after the actual completion or abandonment of the improvement the “date of completion” shall be deemed to be one year after actual completion or abandonment.

(d) Joint owners. If the fee title or leasehold interest to the land involved is held in joint or common ownership or as an estate by the entirety, service upon one of the owners or lessees of the Application for a Lien, Notice of Lien, and Notice of Completion in accordance with this section shall be deemed service upon all of the owners and lessees. Likewise, if the parties who contracted for the improvement, if other than the owner of fee title or lessees to the property involved, hold their interest in the premises in joint or common ownership, or as an estate by the entirety, service upon one of the parties of the Application and the Notices in accordance with this section shall be deemed service upon all of the parties.

Section 5. Record in Superior Court. The clerk of the Superior Court shall keep a book called “Notice of Completion Record” in which shall be entered a memorandum of each Notice of Completion filed and the date of filing, arranged alphabetically by the names of the owners. There shall also be kept a “Mechanics’ Lien Record” in which a memorandum of each Application for a Lien and Notice of Lien filed shall be entered, arranged alphabetically by the names of the claimants and showing the amount of the lien or claim, the date of filing the Application and Notice, the date of the entry of the Order Directing Lien To Attach, the date of withdrawal, discharge or cancellation of the Application and Notice or of a lien which has been directed to attach, and any other matters deemed necessary.

Section 6. Action by Court on Lien. Upon finding probable cause for the lien to attach, the court shall set for trial the claim within ninety (90) days unless for good cause shown the matter should be delayed. Where the trial on the merits cannot be had within the

ninety (90) day period from the attachment of the lien, the court shall require the party seeking delay to post a cash bond sufficient to either satisfy the lien if the party seeking delay is the owner, or cover lost rental income if the lien should prevent use of the property and the party seeking delay is the lien claimant, plus anticipated attorneys fees. Trial shall be to the court, with no right to a jury trial for any party. Any party aggrieved by a final judgment entered pursuant to this Act may appeal the judgment within thirty days. The appeal shall proceed on the normal appellate calendar. The party prevailing on the appeal shall be awarded their reasonable attorneys fees.

Section 7. Priority and Satisfaction. The lien shall relate to and take effect from the time of the visible commencement of operations for the improvement; it shall rank equally in priority subject to the provisos hereinafter contained with all other mechanics' liens and shall have priority over all other liens of any nature, except liens in favor of any branch of the government and mortgages, liens or judgments recorded or filed prior to the time of the visible commencement of operation; and provided further that where a mortgage is recorded prior to the date of completion, and all or a portion of the money advanced under and secured by the mortgage is thereafter used for the purpose of paying for the improvement, the mortgagee shall be entitled, to the extent of the payments, to priority over mechanics' liens but no such priority shall be allowed unless the mortgage recites that the purpose of the mortgage is to secure the moneys advance for the purpose of paying for the improvement in whole or in part. Payments made in good faith to the general contractor or material suppliers for such purposes shall be presumed to have been used for the purpose of paying for the improvement. Whenever the lien or claim of lien herein provided is satisfied, a written notice thereof shall, at the expense of the lienor, be filed with the clerk of court, which all be noted in the Mechanics' Lien Record.

Section 8. Enforcement. After demand and refusal of the amount due or upon neglect to pay same upon demand, the lien may be enforced by action filed in the court of the Senatorial District in which the property is situated. The demand may be included in the Application and Notice and when so included it shall not be necessary to make separate demand upon any other person. The lien claimant, in addition to setting forth a claim in the nature of assumpsit, may pray for any incidental relief according to the usual practice of courts of law and equity and according to this section in enlargement thereof. The owner or the owner's assigns on whose property the lien has attached may file a third party action against a licensed contractor whom the owner has paid for improvements, and counter-claim against any lien claimant. All proceedings concerning the same improvement shall, unless good reason

otherwise appears, be consolidated for trial and the court may order publication of notice of the pendency of the action. Any person having or claiming an interest in any such proceeding or in the property, including other claimants, lienors, encumbrances, sureties and indemnitors may be joined as parties, may be interpleaded or may be permitted to intervene, under such orders as the court may enter. Interlocutory and final decrees for the foreclosure of the liens, for deficiency judgments, and relief against the parties liable therefor, and fixing the priority of mechanics liens as a group and other parties having liens or mortgages against, or interests in, the property shall be made and entered as near as may be done in accordance with the practice on foreclosure of mortgages as provided by law in the Commonwealth of the Northern Mariana Islands. If the property or proceeds realized upon the foreclosure sale are insufficient to satisfy all mechanics' liens and mortgages filed against the same, the property or proceeds shall be divided pro rata among the liens according to the principal amounts of the liens, without regard to the order or priority in which the respective Applications and Notices have been filed or the respective actions or interventions commenced.

Section 9. Judicial Remedies. The court having jurisdiction of the action to foreclosure the lien shall have all of the powers pertaining to courts of equity, and in addition may:

(a) direct the issuance of a writ of attachment or execution upon the motion of any party against the property of any other party provided that the writ shall only issue where the claim upon which the motion therefor is based is upon a contract, express or implied, between the parties.

(b) allow any fee or fees for legal services rendered by the attorneys for any of the parties, and apportion the same as costs for payment by and between the parties or any of them, all as to the court seems equitable in the light of the services performed and benefits derived therefrom by the parties respectively.

(c) eject all tenants or prevent tenants from commencing their tenancy where the owner is a commercial enterprise, until the lien is satisfied.

(d) assign all rent from tenants where the owner is a commercial enterprise to the lien claimants, or to an escrow for final distribution upon completion of the action.

Section 10. Limitations. No mechanics' liens shall be permitted upon public works or improvements owned or operated by the Commonwealth government. Ejection shall not be a remedy against a home owner where a lien is attached to the principal place of residence, except as a remedy of last resort.

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Section 11. Severability. If any provision of this Act or the application of any such provision to any person or circumstance should be held invalid by a court of competent jurisdiction, the remainder of this Act or the application of its provisions to persons or circumstances other than those to which it is held invalid shall not be affected thereby.

Section 12. Savings Clause. This Act and any repealer contained herein shall not be construed as affecting any existing right acquired under contract or acquired under statutes repealed or under any rule, regulation or order adopted under the statutes. Repealers contained in this Act shall not affect any proceeding instituted under or pursuant to prior law. The enactment of this Act shall not have the effect of terminating, or in any way modifying, any liability, civil or criminal, which shall already be in existence at the date this Act becomes effective.

Section 13. Effective Date. This Act shall take effect upon its approval by the Governor or upon its becoming law without such approval.

**CERTIFIED BY:**

**ATTESTED BY:**

/s/ Diego T. Benavente  
DIEGO T. BENAVENTE  
Speaker  
House of Representatives

/s/ Evelyn C. Fleming  
EVELYN C. FLEMING  
House Clerk

Approved this 1st day of August, 1997

/s/ Jesus C. Borja  
~~FROILAN C. TENORIO~~ JESUS C. BORJA  
Actg. Governor  
Commonwealth of the Northern Mariana Islands