

1 HB668
2 150571-2
3 By Representative Poole
4 RFD: Judiciary
5 First Read: 23-APR-13

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8 SYNOPSIS: Under existing law, a lien may be declared
9 by certain persons who perform work on certain real
10 or personal property.

11 This bill would provide for the priority of
12 future advances made pursuant to a future advance
13 mortgage over the liens of persons who perform work
14 on real property when the mortgage is recorded
15 prior to a notice of commencement.

16 This bill would provide that a mechanics' or
17 materialman's lien would only apply to real
18 property if it is recorded in the county where the
19 property is situated and preceded by a notice of
20 commencement.

21 This bill would provide the procedure for
22 the termination of a notice of commencement by a
23 contractor.

24
25 A BILL
26 TO BE ENTITLED
27 AN ACT

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2 To amend Section 35-11-211, Code of Alabama 1975,
3 relating to liens; to provide for the priority advances made
4 pursuant to a future advance mortgage over liens created under
5 this section; and to add Sections 35-11-210.01 and
6 35-11-210.02 to the Code of Alabama 1975, to require a notice
7 of commencement be recorded in the county where the real
8 property is situated as a condition to establishing priority
9 of a mechanics' or materialmen's lien; and to provide the
10 procedure for the termination of a notice of commencement by a
11 contractor.

12 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

13 Section 1. Section 35-11-211, Code of Alabama 1975,
14 are amended to read as follows:

15 "§35-11-211.

16 "(a) ~~Such~~ A lien as to the land and buildings or
17 improvements thereon, shall have priority over all other
18 liens, mortgages or incumbrances created subsequent to the
19 recording of a notice of commencement of work on the building
20 or improvement, and in no event shall the lien have priority
21 over future advances secured by a mortgage recorded prior to
22 the notice of commencement. ~~Except to the extent provided in~~
23 ~~subsection (b) below, all liens, mortgages and incumbrances~~
24 ~~(in this section, "mortgages and other liens") created prior~~
25 ~~to the commencement of such work shall have priority over all~~
26 ~~liens for such work.~~

1 "(b) Enforcement of ~~such the~~ lien of a mechanic,
2 materialman or other person created by section 35-11-210 (in
3 this section, "mechanic or materialman lien") shall not affect
4 any prior mortgage or other lien recorded prior to the notice
5 of commencement, and the purchaser in connection with the
6 enforcement of such mechanic or materialman lien shall take
7 the property subject to ~~such the~~ prior mortgages and other
8 liens of which the purchaser has actual or constructive notice
9 on the date of the purchase.

10 "(c) Foreclosure of any prior mortgage or other lien
11 recorded prior to the notice of commencement shall terminate
12 and extinguish ~~such the~~ subordinate mechanic or materialman
13 lien or other interest as to the land and the buildings and
14 improvements thereon, whether or not at the time of ~~such the~~
15 foreclosure ~~such the~~ lien or interest has been perfected in
16 accordance with the provisions of this division, and the
17 mechanic, materialman or other person thereafter shall have,
18 to the extent of his lawful claim under this division, the
19 statutory right of redemption afforded under applicable
20 redemption laws to a judgment creditor whose judgment was
21 recorded on the date ~~such work was commenced~~ that the notice
22 of commencement was recorded and ~~such the~~ rights in any excess
23 proceeds received by the foreclosing lienholder as provided by
24 law.

25 "~~(b)~~ (d) As to liens, mortgages or incumbrances
26 created prior to the recording of the notice of commencement
27 of the work, the lien for ~~such the~~ work shall have priority

1 only against the building or improvement, the product of ~~such~~
2 the work which is an entirety, separable from the land,
3 building or improvement subject of the prior lien, mortgage or
4 incumbrance, and which can be removed therefrom without
5 impairing the value or security of any prior lien, mortgage or
6 incumbrance; and the person entitled to such lien may have it
7 enforced, at any time prior to the foreclosure of ~~such~~ the
8 prior lien, mortgage or incumbrance, by a sale of such
9 buildings or improvement under the provisions of this division
10 and the purchaser may, within a reasonable time thereafter,
11 remove the same. If ~~such~~ the mechanic or materialman lien for
12 such work is not enforced prior to ~~such~~ the foreclosure, the
13 mechanic or materialman lien shall be terminated and
14 extinguished and after such foreclosure, the mechanic,
15 materialman or other person who held such mechanic or
16 materialman lien thereafter shall have the statutory right of
17 redemption and such rights in excess proceeds to the extent
18 provided in subsection (a) above.

19 ~~"(c)~~ (e) The provisions of this section clarify and
20 confirm the intent of the legislature regarding existing law
21 governing the matters contained in this section. The
22 provisions of this section shall apply to all mortgages and
23 other liens and to all liens of a mechanic, materialman or
24 other person created by ~~section~~ Section 35-11-210 existing on
25 ~~February 23, 1990~~ the date this act becomes law and those
26 created or arising after ~~February 23, 1990~~ this act becomes
27 law."

1 Section 2. Sections 35-11-210.01 and 35-11-210.02
2 are added to Division 8 of Article 5, Chapter 11, of Title 35
3 of the Code of Alabama 1975, to read as follows:

4 §35-11-210.01.

5 (a) A mechanics' or materialmen's lien shall have
6 priority only to the interests, liens, or encumbrances
7 affecting the real property that are created after the notice
8 of commencement is recorded in the real property records in
9 the county where the real property is situated.

10 (b) Except as provided in subsection (g), a notice
11 of commencement must be signed by the property owner or tenant
12 contracting for the work to be performed and the contractor or
13 claimant, be denominated "notice of commencement," and state
14 all of the following:

15 (1) The real estate being or intended to be improved
16 or directly benefitted, with a description of the real estate
17 sufficient to identify it.

18 (2) The name and address and interest in the real
19 estate of the contracting owner or tenant, and the name and
20 address of the fee simple titleholder, if other than the
21 contracting owner or tenant.

22 (3) The name and address of the contractor or
23 claimant.

24 (4) A statement that if, after the notice of
25 commencement is recorded, a construction lien is recorded as
26 to an improvement covered by the notice of commencement, the

1 lien has priority from the time the notice of commencement is
2 recorded.

3 (c) A notice of commencement may state a duration of
4 any period, but, if the duration stated is less than six
5 months after the recording, the duration of the notice is six
6 months. If no duration is stated, the duration of the notice
7 is three years after the recording, but if the notice affects
8 residential real estate, the duration of the notice is one
9 year after the recording.

10 (d) The notice of commencement may state that it is
11 limited to a particular improvement, or portion thereof, on
12 the real estate. However, the limitation is not effective
13 unless the particular improvement, or portion thereof, to
14 which it applies is stated with sufficient specificity that a
15 claimant, by reasonable inquiry, can determine whether the
16 improvement is covered by the notice of commencement.

17 (e) A contracting owner or tenant and the contractor
18 or claimant may extend the duration of a notice of
19 commencement by signing and recording before it lapses a
20 continuation statement that refers to the location in the
21 record and date of recording of the notice of commencement and
22 states the date to which duration of the notice is extended.

23 (f) For the purposes of this section and Section
24 35-11-210.02, the term claimant refers to any person or entity
25 entitled to claim a mechanics' or materialmen's lien.

26 (g) In the absence of a notice of commencement
27 executed pursuant to subsection (b), a claimant may sign and

1 record a notice of commencement denominated "notice of
2 commencement, claimant recording" stating all of the
3 following:

4 (1) The real estate being or intended to be improved
5 or directly benefitted, with a description of the real estate
6 sufficient to identify it.

7 (2) The name and address of the contracting owner or
8 tenant against whom the notice of commencement is effective.

9 (3) The name and address of the claimant recording
10 the notice of commencement.

11 (4) The name and address of the person with whom the
12 claimant contracted with respect to the improvement.

13 (5) A brief description of the services or materials
14 provided, or to be provided, by the claimant for the
15 improvement.

16 (6) That if, after the notice of commencement is
17 recorded, a construction lien is recorded as to an improvement
18 covered by the notice, the lien has priority from the time the
19 notice of commencement is recorded.

20 (h) A claimant recording a notice of commencement
21 shall send a copy of it to the contracting owner or tenant and
22 the fee simple titleholder, if other than the contracting
23 owner or tenant, no later than the day it is recorded. The
24 claimant is liable to the contracting owner, tenant, or fee
25 simple titleholder, for any damages caused by failure to
26 comply with this subsection.

1 (i) Notwithstanding anything to the contrary in
2 this section, a "notice of commencement, claimant recording"
3 recorded by a claimant shall have a duration of one year after
4 the date of recording unless a shorter period is stated
5 therein.

6 (j) Unless a notice of commencement is limited to a
7 particular improvement contract or project, or portion
8 thereof, it covers all improvements made on the real estate
9 described in the notice whether or not they were contemplated
10 by the person recording the notice at the time of recording.

11 (k) A notice of commencement recorded by a claimant
12 shall describe all of the contracting owner's or tenant's real
13 estate being improved or directly benefitted.

14 §35-11-210.02.

15 (a) A contractor or claimant may terminate a notice
16 of commencement as to all or any identified portion of the
17 real estate subject to the notice of commencement by recording
18 a notice of termination denominated "termination of notice of
19 commencement" executed by the contractor or claimant,
20 acknowledged in the same manner as conveyances, and containing
21 all of the following:

22 (1) The information required for a notice of
23 commencement.

24 (2) A reference to the recorded notice of
25 commencement by its location in the record and a statement of
26 its date of recording.

1 (3) A statement of the date as of which the notice
2 of commencement is terminated, which may not be earlier than
3 30 days after the notice of termination is recorded.

4 (4) If the notice of termination is intended to
5 apply only to a portion of the real estate subject to the
6 notice of commencement, a statement of that fact and a
7 description of the portion of the real estate to which the
8 notice of termination applies.

9 (b) A contracting owner or tenant may terminate a
10 notice of commencement as to all or any identified portion of
11 the real estate subject to the notice of commencement by all
12 of the following:

13 (1) Recording a notice of termination denominated
14 "termination of notice of commencement" and containing:

15 a. The information required for a notice of
16 commencement.

17 b. A reference to the recorded notice of
18 commencement by its location in the record and a statement of
19 its date of recording.

20 c. A statement of the date as of which the notice of
21 commencement is terminated, which may not be earlier than 30
22 days after the notice of termination is recorded.

23 d. If the notice of termination is intended to apply
24 only to a portion of the real estate subject to the notice of
25 commencement, a statement of that fact and a description of
26 the portion of the real estate to which the notice of
27 termination applies.

1 (2) Sending, at least 21 days before the effective
2 date of the notice of termination, a copy of the notice of
3 termination, showing the date it was recorded, to all
4 claimants who have made a written request that the owner
5 notify them of the recording of a notice of termination.

6 (3) Publishing a notice of the recording of the
7 notice of termination, which notice must comply with this
8 subsection and be published at least once a week for three
9 consecutive weeks in a newspaper having general circulation in
10 the county where the recording occurs, the last publication of
11 which must be at least five days before the stated termination
12 date.

13 (4) Recording an affidavit stating that the notice
14 of the recorded notice of termination has been sent to all
15 claimants who have requested notice pursuant to subdivision
16 (2) and that publication has been made, stating the name of
17 the newspaper and dates of publication and accompanied by a
18 copy of the published notice.

19 (c) The published notice of the recording of the
20 notice of termination must contain the information required
21 for a notice of termination under subsection (b), a statement
22 of the date on which the notice of termination was recorded,
23 and a statement that all construction lien claims for which a
24 notice of lien is not recorded by the termination date may be
25 defeated by a transfer of the real estate.

26 (d) A purchaser, judgment creditor, mortgagor, or
27 other person having any interest in or lien against the real

1 estate may rely on a "termination of notice of commencement"
2 recorded by the contractor pursuant to subsection (a) or an
3 affidavit complying with subdivision (4) of subsection (b)
4 without a duty to inquire as to its accuracy, and is not
5 prejudiced by its inaccuracy.

6 Section 3. This act shall become effective
7 immediately following its passage and approval by the
8 Governor, or its otherwise becoming law.