

2010 -- S 2230

LC00657

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2010

A N A C T

RELATING TO PROPERTY - MECHANICS' LIENS

Introduced By: Senator Michael J. McCaffrey

Date Introduced: February 09, 2010

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 34-28-4.1 and 34-38-9 of the General Laws in Chapter 34-28  
2 entitled "Mechanics' Liens" are hereby amended to read as follows:

3 **34-28-4.1. Contractors.** -- Except for emergency work, no ~~No~~ person contracting  
4 directly with either the owner of the land, lessee, or tenant of the land, or owner of less than the  
5 fee simple, other than material suppliers, as those terms are referred to in sections 1, 2 and 3  
6 [sections 34-28-1, 34-28-2, 34-28-3]of this chapter, shall be entitled to claim a lien under this  
7 chapter unless that person shall have given the following notice to the owner, lessee or tenant, or  
8 owner of less than the fee simple in writing, by certified mail, return receipt requested, ~~within~~ at  
9 least ten (10) business days ~~of~~ prior to commencing work or delivery of materials for  
10 construction, erection, alteration or repair as set forth in this chapter. The failure of such person  
11 contracting directly to give such notice shall not affect the right of any other person performing  
12 work or furnishing materials of claiming a lien pursuant to this chapter, provided that the  
13 procedures set forth in this chapter are followed. However, such person failing to file such notice  
14 shall indemnify and hold harmless any owner, lessee or tenant, or owner of less than the fee  
15 simple from any payment or costs incurred on account of any liens claims by those not in privity  
16 with them, unless such owner, lessee or tenant, or owner of less than the fee simple shall not have  
17 paid such person.

18 NOTICE OF POSSIBLE MECHANIC'S LIEN

19 To: Insert name of owner, lessee or tenant, or owner of less than the fee simple.

1           The undersigned is about to perform work and/or furnish materials for the construction,  
2 erection, alterations or repair upon the land at (INSERT ADDRESS) under contract with you.  
3 This is a notice that the undersigned and any other persons who provide labor and materials for  
4 the improvement under contract with the undersigned may file a mechanic's lien upon the land in  
5 the event of nonpayment to them. It is your responsibility to assure yourself that those other  
6 persons under contract with the undersigned receive payment for their work performed and  
7 materials furnished for the construction, erection, alteration or repair upon the land.

8           **34-28-9. Effective period of notice.** – (a) A notice of lien recorded in the land evidence  
9 records pursuant to section 34-28-4 shall be effective for two hundred (200) days prior to the date  
10 of filing. A notice of lien shall be effective as to any retainage earned but not paid, for work  
11 furnished pursuant to section 34-28-1 et. seq., and said notice of lien shall be effective from  
12 commencement of said work. Retainage is a percentage of the total contract amount that is  
13 withheld by the owner from the general contractor and by the general contractor from the  
14 subcontractor until the entire job is completed and the project is accepted by the owner and by the  
15 general contractor, at which time the retainage due is paid.

16           (b) The limitation period to file a notice of intention to claim retainage shall be within  
17 two (2) years after the doing of such work or the furnishing of such materials.

18           SECTION 2. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
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1           This act would require contractors to give notice to the owner, lessee or tenant, or owner  
2 of less than the fee simple in writing, by certified mail return receipt requested, at least ten (10)  
3 business days prior to commencing work or delivery of materials for construction, erection,  
4 alteration or repair, to claim a mechanics' lien. The act would also provide an exception to the  
5 notice requirements herein for emergency work, and set forth a time period for filing a notice of  
6 intention to claim retainage.

7           This act would take effect upon passage.

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