

1 STATE OF OKLAHOMA

2 1st Session of the 54th Legislature (2013)

3 HOUSE BILL 2237

By: Dorman

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6 AS INTRODUCED

7 An Act relating to liens; amending 42 O.S. 2011,
8 Sections 142, 142.6, 143 and 150, which relate to
9 mechanics' and materialmen's liens; modifying
10 requirements for filing statement; decreasing time
11 for filing statement; correcting statute citations;
specifying time for filing statement; removing pre-
lien notice exceptions; adding requirement for filing
statement; increasing time for filing statement; and
providing an effective date.

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15 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

16 SECTION 1. AMENDATORY 42 O.S. 2011, Section 142, is
17 amended to read as follows:

18 Section 142. Any person claiming a lien as aforesaid shall file
19 in the office of the county clerk of the county in which the land is
20 situated a statement setting forth the cause for filing the lien,
21 the amount claimed and the items thereof as nearly as practicable,
22 the names of the owner, the contractor, the claimant, and a legal
23 description of the property subject to the lien, verified by
24 affidavit. Such statement shall be filed within ~~four (4) months~~

1 ninety (90) days after the date upon which material or equipment
2 used on said land was last furnished or labor last performed under
3 contract as aforesaid; and if the claim be for the planting of any
4 ~~trees~~ tree, ~~vines~~ vine, ~~plants~~ plant, or hedge, such statement shall
5 be filed within ~~four (4) months~~ ninety (90) days from such planting.
6 Immediately upon the receipt of such statement the county clerk
7 shall enter a record of the same against the tract index and in a
8 book kept for that purpose, to be called the mechanics' lien
9 journal, which shall be ruled off into separate columns, with
10 headings as follows: "When filed", "Name of owner", "Name of
11 claimant", "Amount claimed", "Legal description of property", and
12 "Remarks", and the clerk shall make the proper entry in each column.

13 SECTION 2. AMENDATORY 42 O.S. 2011, Section 142.6, is
14 amended to read as follows:

15 Section 142.6 A. For the purposes of this section:

16 1. "Claimant" means a person, other than an original
17 contractor, that is entitled or may be entitled to a lien pursuant
18 to Section ~~141~~ 143 of this title; and

19 2. "Person" means any individual, corporation, partnership,
20 unincorporated association, or other entity.

21 B. 1. Prior to the filing of a lien statement pursuant to
22 Section ~~143.1~~ 143 of this title, but no later than seventy-five (75)
23 days after the last date of supply of material, services, labor, or
24 equipment in which the lien claimant is entitled or may be entitled

1 to lien rights, the claimant shall send to the last-known address of
2 the original contractor and an owner of the property a pre-lien
3 notice pursuant to the provisions of this section. Provided
4 further, no lien affecting property then occupied as a dwelling by
5 an owner shall be valid unless the pre-lien notice provided in this
6 section was sent within seventy-five (75) days of the last
7 furnishing of materials, services, labor or equipment by the
8 claimant.

9 2. The provisions of this section shall not be construed to
10 require:

- 11 a. a pre-lien notice with respect to any retainage held
12 by agreement between an owner, contractor, or
13 subcontractor, or
- 14 b. more than one pre-lien notice during the course of a
15 construction project in which material, services,
16 labor, or equipment is furnished.

17 A pre-lien notice sent in compliance with this section for the
18 supply of material, services, labor, or equipment that entitles or
19 may entitle a claimant to lien rights shall protect the claimant's
20 lien rights for any subsequent supply of material, services, labor,
21 or equipment furnished during the course of a construction project.

22 3. ~~Except as otherwise required in paragraph 1 of this~~
23 ~~subsection, the pre-lien notice requirements shall not apply to a~~
24 ~~claimant:~~

- 1 a. ~~whose claim relates to the supply of material,~~
2 ~~services, labor, or equipment furnished in connection~~
3 ~~with a residential project. For the purposes of this~~
4 ~~subparagraph, the term "residential" shall mean a~~
5 ~~single family or multifamily project of four or fewer~~
6 ~~dwelling units, none of which are occupied by an~~
7 ~~owner, or~~
- 8 b. ~~whose aggregate claim is less than Ten Thousand~~
9 ~~Dollars (\$10,000.00).~~

10 4. The pre-lien notice shall be in writing and shall contain,
11 but not be limited to, the following:

- 12 a. a statement that the notice is a pre-lien notice,
13 b. the complete name, address, and telephone number of
14 the claimant, or the claimant's representative,
15 c. the date of supply of material, services, labor, or
16 equipment,
17 d. a description of the material, services, labor, or
18 equipment,
19 e. the name and last-known address of the person who
20 requested that the claimant provide the material,
21 services, labor, or equipment,
22 f. the address, legal description, or location of the
23 property to which the material, services, labor, or
24 equipment has been supplied,

1 g. a statement of the dollar amount of the material,
2 services, labor, or equipment furnished or to be
3 furnished, and

4 h. the signature of the claimant, or the claimant's
5 representative.

6 ~~5.~~ 4. A rebuttable presumption of compliance with paragraph 1
7 of this subsection shall be created if the pre-lien notice is sent
8 as follows:

9 a. hand delivery supported by a delivery confirmation
10 receipt,

11 b. automated transaction pursuant to Section 15-115 of
12 Title 12A of the Oklahoma Statutes, or

13 c. certified mail, return receipt requested. Notice by
14 certified mail, return receipt requested, shall be
15 effective on the date mailed.

16 ~~6.~~ 5. The claimant may request in writing, the request to be
17 sent in the manner as provided in paragraph ~~5~~ 4 of this subsection,
18 that the original contractor provide to the claimant the name and
19 last-known address of an owner of the property. Failure of the
20 original contractor to provide the claimant with the information
21 requested within five (5) days from the date of receipt of the
22 request shall render the pre-lien notice requirement to the owner of
23 the property unenforceable.

1 C. At the time of the filing of the lien statement, the
2 claimant shall furnish to the county clerk a notarized affidavit
3 verifying compliance with the pre-lien notice requirements of this
4 section. Any claimant who falsifies the affidavit shall be guilty
5 of a misdemeanor, and upon conviction thereof may be punished by a
6 fine of not more than Five Thousand Dollars (\$5,000.00), or by
7 imprisonment in the county jail for not more than thirty (30) days,
8 or by both such fine and imprisonment.

9 D. Failure of the claimant to comply with the pre-lien notice
10 requirements of this section shall render ~~that portion of~~ the lien
11 claim for which no notice was sent invalid and unenforceable.

12 SECTION 3. AMENDATORY 42 O.S. 2011, Section 143, is
13 amended to read as follows:

14 Section 143. Any person who shall furnish any such material or
15 lease or rent equipment used on said land or perform such labor as a
16 subcontractor, or as an artisan or day laborer in the employ of the
17 contractor, may obtain a lien upon such land, or improvements, or
18 both, from the same time, in the same manner, and to the same extent
19 as the original contractor, for the amount due ~~him~~ for such
20 material, equipment and labor; and any artisan or day laborer in the
21 employ of, and any person furnishing material or equipment used on
22 said land to, such subcontractor may obtain a lien upon such land,
23 or improvements, or both, for the same time, in the same manner, and
24 to the same extent as the subcontractor, for the amount due ~~him~~ for

1 such material, equipment used on said land and labor, by filing with
2 the county clerk of the county in which the land is situated, within
3 ninety (90) days after the date upon which material or equipment
4 used on said land was last furnished or labor last performed under
5 such subcontract, a statement, verified by affidavit, setting forth
6 the cause for filing the lien, the amount due from the contractor to
7 the claimant, and the items thereof, as nearly as practicable, the
8 name of the owner, the name of the contractor, the name of the
9 claimant, and a legal description of the property upon which a lien
10 is claimed. Immediately upon the filing of such statement the
11 county clerk shall enter a record of the same against the tract
12 index and in the journal provided for in the preceding section, and
13 in the manner therein specified. Provided further, that the owner
14 of any land affected by such lien shall not thereby become liable to
15 any claimant for any greater amount than he contracted to pay the
16 original contractor. The risk of all payments made to the original
17 contractor shall be upon such owner until the expiration of the
18 ninety (90) days herein specified, and no owner shall be liable to
19 an action by such contractor until the expiration of said ninety
20 (90) days, and such owner may pay such subcontractor the amount due
21 ~~him~~ from such contractor for such labor, equipment used on said land
22 and material, and the amount so paid shall be held and deemed a
23 payment of said amount to the original contractor.

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1 SECTION 4. AMENDATORY 42 O.S. 2011, Section 150, is
2 amended to read as follows:

3 Section 150. Any person claiming a lien as aforesaid shall file
4 in the office of the county clerk of the county in which the land or
5 property is situated, a statement setting forth the cause for filing
6 the lien, the amount claimed and the items thereof, as nearly as
7 practicable, the names of the managers, lessees, sublessees,
8 operators, mortgagees, trustees and beneficiaries under trusts, or
9 owners, the contractor, the claimant and the legal description of
10 the property, subject to such lien and verified by affidavit. Such
11 statement shall be filed within ~~forty five (45)~~ ninety (90) days
12 after the date upon which such labor was last performed. Upon
13 receipt of such lien statement, the clerk shall enter same against
14 the tract index and in a record kept for that purpose, to be called
15 the mechanics' lien journal. Except as provided herein, the
16 provisions of Sections 92 through 96 and 141 through ~~147~~ 146 of this
17 title shall apply with reference to the liens herein created.

18 SECTION 5. This act shall become effective November 1, 2013.
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20 54-1-5974 EK 12/27/12
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