



## District of Columbia

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### Statutory Outline

DIVISION VII. PROPERTY.

TITLE 40. LIENS.

CHAPTER 3. MECHANICS, MATERIALMEN, AND CONTRACTORS.

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## SUBCHAPTER I. GENERAL

### **40-301.01. Mechanic's lien.**

Every building erected, improved, added to, or repaired at the direction of the owner, or the owner's authorized agent, and the land on which the same is erected, intended to be used in connection therewith, or necessary to the use and enjoyment thereof, to the extent of the right, title, and interest, at that time existing, of the owner, shall be subject to a lien in favor of the contractor who contracted with the owner, in the amount of the contract price or, in the absence of an express contract, the reasonable value of the project; provided, that to enforce the lien, the contractor claiming the lien shall record in the land records a notice of intent and comply with the other procedures prescribed in this chapter.

### **40-301.02. Notice.**

(a)(1) A contractor desiring to enforce the lien shall record in the land records a notice of intent that identifies the property subject to the lien and states the amount due or to become due to the contractor. The notice of intent shall be recorded during the construction or within 90 days after the earlier of the completion or termination of the project. If the notice of intent is not recorded in the land records during the construction or within 90 days after the earlier of the completion or termination of the project, the contractor's lien shall terminate upon the expiration of the 90-day period. A notice of intent that does not comply with subsection (b) of this section shall be void.

(2) Any contractor who records timely a notice of intent in accordance with subsection (a)(1) of this section, shall send to the owner, by certified mail to the current address (or if not available in the local public records, the last known address) of the owner, a copy of the notice of intent within 5 business days after the date of its recordation in the land records. If the certified mail is returned to the contractor unclaimed or undelivered, the contractor shall post a copy of the recorded notice of intent at or on the affected real property in a location generally visible from some entry point to the real property.

(b) The notice of intent shall include the following:

- (1) The name and address of the contractor or the contractor's registered agent;
- (2) The name and address of the owner or the owner's registered agent;
- (3) The name of the party against whose interest a lien is claimed and the amount claimed, less any credit for payments received up to and including the date of the notice of intent;
- (4) A description of the work done, including the dates that work was commenced and completed;
- (5) A description of the material furnished, including the dates that material was first and last delivered;
- (6) A legal description and, to the extent available, a street address of the real property;
- (7)(A) To the extent available under applicable law, if the contractor is an entity organized under the laws of the District of Columbia or is doing business in the District of Columbia within the meaning of applicable District law:
  - (i) A copy of the contractor's current license to do business in the District issued by the Department of Consumer and Regulatory Affairs; and
  - (ii) A certificate of good standing from the Department of Consumer and Regulatory Affairs issued within 180 days prior to the date of the filing of the notice of intent; or
- (B) To the extent available under applicable law, if the contractor is an individual or an entity organized under laws other than those of the District of Columbia, and is not doing business in the District of Columbia within the meaning of applicable District laws but is required to be licensed by a governmental entity:
  - (i) A copy of the contractor's current license to do business issued by the government of the other jurisdiction; and
  - (ii) A certificate evidencing the contractor's good standing in its place of business or state of incorporation issued by the other jurisdiction;
- (8) If the project is provided under a home improvement contract, a copy of the home improvement contract; and
- (9)(A) A sworn, notarized statement affirming under penalty of perjury and upon personal knowledge that:

- (i) The contents of the notice of intent are true and correct to the best of the contractor's information and belief; and
  - (ii) The contractor has a right to recover the amount claimed.
- (B) If a notice of intent is executed by an authorized representative or counsel of the contractor, he or she shall attach evidence of his or her authority to execute the notice of intent on behalf the contractor and shall affirm that the notice of intent is true and correct to the best of the affiant's knowledge and belief.

**40-301.03. Definitions.**

For the purposes of this chapter, the term:

- (1) "Home improvement" means the repair, remodeling, alteration, conversion, or modernization of, or addition to, residential real property.
- (2) "Home improvement contract" means any written agreement, in a form that has been approved by the Department of Consumer and Regulatory Affairs, entered into between the same contractor and the same homeowner within any 12-month period for home improvement for a specific price. For the purposes of this section, the contract price for a home improvement contract shall be the contract price for all contracts during any 12-month period with respect to a home improvement.
- (3) "Land records" means the property records maintained by the Office of the Recorder of Deeds of the District of Columbia.
- (4) "Notice amount" means a written notice of amounts due to a contractor, subcontractor, materialman, or supplier for a project.
- (5) "Notice of intent" means a notice of intention to enforce a lien against the owner's property for a project.
- (6) "Owner" means an owner either in fee simple or a lesser estate, a lessee, or a prospective purchaser in possession under a contract of sale authorized to contract for a project.
- (7) "Project" means any work or materials provided by a contractor for the erection, construction, improvement, repair of, or addition to any real property in the District of Columbia at the direction of an owner, or an owner's authorized agent, or the placing of any engine, machinery, or other thing therein or in connection therewith so as to become a fixture, though capable of being detached.

SUBCHAPTER II. SUBCONTRACTOR'S LIEN

**40-303.01. Subcontractor's lien—generally.**

Any person directly employed by a contractor described by § 40-301.01 (any such contractor also referred to herein as original contractor), whether the person is a subcontractor, materialman, or laborer, to furnish work or materials for the completion of the project, shall be entitled to the same rights and subject to the same obligations as the original contractor under this chapter, subject to the conditions and limitations set forth in this chapter.

**40-303.02. Conditions and limitations.**

- (a) A lien in favor of parties so employed by the original contractor shall be subject to the terms and conditions of the contract, if any, between the owner and the original contractor except any terms and conditions therein that relate to the original contractor's right to waive liens on behalf of the parties employed. The lien of the parties shall be limited to the amount due, or to become due, but unpaid to the original contractor and shall be satisfied, in whole or in part, out of that amount only. If the original contractor, by reason of any breach by the original contractor of his, her, or its agreement with the owner, shall be entitled to recover less than the amount agreed upon between them, the liens of the parties employed by the original contractor shall be enforceable only to the extent of the reduced amount.
- (b) If the owner, in good faith, has paid the original contractor in full for the project of the original contract (and the amount of the payment is not disputed by the original contractor), the parties employed by the original contractor shall not be entitled to a lien on the owner's real property to recover any amounts due and owing for their work or materials provided for the erection, construction, improvement, repair of, or addition

to the real property; provided, that if a subcontractor, materialman, or supplier notifies the owner in writing of amounts due to the subcontractor, materialman, or supplier ("notice amount") while the owner has a balance due and owing or to become due and owing to the original contractor that is not less than the notice amount, the notice of the notice amount shall be prima facie evidence that any payment thereafter by the owner to the original contractor was not made in good faith. Any provision in a contract, purchase order, or similar document that prohibits a subcontractor, materialman, or supplier from contacting or communicating with an owner shall be void to the extent it prevents compliance with the notice requirements of this subsection.

**40-303.03. Notice to owner.**

The said subcontractor or other person employed by the contractor as aforesaid, besides filing a notice with the Recorder of Deeds of the District of Columbia as aforesaid, shall serve the same upon the owner of the property upon which the lien is claimed, by leaving a copy thereof with said owner or his agent, if said owner or agent be a resident of the District, or if neither can be found, by posting the same on the premises; and on his failure to do so, or until he shall do so, the said owner may make payments to his contractor according to the terms of his contract, and to the extent of such payments the lien of the principal contractor shall be discharged and the amount for which the property shall be chargeable in favor of the parties so employed by him reduced.

**40-303.04. Owner's duty.**

After notice shall be filed by said party employed under the original contractor and a copy thereof served upon the owner or his agent as aforesaid, the owner shall be bound to retain out of any subsequent payments becoming due to the contractor a sufficient amount to satisfy any indebtedness due from said contractor to the said subcontractor, or other person so employed by him, secured by lien as aforesaid, otherwise the said party shall be entitled to enforce his lien to the extent of the amount so accruing to the principal contractor.

**40-303.05. Subcontractor entitled to know terms of contract.**

Any subcontractor or other person employed by the contractor as aforesaid shall be entitled to demand of the owner or his authorized agent a statement of the terms under which the work contracted for is being done and the amount due or to become due to the contractor executing the same, and if the owner or his agent shall fail or refuse to give the said information, or willfully state falsely the terms of the contract or the amounts due or unpaid thereunder, the said property shall be liable to the lien of the said party demanding said information, in the same manner as if no payments had been made to the contractor before notice served on the owner as aforesaid.

**40-303.06. Advance payments.**

If the owner, for the purpose of avoiding the provisions hereof, and defeating the lien of the subcontractor or other person employed by the contractor, as aforesaid, shall make payments to the contractor in advance of the time agreed upon therefor in the contract, and the amount still due or to become due to the contractor shall be insufficient to satisfy the liens of the subcontractors or others so employed by the contractor, the property shall remain subject to said liens in the same manner as if such payments had not been made.

**40-303.07. Priority of lien.**

The lien hereby given shall be preferred to all judgments, mortgages, deeds of trusts, liens, and incumbrances which attach upon the building or ground affected by said lien subsequently to the commencement of the work upon the building, as well as to conveyances executed, but not recorded, before that time, to which recording is necessary, as to third persons; except that nothing herein shall affect the priority of a mortgage or deed of trust given to secure the purchase money for the land, if the same be recorded within 10 days from the date of the acknowledgment thereof. When a mortgage or deed of trust of real estate securing advances thereafter to be made for the purpose of erecting buildings and improvements thereon is given, or when an owner of lands contracts with a builder for the sale of lots and the erection of buildings thereon, and agrees to advance moneys toward the erection of such buildings, the lien hereinbefore authorized shall have priority to all advances made after the filing of said notices of lien, and the lien shall attach to the right, title, and interest of

the owner in said building and land to the extent of all advances which shall have become due after the filing of such notice of such lien, and shall also attach to and be a lien on the right, title, and interest of the person so agreeing to purchase said land at the time of the filing of said notices of lien. When a building shall be erected or repaired by a lessee or tenant for life or years, or a person having an equitable estate or interest in such building or land on which it stands, the lien created by this chapter shall only extend to and cover the interest or estate of such lessee, tenant, or equitable owners.

**40-303.08. How lien enforced.**

The proceeding to enforce the lien hereby given shall be a bill in equity, which shall contain a brief statement of the contract on which the claim is founded, the amount due thereon, the time when the notice was filed with the Recorder of Deeds, and a copy thereof served on the owner or his agent, if so served, and the time when the building or the work thereon was completed, with a description of the premises and other material facts; and shall pray that the owner's interest in the premises be sold and the proceeds of sale applied to the satisfaction of the lien. If such suit be brought by any person entitled, other than the principal contractor, the latter shall be made a party defendant, as well as all other persons who may have filed notices of liens, as aforesaid. All or any number of persons having liens on the same property may join in one suit, their respective claims being distinctly stated in separate paragraphs; and if several suits are brought by different claimants and are pending at the same time, the court may order them to be consolidated.

**40-303.09. Decree of sale.**

If the right of the complainant, or of any of the parties to the suit, to the lien herein provided for shall be established, the court shall decree a sale of the land and premises or the estate and interest therein of the person who, as owner, contracted for the erection, repair, improvement of, or addition to the building, as aforesaid.

**40-303.10. Subcontractor preferred to contractor.**

If the original contractor and the persons contracting or employed under him shall both have filed notices of liens, as aforesaid, the latter shall first be satisfied out of the proceeds of sale before the original contractor, but not in excess of the amount due him, and the balance, if any, of said amount shall be paid to him.

**40-303.11. Distribution of sale proceeds.**

If one, or some only, of the persons employed under the original contractor shall have served notice on the owner, as aforesaid, before payments made by him to the original contractor, said party or parties shall be entitled to priority of satisfaction out of said proceeds to the amount of such payments; but, subject to this provision, if the proceeds of sale, after paying there out the costs of the suit, shall be insufficient to satisfy the liens of said parties employed under the original contractor the said proceeds shall be distributed ratably among them to the extent of the payments accruing to the original contractor subsequently to the service of notice on the owner by said parties, as aforesaid.

**40-303.12. Several buildings.**

In case of labor done or materials furnished for the erection or repair of 2 or more buildings joined together and owned by the same person or persons, it shall not be necessary to determine the amount of work done or materials furnished for each separate building, but only the aggregate amount upon all the buildings so joined, and the decree may be for the sale of all the buildings and the land on which they are erected as one building, or they may be sold separately if it shall seem best to the court.

**40-303.13. When suit to be commenced.**

(a)(1) Any person with a lien and who has recorded a valid notice of intent shall only enforce the lien by:  
(A) Filing suit under § 40-303.08 to enforce the lien at anytime within 180 days after the date that the notice of intent is recorded in the land records; and

(B) Recording, within 10 days of filing suit, a notice of pendency of action in accordance with § 42-1207(b) in the land records.

(2) Failure to file suit within the 180-day period or to file timely a notice of pendency of action shall terminate the lien.

**40-303.14. Extent of land bound by lien.**

If there be any contest as to the dimensions of the land claimed to be subjected to the lien aforesaid, the court shall determine the same upon the evidence and describe the same in the decree of sale.

**40-303.15. Entry of satisfaction.**

Whenever any person having a lien by virtue hereof shall have received satisfaction of his claim and cost, he shall, on the demand, and at the cost of the person interested, enter said claim satisfied, in the clerk's office aforesaid, and on his failure or refusal so to do he shall forfeit \$50 to the party aggrieved, and all damages that the latter may have sustained by reason of such failure or refusal.

**40-303.16. Payment into court and release.**

(a) In any suit to enforce a lien under this chapter, the owner of the building and premises to which the lien may have attached may be allowed to either:

(1) Pay into court the amount claimed by the lienor, and such additional amount, to cover interest and costs, as the court may direct; or

(2) File a written undertaking, with one or more sureties, to be approved by the court, to the effect that he or she and they will pay the judgment that may be recovered, which may include interest and costs; provided, that:

(A) Where the surety is to be provided by bond, only one bond shall be required; and

(B) The judgment shall be rendered against all the persons so undertaking.

(b) On the payment of the money into court, or the approval of the undertaking pursuant to subsection (a)(2) of this section, the property shall be released from the lien, and any money so paid in shall be subject to the final decree of the court.

(c)(1) No undertaking pursuant to subsection (a)(2) of this section shall be approved by the court until the complainant shall have had at least 5 days notice of the defendant's intention to apply to the court for the approval, which notice shall give the name and residence of the person to be offered as surety, or persons if the court determines more than a single surety is required, and the time when the motion for the approval will be made.

(2) Any surety shall make oath, if required, that he or she is worth, over and above all debts and liabilities, double the amount of the lien.

(3) The complainant may appear and object to the approval.

**40-303.16a. Effect of failure to file notice. [Repealed].**

Repealed.

**40-303.17. Undertaking to discharge liens before suit.**

Such an undertaking as above mentioned may be offered before any suit brought in order to discharge the property from existing liens, in which case notice shall be given as aforesaid to the parties whose liens it is sought to have discharged, and the same proceedings shall be had as above directed in relation to the undertaking to be given after the commencement of the suit, and said undertaking shall be to the effect that the owner and his said sureties will pay any judgment that may be rendered in any suit that may thereafter be brought for the enforcement of said lien.

**40-303.18. Decree against sureties.**

If such undertaking be approved before any suit brought, such suit shall be a suit in equity against the owner, to which the sureties may be made parties; if the undertaking be approved after suit brought, the said sureties

shall ipso facto become parties to the suit, and in either case the decree of the court shall be against the sureties as well as the owner.

**40-303.19. No action by subcontractor against owner.**

No subcontractor, materialman, or workman employed under the original contractor shall be entitled to a personal judgment or decree against the owner of the premises for the amount due to him from said original contractor, except upon a special promise of such owner, in writing, for a sufficient consideration, to be answerable for the same.

**40-303.20. Judgment for deficiency upon sale.**

In any suit brought to enforce a lien by virtue of the provisions aforesaid, if the proceeds of the property affected thereby shall be insufficient to satisfy such lien, a personal judgment for the deficiency may be given in favor of the lien or against the owner of the premises or the original contractor, as the case may be, whichever contracted with him for the labor or materials furnished by him, provided such person be a party to the suit and shall have been personally served with process therein.

**40-303.20a. Authority to promulgate regulations.**

(a) The Mayor shall promulgate rules to implement this chapter. The proposed rules shall be transmitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the rules within the 45-day review period, the rules shall be deemed disapproved.

(b) The Mayor shall issue rules to implement the provisions of D.C. Law 16-31, within 180 days of October, 20, 2005.

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