

Virginia

<http://leg1.state.va.us/000/src.htm>

Statutory Outline

TITLE 43. MECHANICS' AND CERTAIN OTHER LIENS.

CHAPTER 1. MECHANICS' AND MATERIALMEN'S LIENS.

Section 43-1.	Definitions.
Section 43-2.	Structures, materials, etc., deemed permanently annexed to freehold.
Section 43-3.	Lien for work done and materials furnished; waiver of right to file or enforce lien.
Section 43-4.	Perfection of lien by general contractor; recordation and notice.
Section 43-4.01.	Posting of building permit; identification of mechanics' lien agent in building permit; notice to mechanics' lien agent; effect of notice.
Section 43-4.1.	Liens to be recorded in deed books and indexed in general index of deeds.
Section 43-5.	Sufficiency of memorandum and affidavit required by §43-4.
Section 43-6.	[Repealed]
Section 43-7.	Perfection of lien by subcontractor; extent of lien; affirmative defense; provisions relating to time-share estates.
Section 43-8.	Sufficiency of memorandum, affidavit and notice required by §43-7.
Section 43-9.	Perfection of lien by person performing labor or furnishing materials for a subcontractor; extent of lien.
Section 43-10.	Sufficiency of memorandum, affidavit and notice required by §43-9.
Section 43-11.	How owner or general contractor made personally liable to subcontractor, laborer or materialman.
Section 43-12.	[Repealed]
Section 43-13.	Funds paid to general contractor or subcontractor must be used to pay persons performing labor or furnishing material.
Section 43-13.1.	Use of lien waiver form; forgery or signing without authority.
Section 43-13.2.	When an affidavit or a signed statement of payment required of owner prior to sale.
Section 43-13.3.	An affidavit or a signed statement of payment required of owner prior to sale or refinance; penalty.

Section 43-14.	[Repealed]
Section 43-14.1.	Service of notices.
Section 43-15.	Inaccuracies in memorandum or description not affecting lien.
Section 43-16.	What owner may do when contractor fails or refuses to complete building, etc.
Section 43-17.	Limitation on suit to enforce lien.
Section 43-17.1.	Hearing on validity of lien.
Section 43-18.	Lien of general contractor to inure to benefit of subcontractor.
Section 43-19.	Validity and priority of lien not affected by assignments.
Section 43-20.	Extent of lien where owner has less than fee in land.
Section 43-21.	Priorities between mechanics' and other liens.
Section 43-22.	How liens enforced.
Section 43-23.	Priority among liens perfected under this chapter.
Section 43-23.1.	Forfeiture of lien.
Section 43-23.2.	Remedies cumulative.

CHAPTER 2. LIENS ON FRANCHISES AND PROPERTY OF TRANSPORTATION, ETC., COMPANIES.

Section 43-24.	Liens of employees, suppliers, etc.
Section 43-25.	Perfection and enforcement of lien.
Section 43-26.	Assignee's rights.

CHAPTER 3. LIENS FOR ADVANCES.

Section 43-27.	[Repealed]
Section 43-27.1.	When clerk may destroy crop lien agreement and crop lien book.
Section 43-28.	[Repealed]
Section 43-29.	Liens of landlords and farmers for advances to tenants and laborers.
Section 43-30.	Lien of landlord and other recorded liens not affected by lien given under §43-27; nor is right to claim exemption.

CHAPTER 4. LIENS OF INNKEEPERS, LIVERY STABLE, GARAGE AND MARINA KEEPERS, MECHANICS AND BAILEES.

Section 43-31.	Lien of innkeepers, etc.
Section 43-32.	Lien of keeper of livery stable, marina, etc.
Section 43-33.	Lien of mechanic for repairs.
Section 43-34.	Enforcement of liens acquired under §§43-31 through 43-33 and of liens of bailees.
Section 43-34.1.	Lien of keeper of hangar or tie-down on aircraft subject to a chattel mortgage.
Section 43-35.	How and when validity of lien, or claim of other person to property, is tried.
Section 43-36.	Appeals, how taken and tried.
Section 43-37.	Sale of baggage and other personal property held pursuant to §43-31 or unclaimed.
Section 43-38.	Withdrawal from such sale upon payment of charges, interest and expenses.
Section 43-39.	Distribution of proceeds of sale.
Section 43-40.	Subsequent payment of surplus proceeds to persons entitled thereto.

CHAPTER 5. LIENS ON OFFSPRING OF CERTAIN ANIMALS.

- Section 43-41. Lien on offspring of stallion or jackass.
Section 43-42. Recordation of lien given by preceding section.
Section 43-43. Lien on offspring of bull.

CHAPTER 6. LIENS OF CHATTEL DEEDS OF TRUST UPON CROPS, FARM MACHINERY, ETC. [REPEALED]

Sections 43-44. through 43-61. [Repealed]

CHAPTER 7. MISCELLANEOUS LIENS.

- Section 43-62. Lien for farm products consigned to commission merchant.
Section 43-63. Lien for cleaning, laundering, dyeing, pressing or storing clothing, rugs and other fabrics.
Section 43-63.1. [Repealed]

CHAPTER 8. MISCELLANEOUS PROVISIONS.

- Section 43-64. How notices served, acts done, etc., in case of bankruptcy, death or absconding.
Section 43-65. Protection of assignees, transferees or endorsees of debts secured by mechanics' or crop liens.
Section 43-66. Purchaser not affected by liens of Mutual Assurance Society against Fire.

CHAPTER 9. RELEASE OF LIENS.

- Section 43-67. Release of mechanic's lien upon payment or satisfaction.
Section 43-68. Releases made by court.
Section 43-69. [Repealed]
Section 43-70. Release of mechanic's lien upon payment into court or filing of bond after suit brought.
Section 43-71. Release of mechanic's lien upon payment into court or filing bond before suit.

CHAPTER 1. MECHANICS' AND MATERIALMEN'S LIENS.

§43-1. Definitions.

As used in this chapter, the term "**general contractor**" includes contractors, laborers, mechanics, and persons furnishing materials, who contract directly with the owner, and the term "**subcontractor**" includes all such contractors, laborers, mechanics, and persons furnishing materials, who do not contract with the owner but with the general contractor. As used in this chapter, the term "**owner**" shall not be construed to mean any person holding bare legal title under an instrument to secure a debt or indemnify a surety. As used in this chapter, the term "**mechanics' lien agent**" means a person (i) designated in writing by the owner of real estate or a person authorized to act on behalf of the owner of such real estate and (ii) who consents to act, as the owner's designee for purposes of receiving notice

pursuant to §43-4.01. Such person shall be an attorney at law licensed to practice in the Commonwealth, a title insurance company authorized to write title insurance in the Commonwealth or one of its subsidiaries or licensed title insurance agents, or a financial institution authorized to accept deposits and to hold itself out to the public as engaged in the banking or savings institution business in the Commonwealth or a service corporation, subsidiary or affiliate of such financial institution. Any such person may perform mechanics' lien agent services as any legal entity. Provided that nothing herein shall be construed to affect pending litigation.

§43-2. Structures, materials, etc., deemed permanently annexed to freehold.

For the purpose of this chapter, a well, excavation, sidewalk, driveway, pavement, parking lot, retaining wall, curb and/or gutter, breakwater (either salt or fresh water), underground or field-constructed above-ground storage tank and connected dispensing equipment, water system, drainage structure, filtering system (including septic or waste disposal systems) or swimming pool shall be deemed a structure permanently annexed to the freehold, and all shrubbery, earth, sod, sand, gravel, brick, stone, tile, pipe or other materials, together with the reasonable rental or use value of equipment and any surveying, grading, clearing or earth moving required for the improvement of the grounds upon which such building or structure is situated shall be deemed to be materials furnished for the improvement of such building or structure and permanently annexed to the freehold.

§43-3. Lien for work done and materials furnished; waiver of right to file or enforce lien.

A. All persons performing labor or furnishing materials of the value of \$150 or more, including the reasonable rental or use value of equipment, for the construction, removal, repair or improvement of any building or structure permanently annexed to the freehold, and all persons performing any labor or furnishing materials of like value for the construction of any railroad, shall have a lien, if perfected as hereinafter provided, upon such building or structure, and so much land therewith as shall be necessary for the convenient use and enjoyment thereof, and upon such railroad and franchises for the work done and materials furnished, subject to the provisions of § 43-20. But when the claim is for repairs or improvements to existing structures only, no lien shall attach to the property repaired or improved unless such repairs or improvements were ordered or authorized by the owner, or his agent. If the building or structure being constructed, removed or repaired is part of a condominium as defined in § 55.1-1900 or under the Horizontal Property Act (§ 55.1-2000 et seq.), any person providing labor or furnishing material to one or more units or limited common elements within the condominium pursuant to a single contract may perfect a single lien encumbering the one or more units which are the subject of the contract or to which those limited common elements pertain, and for which payment has not been made. All persons providing labor or furnishing materials for the common elements pertaining to all the units may perfect a single lien encumbering all such condominium units. Whenever a lien has been or may be perfected encumbering two or more units, the proportionate amount of the indebtedness attributable to each unit shall be the ratio that the percentage liability for common expenses appertaining to that unit computed pursuant to subsection D of § 55.1-1964 bears to the total percentage liabilities for all units which are encumbered by the lien. The lien claimant shall release from a perfected lien an encumbered unit upon request of the unit owner as provided in subsection B of § 55.1-1908 upon receipt of payment equal to that portion of the indebtedness evidenced by the lien attributable to such unit determined as herein provided. In the event the lien is not perfected, the lien claimant shall upon request of any interested party execute lien releases for one or more units upon receipt of payment equal to that portion of the indebtedness attributable to such unit or units determined as herein provided but no such release shall preclude the lien claimant from perfecting a single lien against the unreleased unit or units for the remaining portion of the indebtedness.

B. Any person providing labor or materials for site development improvements or for streets, stormwater facilities, sanitary sewers or water lines for the purpose of providing access or service to the individual lots in a development or condominium units as defined in § 55.1-1900 or under the Horizontal Property Act (§ 55.1-2000 et seq.) shall have a lien on each individual lot in the development for the fractional part of the total value of the work contracted for by the claimant in the subdivision as is obtained by using "one" as the numerator and the number of lots being developed as the denominator and in the case of a condominium on each individual unit in an amount computed by reference to the liability of that unit for common expenses appertaining to that condominium pursuant to subsection D of § 55.1-1964, provided, however, that no such lien shall be valid as to any lot or condominium unit unless the person providing such work shall, prior to the sale of such lot or condominium unit, file with the clerk of the circuit court of the jurisdiction in which such land lies a document setting forth a full disclosure of the nature of the lien which may be claimed, the total value of the work contracted for by the claimant in the subdivision and the portion thereof allocated to each lot as required herein, and a description of the development or condominium, and shall, thereafter, comply with all other applicable provisions of this chapter. "Site development improvements" means improvements which are provided for the development, such as project site grading, traffic signalization, and installation of electric, gas, cable, or other utilities, for the benefit of the development rather than for an individual lot. In determining the individual lots in the development for the purpose of allocating value of the work contracted for by the claimant, parcels of land within the development which are common area, or which are being developed for the benefit of the development as a whole and not for resale, shall not be included in the denominator of the disclosure statement.

Nothing contained herein shall be construed to prevent the filing of a mechanics' lien under the provisions of subsection A, or require the lien claimant to elect under which subsection the lien may be enforced.

C. Any right to file or enforce any mechanics' lien granted hereunder may be waived in whole or in part at any time by any person entitled to such lien, except that a general contractor, subcontractor, lower-tier subcontractor, or material supplier may not waive or diminish his lien rights in a contract in advance of furnishing any labor, services, or materials. A provision that waives or diminishes a general contractor's, subcontractor's, lower-tier subcontractor's, or material supplier's lien rights in a contract executed prior to providing any labor, services, or materials is null and void. In the event that payments are made to the contractor without designating to which lot the payments are to be applied, the payments shall be deemed to apply to any lot previously sold by the developer such that the remaining lots continue to bear liability for an amount up to but not exceeding the amount set forth in any disclosure statement filed under the provisions of subsection B.

D. A person who performs labor without a valid license or certificate issued by the Board for Contractors pursuant to Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1, or without the proper class of license for the value of the work to be performed, when such a license or certificate is required by law for the labor performed shall not be entitled to a lien pursuant to this section.

§43-4. Perfection of lien by general contractor; recordation and notice.

A general contractor, or any other lien claimant under §§ 43-7 and 43-9, in order to perfect the lien given by § 43-3, provided such lien has not been barred by § 43-4.01 C, shall file a memorandum of lien at any time after the work is commenced or material furnished, but not later than 90 days from the last day of the month in which he last performs labor or furnishes material, and in no event later than 90 days from the time such building, structure, or railroad is completed, or the work thereon otherwise terminated. The memorandum shall be filed in the clerk's office in the county or city in which the building, structure or railroad, or any part thereof is located. The memorandum shall show the names and addresses of the owner of the property sought to be charged, and of the claimant of the lien, the

amount and consideration of his claim, the time or times when the same is or will be due and payable, and the date from which interest is claimed, verified by the oath of the claimant, or his agent, including a statement declaring his intention to claim the benefit of the lien, and giving a brief description of the property on which he claims a lien. The memorandum shall also contain the claimant's license or certificate number issued by the Board for Contractors pursuant to Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1, if any, and the date such license or certificate was issued and the date such license or certificate expires. It shall be the duty of the clerk in whose office the memorandum is filed to record and index the same as provided in § 43-4.1, in the name of the claimant of the lien and of the owner of the property. From the time of such recording and indexing all persons shall be deemed to have notice thereof. A lien claimant who is a general contractor, and not lien claimants under §§ 43-7 and 43-9, also shall file along with the memorandum of lien, a certification of mailing of a copy of the memorandum of lien on the owner of the property at the owner's last known address. The cost of recording the memorandum shall be taxed against the person found liable in any judgment or decree enforcing such lien. The lien claimant may file any number of memoranda but no memorandum filed pursuant to this chapter shall include sums due for labor or materials furnished more than 150 days prior to the last day on which labor was performed or material furnished to the job preceding the filing of such memorandum. However, any memorandum may include (i) sums withheld as retainages with respect to labor performed or materials furnished at any time before it is filed, but not to exceed 10 percent of the total contract price and (ii) sums which are not yet due because the party with whom the lien claimant contracted has not yet received such funds from the owner or another third party. The time limitations set forth herein shall apply to all labor performed or materials furnished on construction commenced on or after July 1, 1980. An inaccuracy in the memorandum as to the claimant's license or certificate number, if any, the date such license or certificate was issued, or the date such license or certificate expires shall not bar a person from perfecting a lien if the claimant can otherwise be reasonably identified in the records of the Board for Contractors.

§43-4.01. Posting of building permit; identification of mechanics' lien agent in building permit; notice to mechanics' lien agent; effect of notice.

A. The building permit for any one- or two-family residential dwelling unit issued pursuant to the Uniform Statewide Building Code shall be conspicuously and continuously posted on the property for which the permit is issued until all work is completed on the property. The permit shall be posted on the property before any labor is performed or any material furnished on the property for which the building permit is issued. Nothing herein shall be construed to prohibit a permit being amended after it has been initially issued to name a mechanics' lien agent or a new mechanics' lien agent.

B. If the building permit contains the name, mailing address, and telephone number of the mechanics' lien agent as defined in § 43-1, any person entitled to claim a lien under this title may notify the mechanics' lien agent then named on the permit or amended permit that he seeks payment for labor performed or material furnished by registered or certified mail or by physical delivery. Such notice shall contain (i) the name, mailing address, and telephone number of the person sending such notice, (ii) the person's license or certificate number issued by the Board for Contractors pursuant to Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1, if any, and the date such license or certificate was issued and the date such license or certificate expires, (iii) the building permit number on the building permit, (iv) a description of the property as shown on the building permit, and (v) a statement that the person filing such notice seeks payment for labor performed or material furnished. A return receipt or other receipt showing delivery of the notice to the addressee or written evidence that such notice was delivered by the postal service or other carrier to but not accepted by the addressee shall be prima facie evidence of receipt. An inaccuracy in the notice as to the description of the property shall not bar a person from

claiming a lien under this title or filing a memorandum or otherwise perfecting or enforcing a lien as provided in subsection C if the property can otherwise be reasonably identified from the description. In the event that the mechanics' lien agent dies, resigns, or otherwise becomes unable or unwilling to serve during the construction period, the owner or the general contractor shall immediately appoint a successor mechanics' lien agent with all the rights, duties, and obligations of the predecessor mechanics' lien agent. An amended permit shall be displayed as provided in subsection A. Until such time as the successor is named and displayed as provided, notice given hereunder to the predecessor mechanics' lien agent at the address shown shall be deemed good notice, notwithstanding the fact that the agent may have died, resigned or become otherwise unable or unwilling to serve.

C. Except as provided otherwise in this subsection, no person other than a person claiming a lien under subsection B of § 43-3 may claim a lien under this title or file a memorandum or otherwise perfect and enforce a lien under this title with respect to a one or two family residential dwelling unit if such person fails to notify any mechanics' lien agent identified on the building permit in accordance with subsection B above (i) within 30 days of the first date that he performs labor or furnishes material to or for the building or structure or (ii) within 30 days of the date such a permit is issued, if such labor or materials are first performed or furnished by such person prior to the issuance of a building permit. However, the failure to give any such notices within the appropriate 30-day period as required by the previous sentence shall not bar a person from claiming a lien under this title or from filing a memorandum or otherwise perfecting and enforcing a lien under this title, provided that such lien is limited to labor performed or materials furnished on or after the date a notice is given by such person to the mechanics' lien agent in accordance with subsection B above. A person performing labor or furnishing materials with respect to a one or two family residential dwelling unit on which a building permit is not posted at the time he first performs his labor or first furnishes his material or, if posted, does not state the name of the mechanics' lien agent, shall determine from appropriate authorities whether a permit of the type described in subsection B above has been issued, the date on which it is issued, and the name of the mechanics' lien agent, if any, that has been appointed. The issuing authority shall maintain the mechanics' lien agent information in the same manner and in the same location in which it maintains its record of building permits issued.

No person shall be required to comply with this subsection as to any memorandum of lien which is recorded prior to the issuance of a building permit nor shall any person be required to comply with this subsection when the building permit does not designate a mechanics' lien agent.

D. Unless otherwise agreed in writing, the only duties of the mechanics' lien agent shall be to receive notices delivered to him pursuant to subsection B and to provide any notice upon request to a settlement agent, as defined in § 55.1-900, involved in a transaction relating to the residential dwelling unit.

E. Mechanics' lien agents are authorized to enter into written agreements with third parties with regard to funds to be advanced to them for disbursement, and the transfer, disbursement, return and other handling of such funds shall be governed by the terms of such written agreements.

F. A mechanics' lien agent as defined in § 43-1 may charge a reasonable fee for services rendered in connection with administration of notice authorized herein and the disbursement of funds for payment of labor and materials for the construction or repair of improvements on real estate.

§43-4.1. Liens to be recorded in deed books and indexed in general index of deeds.

Notwithstanding the provision of any other section of this title, or any other provision of law requiring documents to be recorded in the miscellaneous lien book or the deed books in the clerk's office of any court, on and after July 1, 1964, all memoranda or notices of liens, in the discretion of the clerk, shall be recorded in the deed books in such clerk's office, and shall be indexed in the general index of deeds, and such general index shall show the type of such lien.

§43-5. Sufficiency of memorandum and affidavit required by §43-4.

The memorandum and affidavit required by §43-4 shall be sufficient if substantially in form and effect as follows:

Memorandum for Mechanic's Lien Claimed by General Contractor.

Name of owner:.....

Address of owner:.....

Name of claimant:.....

Address of claimant:.....

Contractor license or certificate number of claimant

(if applicable):.....

Issuance date of license or certificate

(if applicable):.....

Expiration date of license or certificate

(if applicable):.....

If no contractor license or certificate number is included, the claimant certifies that such a valid license or certificate is not required by law for the work done for which the benefit of a lien is claimed.

1. Type of materials or services furnished:

.....
.....
.....
.....

2. Amount claimed: \$.....

If any part of the Amount claimed is not due as of the date of this mechanic's lien, identify the date or event upon which it will be due and the sum(s) to which the due date(s) or event(s) apply:

.....

3. Type of structure on which work done or materials furnished:

.....

4. Brief description and location of real property:

.....

5. Date from which interest on the above amount is claimed:

Date:

It is the intent of the claimant to claim the benefit of a lien.

The undersigned hereby certifies that he has mailed a copy of this memorandum of lien to the owner of the property at the owner's last known address:(address), on(date of mailing)

..... (Name of claimant).

Affidavit.

State of Virginia,

County (or city) of, to wit:

I,(notary or other officer) for the county (or city) aforesaid, do certify that

.....claimant, or....., agent for claimant, this day made oath before me in my county (or city) aforesaid that (the owner) is justly indebted to claimant in the sum of dollars, for the consideration stated in the foregoing memorandum, and that the same is payable as therein stated.

Given under my hand this the day of, 20...

.....(Notary Public or Magistrate, et cetera.)

§43-6. Repealed.

§43-7. Perfection of lien by subcontractor; extent of lien; affirmative defense; provisions relating to time-share estates.

A. Any subcontractor, in order to perfect the lien given him by § 43-3 shall comply with § 43-4, and in addition give notice in writing to the owner of the property or his agent of the amount and character of his claim. But the amount for which a subcontractor may perfect a lien under this section shall not exceed the amount in which the owner is indebted to the general contractor at the time the notice is given, or shall thereafter become indebted to the general contractor upon his contract with the general contractor for such structure or building or railroad. It shall be an affirmative defense or affirmative partial defense, as the case may be, to a suit to perfect a lien of a subcontractor that the owner is not indebted to the general contractor or is indebted to the general contractor for less than the amount of the lien sought to be perfected.

B. Where the property referred to in subsection A hereof is a time-share unit, as defined by § 55.1-2200, the word "agent," as used in subsection A, shall be deemed to include the developer, during the developer control period, or the time-share estate owners' association, after the developer control period.

Within ten days of receipt of the notice, the developer or the time-share estate owners' association shall mail by first class mail a copy of the notice to all time-share estate owners whose interests are affected by the subcontractor's lien on the time-share unit. Failure on the part of the developer or time-share estate owners' association to so notify the appropriate time-share estate owners within the time period set forth above shall result in the developer's or the association's being liable for the full amount of the subcontractor's claim, but such failure shall not affect the validity of any lien perfected under this section. Assessments levied by the estate owners' association to pay the liability hereby imposed shall be made only against the time-share estate owners of record in the time-share estate project at the time the liability was incurred.

C. Where the property referred to in subsection A hereof is a time-share unit, as defined by § 55.1-2200, the memorandum required to be filed pursuant to § 43-4 need show only the name of the developer during the developer control period, or the time-share estate owners' association, after the developer control period.

§43-8. Sufficiency of memorandum, affidavit and notice required by §43-7.

The memorandum, affidavit and notice required by §43-7 shall be sufficient if substantially in form and effect as follows:

Memorandum for Mechanic's Lien Claimed by Subcontractor.

Name of owner:.....

Address of owner:.....

Name of general contractor (if any):.....

Name of claimant:.....

Address of claimant:.....

Contractor license or certificate number of claimant

(if applicable):.....

Issuance date of license or certificate

(if applicable):.....

Expiration date of license or certificate

(if applicable):.....

If no contractor license or certificate number is included, the claimant certifies that such a valid license or certificate is not required by law for the work done for which the benefit of a lien is claimed.

1. Type of materials or services furnished:

.....

2. Amount claimed: \$.....

If any part of the Amount claimed is not due as of the date of this mechanic's lien, identify the date or event upon which it will be due and the sum(s) to which the due date(s) or event(s) apply:

.....

3. Type of structure on which work done or materials furnished:

.....

4. Brief description and location of real property:

.....

5. Date from which interest on above amount is claimed:

Date:

It is the intent of the claimant to claim the benefit of a lien.

.....(Name of claimant).

Affidavit.

State of Virginia,

County (or city) of to wit:

I, (notary or other officer) for the county (or city) aforesaid, do certify that, claimant, or....., agent for claimant, this day made oath before me in my county (or city) aforesaid that is justly indebted to claimant in the sum of dollars, for the consideration stated in the foregoing memorandum, and that the same is payable as therein stated.

Given under my hand this the day of, 20...

..... (Notary Public or Magistrate, et cetera.)

Notice.

To(owner).

You are hereby notified that (general contractor) is indebted to me in the sum of dollars (\$.....) with interest thereon from the day of, 20..., for work done (or materials furnished, as the case may be,) in and about the construction (or removal, etc.,) of a (describe structure, whether dwelling, store, or etc.,) which he has contracted to construct (or remove, etc.,) for you or on property owned by you in the county (or city) of....., and that I have duly recorded a mechanic's lien for the same.

Given under my hand this the day of, 20.....

..... (Subcontractor).

§43-9. Perfection of lien by person performing labor or furnishing materials for a subcontractor; extent of lien.

Any person performing labor or furnishing materials for a subcontractor, in order to perfect the lien given him by §43-3, shall comply with the provisions of §43-4, and in addition thereto give notice in writing to the owner of the property, or his agent, and to the general contractor, or his agent, of the amount and character of his claim. But the amount for which a lien may be perfected by such person shall not exceed the amount for which such subcontractor could himself claim a lien under §43-7.

§43-10. Sufficiency of memorandum, affidavit and notice required by §43-9.

The memorandum, affidavit and notice required by §43-9 shall be sufficient if substantially in form and effect as follows:

Memorandum for Mechanic's Lien Claimed by Sub-subcontractor.

Name of owner:.....

Address of owner:.....

Name of general contractor (if any) and subcontractor:

.....

Name of claimant:.....

Address of claimant:.....

Contractor license or certificate number of claimant

(if applicable):.....

Issuance date of license or certificate

(if applicable):.....

Expiration date of license or certificate

(if applicable):.....

If no contractor license or certificate number is included, the claimant certifies that such a valid license or certificate is not required by law for the work done for which the benefit of a lien is claimed.

1. Type of materials or services furnished:

.....

2. Amount claimed: \$.....

If any part of the Amount claimed is not due as of the date of this mechanic's lien, identify the date or event upon which it will be due, and the sum(s) to which the due date(s) or event(s) apply:

.....

3. Type of structure on which work done or materials furnished:

.....

4. Brief description and location of real property:

.....

5. Date from which interest on above amount is claimed:

Date:

It is the intent of the claimant to claim the benefit of a lien.

..... (Name of claimant).

..... (Signature of claimant or agent for claimant).

Affidavit.

State of Virginia,

County (or city) of, to wit:

I,.....(notary or other officer) for the county (or city) aforesaid do certify that

..... claimant, or, agent for claimant, this day made

oath before me in my county (or city) aforesaid that..... is justly indebted to claimant in the sum of

..... dollars for the consideration stated in the foregoing memorandum, and that the same is payable

as therein stated.

Given under my hand this the day of, 20...

..... (Notary Public or

Magistrate, et cetera.)

Notice.

To (owner) and (general contractor):

You are hereby notified that....., a subcontractor under you, said.....(general

contractor) for the construction (or removal, etc.,) of a..... (describe structure) for you, or on property

owned by you, said..... (owner) is indebted to me in the sum of dollars (\$.....)

with interest thereon from the....day of, 20..., for work done (or materials furnished) in and about

the construction (or removal, etc.,) of..... (naming structure), situate in the county (or city) of Virginia, and that I have duly recorded a mechanic's lien for the same.
Given under my hand this the day of, 20.....
..... (Sub-subcontractor).

§43-11. How owner or general contractor made personally liable to subcontractor, laborer or materialman.

1. Any subcontractor or person furnishing labor or material to the general contractor or subcontractor, may give a preliminary notice in writing to the owner or his agent or the general contractor, stating the nature and character of his contract and the probable amount of his claim.
2. Additionally, if such subcontractor, or person furnishing labor or material shall at any time after the work is done or material furnished by him and before the expiration of thirty days from the time such building or structure is completed or the work thereon otherwise terminated furnish the owner thereof or his agent and also the general contractor, or the general contractor alone in case he is the only one notified, with a second notice stating a correct account, verified by affidavit, of his actual claim against the general contractor or subcontractor, for work done or materials furnished and of the amount due, then the owner, or the general contractor, if he alone was notified, shall be personally liable to the claimant for the actual amount due to the subcontractor or persons furnishing labor or material by the general contractor or subcontractor, provided the same does not exceed the sum in which the owner is indebted to the general contractor at the time the second notice is given or may thereafter become indebted by virtue of his contract with the general contractor, or in case the general contractor alone is notified the sum in which he is indebted to the subcontractor at the time the second notice is given or may thereafter become indebted by virtue of his contract with the general contractor. But the amount which a person supplying labor or material to a subcontractor can claim shall not exceed the amount for which such subcontractor could file his claim.
3. Any bona fide agreement for deductions by the owner because of the failure or refusal of the general contractor to comply with his contract shall be binding upon such subcontractor, laborer or materialman.
4. The provisions of this section are subject to the qualification that before any such personal liability of the owner or general contractor herein provided for shall be binding the two notices herein required, with such returns thereon as is sufficient under §8.01-325, shall be recorded and indexed as provided in §43-4.1 in the appropriate clerk's office; or the two notices herein required shall be mailed by registered or certified mail to and received by the owner or general contractor upon whom personal liability is sought to be imposed, and a return receipt therefor showing delivery to the addressee shall be prima facie evidence of receipt.

§43-12. Repealed.

§43-13. Funds paid to general contractor or subcontractor must be used to pay persons performing labor or furnishing material.

Any contractor or subcontractor or any officer, director or employee of such contractor or subcontractor who shall, with intent to defraud, retain or use the funds, or any part thereof, paid by the owner or his agent, the contractor or lender to such contractor or by the owner or his agent, the contractor or lender to a subcontractor under any contract for the construction, removal, repair or improvement of any building or structure permanently annexed to the freehold, for any other purpose than to pay persons performing labor upon or furnishing material for such construction, repair, removal or improvement, shall be guilty of larceny in appropriating such funds for any other use while any amount for which the contractor or subcontractor may be liable or become liable under his contract for such labor or materials

remains unpaid, and may be prosecuted upon complaint of any person or persons who have not been fully paid any amount due them.

The use by any such contractor or subcontractor or any officer, director or employee of such contractor or subcontractor of any moneys paid under the contract, before paying all amounts due or to become due for labor performed or material furnished for such building or structure, for any other purpose than paying such amounts, shall be prima facie evidence of intent to defraud.

§43-13.1. Use of lien waiver form; forgery or signing without authority.

Any person who knowingly presents a waiver of lien form to an owner, his agent, contractor, lender, or title company for the purpose of obtaining funds or title insurance and who forges or signs without authority the name of any person listed thereon shall be guilty of a felony and punished as provided in §18.2-172.

§43-13.2. When an affidavit or a signed statement of payment required of owner prior to sale.

A person who is both the owner of a one- or two-family residential dwelling unit and either a developer of such property, a contractor in connection with the development or improvement of such property or a contractor or subcontractor furnishing labor or material in connection with the development or improvement of such property shall, at the time of settlement on the sale of such property, provide the purchaser with an affidavit or a signed statement attested to by a witness stating either (i) that all persons performing labor or furnishing materials in connection with the improvements on such property and with whom such owner is in privity of contract have been paid in full or (ii) the name, address and amount payable or claimed to be payable to any person so performing labor or furnishing materials and with whom such owner is in privity of contract. Willful failure to provide such statement or any willful material misrepresentation with respect to such a statement which causes a monetary loss to a financial institution, title company, contractor, subcontractor, supplier, owner, mechanics' lien agent or any other person or institution shall be punishable as a Class 5 felony.

§43-13.3. An affidavit or a signed statement of payment required of owner prior to sale or refinance; penalty.

Any person who is the owner of a one- or two-family residential dwelling unit not included within the scope of §43-13.2 shall, at the time of settlement on the sale of such property, provide the purchaser, or lender in the case of a permanent loan or refinance, with an affidavit or a signed statement attested to by a witness stating either (i) that all persons performing labor or furnishing materials in connection with any improvements on such property within 120 days prior to the date of settlement and with whom such owner is in privity of contract have been paid in full, or (ii) the name, address and amount payable or claimed to be payable to any person so performing labor or furnishing materials and with whom such owner is in privity of contract. Any willful material misrepresentation in the affidavit or signed statement attested to by a witness which causes a monetary loss to any financial institution, title company, or purchaser shall be punishable as a Class 3 misdemeanor.

§43-14. Repealed.

§43-14.1. Service of notices.

Any notice authorized or required by this chapter, except the notice required by §43-11, may be served by any sheriff or constable who shall make return of the time and manner of service; or any such notice may be served by certified or registered mail and a return receipt therefor shall be prima facie evidence of receipt.

§43-15. Inaccuracies in memorandum or description not affecting lien.

No inaccuracy in the memorandum filed, or in the description of the property to be covered by the lien, shall invalidate the lien, if the property can be reasonably identified by the description given and the memorandum conforms substantially to the requirements of §§43-5, 43-8 and 43-10, respectively, and is not willfully false.

§43-16. What owner may do when contractor fails or refuses to complete building, etc.

If the owner is compelled to complete his building, structure, or railroad, or any part thereof undertaken by a general contractor in consequence of the failure or refusal of the general contractor to do so, the amount expended by the owner for such completion shall have priority over all mechanics' liens which have been or may be placed on such building, structure, or railroad by such general contractor, a subcontractor under him, or any person furnishing labor or materials to either of them.

§43-17. Limitation on suit to enforce lien.

No suit to enforce any lien perfected under §§43-4, 43-5 and 43-7 to 43-10 shall be brought after six months from the time when the memorandum of lien was recorded or after sixty days from the time the building, structure or railroad was completed or the work thereon otherwise terminated, whichever time shall last occur; provided, however, that the filing of a petition to enforce any such lien in any suit wherein such petition may be properly filed shall be regarded as the institution of a suit under this section; and, provided further, that nothing herein shall extend the time within which such lien may be perfected.

§43-17.1. Hearing on validity of lien.

Any party, having an interest in real property against which a lien has been filed, may, upon a showing of good cause, petition the court of equity having jurisdiction wherein the building, structure, other property, or railroad is located to hold a hearing to determine the validity of any perfected lien on the property. After reasonable notice to the lien claimant and any party to whom the benefit of the lien would inure and who has given notice as provided in §43-18 of the Code of Virginia, the court shall hold a hearing and determine the validity of the lien. If the court finds that the lien is invalid, it shall forthwith order that the memorandum or notice of lien be released from record.

§43-18. Lien of general contractor to inure to benefit of subcontractor.

The perfected lien of a general contractor on any building or structure shall inure to the benefit of any subcontractor, and of any person performing labor or furnishing materials to a subcontractor who has not perfected a lien on such building or structure, provided such subcontractor, or person performing labor or furnishing materials shall give written notice of his claim against the general contractor, or subcontractor, as the case may be, to the owner or his agent before the amount of such lien is actually paid off or discharged.

§43-19. Validity and priority of lien not affected by assignments.

Every assignment or transfer by a general contractor, in whole or in part, of his contract with the owner or of any money or consideration coming to him under such contract, or by a subcontractor of his contract with the general contractor, in whole or in part, or of any money or consideration coming to him under his contract with the general contractor, and every writ of fieri facias, attachment or other process against the general contractor or subcontractor to subject or encumber his interest arising under such contract, shall be subject to the liens given by this chapter to laborers, mechanics, and materialmen. No such assignment or transfer shall in any way affect the validity or the priority of satisfaction of liens given by this chapter.

§43-20. Extent of lien where owner has less than fee in land.

Subject to the provisions of §43-3, if the person who shall cause a building or structure to be erected or repaired owns less than a fee simple estate in the land, then only his interest therein shall be subject to liens created under this chapter. When the vendee under a contract for the sale of real estate causes a building or structure to be erected or repaired on the land which is the subject of the contract and the owner has actual knowledge of such erection or repairs, the interest of the owner in the land shall be subject to liens created under this chapter; and for the purposes of §43-21, the interest of such an owner in the land, to the extent of the unpaid purchase price, shall be deemed to be a recorded purchase money deed of trust lien created at the time the contract of sale was fully executed. As used in this section, "a contract for the sale of real estate" shall not include a lease of real estate containing an option to purchase the leased real estate or an option to purchase real estate unless the option is enforceable against the optionee.

§43-21. Priorities between mechanics' and other liens.

No lien or encumbrance upon the land created before the work was commenced or materials furnished shall operate upon the building or structure erected thereon, or materials furnished for and used in the same, until the lien in favor of the person doing the work or furnishing the materials shall have been satisfied; nor shall any lien or encumbrance upon the land created after the work was commenced or materials furnished operate on the land, or such building or structure, until the lien in favor of the person doing the work or furnishing the materials shall have been satisfied.

Unless otherwise provided in the subordination agreement, if the holder of the prior recorded lien of a purchase money deed of trust subordinates to the lien of a construction money deed of trust, such subordination shall be limited to the construction money deed of trust and said prior lien shall not be subordinate to mechanics' and materialmen's liens to the extent of the value of the land by virtue of such agreement.

In the enforcement of the liens acquired under the previous sections of this chapter, any lien or encumbrance created on the land before the work was commenced or materials furnished shall be preferred in the distribution of the proceeds of sale only to the extent of the value of the land estimated, exclusive of the buildings or structures, at the time of sale, and the residue of the proceeds of sale shall be applied to the satisfaction of the liens provided for in the previous sections of this chapter. Provided that liens filed for performing labor or furnishing materials for the repair or improvement of any building or structure shall be subject to any encumbrance against such land and building or structure of record prior to the commencement of the improvements or repairs or the furnishing of materials or supplies therefor. Nothing contained in the foregoing proviso shall apply to liens that may be filed for the construction or removal of any building or structure.

Notwithstanding the provisions of subsection C of § 43-3, a general contractor may, prior to or after providing any labor, services, or materials, contract to subordinate his lien rights to prior recorded and later recorded deeds of trust, provided that such contract is (i) in writing and (ii) signed by any general contractor whose lien rights are subordinated pursuant to such contract.

§43-22. How liens enforced.

The liens created and perfected under this chapter may be enforced in a court of equity by a bill filed in the county or city wherein the building, structure, or railroad, or some part thereof is situated, or wherein the owner, or if there be more than one, any of them, resides. The plaintiff shall file with his bill an itemized statement of his account, showing the amount and character of the work done or materials furnished, the prices charged therefor, the payments made, if any, the balance due, and the time from which interest is claimed thereon, the correctness of which account shall be verified by the affidavit of

himself, or his agent. When suit is brought for the enforcement of any such lien against the property bound thereby, all parties entitled to such liens upon the property or any portion thereof may file petitions in such suit asking for the enforcement of their respective liens to have the same effect as if an independent suit were brought by each claimant.

§43-23. Priority among liens perfected under this chapter.

There shall be no priority among the liens created and perfected under this chapter, except that the lien of a subcontractor shall be preferred to that of his general contractor; the lien of persons performing labor or furnishing materials for a subcontractor, shall be preferred to that of such subcontractor; and liens filed by persons performing manual labor shall have priority over materialmen to the extent of the labor performed during the thirty days immediately preceding the date of the performance of the last labor.

§43-23.1. Forfeiture of lien.

Any person who shall, with intent to mislead, include in his memorandum of lien work not performed upon, or materials not furnished for, the property described in his memorandum shall thereby forfeit any right to a lien under this chapter.

§43-23.2. Remedies cumulative.

The remedies afforded by this chapter shall be deemed cumulative in nature and not be construed to be in lieu of any other legal or equitable remedies.

CHAPTER 2. LIENS ON FRANCHISES AND PROPERTY OF TRANSPORTATION, ETC., COMPANIES.

§43-24. Liens of employees, suppliers, etc.

All conductors, brakemen, engine drivers, firemen, captains, stewards, pilots, clerks, depot or office agents, storekeepers, mechanics, traveling representatives or laborers, and all persons furnishing railroad iron, engines, cars, fuel and all other supplies necessary to the operation of any railway, canal or other transportation company, and all clerks, mechanics, traveling representatives, foremen, and laborers, and superintendents to the extent of not more than \$100 per week, who furnish their services or labor to any one or more individuals trading under a real or fictitious name, or names, or to any partnership or other unincorporated body of persons, engaged in mining or manufacturing, or to any mining or manufacturing company, whether such railway, canal or other transportation or mining or manufacturing company be chartered under or by the laws of this Commonwealth, or be chartered elsewhere and be doing business within the limits of this Commonwealth, shall have a prior lien on the franchises, gross earnings and on all the real and personal property of such individual, partnership, unincorporated association or company which is used in operating the same, to the extent of the moneys due them by the individual, partnership, unincorporated association or company for such wages or supplies, which lien shall be superior to, and have priority over, any amount due by such individual, partnership, unincorporated association or company for rents, or royalties.

No mortgage, deed of trust, sale, hypothecation or conveyance executed since the first day of May, 1888, shall defeat or take precedence over such lien. The lien secured by this section to parties furnishing supplies, shall be subordinate to that allowed to clerks, mechanics, foremen, superintendents, and laborers for services furnished as aforesaid.

If any person entitled to a lien as well under §43-3 as under this section, shall perfect his lien given by either section, he shall not be entitled to the benefit of the other.

No right to or remedy upon a lien which has already accrued to any person shall be extended, abridged or otherwise affected hereby.

§43-25. Perfection and enforcement of lien.

No person shall be entitled to the lien given by §43-24 unless he shall, within ninety days after the last item of his bill becomes due and payable for which such supplies are furnished or service rendered, file in the clerk's office of the circuit court of the county or circuit court of the city in which is located the chief office in this Commonwealth of the company against which the claim is, or in the clerk's office of the Circuit Court of the City of Richmond when such office is in the city, or within that time shall file with the receiver, trustee or assignee of such company, a memorandum of the amount and consideration of his claim, and the time or times when the same is, or will become due and payable, verified by affidavit, which memorandum, if filed with the clerk or in his office, the clerk shall forthwith record in the miscellaneous lien book and index the same in the name of the claimant and also in the name of the company against which the claim is, as required by §43-4. Any such lien may be enforced in a court of equity.

§43-26. Assignee's rights.

Any assignee of such a claim as is mentioned in the preceding sections may file the memorandum and make the oath required by such sections, and shall have the same rights as his assignor.

CHAPTER 3. LIENS FOR ADVANCES.

§43-27. Repealed.

§43-27.1. When clerk may destroy crop lien agreement and crop lien book.

Any agreement evidencing a lien on crops required by §43-27 to be docketed in a clerk's office may be destroyed by such clerk after twenty-four months from the date the same is docketed in his office. Any "Crop Lien Book," together with the index thereto, required by §43-27 to be kept in a clerk's office, may be destroyed by such clerk after twenty-four months from the date the last entry has been made therein, provided the same is replaced with a similar book and index for the recordation of current liens.

§43-28. Repealed.

§43-29. Liens of landlords and farmers for advances to tenants and laborers.

(1) Provision for lien; enforcement and priority.—If any owner or occupier of land contract with any person to cultivate or raise livestock on such land as his tenant for rent either in money or a share of the crop or livestock; or if any person engaged in the cultivation of land contract with any laborer thereon for a share of the crop or the livestock raised thereon as his wages; and such owner or occupier of the land, or such person engaged in the cultivation of land, shall make any advances in money, supplies, or other thing to such tenant or laborer, he shall have a lien to the extent of such advances on all the crops or livestock, or the share of such laborer in the crops or livestock that are made or seeded or raised, grown or fed on the land during the year in which the advances are made, which shall be prior to all other liens on such crops or livestock or such portion thereof, or share therein. And he shall have the same remedy for the enforcement of such lien by distress when the claim is due, or by attachment when the claim is not yet payable, as is given a landlord for the recovery of rent under § 8.01-130.4; provided, that he or his agent, shall, before suing out the distress warrant, make affidavit before the magistrate issuing the same to the amount of his claim, that it is then due and is for advances made under contract to a tenant cultivating or raising livestock on his land, or a laborer working or raising livestock on the same; and before suing out the attachment, make the like affidavit, and also at what time the claim will become payable, and that the debtor intends to remove, or is removing from such land such crops or

livestock, or his portion thereof, or share therein, so that there will not be left enough to satisfy the claim. The person, whose crops or livestock are so distrained or attached, shall have all the rights and be entitled to all the remedies allowed a tenant against a distress or attachment for rent.

(2) When verified statement of advances required.—However, when the crops or livestock are subject to a lien of a fieri facias or attachment, whether a levy be actually made or not, it shall be the duty of the person claiming a lien under this section, upon the request of the sheriff, or any other party in interest, to render to the sheriff of the county wherein the crops or livestock are raised or grown, a complete and itemized statement under oath of the claims for advances, showing the nature of the claims, the dates of advancement and the respective amounts. And in case the person claiming advances fails to render to the sheriff of such county the verified itemized statement above provided for within ten days after the request has been made, he shall forever lose the benefit of the lien on the crops or livestock for advances granted him under this section.

(3) When further showing as to advances required.—If the execution creditor or attachment creditor desires to contest the validity of the claims for advances, he may cause the clerk of the circuit court of the county in which such crops are grown or livestock raised to summon the person claiming the lien for advances to appear before such court and show to the satisfaction of the court that such money, supplies or other things of value were advanced for the purpose of, and were necessary in and about the cultivation of the crops or the raising of the livestock upon which the lien is claimed.

§43-30. Lien of landlord and other recorded liens not affected by lien given under §43-27; nor is right to claim exemption.

The lien provided for in §43-27 shall not affect in any manner the rights of the landlord to his proper share of rents, or his lien for rent or advances, or his right of distress or attachment for the same, nor any lien existing at the time of making the agreement mentioned in such section, which is required by law to be recorded and shall have been admitted to record. Nor shall it affect the right of the party to whom the advances have been made, to claim such part of his crops as is exempt from levy or distress for rent.

CHAPTER 4. LIENS OF INNKEEPERS, LIVERY STABLE, GARAGE AND MARINA KEEPERS, MECHANICS AND BAILEES.

§43-31. Lien of innkeepers, etc.

Every innkeeper and the keeper of a boardinghouse or house of private entertainment shall have a lien upon, and may retain possession of, the baggage and other property of his guest or boarder brought upon his premises, and also upon the property of the employer of such guest or boarder, controlled and brought upon the premises by such guest or boarder in the course of his employment, for the proper charges due from such guest for his board and lodging.

§43-32. Lien of keeper of livery stable, marina, etc.

A. Every keeper of a livery stable, hangar, tie-down, or marina, and every person pasturing or keeping any horses or other animals, boats, aircraft, or harness, shall have a lien upon such horses and other animals, boats, aircraft, and harness, for the amount that may be due him for the towing, storage, recovery, keeping, supporting, and care thereof, until such amount is paid.

B. In the case of any boat or aircraft subject to a chattel mortgage, security agreement, deed of trust, or other instrument securing money, the keeper of the marina, hangar, or tie-down shall have a lien thereon for his reasonable charges for storage under this section not to exceed \$500 and for alteration and repair under § 43-33 not to exceed \$1,000. However, in the case of a storage lien, to obtain the priority for an amount in excess of \$300, the person asserting the lien shall make a reasonable attempt

to notify any secured party of record at the Department of Game and Inland Fisheries by telephonic means and shall give written notice by certified mail, return receipt requested, to any secured party of record at the Department of Game and Inland Fisheries within seven business days of taking possession of the boat or aircraft. If the secured party does not, within seven business days of receipt of the notice, take or refuse redelivery to it or its designee, the lienor shall be entitled to priority for the full amount of storage charges, not to exceed \$500. Notwithstanding a redelivery, the watercraft shall be subject to subsection D.

C. In addition, any person furnishing services involving the towing and recovery of a boat or aircraft shall have a lien for all normal costs incident thereto, if the person asserting the lien gives written notice within seven days of receipt of the boat or aircraft by certified mail, return receipt requested, to all secured parties of record at the Department of Game and Inland Fisheries.

D. In addition, any keeper shall be entitled to a lien against any proceeds remaining after the satisfaction of all prior security interests or liens and may retain possession of such property until such charges are paid.

§43-33. Lien of mechanic for repairs.

Every mechanic who shall alter or repair any article of personal property at the request of the owner of such property shall have a lien thereon for his just and reasonable charges therefor and may retain possession of such property until such charges are paid.

And every mechanic who shall make necessary alterations or repairs on any article of personal property which from its character requires the making of ordinary repairs thereto as a reasonable incident to its reasonable and customary use, at the request of any person legally in possession thereof under a reservation of title contract, chattel mortgage, deed of trust, or other instrument securing money, the person so in possession having authority to use such property, shall have a lien thereon for his just and reasonable charges therefor to the extent of \$1,000. In addition, such mechanic shall be entitled to a lien against the proceeds, if any, remaining after the satisfaction of all prior security interests or liens and may retain possession of such property until such charges are paid. In any action to enforce the lien hereby given all persons having an interest in the property sought to be subjected shall be made parties defendant.

If the owner of the property held by the mechanic shall desire to obtain possession thereof, he shall make the mechanic defendant in proceeding in the county or municipal court to recover the property. The owner may give a bond payable to the court, in a penalty of the amount equal to the lien claimed by the mechanic and court costs, with security to be approved by the clerk, and conditioned for the performance of the final judgment of the court on the trial of the proceeding, and with a further condition to the effect that, if upon the hearing, the judgment of the court be that the lien of the mechanic on such property, or any part thereof, be enforced, judgment may thereupon be entered against the obligors on such bond for the amount due the mechanic and court costs, if assessed against the owner, without further or other proceedings against them thereon. Upon giving of the bond, the property shall be delivered to the owner.

§43-34. Enforcement of liens acquired under §§43-31 through 43-33 and of liens of bailees.

For the purposes of this section, "public place" means a premises owned by the Commonwealth or a political subdivision thereof, or an agency of either, that is open to the general public.

Any person having a lien under §§ 43-31 through 43-33 and any bailee, except where otherwise provided, having a lien as such at common law on personal property in his possession that he has no power to sell for the satisfaction of the lien, if the debt for which the lien exists is not paid within 10 days after it is due and the value of the property affected by the lien does not exceed \$10,000, may sell such property or so much thereof as may be necessary, by public auction, for cash. The proceeds shall

be applied to the satisfaction of the debt and expenses of sale, and the surplus, if any, shall be paid within 30 days of the sale to any lienholder, and then to the owner of the property. A seller who fails to remit the surplus as provided shall be liable to the person entitled to the surplus in an amount equal to \$50 for each day beyond 30 days that the failure continues.

Before making the sale, the seller shall advertise the time, place, and terms thereof in any of the following places: (i) a public place in the county or city where the property is located; (ii) a website operated by the Commonwealth, the county or city where the property is located, or a political subdivision of either; or (iii) a newspaper of general circulation in the county or city where the property is located, either in print or on its website. In the case of property other than a motor vehicle required to be registered in Virginia having a value in excess of \$600, 10 days' prior notice shall be given to any secured party who has filed a financing statement against the property, and written notice shall be given to the owner as hereinafter provided.

If the value of the property is more than \$10,000 but does not exceed \$25,000, the party having the lien, after giving notice as herein provided, may apply by petition to any general district court of the county or city wherein the property is, or, if the value of the property exceeds \$25,000, to the circuit court of the county or city, for the sale of the property. If, on the hearing of the case on the petition, the defense, if any made thereto, and such evidence as may be adduced by the parties respectively, the court is satisfied that the debt and lien are established and the property should be sold to pay the debt, the court shall order the sale to be made by the sheriff of the county or city. The sheriff shall make the same and apply and dispose of the proceeds in the same manner as if the sale were made under a writ of fieri facias.

If the owner of the property is a resident of the Commonwealth, any notice required by this section may be served as provided in § 8.01-296 or, if the sale is to be made without resort to the courts, by personal delivery or by certified or registered mail delivered to the present owner of the property to be sold at his last known address at least 10 days prior to the date of sale. If the owner of the property is a nonresident or if his address is unknown, any notice required by this section may be served by posting a copy thereof in three of any of the following places in any combination: (i) one or more public places in the county or city where the property is located; (ii) one or more websites operated by the Commonwealth, the county or city where the property is located, or a political subdivision of either; or (iii) one or more newspapers of general circulation in the county or city where the property is located, either in print or on their websites.

§43-34.1. Lien of keeper of hangar or tie-down on aircraft subject to a chattel mortgage.

In the case of any aircraft subject to a chattel mortgage, security agreement, deed of trust or other instrument securing money, the keeper of the hangar or tie-down shall have a lien thereon for his usual and reasonable charges for storage, alteration or repair from the time such lien is perfected as provided herein. Such lien is nonpossessory and shall be deemed a conveyance. To perfect such lien, the following shall be required:

1. The claim of lien shall be signed, under oath, by the claimant, his agent or attorney;
2. The claim of lien shall also be filed within 120 days after completion of alterations or repair or accrual of storage charges, as personal property security interests or liens are recorded, with the State Corporation Commission in accordance with the applicable provisions of Part 5 (§8.9A-501 et seq.) of Title 8.9A; and
3. The claim of lien shall also be filed within such 120-day period with the Aircraft Registration Branch of the Federal Aviation Administration.

§43-35. How and when validity of lien, or claim of other person to property, is tried.

Any person may file his petition, at any time before the property is sold or the proceeds of sale are paid to the plaintiff under the judgment of the court, disputing the validity of the plaintiff's lien thereon, or stating a claim thereto, or an interest in or lien on the same, and its nature; and the court shall inquire into such claim, and if it be found that the petitioner has title to, or a lien on, or any interest in, such property or proceeds of sale, the court shall make such order as is necessary to protect his rights.

§43-36. Appeals, how taken and tried.

Any party may appeal from the judgment of the general district court, as in case of warrants for small claims under Chapter 6 (§16.1-76 et seq.) of Title 16.1, and such appeal shall be heard and determined in like manner, as appeals under such chapter.

§43-37. Sale of baggage and other personal property held pursuant to §43-31 or unclaimed.

Whenever any baggage or other personal property is being held by a hotel pursuant to the lien granted by §43-31, or where such baggage or other personal property has been voluntarily checked with a hotel, such baggage and other personal property may be sold at public auction for cash after it has been so held or checked and has remained unclaimed for more than sixty days, provided that before such sale is held written notice of such sale stating the date and place thereof and a brief description of such baggage or other personal property and the name of the owner thereof, if known, and the amount of the charges, if any, against the same, is sent by registered mail to such owner, if known, at his last known address, if known, at least ten days prior to such sale, and provided that such notice is publicly posted in the lobby of such hotel at least ten days prior to such sale.

§43-38. Withdrawal from such sale upon payment of charges, interest and expenses.

Such baggage or other personal property shall be withdrawn from sale and released to the owner thereof upon payment to such hotel, at any time prior to such sale, of the debt or charges, if any, against the same, with legal interest thereon and the expenses incurred in preparation for such sale prior to such payment.

§43-39. Distribution of proceeds of sale.

The proceeds of sale shall be applied to the expenses of such sale, including the expense of notices, and to the satisfaction of the debt or charges, if any, with legal interest against such baggage or other personal property. The surplus, if any, shall be paid by the hotel to the owner of such baggage or other personal property, upon written application filed with such hotel by the owner within thirty days after such sale. If no such application is so filed, then such hotel shall pay over such surplus to the State Treasurer, who shall credit the same to the Literary Fund. Compliance by a hotel with the provisions of this and the two preceding sections (§§43-37, 43-38) shall be a complete bar and defense to any claim that may thereafter be made by anyone against such hotel on account of such baggage or other personal property.

§43-40. Subsequent payment of surplus proceeds to persons entitled thereto.

At any time within ten years after the payment into the state treasury of the surplus proceeds of any such sale as provided in the preceding section (§43-39), the former owner or owners of the property so sold, upon evidence of such ownership satisfactory to the Comptroller, shall be paid the principal amount of such surplus proceeds so paid into the state treasury out of any moneys held in reserve on the books of the Department of Accounts for the benefit of the Literary Fund upon warrant of the Comptroller. If any such claim be disallowed in whole or in part by the Comptroller, it may be recovered

in the manner and subject to the conditions and limitations provided in §§8.01-192 through 8.01-195 and 8.01-255 for recovering claims against the Commonwealth.

CHAPTER 5. LIENS ON OFFSPRING OF CERTAIN ANIMALS.

§43-41. Lien on offspring of stallion or jackass.

When the owner of a mare or jennet breeds the same to any stallion or jackass whereby such mare or jennet shall become in foal and is delivered of a live colt, the owner of any such stallion or jackass shall have a lien upon the colt for a period of twelve months, or until the price agreed upon for the season or service by the owner of the stallion or jackass and the owner of the mare or jennet be paid. Such lien shall not extend for a longer period than twelve months, and after judgment has been taken for the amount of such fee, then, unless the same is paid, the officer in whose hands the fieri facias is placed for collection may proceed to levy on and sell such colt for the aforesaid fieri facias and costs, and he shall be entitled to the same fees for his services as is provided for by the existing law.

§43-42. Recordation of lien given by preceding section.

The lien given by the preceding section (§43-41), if reduced to writing, shall be recorded in the miscellaneous lien book and shall be operative from the recordation thereof and if the lien is not reduced to writing, it shall, upon application of the owner of the stallion or jackass, be recorded by the clerk of the circuit court of the county in which the foal is foaled in such book in the following form:
.....(giving the name of the owner of the stallion or jackass) versus.....(giving the name of the owner of the colt). The owner of the stallion or jackass claims a lien on a colt less than twelve months old for \$....., for the get thereof.

§43-43. Lien on offspring of bull.

A person owning a bull in this Commonwealth shall have a lien on the get of such bull for the period of six months from the date of the birth of such get, for the price agreed upon between him and the owner of any cow served by such bull; however, this lien shall not hold good as against an innocent purchaser for value and without notice, except when the lien has been admitted to record, which may be done in the following form:

..... (giving the name of the owner of the bull) versus... (giving the name of the owner of the calf). The owner of the bull claims a lien on a calf less than six months old for \$....., for the get thereof.

It shall be the duty of the clerk of the county in which the calf is calved to place the same on record in the miscellaneous lien book.

CHAPTER 6. LIENS OF CHATTEL DEEDS OF TRUST UPON CROPS, FARM MACHINERY, ETC.

[REPEALED]

Sections 43-44. through 43-61. [Repealed]

CHAPTER 7. MISCELLANEOUS LIENS.

§43-62. Lien for farm products consigned to commission merchant.

Whenever any farm products shall have been consigned to any commission merchant for sale, and he shall have made sale thereof and become insolvent or die before paying over the proceeds of the sale thereof to, or on account of, the consignor or owner of the farm products, the claim of such consignor or

owner, when legally proved, shall be a lien on the estate of the commission merchant subject only to such liens as were created on the estate and recorded prior to his insolvency or death.

The benefit of this section shall not accrue to any consignor or owner who, without requesting payment, shall allow such proceeds to remain with such commission merchant at interest, nor to any consignor or owner who, without requesting payment, shall allow such proceeds to remain in the hands of such commission merchant more than 30 days after becoming informed of such sale.

Jurisdiction is hereby given to circuit courts to enforce the provisions of this section.

§43-63. Lien for cleaning, laundering, dyeing, pressing or storing clothing, rugs and other fabrics.

Every person, firm, association and corporation engaged in the business of cleaning, laundering, dyeing and pressing or storing clothing, carpets, rugs and other fabrics shall have a lien upon such clothing, carpets, rugs or other fabrics for the amount which may be due for the cleaning, dyeing, pressing or storage thereof, and may retain such clothing, carpets, rugs or other fabrics until such amount is paid. If the debt for which a lien is given under this section be not paid within ninety days after it is due, the property subject to such lien, or so much thereof as may be necessary to satisfy such lien, may be sold by the person, firm, association or corporation holding such lien at public auction for cash, and the proceeds of such sale applied to the expenses thereof, and to pay the debt, and the surplus, if any, shall be paid to the owner of such property. Before making such sale the person, firm or corporation holding such lien shall give ten days' written notice thereof by registered mail sent to the last known post-office address of such owner, and, in addition thereto, shall advertise the time and place thereof in such manner as to give it reasonable publicity; provided that if the owner at the time of leaving such property to be cleaned, laundered, dyed, pressed or stored is given a ticket or other receipt therefor which bears on its face in type not smaller than eight point the words, "The property evidenced hereby may be sold if unclaimed after one hundred and eighty days except in the case of stored property which shall not be subject to sale until such property is unclaimed for two hundred forty days," then notice of sale by mail and other advertisement shall not be required. A copy of this section shall be prominently displayed in the place of business in which any such property is left by the owner.

§43-63.1 Repealed.

CHAPTER 8. MISCELLANEOUS PROVISIONS.

§43-64. How notices served, acts done, etc., in case of bankruptcy, death or absconding.

Whenever any act is required to be done by, or notice is to be given to, a person mentioned in any section of this title, or of Chapter 17 (§8.01-426 et seq.) of Title 8.01, if such person become bankrupt, the act may be done by, or the notice given to, either the bankrupt or his trustee; or if such person die, the act may be done by, or the notice given to, his personal representative; or if he abscond, the notice may be given to any person over the age of sixteen years found at his last known place of business or residence, or if no such person be found there, by posting the same at the front door of such place of business or residence, or at some other conspicuous part of the building, or he may be proceeded against by order of publication as a nonresident of the Commonwealth.

§43-65. Protection of assignees, transferees or endorsees of debts secured by mechanics' or crop liens.

Whenever any debt secured on real estate or personal property by a mechanics' or crop lien has been assigned, transferred, or endorsed to another, in whole or in part by the original payee thereof, such payee, assignee, transferee, or endorsee may cause a memorandum or statement of the assignment to such assignee, transferee, or endorsee to be recorded, which memorandum or statement shall be

signed by the assignor, transferrer, or endorser, or his duly authorized agent or attorney, and when so signed and the signature thereto attested by the clerk in whose office such encumbrance is recorded the same shall operate as a notice of such assignment and transfer. Such assignment, transfer, or endorsement shall reference the book and page where the original debt secured on real estate or personal property is recorded. And where such transfer by the payee is so entered in the proper book, subsequent transfers may likewise be entered in the same manner and with like effect. Provided, however, this section shall not apply to conditional sales contracts of personal property.

§43-66. Purchaser not affected by liens of Mutual Assurance Society against Fire.

The lien of the Mutual Assurance Society against Fire on buildings in the Commonwealth of Virginia upon property insured therein for quotas assessed against the policies of such property owners shall not be valid against purchasers of such property for valuable consideration without notice of the existence of such insurance, except from the time the Society shall have complied with the provisions of this section. The Society shall have prepared and kept in the clerk's office of the Circuit Court of the City of Richmond, and of the circuit court of each county and the circuit court of each city in which the Society insures property, a book to be called the "Mutual Assurance Society's Lien Book." Such book when left with the clerk shall become a public record and shall be kept open to the inspection of the public. The Society shall have entered in such book a brief description of the property insured by it upon which it claims a lien, the date and amount of the policy and the name of the parties to whom the policy was issued, and the date of the entry shall be made in such book.

CHAPTER 9. RELEASE OF LIENS.

§43-67. Release of mechanic's lien upon payment or satisfaction.

When payment or satisfaction has been made of a debt secured by a mechanic's lien it shall be released in the manner provided in §§ 55.1-339 and 55.1-341, insofar as appropriate.

§43-68. Releases made by court.

Any person who owns or has any interest in real estate or personal property on which such lien exists may, after twenty days' notice thereof to the person entitled to such lien, apply to the circuit or corporation court of the county or corporation in whose clerk's office such encumbrance is recorded, or to the Circuit Court of the City of Richmond, if it be in the clerk's office of such court, to have the same released or discharged; and upon proof that it has been paid or discharged, or upon its appearing to the court that more than twenty years have elapsed since the maturity of the lien, raising a presumption of payment, and which is not rebutted at the hearing, or upon proof that no suit, as defined by §43-17, has been brought to enforce the same within the time prescribed by such section; such court shall order the same to be recorded by the clerk. Such release shall reference the book and page where the original lien securing such interest in real estate or personal property is recorded.

§43-69. Repealed.

§43-70. Release of mechanic's lien upon payment into court or filing of bond after suit brought.

In any suit brought under the provisions of §43-22, the owner of the building and premises to which the lien, or liens, sought to be enforced shall have attached, the general contractor for such building or other parties in interest may, after five days' notice to the lienor, or lienors, apply to the court in which such suit shall be pending, or to the judge thereof in vacation, for permission to pay into court an amount of money sufficient to discharge such lien, or liens, and the costs of the suit or for permission to file a bond in the penalty of double the amount of such lien, or liens, and costs, with surety to be

approved by the court, or judge, conditioned for the payment of such judgment adjudicating the lien or liens to be valid and determining the amount for which the same would have been enforceable against the real estate as may be rendered by the court upon the hearing of the case on its merits, which permission shall be granted by the court, or judge, in either such case, unless good cause be shown against the same by some party in interest.

Upon the payment of such money into court, or upon the filing of such bond, as the case may be, after the court has granted permission for the same to be done, the property affected thereby shall stand released from such lien, or liens, and the money so paid in, or the bond so filed, as the case may be, shall be subject to the final judgment of the court upon the hearing of the case on its merits.

§43-71. Release of mechanic's lien upon payment into court or filing bond before suit.

At any time after the perfecting of any such lien and before a suit be brought for the enforcement thereof, the owner of the property affected thereby, the general contractor or other parties in interest may, after five days' notice to the lienor, apply to the court having jurisdiction of a suit for the enforcement of such lien, or to the judge thereof in vacation, for permission to make such payment into court, or to file such bond, as prescribed in §43-70, which permission, in either such event, shall be granted by such court, or judge, unless good cause be shown against the same by some party in interest. Upon the granting of such permission, and the payment of such money into court, or the filing of such bond, as the case may be, the property affected thereby shall stand released from such lien. Such money, or bond, as the case may be, shall be held under the control of the court and shall be subject to the final judgment of the court adjudicating the lien or liens to be valid and determining the amount for which the same would have been enforceable against the real estate in any suit or action thereafter brought for the ascertainment of the rights of the parties in interest, with respect hereto, or, shall be paid out and disposed of as the parties in interest may direct, in the event the matters in controversy with respect thereto be settled and adjusted between the parties without suit or action. The sureties on any such bond, which may be involved in any suit or action brought under the provisions of this section, shall be made parties to such suit or action.

Copyright © Commonwealth of Virginia, 2020. All rights reserved.