

Notice to Owner by Contractor

A.C.A. § 18-44-115

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Title 18 Property
Subtitle 4. Mortgages And Liens
Chapter 44 Mechanics' and Materialmen's Liens
Subchapter 1 -- General Provisions

A.C.A. § 18-44-115 (2012)

18-44-115. Notice to owner by contractor.

(a) (1) No lien upon residential real estate containing four (4) or fewer units may be acquired by virtue of this subchapter unless the owner of the residential real estate, the owner's authorized agent, or the owner's registered agent has received, by personal delivery or by certified mail, a copy of the notice set out in this subsection.

(2) The notice required by this subsection shall not require the signature of the owner of the residential real estate, the owner's authorized agent, or the owner's registered agent in an instance when the notice is delivered by certified mail.

(3) It shall be the duty of the residential contractor to give the owner, the owner's authorized agent, or the owner's registered agent the notice set out in this subsection on behalf of all potential lien claimants before the commencement of work.

(4) If a residential contractor fails to give the notice required under this subsection, then the residential contractor is barred from bringing an action either at law or in equity, including without limitation quantum meruit, to enforce any provision of a residential contract.

(5) (A) Any potential lien claimant may also give notice.

(B) (i) If before commencing work or supplying goods a subcontractor, material supplier, laborer, or other lien claimant gives notice under this section, the notice shall be effective for all subcontractors, material suppliers, laborers, and other lien claimants not withstanding that the notice was given after the project commences as defined under § 18-44-110(a)(2).

(ii) If the notice relied upon by a lien claimant to establish a lien under this subchapter is given by another lien claimant under subdivision (a)(5)(B)(i) of this section after the project commences, the lien of the lien claimant shall secure only the labor, material, and services supplied after the effective date of the notice under subdivision (a)(5)(B)(i) of this section.

(C) However, no lien may be claimed by any subcontractor, laborer, material supplier, or other lien claimant unless the owner of the residential real estate, the owner's authorized agent, or the owner's registered agent has received at least one (1) copy of the notice, which need not have been given by the particular lien claimant.

(6) A residential contractor who fails to give the notice required by this subsection is guilty of a violation pursuant to § 5-1-108 and upon pleading guilty or nolo contendere to or being found guilty of failing to give the notice required by this subsection shall be punished by a fine not exceeding one thousand dollars (\$1,000).

(7) The notice set forth in this subsection may be incorporated into the contract or affixed to the contract and shall be conspicuous, set out in boldface type, worded exactly as stated in all capital letters, and shall read as follows:

"IMPORTANT NOTICE TO OWNER

(8) (A) If the residential contractor supplies a performance and payment bond or if the transaction is a direct sale to the property owner, the notice requirement of this subsection shall not apply, and the lien rights arising under this subchapter shall not be conditioned on the delivery and execution of the notice.

(B) A sale shall be a direct sale only if the owner orders materials or services from the lien claimant.

(b) (1) (A) The General Assembly finds that owners and developers of commercial real estate are generally knowledgeable and sophisticated in construction law, are aware that unpaid laborers, subcontractors, and material suppliers are entitled to assert liens against the real estate if unpaid, and know how to protect themselves against the imposition of mechanics' and material suppliers' liens.

(B) The General Assembly further finds that consumers who construct or improve residential real estate containing four (4) or fewer units generally do not possess the same level of knowledge and awareness and need to be informed of their rights and

responsibilities.

(2) As used in this subsection:

(A) "Commercial real estate" means:

- (i)** Nonresidential real estate; and
- (ii)** Residential real estate containing five (5) or more units; and

(B) "Service provider" means an architect, an engineer, a surveyor, an appraiser, a landscaper, an abstractor, or a title insurance agent.

(3) Because supplying the notice specified in subsection (a) of this section imposes a substantial burden on laborers, subcontractors, service providers, and material suppliers, the notice requirement mandated under subsection (a) of this section as a condition precedent to the imposition of a lien by a laborer, subcontractor, service provider, or material supplier shall apply only to construction of or improvement to residential real estate containing four (4) or fewer units.

(4) No subcontractor, service provider, material supplier, or laborer shall be entitled to a lien upon commercial real estate unless the subcontractor, service provider, material supplier, or laborer notifies the owner of the commercial real estate being constructed or improved, the owner's authorized agent, or the owner's registered agent in writing that the subcontractor, service provider, material supplier, or laborer is currently entitled to payment but has not been paid.

(5) (A) The notice shall be sent to the owner, the owner's authorized agent, or the owner's registered agent and to the contractor before seventy-five (75) days have elapsed from the time that the labor was supplied or the materials furnished.

(B) The notice may be served by any:

- (i)** Officer authorized by law to serve process in civil actions;
- (ii)** Form of mail addressed to the person to be served with a return receipt requested and delivery restricted to the addressee or the agent of the addressee; or
- (iii)** Means that provides written, third-party verification of delivery at any place where the owner, the owner's registered agent, or the owner's authorized agent maintains an office, conducts business, or resides.

(C) When served by mail, the notice shall be complete when mailed.

(D) If delivery of the mailed notice is refused by the addressee or the item is unclaimed:

- (i)** The lien claimant shall immediately send the owner, the owner's authorized agent, or the owner's registered agent a copy of the notice by first class mail; and
- (ii)** The unopened original of the item marked unclaimed or refused by the United States Postal Service shall be accepted as proof of service as of the postmarked date of the item.

(6) The notice shall contain the following information:

- (A)** A general description of the labor, service, or materials furnished, and the amount due and unpaid;
- (B)** The name and address of the person furnishing the labor, service, or materials;
- (C)** The name of the person who contracted for purchase of the labor, service, or materials;
- (D)** A description of the job site sufficient for identification; and
- (E)** The following statement set out in boldface type and all capital letters:

"NOTICE TO PROPERTY OWNER

HISTORY: Acts 1979, No. 746, §§ 1-5; 1981, No. 669, § 1; 1983, No. 304, § 1; A.S.A. 1947, §§ 51-608.1 -- 51-608.6; Acts 1995, No. 1298, § 7; 2005, No. 1994, § 98; 2005, No. 2287, § 3; 2009, No. 454, § 3; 2011, No. 271, § 5.