


I MINA' BENTE NUEBI NA LIHESLATURAN GUÅHAN
2008 (SECOND) Regular Session

Bill No. 297 (EC)

Introduced by:

Ray Tenorio 

AN ACT TO REPEAL AND REENACT CHAPTER 33 OF
TITLE 7 OF THE GUAM CODE ANNOTATED RELATIVE TO
ESTABLISHING NEW MECHANICS LIENS LAWS OF
GUAM.

2008 MAY 13 PM 4:11

1 BE IT ENACTED BY THE PEOPLE OF GUAM:
2

3 Section 1. Legislative Statement. It is the intent of *I Liheslaturan*
4 *Guåhan* to enact a body of mechanics' lien laws consistent with the practice of
5 California, the jurisdiction from which Guam adopted and patterned its original
6 Mechanics' Lien Law, with some exceptions, however, to account for Guam's
7 unique requirements.

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9 Section 2. This act shall be known as the "2008 Guam Mechanics' Lien
10 Law. The effective date of this Act shall be One Hundred Eighty (180) Days from
11 enactment.

12
13 Section 3. Unless otherwise designated, references to code sections shall
14 apply to code sections within this Chapter.
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1 **Section 4.** Chapter 33 of Title 7 of the Guam Code Annotated is hereby
2 repealed and reenacted to read as follows:

3
4 **CHAPTER 33.**
5 **WORKS OF IMPROVEMENT.**

6
7 **Article 1. General Definitions.**

8 **Article 2. Mechanics' Liens.**

9 **Article 3. Construction of and Terms and Conditions of**
10 **Bonds**

11 **Article 4. Payment Bond Provision for and Effect of**
12 **Filing Contract and Payment Bond**

13 **Article 5. Miscellaneous Provisions.**

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15
16 **ARTICLE 1.**
17 **GENERAL DEFINITIONS.**

18
19 **§ 33101. Application of Chapter**

20 **§ 33102. Chapter Governs Construction of Title**

21 **§ 33103. Claim of Lien**

22 **§ 33104. Claimant**

23 **§ 33105. Completion**

24 **§ 33106. Contract**

25 **§ 33107. Laborer**

- 1 § 33108. **Materialman**
- 2 § 33109. **Notice of Cessation**
- 3 § 33110. **Notice of Completion**
- 4 § 33111. **Notice of Nonresponsibility**
- 5 § 33112. **Original Contractor**
- 6 § 33113. **Payment Bond**
- 7 § 33114. **Preliminary 20-Day Notice**
- 8 § 33115. **Site**
- 9 § 33116. **Site Improvement**
- 10 § 33117. **Subcontractor**
- 11 § 33118. **Subdivision**
- 12 § 33119. **Work of Improvement**

13

14 § 33101. **Application of Chapter.** This Chapter does not apply to any
15 public work.¹

16 § 33102. **Chapter Governs Construction of Title.** Unless the context
17 otherwise requires, the provisions in this Article govern the construction of this
18 Chapter.

19 § 33103. **Claim of Lien.** *Claim of Lien* means a written statement,
20 signed and verified by the claimant or by the claimant's agent, containing all of the
21 following:

22 (a) A statement of the claimant's demand after deducting all just
23 credits and offsets.

24 (b) The name of the owner or reputed owner, if known.

¹Claims against payment bonds for public works are contained in 5 G.C.A. § 5304, *et seq.*

1 (c) A general statement of the kind of labor, services, equipment,
2 or materials furnished by the claimant.

3 (d) The name of the person by whom the claimant was employed
4 or to whom the claimant furnished the labor, services, equipment, or materials.

5 (e) A description of the site sufficient for identification and
6 recordation with the Department of Land Management.

7 **§ 33104. Claimant.** *Claimant* means any person entitled under this
8 Chapter to record a claim of lien or to recover on any payment bond.

9 **§ 33105. Completion.** *Completion* means, in the case of any work of
10 improvement, actual completion of the work of improvement. Any of the
11 following shall be deemed equivalent to a completion:

12 (a) The occupation or use of a work of improvement by the owner,
13 or his agent, accompanied by cessation of labor thereon.

14 (b) The acceptance by the owner, or his agent, of the work of
15 improvement.

16 (c) After the commencement of a work of improvement, a
17 cessation of labor thereon for a continuous period of sixty (60) days, or a cessation
18 of labor thereon for a continuous period of thirty (30) days or more if the owner
19 files for record a notice of cessation.

20 **§ 33106. Contract.** *Contract* means an agreement between an owner and
21 any original contractor providing for the work of improvement or any part thereof.

22 **§ 33107. Laborer.** *Laborer* means any person who, acting as an
23 employee, performs labor upon or bestows skill or other necessary services on any
24 work of improvement.

1 **§ 33108. Materialman.** *Materialman* means any person who furnishes
2 materials or supplies to be used or consumed in any work of improvement.

3 **§ 33109. Notice of Cessation.** *Notice of Cessation* means a written
4 notice, signed and verified by the owner or his agent, containing all of the
5 following:

6 (a) The date on or about when the cessation of labor commenced.

7 (b) A statement that such cessation has continued until the
8 recording of the notice of cessation.

9 (c) The name and address of the owner.

10 (d) The nature of the interest or estate of the owner.

11 (e) A description of the site sufficient for identification and
12 recordation with the Department of Land Management, containing the lot number
13 and street address of the site, if any. If a sufficient legal description of the site is
14 given, the validity of the notice shall not, however, be affected by the fact that the
15 street address is erroneous or is omitted.

16 (f) The name of the original contractor, if any, for the work of
17 improvement as a whole.

18 (g) For the purpose of this Section, "owner" means the owner who
19 causes a building, improvement, or structure, to be constructed, altered, or repaired
20 (or his successor in interest at the date of a notice of cessation from labor is filed
21 for record) whether the interest or estate of such owner be in fee, as vendee under
22 a contract of purchase, as lessee, or other interest or estate less than the fee.
23 Where such interest or estate is held by two or more persons as joint tenants or
24 tenants in common, any one or more of the cotenants may be deemed to be the
25 "owner" within the meaning of this Section. Any notice of cessation signed by

1 less than all of such cotenants shall recite the names and addresses of all such
2 cotenants.

3 The notice of cessation shall be recorded at the Department of Land
4 Management and shall be effective only if there has been a continuous cessation of
5 labor for at least thirty (30) days prior to such recording.

6 **§ 33110. Notice of Completion.** *Notice of Completion* means a written
7 notice, signed and verified by the owner or his agent, containing all of the
8 following:

9 (a) The date of completion (other than a cessation of labor). The
10 recital of an erroneous date of completion shall not, however, affect the validity of
11 the notice if the true date of completion is within ten (10) days preceding the date
12 of recording of such notice.

13 (b) The name and address of the owner.

14 (c) The nature of the interest or estate of the owner.

15 (d) A description of the site sufficient for identification and
16 recordation with the Department of Land Management, containing the lot number
17 and street address of the site, if any. If a sufficient legal description of the site is
18 given, the validity of the notice shall not, however, be affected by the fact that the
19 street address recited is erroneous or that such street address is omitted.

20 (e) The name of the original contractor, if any, or if the notice is
21 given only of completion of a contract for a particular portion of such work of
22 improvement, as provided in §33206, then the name of the original contractor
23 under such contract, and a general statement of the kind of work done or materials
24 furnished pursuant to such contract.

1 The notice of completion shall be recorded at the Department of Land
2 Management within ten (10) days after such completion.

3 If there is more than one owner, any notice of completion signed by less
4 than all of such co-owners shall recite the names and addresses of all of such co-
5 owners; and provided further, that any notice of completion signed by a successor
6 in interest shall recite the names and addresses of his transferor or transferors.

7 For the purpose of this Section, owner is defined as set forth in Subsection
8 (g) of §33109.

9 **§ 33111. Notice of Nonresponsibility.** *Notice of nonresponsibility* means a
10 written notice, signed and verified by a person owning or claiming an interest in
11 the site who has not caused the work of improvement to be performed, or his
12 agent, containing all of the following:

- 13 (a) A description of the site sufficient for identification.
- 14 (b) The name and nature of the title or interest of the person giving
15 the notice.
- 16 (c) The name of the purchaser under contract, if any, or lessee, if
17 known.
- 18 (d) A statement that the person giving the notice will not be
19 responsible for any claims arising from the work of improvement.

20 Except as provided for in §33211(b), within ten (10) days after the person
21 claiming the benefits of nonresponsibility has obtained knowledge of the work of
22 improvement or the first preliminary notice provided for in §33114 concerning the
23 work of improvement has been delivered to that person, the notice provided for in
24 this Section shall be posted in some conspicuous place on the site.

1 Within the same ten (10) day period provided for the posting of the notice,
2 the notice shall be recorded with the Department of Land Management.

3 **§ 33112. Original Contractor.** *Original Contractor* means any
4 contractor who has a direct contractual relationship with the owner.

5 **§ 33113. Payment Bond.** *Payment Bond* means a bond with good and
6 sufficient sureties that is conditioned for the payment in full of the claims of all
7 claimants and that also by its terms is made to inure to the benefit of all claimants
8 so as to give these persons a right of action to recover upon this bond in any suit
9 brought to foreclose the liens provided for in this Chapter or in a separate suit
10 brought on the bond. An owner, original contractor, or subcontractor may be the
11 principal upon any payment bond.

12 **§ 33114. Preliminary 20-Day Notice. and Preliminary Notice.**
13 *Preliminary 20-Day Notice. and Preliminary Notice* mean a written notice from a
14 claimant that is given prior to the recording of a mechanics lien and prior to
15 asserting a claim against a payment bond, and is required to be given under the
16 following circumstances:

17 (a) Except one under direct contract with the owner or one
18 performing actual labor for wages, every person who furnishes labor, service,
19 equipment, or materials for which a lien or payment bond otherwise can be
20 claimed under this Chapter, shall, as a necessary prerequisite to the validity of any
21 claim of lien and payment bond cause to be given to the owner, or reputed owner,
22 who contracted such work of improvement to be constructed, and to the original
23 contractor, or reputed contractor, a written preliminary notice as prescribed by this
24 Section.

1 (b) Every claimant who furnishes labor, service, equipment, or
2 materials to a site, for which a lien otherwise can be claimed under this Chapter,
3 shall, as a necessary prerequisite to the validity of any claim of lien on the interest
4 of the owner or any person having or claiming any estate therein, other than the
5 owner or person who contracted such work of improvement to be constructed,
6 cause to be given to such owner or such person having or claiming any estate
7 therein a written preliminary notice as prescribed by this Section.

8 (c) The preliminary notice referred to in Subsections (a) and (b)
9 shall contain the following information:

10 (1) A general description of the labor, service, equipment, or
11 materials furnished, or to be furnished, and an estimate of the total
12 price thereof.

13 (2) The name and address of the person furnishing that
14 labor, service, equipment, or materials.

15 (3) The name of the person who contracted for purchase of
16 that labor, service, equipment, or materials.

17 (4) A description of the jobsite sufficient for identification.

18 (5) The following statement in boldface type:

19 ***NOTICE TO PROPERTY OWNER***

20 *If bills are not paid in full for the labor, services, equipment, or*
21 *materials furnished or to be furnished, a mechanics lien leading to*
22 *the loss, through court foreclosure proceedings, of all or part of your*
23 *property being so improved may be placed against the property even*
24 *though you have paid your contractor in full. You may wish to*
25 *protect yourself against this consequence by (1) requiring your*

1 *contractor to furnish a signed release by the person or firm giving*
2 *you this notice before making payment to your contractor or (2) any*
3 *other method or device that is appropriate under the circumstances.*

4 (6) If an invoice for materials contains the information required
5 by this Section, a copy of the invoice, transmitted in the manner
6 prescribed by this Section shall be sufficient notice.

7 A certificated architect, registered engineer, or licensed land surveyor
8 who has furnished services for the design of the work of improvement and who
9 gives a preliminary notice as provided in this section not later than twenty (20)
10 days after the work of improvement has commenced shall be deemed to have
11 complied with Subsections (a) and (b) with respect to architectural, engineering, or
12 surveying services furnished, or to be furnished.

13 (d) The preliminary notice referred to in Subsections (a) and (b)
14 shall be given not later than twenty (20) days after the claimant has first furnished
15 labor, service, equipment, or materials to the jobsite. If labor, service, equipment,
16 or materials have been furnished to a jobsite by a claimant who did not give a
17 preliminary notice, that claimant shall not be precluded from giving a preliminary
18 notice at any time thereafter. The claimant shall, however, be entitled to record a
19 lien and assert a claim against a payment bond only for labor, service, equipment,
20 or material furnished within twenty (20) days prior to the service of the
21 preliminary notice, and at any time thereafter.

22 (e) Any agreement made or entered into by an owner, whereby the
23 owner agrees to waive the rights or privileges conferred upon the owner by this
24 Section shall be void and of no effect.

1 (f) The notice required under this Section may be served as
2 follows:

3 (1) If the person to be notified resides in Guam, by
4 delivering the notice personally, or by leaving it at his or her address
5 of residence or place of business with some person in charge, or by
6 first-class registered or certified mail, postage prepaid, addressed to
7 the person to whom notice is to be given at his or her residence or
8 place of business address.

9 (2) If the person to be notified does not reside in Guam, by
10 first-class registered or certified mail, postage prepaid, addressed to
11 the person to whom notice is to be given at his or her residence or
12 place of business address.

13 (3) When service is made by first-class certified or
14 registered mail, service is complete on the fifth (5th) day following the
15 day of the deposit of such mail

16 (g) A person required by this Section to give notice to the owner
17 and to an original contractor need give only one notice to the owner and to the
18 original contractor with respect to all materials, service, labor, or equipment he or
19 she furnishes for a work of improvement, that means the entire structure or scheme
20 of improvements as a whole, unless the same is furnished under contracts with
21 more than one subcontractor, in which event, the notice requirements shall be met
22 with respect to materials, services, labor, or equipment furnished to each
23 contractor.

24 If a notice contains a general description required by Subsections (a)
25 or (b) of the materials, services, labor, or equipment furnished to the date of

1 notice, it is not defective because, after that date, the person giving notice
2 furnishes materials, services, labor, or equipment not within the scope of this
3 general description.

4 (h) The original contractor shall make available the name and
5 address of residence of the owner to any person seeking to serve the notice
6 specified in Subsection (c).

7 (i) Proof that the preliminary 20-day notice required by this
8 Section was served shall be made as follows:

9 (1) If served by mail, by the proof of service affidavit
10 described in Subsection (3) of this Subsection accompanied either by
11 the return receipt of certified or registered mail, or by a photocopy of
12 the record of delivery and receipt maintained by the post office,
13 showing the date of delivery and to whom delivered.

14 (2) If served by personally delivering the notice to the
15 person to be notified, or by leaving it at his address or place of
16 business with some person in charge, by the proof of service affidavit
17 described in Subsection (3).

18 (3) A proof of service affidavit is an affidavit of the person
19 making the service, showing the time, place and manner of service
20 and facts showing that such service was made in accordance with this
21 Section. Such affidavit shall show the name and address of the
22 person upon whom a copy of the preliminary 20-day notice was
23 served, and, if appropriate, the title or capacity in which he was
24 served.

1 **§ 33115. Site.** *Site* means the real property upon which the work of
2 improvement is being constructed or performed.

3 **§ 33116. Site Improvement.** *Site improvement* means the demolishing
4 or removing of improvements, trees, or other vegetation located thereon, or
5 drilling test holes, or the grading, filling or otherwise improving of any lot or tract
6 of land or the street, highway, or sidewalk in front of or adjoining any lot or tract
7 of land, or constructing or installing sewers or other public utilities therein, or
8 constructing any areas, vaults, cellars, or rooms under said sidewalks, or making
9 any improvements thereon.

10 **§ 33117. Subcontractor.** *Subcontractor* means any contractor who has
11 no direct contractual relationship with the owner.

12 **§ 33118. Subdivision.** *Subdivision* means a work of improvement
13 consisting of two (2) or more separate residential units or two (2) or more
14 buildings, mining claims, or other improvements owned or reputed to be owned by
15 the same person or on which the claimant has been employed by the same person.
16 A separate residential unit means one (1) residential structure, together with any
17 garage or other improvements appurtenant thereto.

18 **§ 33119. Work of Improvement.** *Work of improvement* includes, but is
19 not restricted to, the construction, alteration, addition to, or repair, in whole or in
20 part, of any building, wharf, bridge, ditch, flume, aqueduct, well, tunnel, fence,
21 machinery, railroad, or road, the seeding, sodding, or planting of any lot or tract of
22 land for landscaping purposes, the filling, leveling, or grading of any lot or tract of
23 land, the demolition of buildings, and the removal of buildings. Except as
24 otherwise provided in this Chapter, work of improvement means the entire
25 structure or scheme of improvement as a whole.

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ARTICLE 2.

MECHANICS LIENS

- § 33201. Persons Who Have Lien Rights**
- § 33202. Persons Who Furnish Site Improvements Have Lien Rights**
- § 33203. Preliminary 20-Day Notice**
- § 33204. Original Contractor; Sixty Days After Notice of Completion**
- § 33205. Claimant Other Than Original Contractor; Thirty Days After Notice of Completion**
- § 33206. Completion of Separate Original Contract**
- § 33207. Willful Inclusion of Items not Furnished; Forfeiture**
- § 33208. Amount of Lien; Charge**
- § 33209. Services and Material not Included in Original Contract**
- § 33210. Liens Attach to Land Including Space for Convenient Use and Occupation**
- § 33211. Notice of Nonresponsibility Protects Against Liens Suffered by Tenants**

1	§ 33212.	Lien Against two or More Building
2		should Designate Amount Due on Each
3	§ 33213.	Residential Units Considered Separate
4		Works of Improvement
5	§ 33214.	Claim of Lien Takes Priority from
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14		and Offsets
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18		Statute of Limitations on Bond
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20		Extension of Lien; Recording
21	§ 33223.	Notice of Pendency of Action
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23	§ 33225.	Effect of Dismissal or Judgment
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1	§ 33227.	Costs; Attorneys' Fees
2	§ 33228.	Deficiency Judgment
3	§ 33229.	Lien does not Affect the Right to
4		Maintain a Personal Action or Issuance
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6	§ 33230.	Contractor Shall Defend Owner Against
7		Mechanics Lien Actions; Liability of
8		Performance Bond
9	§ 33231.	Owners Petition for Decree to Release
10		Property from Lien

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12 **§ 33201. Persons Who Have Lien Rights.** Mechanics, materialmen,
13 contractors, subcontractors, lessors of equipment, artisans, architects, registered
14 engineers, licensed land surveyors, machinists, builders, teamsters and draymen,
15 and all persons and laborers of every class performing labor upon or bestowing
16 skill or other necessary services on, or furnishing materials or leasing equipment
17 to be used or consumed in or furnishing appliances, teams, or power contributing
18 to a work of improvement shall have a lien upon the property upon which they
19 have bestowed labor or furnished materials or appliances or leased equipment for
20 the value of such labor done or materials furnished and for the value of the use of
21 such appliances, equipment, teams, or power whether done or furnished at the
22 instance of the owner or of any person acting by his authority or under him as
23 contractor or otherwise. For the purposes of this Chapter, every contractor,
24 subcontractor, sub-subcontractor, architect, builder, or other person having charge

1 of a work of improvement or portion thereof shall be held to be the agent of the
2 owner.

3 **§ 33202. Persons Who Furnish Site Improvements Have Lien Rights.**

4 Any claimant who, at the instance or request of the owner, or any other person
5 acting by his authority or under him, as contractor or otherwise, of any lot or tract
6 of land, has made any site improvement has a lien upon such lot or tract of land for
7 work done or materials furnished.

8 **§ 33203. Preliminary 20-Day Notice.** A claimant shall be entitled to
9 enforce a lien only if he has given the preliminary 20-day notice and has made
10 proof of service in accordance with the provisions of §33114.

11 **§ 33204. Original Contractor; Sixty Days After Notice of**
12 **Completion.** Each original contractor, in order to enforce a lien, must record his
13 claim of lien after he completes his contract and before the expiration of (a) ninety
14 (90) days after the completion of the work of improvement as defined in ' 33105 if
15 no notice of completion or notice of cessation has been recorded, or (b) sixty (60)
16 days after recordation of a notice of completion or notice of cessation.

17 **§ 33205. Claimant Other Than Original Contractor; Thirty Days**
18 **After Notice of Completion.** Each claimant other than an original contractor, in
19 order to enforce a lien, must record his claim of lien after he has ceased furnishing
20 labor, services, equipment, or materials, and before the expiration of (a) ninety
21 (90) days after completion of the work of improvement if no notice of completion
22 or cessation has been recorded, or (b) thirty (30) days after recordation of a notice
23 of completion or notice of cessation.

24 **§ 33206. Completion of Separate Original Contract.** Where the work
25 of improvement is not made pursuant to one original contract for the work of

1 improvement but is made in whole or in part pursuant to two or more original
2 contracts, each covering a particular portion of the work of improvement, the
3 owner may, within ten (10) days after completion of any such contract for a
4 particular portion of the work of improvement, record a notice of completion with
5 the Department of Land Management. If such notice of completion be recorded,
6 notwithstanding the provisions of §33204 and §33205, the original contractor
7 under the contract covered by such notice must, within sixty (60) days after the
8 recording of such notice, and any claimant under such contract other than the
9 original contractor must, within thirty (30) days after the recording of such notice
10 of completion, record his claim of lien. If such notice is not recorded, then the
11 period for recording claims of lien shall be as provided for in §33204 and §33205.

12 **§ 33207. Willful Inclusion of Items not Furnished; Forfeiture.** Any
13 person who shall willfully include in his claim of lien labor, services, equipment,
14 or materials not furnished for the property described in such claim shall thereby
15 forfeit his lien.

16 **§ 33208. Amount of Lien; Charge.**

17 (a) The liens provided for in this Chapter shall be direct liens, and
18 shall be for the reasonable value of the labor, services, equipment, or materials
19 furnished or for the price agreed upon by the claimant and the person with whom
20 he or she contracted, whichever is less. The lien shall not be limited in amount by
21 the price stated in the contract as defined in §33106, except as provided in §33401
22 and §33402.

23 (b) This Section does not preclude the claimant from including in
24 the lien any amount due for labor, services, equipment or materials furnished
25 based on a written modification of the contract or as a result of the rescission,

1 abandonment, or breach of the contract. However, in the event of rescission,
2 abandonment or breach of the contract, the amount of the lien may not exceed the
3 reasonable value of the labor, services, equipment and materials furnished by the
4 claimant.

5 **§ 33209. Services and Material not Included in Original Contract.**

6 In any case where the claimant was employed by a contractor or subcontractor, his
7 claim of lien shall not extend to any labor, services, equipment or materials not
8 included in the contract between the owner and original contractor or any
9 modification thereof, if the claimant had actual knowledge or constructive notice
10 of the contract as defined in §33106 or any such modification before he furnished
11 such labor, service, equipment or materials. The filing of a contract for a work of
12 improvement or of a modification of such contract with the Department of Land
13 Management, before the commencement of work, shall be equivalent to the giving
14 of actual notice of the provisions thereof by the owner to all persons performing
15 work or furnishing materials thereunder.

16 **§ 33210. Liens Attach to Land Including Space for Convenient Use**

17 **and Occupation.** The liens provided for in this Article shall attach to the work of
18 improvement and the land on which it is situated, if at the commencement of the
19 work or of the furnishing of the materials for the same, the land belonged to the
20 person who caused such work of improvement to be constructed, but if such
21 person owned less than a fee simple estate in such land then only his interest
22 therein is subject to such lien, except as provided in §33211.

23 **§ 33211. Notice of Nonresponsibility Protects Against Liens Suffered**

24 **by Tenants.** Every work of improvement constructed upon any land and all work
25 or labor performed or materials furnished in connection therewith with the

1 knowledge of the owner or of any person having or claiming any estate therein
2 shall be held to have been constructed, performed, or furnished at the instance of
3 such owner or person having or claiming any estate therein and such interest shall
4 be subject to any lien recorded under this Chapter, unless such owner or person
5 having or claiming any estate therein shall have given a notice of
6 nonresponsibility pursuant to §33111; provided further that no owner's interest
7 shall be subject to a claim of lien based upon a work of improvement contracted
8 for by a person claiming an estate under said owner, nor shall such person be
9 deemed that owner's agent, where the estate interest of said person claiming an
10 estate is for a term of at least thirty (30) years from the commencement of the work
11 of improvement and where the terms of the estate interest were negotiated at arms
12 length upon commercially reasonable terms.

13 **§ 33212. Lien Against Two or More Buildings should Designate**
14 **Amount Due on Each.** In every case in which one claim is filed against two (2)
15 or more buildings or other works of improvement owned or reputed to be owned
16 by the same person or on which the claimant has been employed by the same
17 person to do his work or furnish his materials, whether such works of
18 improvement are owned by one (1) or more owners, the person filing such claim
19 must at the same time designate the amount due to him on each of such works of
20 improvement; otherwise the lien of such claim is postponed to other liens. If such
21 claimant has been employed to furnish labor or materials under a contract
22 providing for a lump sum to be paid to him for his work or materials on such
23 works of improvement as a whole, and such contract does not segregate the
24 amount due for the work done and materials furnished on such works of
25 improvement separately, then such claimant, for the purposes of this Section, may

1 estimate an equitable distribution of the sum due him over all of such works of
2 improvement based upon the proportionate amount of work done or materials
3 furnished upon such respective works of improvement. The lien of such claimant
4 does not extend beyond the amount designated as against other creditors having
5 liens, by judgment, mortgage, or otherwise, upon either such work of improvement
6 or upon the land upon which the same are situated.

7 For all purposes of this Section, if there is a single structure on more than
8 one parcel of land owned by one or more different owners, it shall not be the duty
9 of the claimant to segregate the proportion of materials or labor entering into the
10 structure on any one of such parcels; but upon the trial thereof the court may,
11 when it deems it equitable so to do, distribute the lien equitably as between the
12 several parcels involved.

13 **§ 33213. Residential Units Considered Separate Works of**
14 **Improvement.** If a work of improvement consists in the construction of two (2)
15 or more separate residential units, each such unit shall be considered a separate
16 work of improvement, and the time for filing claims of lien against each such
17 residential unit shall commence to run upon the completion of each such
18 residential unit. A separate residential unit means one (1) residential structure,
19 including a residential structure containing multiple condominium units, together
20 with any common area, or any garage or other improvements appurtenant thereto.
21 The provisions of this qualification shall not impair any rights conferred under the
22 provisions of §33202 and §33212. Materials delivered to or upon any portion of
23 such entire work of improvement or furnished to be used in such entire work of
24 improvement and ultimately used or consumed in one (1) of such separate
25 residential units shall, for all the purposes of this Chapter, be deemed to have been

1 furnished to be used or consumed in the separate residential unit in which the
2 same shall have been actually used or consumed; provided, however, that if the
3 claimant is unable to segregate the amounts used on or consumed in such separate
4 units, he shall be entitled to all the benefits of §33212.

5 **§ 33214. Claim of Lien Takes Priority from Commencement of**
6 **Work of Improvement.** The liens provided for in this Chapter are, subject to the
7 exception in §33217, preferred to any lien, mortgage, or other encumbrance upon
8 the work of improvement and the site, which attaches subsequent to the
9 commencement of the work of improvement, and also to any lien, mortgage, or
10 other encumbrance of which the claimant had no notice and which was unrecorded
11 at the time of commencement of the work of improvement.

12 **§ 33215. Separate Contract for Site Improvements (Offsite**
13 **Improvement).** If any site improvement is provided for in a separate contract
14 from any contract with respect to the erection of residential units or other
15 structures, then the site improvement shall be considered a separate work of
16 improvement and the commencement thereof shall not constitute a commencement
17 of the work of improvement consisting of the erection of any residential unit or
18 other structure.

19 **§ 33216. Optional Advances by Construction Lender.** A mortgage
20 which would be prior to the liens provided for in this Chapter to the extent of
21 obligatory advances made thereunder in accordance with the commitment of the
22 lender shall also be prior to the liens provided for in this Chapter as to any other
23 advances, secured by such mortgage, which are used in payment of any claim of
24 lien which is recorded at the date or dates of such other advances and thereafter in
25 payment of costs of the work of improvement. Such priority shall not, however,

1 exceed the original obligatory commitment of the lender as shown in such
2 mortgage.

3 **§ 33217. Payment Bond to Secure Priority of Mortgage.** If the holder
4 of any mortgage which is subordinate pursuant to §33214 to any lien, shall
5 procure a payment bond as defined in §33113 in an amount not less than seventy-
6 five percent (75%) of the principal amount of such mortgage which bond refers to
7 such mortgage and shall record such payment bond with the Department of Land
8 Management, then such mortgage shall be preferred to all liens for labor, services,
9 equipment or materials furnished after such recording.

10 **§ 33218. Amount of Lien After Deducting Credits and Offsets.** Any
11 original contractor or subcontractor shall be entitled to recover, upon a claim of
12 lien recorded by him, only such amount as may be due him according to the terms
13 of his contract or subcontract after deducting all claims of other claimants for
14 labor, services, equipment or materials furnished and embraced within his contract
15 or subcontract.

16 **§ 33219. Release Bond.** If the owner of property, or the owner of any
17 interest therein, sought to be charged with a claim of lien, or any original
18 contractor or subcontractor disputes the correctness or validity of any claim of
19 lien, he may record with the Department of Land Management, either before or
20 after the commencement of an action to enforce such claim of lien, a bond
21 executed by a corporation authorized to issue surety bonds in Guam, in a penal
22 sum equal to one and one-half (1 2) times the amount of the claim or one and one-
23 half (1 2) times the amount allocated in the claim of lien to the parcel or parcels of
24 real property sought to be released, which bond shall be conditioned for the
25 payment of any sum which the claimant may recover on the claim together with

1 his cost of suit in the action, if he recovers therein. Upon the recording of such
2 bond the real property described in such bond is released from the lien and from
3 any action brought to foreclose such lien. The principal upon such bond may be
4 either the owner of the property or the owner of any interest therein, or any
5 original contractor, subcontractor or sub-subcontractor affected by such claim of
6 lien.

7 **§ 33220. Time for Filing Foreclosure Suit.**

8 (a) No lien provided for in this Chapter binds any property for a
9 longer period of time than ninety (90) days after the recording of the claim of lien,
10 unless within that time an action to foreclose the lien is commenced in the
11 Superior Court, except that, if credit is given and notice of the fact and terms of
12 such credit is recorded with the Department of Land Management subsequent to
13 the recording of such claim of lien and prior to the expiration of such ninety (90)
14 day period, then such lien continues in force until ninety (90) days after the
15 expiration of such credit, but in no case longer than one (1) year from the time of
16 completion of the work of improvement.

17 (b) If the claimant fails to commence an action to foreclose the lien
18 within the time limitation provided in this Section, the lien automatically shall be
19 null and void and of no further force and effect.

20 **§ 33221. Notice of Recording of Release Bond; Statute of Limitations**
21 **on Bond.** Any person who obtains a lien release bond which is recorded pursuant
22 to §33219 shall give notice of the recording to the lienholder by mailing a copy of
23 the bond to the lienholder at the address appearing on the lien. Service of the
24 notice shall be by certified or registered mail, return receipt requested. Failure to
25 give the notice provided by this Section shall not affect the validity of the lien

1 release bond, but the statute of limitations on any action on the bond shall be
2 tolled until the notice is given. Any action on the lien release bond shall be
3 commenced by the claimant within six (6) months of the recording of the lien
4 release bond.

5 **§ 33222. Notice of Agreement of Credit and Extension of Lien;**
6 **Recording.** As against any purchaser or encumbrancer for value and in good faith
7 whose rights are acquired subsequent to the expiration of the ninety (90) day
8 period following the recording of the claim of lien, no giving of credit or
9 extension of the lien or of the time to enforce the same shall be effective unless
10 evidenced by a notice or agreement recorded with the Department of Land
11 Management prior to the acquisition of the rights of such purchaser or
12 encumbrancer.

13 **§ 33223. Notice of Pendency of Action.** After the filing of the
14 complaint in the Superior Court, the plaintiff may record with the Department of
15 Land Management a notice of the pendency of such proceedings, as provided in '
16 14103 of this Title. Only from the time of recording such notice shall a purchaser
17 or encumbrancer of the property affected thereby be deemed to have constructive
18 notice of the pendency of the action, and in that event only of its pendency against
19 parties designated by their real names.

20 **§ 33224. Discretionary One-Year Dismissal.** If the action to foreclose
21 the lien is not brought to trial within one (1) year after the commencement thereof,
22 the court may in its discretion dismiss the same for want of prosecution.

23 **§ 33225. Effect of Dismissal or Judgment.** In all cases the dismissal of
24 an action to foreclose the lien, unless it is expressly stated that the same is without

1 prejudice, or a judgment rendered therein that no lien exists shall be equivalent to
2 the cancellation and removal from the record of such lien.

3 **§ 33226. Joinder and Consolidation of Foreclosure Actions.** Any
4 number of persons claiming liens on the same property may join in the same action
5 to foreclose their liens and when separate actions are commenced the court may
6 consolidate them.

7 **§ 33227. Costs; Attorneys' Fees.** In addition to any other costs allowed
8 by law, the court in an action to foreclose a lien must also allow as costs the
9 money paid for verifying and recording the lien, and the court may allow such
10 costs and attorneys' fees as the courts deems to be reasonable to the prevailing
11 party, whether he be plaintiff or defendant.

12 **§ 33228. Deficiency Judgment.** Whenever on the sale of the property
13 subject to any liens provided for in this Chapter, under a judgment of foreclosure
14 of such lien, there is a deficiency of proceeds, judgment for the deficiency may be
15 entered against any party personally liable therefor in like manner and with like
16 effect as in an action for the foreclosure of a mortgage.

17 **§ 33229. Lien does not Affect the Right to Maintain a Personal**
18 **Action or Issuance of a Writ of Attachment.** Nothing contained in this Chapter
19 affects the right of a claimant to maintain a personal action to recover a debt
20 against the person liable therefor either in a separate action or in the action to
21 foreclose the lien, nor any right the claimant may have to the issuance of a writ of
22 attachment or execution or to enforce a judgment by other means. In an
23 application for a writ of attachment, the claimant shall refer to this Section. A lien
24 held by the claimant under this Chapter does not affect the right to procure a writ
25 of attachment. The judgment, if any, obtained by the claimant in a personal action,

1 or personal judgment obtained in a mechanic's lien action, does not impair or
2 merge a lien held by the claimant under this Chapter, but any money collected on
3 the judgment shall be credited on the amount of the lien.

4 **§ 33230. Contractor Shall Defend Owner Against Mechanics Lien**
5 **Actions; Liability of Performance Bond.** In all cases where a claim of lien is
6 recorded for labor, services, equipment or materials furnished to any contractor,
7 the contractor shall defend any action brought thereon at his own expense, and
8 during the pendency of such action the owner may withhold from the original
9 contractor, and the original contractor may withhold from the contractor to whom
10 the claimant furnished such labor, services, equipment or materials, the amount of
11 money for which the claim of lien is recorded. In case of judgment in such action
12 against the owner or his property upon the lien, the owner shall be entitled to
13 deduct from any amount then or thereafter due from him to the original contractor,
14 and the original contractor shall be entitled to deduct from any amount then or
15 thereafter due from him to any contractor, the amount of such judgment and costs.
16 If the amount of such judgment and costs exceeds the amount due from him to the
17 original contractor, or if he has settled with the original contractor in full, he shall
18 be entitled to recover back from the original contractor, or the sureties on any
19 bond given by him for the faithful performance of his contract, or from any
20 contractor to whom the claimant furnished labor, services, equipment or materials,
21 any amount of such judgment and costs in excess of the contract price, and for
22 which the original contractor was originally the party liable.

23 **§ 33231. Owners Petition for Decree to Release Property from Lien.**

24 (a) At any time after the expiration of the time period specified by
25 §33220 with regard to the period during which property is bound by a lien after

1 recordation of a claim of lien, where no action has been brought to enforce such
2 lien, the owner of the property or the owner of any interest therein may petition
3 the Superior Court for a decree to release the property from the lien.

4 (b) The petition shall be verified and shall allege all of the
5 following:

6 (1) The date of recordation of the claim of lien

7 (2) The legal description of the property affected by such
8 claim of lien.

9 (3) That no action has been filed to foreclose the lien, or that
10 no extension of credit has been recorded, and that the time period
11 during which suit can be brought to foreclose the lien has expired.

12 (4) That the lien claimant is unable or unwilling to execute a
13 release of the lien or cannot with reasonable diligence be found.

14 (5) That the owner of the property or interest in the property
15 has not filed for relief under any law governing bankrupts, and that
16 there exists no other restraint to prevent the lien claimant from filing
17 to foreclose his or her lien. A certified copy of the claim of lien shall
18 be attached to the petition. The petition shall be deemed controverted
19 by the lien claimant.

20 (c) Upon the filing of the petition, and before any further
21 proceedings are had, the Clerk of Court shall set a date for the hearing not more
22 than thirty (30) days following the filing of the petition. The court may continue
23 the hearing beyond the 30-day period, but good cause shall be shown for any
24 continuance.

1 (d) A copy of the petition and the notice setting the date for the
2 hearing shall be served upon the lien claimant at least ten (10) days prior to the
3 date set for hearing, in the manner in which a summons is required to be served,
4 or by certified or registered mail, postage prepaid, return receipt requested,
5 addressed to the lien claimant at the claimant's address as shown:

6 (1) on the preliminary 20-day notice served by the claimant
7 pursuant to §33114,

8 (2) in the records of the Guam Contractors License Board,

9 (3) on the contract on which the lien is based, or

10 (4) on the claim of lien itself.

11 (e) When service is made by mail as provided in this Section,
12 service is complete on the fifth (5th) day following the day of the deposit of such
13 mail. No decree shall issue in favor of the petitioner unless the petitioner proves
14 that service of the petition and the order fixing the date for hearing was made in
15 compliance with this Subsection. The issue of compliance with this Subsection
16 shall be deemed controverted by the lien claimant.

17 (f) In the event judgment is rendered in favor of the petitioner, the
18 decree shall indicate all of the following:

19 (1) The date the lien was recorded.

20 (2) The recorder's instrument number on the lien in the
21 official records of the Department of Land Management.

22 (3) The legal description of the property affected.

23 Upon the recordation of a certified copy of the decree, the property
24 described in the decree shall be released from the lien.

1 (g) The prevailing party shall be entitled to his reasonable
2 attorneys' fees.

3 (h) Nothing in this Section shall be construed to bar any other
4 cause of action or claim for relief by the owner of the property or an interest in
5 the property, nor shall a decree canceling a claimant's lien bar the lien claimant
6 from bringing any other cause of action or claim for relief, other than an action
7 foreclosing such lien. However, no other action or claim shall be joined with the
8 claim for relief established by this Section.

9
10 **ARTICLE 3.**

11
12 **CONSTRUCTION OF AND TERMS AND CONDITIONS OF BONDS**

13
14 **§ 33301. Liability of Sureties**

15 **§ 33302. Bonds Construed Against Surety; Conditions of**
16 **Recovery**

17 **§ 33303. Written Notice to Surety**

18
19 **§ 33301. Liability of Sureties.** The surety or sureties on any bond given
20 pursuant to any of the provisions of this Chapter shall not be exonerated or
21 released from the obligation of the bond by any change, alteration, or modification
22 in or of any contract, plans, specifications, or agreement pertaining or relating to
23 any scheme or work of improvement or pertaining or relating to the furnishing of
24 labor, materials, or equipment therefor, nor by any change or modification of any
25 terms of payment or extension of the time for any payment pertaining or relating to

1 any scheme or work of improvement, nor by any rescission or attempted rescission
2 of the contract, agreement or bond, nor by any conditions precedent or subsequent
3 in the bond attempting to limit the right of recovery of claimants otherwise entitled
4 to recover under any such contract or agreement or under the bond, nor, where the
5 bond is given for the benefit of claimants, by any fraud practiced by any person
6 other than the claimant seeking to recover on the bond.

7 **§ 33302. Bonds Construed Against Surety; Conditions of Recovery.**

8 Any bond given pursuant to the provisions of this Chapter will be construed most
9 strongly against the surety and in favor of all persons for whose benefit such bond
10 is given, and under no circumstances shall a surety be released from liability to
11 those for whose benefit such bond has been given, by reason of any breach of
12 contract between the owner and original contractor or on the part of any obligee
13 named in such bond, but the sole condition of recovery shall be that claimant is a
14 person described in ' §33201 or §33202, and has not been paid the full amount of
15 his claim.

16 **§ 33303. Written Notice to Surety.**

17 (a) The written notice to be given to the surety and the bond
18 principal may be given by personal delivery, or by depositing the notice in the
19 mail, postage prepaid, certified or registered, and addressed in accordance with
20 any of the following that may be applicable:

21 (1) If to an individual surety, at his or her residence or place
22 of business.

23 (2) If to a corporate surety, at the office of or in care of the
24 agent designated by the surety in the bond as the address to which
25 notice shall be sent.

1 (3) At the office of or in care of any officer of the surety in
2 Guam.

3 (4) At the office of or in care of the statutory agent of the
4 surety in Guam.

5 (5) To the bond principal at the last known address.

6 (6) By service in the manner provided by law for the service
7 of a summons in a civil action.

8 (b) The written notice described in Subsection (a) shall contain all
9 of the following:

10 (1) The kind of labor, services, equipment, or materials
11 furnished or agreed to be furnished by the claimant.

12 (2) The name of the person to or for whom the labor,
13 services, equipment, or materials were furnished.

14 (3) The amount in value, as near as may be determined, of
15 any labor, services, equipment, or materials already furnished or to be
16 furnished.

17

1 **ARTICLE 4.**

2
3 **PAYMENT BOND**

4 **PROVISION FOR AND EFFECT OF FILING**

5 **CONTRACT AND PAYMENT BOND**

6
7 **§ 33401. Recording Payment Bond Before Work has**
8 **Commenced; Restriction of Recovery**

9 **§ 33402. Limits to Owners Liability**

10 **§ 33403. Recording Payment Bond; Statute of Limitations**

11 **§ 33404. Limitations**

12 **§ 33405. Enforcement of Claim Upon Payment Bond**

13 **§ 33401. Recording Payment Bond Before Work has Commenced;**
14 **Restriction of Recovery.** In case the original contract for a work of improvement
15 is recorded with the Department of Land Management, and the payment bond of
16 the original contractor in an amount not less than fifty percent (50%) of the
17 contract price named in such contract is recorded with the Department of Land
18 Management, then the court must, where it would be equitable so to do, restrict the
19 recovery under lien claims to an aggregate amount equal to the amount found to be
20 due from the owner to the original contractor and render judgment against the
21 original contractor and his sureties on such bond for any deficiency or difference
22 there may remain between such amount so found to be due to the original
23 contractor and the whole amount found to be due to claimants.

24 **§ 33402. Limits to Owners Liability.** It is the intent and purpose of
25 §33401 to limit the owners liability, in all cases, to the measure of the contract

1 price where he shall have filed or caused to be filed in good faith his original
2 contract and recorded a payment bond as therein provided. It shall be lawful for
3 the owner to protect himself against any failure of the original contractor to
4 perform his contract and make full payment for all work done and materials
5 furnished thereunder by exacting such bond or other security as he may deem
6 necessary.

7 **§ 33403. Recording Payment Bond; Statute of Limitations.** No
8 provision in any payment bond given pursuant to any of the provisions of this
9 Chapter attempting by agreement to shorten the period prescribed in Article 3,
10 Chapter 11 of this Title for the commencement of an action thereon shall be valid
11 if such provision attempts to limit the time for commencement of action thereon to
12 a shorter period than six (6) months from the completion of any work of
13 improvement, nor shall any provision in any of such bonds attempting to limit the
14 period for the commencement of actions thereon be valid insofar as actions
15 brought by claimants are concerned, unless such bond is recorded, before the work
16 of improvement is commenced, with the Department of Land Management.

17 **§ 33404. Limitations.** Notwithstanding §33403, if a surety on any
18 payment bond given pursuant to this Chapter records the payment bond with the
19 Department of Land Management before the work of improvement is completed,
20 then any action against the surety or sureties shall be commenced not later than six
21 (6) months after the completion of the work of improvement.

22 **§ 33405. Enforcement of Claim Upon Payment Bond.**

23 (a) With regard to a contract or subcontract entered into on or after
24 the effective date of this Act, in order to enforce a claim upon any payment bond

1 given in connection with a work of improvement, a claimant shall give the
2 preliminary 20-day notice provided in §33114.

3 (b) If the preliminary 20-day notice was not given as provided in '
4 33114, a claimant may enforce a claim by giving written notice to the surety and
5 the bond principal as provided in §33303 within fifteen (15) days after recordation
6 of a notice of completion. If no notice of completion has been recorded, the time
7 for giving written notice to the surety and the bond principal is extended to
8 seventy-five (75) days after completion of the work of improvement.

9

10

ARTICLE 5.

11

12

MISCELLANEOUS PROVISIONS

13

14

**§ 33501. Application of Code of Civil Procedure; Rules
of Practice; New Trials; Appeals.**

15

16

**§ 33502. Recordation of Notice of Completion or Notice
of Cessation; Notification Requirements.**

17

18

§ 33503. Effect of Mistakes or Errors in Statement of Demand.

19

**§ 33504. Prohibition Against Contractual Provision for
Waiver of Claims or Liens of Other Persons;
Requirement and Form of Written Waiver and
Release.**

20

21

22

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§ 33505. Effect of Owner's Good Faith.

24

§ 33506. Limitations of Claims Against Payment Bond.

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§ 33507. Waiver.

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§ 33501. Application of Code of Civil Procedure; Rules of Practice; New Trials; Appeals. Except as otherwise provided in this Chapter, the provisions of Title 7 of the Guam Code Annotated [Civil Procedure] are applicable to, and constitute the rules of practice in, the proceedings mentioned in this Chapter. The provisions of Title 7 of the Guam Code Annotated [Civil Procedure], relative to new trials and appeals, except insofar as they are inconsistent with the provisions of this Chapter or with rules adopted by the Judiciary, apply to the proceedings mentioned in this Chapter. A lien is extinguished by the lapse of time within which, under the provisions of Title 7 of the Guam Code Annotated [Civil Procedure], an action can be brought upon the principal obligation.

§ 33502. Recordation of Notice of Completion or Notice of Cessation; Notification Requirements. A notice of completion and/or notice of cessation shall be sent within ten (10) days after recordation to the original contractor and any claimant other than the original contractor who has provided a preliminary 20-day notice in accordance with §33114. Notification shall be sent by registered or certified mail, or by first-class mail, evidenced by a certificate of mailing. Failure to mail notice to a contractor or claimant within ten (10) days of recording the notice of completion or notice of cessation shall extend the period of time in which that contractor or claimant may file a mechanic's lien or stop notice to ninety (90) days beyond the date that a notice of completion or notice of cessation has been recorded. The sole liability for failing to give notice shall be the extension of the period of time in which that contractor or claimant may file a mechanic's lien.

1 **§ 33503. Effect of Mistakes or Errors in Statement of Demand.** No
2 mistake or errors in the statement of the demand, or of the amount of credits and
3 offsets allowed, or of the balance asserted to be due the claimant, or in the
4 description of the property against which the lien is recorded, shall invalidate the
5 lien, unless the court finds that such mistake or error in the statement of the
6 demand, credits and offsets, or of the balance due, was made with the intent to
7 defraud, or that an innocent third party, without notice, direct or constructive, has
8 since the claim was recorded become the *bona fide* owner of the property, and that
9 the notice of claim was so deficient that it did not put the party on further inquiry
10 in any manner.

11 **§ 33504. Prohibition Against Contractual Provision for Waiver of**
12 **Claims or Liens of Other Persons; Requirement and Form of Written Waiver**
13 **and Release.**

14 (a) Neither the owner nor original contractor by any term of their
15 contract, or otherwise, shall waive, affect, or impair the claims and liens of other
16 persons whether with or without notice except by their written consent, and any
17 term of the contract to that effect shall be null and void. Any written consent
18 given by any claimant pursuant to this Section shall be null, void, and
19 unenforceable unless and until the claimant executes and delivers a waiver and
20 release. Such a waiver and release shall be binding and effective to release the
21 owner, construction lender, and surety on a payment bond from claims and liens
22 only if the waiver and release follows substantially one (1) of the forms set forth in
23 this Section and is signed by the claimant or his or her authorized agent, and, in
24 the case of a conditional release, there is evidence of payment to the claimant.
25 Evidence of payment may be by the claimant's endorsement on a single or joint

1 payee check which has been paid by the bank upon which it was drawn or by
2 written acknowledgment of payment given by the claimant.

3 (b) No oral or written statement purporting to waive, release,
4 impair or otherwise adversely affect a claim is enforceable or creates any estoppel
5 or impairment of a claim unless: (1) it is pursuant to a waiver and release
6 prescribed herein, or (2) the claimant had actually received payment in full for the
7 claim.

8 (c) This Section does not affect the enforceability of either an
9 accord and satisfaction regarding a *bona fide* dispute or any agreement made in
10 settlement of an action pending in any court provided the accord and satisfaction
11 or agreement and settlement make specific reference to the mechanic's lien or
12 bond claims.

13 (d) The waiver and release given by any claimant hereunder shall
14 be null, void, and unenforceable, unless it follows substantially the following
15 forms in the following circumstances:

16 (1) Where the claimant is required to execute a waiver and
17 release in exchange for, or in order to induce the payment of, a
18 progress payment and the claimant is not, in fact, paid in exchange for
19 the waiver and release or a single payee check or joint payee check is
20 given in exchange for the waiver and release, the waiver and release
21 shall follow substantially the following form:

22

23

CONDITIONAL WAIVER AND

24

RELEASE UPON PROGRESS PAYMENT

25 *Upon receipt by the undersigned of a check from _____ (Maker*
26 *of Check) in the sum of \$_____ (Amount of Check) payable to*

1 _____ (Payee or Payees of Check) and when the
2 check has been properly endorsed and has been paid by the bank upon which it is
3 drawn, this document shall become effective to release any mechanics lien or
4 bond right the undersigned has on the job of _____ (Owner) located at
5 _____ (Job Description) to the following extent. This release
6 covers a progress payment for labor, services, equipment, or materials furnished
7 to _____ (Your Customer) through _____ (Date) only and
8 does not cover any retentions retained after the release date; extras or items
9 furnished after the release date; or the sum of \$ _____ for any retentions
10 retained and extras furnished before the release date for which payment has not
11 been received. Rights based upon work performed or items furnished under a
12 written change order which has been fully executed by the parties prior to the
13 release date are covered by this release, unless specifically reserved by the
14 claimant in this release. This release of any mechanics lien or bond right shall
15 not otherwise affect the contract rights, including rights between parties to the
16 contract based upon a rescission, abandonment, or breach of the contract, or the
17 right of the undersigned to recover compensation for furnished labor, services,
18 equipment, or materials covered by this release if that furnished labor, services,
19 equipment, or materials was not compensated by the progress payment. Before
20 any recipient of this document relies on it, said party should verify evidence of
21 payment to the undersigned.

22 Dated: _____

23 _____

24 (Company Name)

25 By _____

1 (Title)

2

3

(2) Where the claimant is required to execute a waiver and release in exchange for, or in order to induce payment of, a progress payment and the claimant asserts in the waiver it has, in fact, been paid the progress payment, the waiver and release shall follow substantially the following form:

7

8

9

**UNCONDITIONAL WAIVER AND
RELEASE UPON PROGRESS PAYMENT**

10

11

The undersigned has been paid and has received a progress payment in the sum of

12

\$ _____ (Amount of Check) for labor, services, equipment, or materials

13

furnished to _____ (Your Customer) on the job of _____

14

(Owner) located at _____ (Job Description) and does hereby

15

release any mechanics lien or bond right that the undersigned has on the above

16

referenced job to the following extent. This release covers a progress payment

17

for labor, services, equipment, or materials furnished to _____ (Your

18

Customer) through _____ (Date) only and does not cover any

19

retentions retained after the release date; extras or items furnished after the

20

release date; or the sum of \$ _____ for any retentions retained and

21

extras furnished before the release date for which payment has not been received.

22

Rights based upon work performed or items furnished under a written change

23

order which has been fully executed by the parties prior to the release date are

24

covered by this release unless specifically reserved by the claimant in this release.

25

This release of any mechanics lien or bond right shall not otherwise affect the

26

contract rights, including rights between parties to the contract based upon a

1 *rescission, abandonment, or breach of the contract, or the right of the*
2 *undersigned to recover compensation for furnished labor, services, equipment, or*
3 *materials covered by this release if that furnished labor, services, equipment, or*
4 *materials was not compensated by the progress payment.*

5 *Dated:* _____

6 _____

7 *(Company Name)*

8 *By* _____

9 *(Title)*

10

11 *** Each unconditional waiver in this provision shall contain the following
12 language, in at least as large a type as the largest type otherwise on the document:

13

14 ***NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY***
15 ***AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE***
16 ***RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU***
17 ***SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT***
18 ***BEEN PAID, USE A CONDITIONAL RELEASE FORM.***

19

20 (3) Where the claimant is required to execute a waiver and
21 release in exchange for, or in order to induce the payment of, a final
22 payment and the claimant is not, in fact, paid in exchange for the
23 waiver and release or a single payee check or joint payee check is
24 given in exchange for the waiver and release, the waiver and release
25 shall follow substantially the following form:

26

CONDITIONAL WAIVER AND

1 **RELEASE UPON FINAL PAYMENT**

2 *Upon receipt by the undersigned of a check from _____ (Maker of Check)*
3 *in the sum of \$_____ (Amount of Check) payable to _____ (Payee*
4 *or Payees of Check) and when the check has been properly endorsed and has been*
5 *paid by the bank upon which it is drawn, this document shall become effective to*
6 *release any mechanic's lien or bond right the undersigned has on the job of*
7 *_____ (Owner) located at _____ (Job Description).*

8 *This release covers the final payment to the undersigned for all labor, services,*
9 *equipment, or materials furnished on the job. Before any recipient of this*
10 *document relies on it, the party should verify evidence of payment to the*
11 *undersigned.*

12 *Dated: _____*
13 _____

14 *(Company Name)*

15 *By _____*

16 *(Title)*

17
18 (4) Where the claimant is required to execute a waiver and
19 release in exchange for, or in order to induce payment of, a final
20 payment and the claimant asserts in the waiver it has, in fact, been
21 paid the final payment, the waiver and release shall follow
22 substantially the following form:

23
24 **UNCONDITIONAL WAIVER AND**
25 **RELEASE UPON FINAL PAYMENT**

1 *The undersigned has been paid in full for all labor, services, equipment or materials*
2 *furnished to _____ (Your Customer) on the job of*
3 *_____ (Owner) located at _____ (Job Description) and*
4 *does hereby waive and release any right to a mechanics lien or any right against a*
5 *labor and materials bond on the job.*

6 *Dated: _____*

7 _____

8 *(Company Title)*

9 *By _____*

10 *(Title)*

11

12 *****Each unconditional waiver in this provision shall contain the following language, in**
13 **at least as large a type as the largest type otherwise on the document:**

14

15 ***NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND***
16 ***STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS.***
17 ***THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN***
18 ***IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A***
19 ***CONDITIONAL RELEASE FORM.'***

20

21 **§ 33505. Effect of Owner's Good Faith.** No act done by an owner in good
22 faith and in compliance with any of the provisions of this Chapter shall be held to be a
23 prevention of the performance of any contract between the owner and an original
24 contractor by an original contractor, or to exonerate the sureties on any bond given for
25 faithful performance or for the payment of claimants.

26 **§ 33506. Limitations of Claims Against Payment Bond.** Nothing contained
27 in this Chapter shall be construed to give to any person any right of action on any

1 original contractors payment bond described in this Chapter unless the work forming
2 the basis for his claim was performed by such person for the principal on such payment
3 bond, or one of his subcontractors, pursuant to the contract between the original
4 contractor and the owner.

5 **§ 33507. Waiver.** Except where it is otherwise declared, the provisions of
6 this Chapter, in respect to the rights and obligations of parties to contracts, are
7 subordinate to the intention of the parties, when ascertained in the manner prescribed
8 by the chapter on the interpretation of contracts; and the benefit thereof may be waived
9 by any party entitled thereto, unless such waiver would be against public policy.”

10 **Section 5. Savings Provision.**

11 (a) The effective date of this Act shall be thirty (30) days after it is
12 enacted into law.

13 (b) The 2008 Guam Mechanics’ Lien Law will apply to all works of
14 improvement that commence after the effective date this law. The prior Guam
15 Mechanics’ Lien Law will no longer be applicable to any works of improvement
16 commencing after the effective date of this law.

17 (c) For all works of improvements that have been completed prior to the
18 effective date of this law, the prior Guam Mechanics’ Lien Law will continue to
19 apply.

20 (d) For works of improvement that commenced prior to the effective
21 date of this law but are not completed prior to the effective date of this law, the
22 following shall apply:

23 (1) For labor, services, materials, appliances or equipment
24 provided to that portion of the work of improvement completed prior to
25 enactment of this law, it shall be covered by the prior Guam Mechanics’
26 Lien Law.

1 (2) For labor, services, materials, appliances or equipment
2 provided to that portion of the work of improvement completed after the
3 effective date of this law, the 2008 Guam Mechanics' Lien Law shall
4 apply, but with the following provisions:

5 (i) The required preliminary 20-day notice shall be given
6 no later than: i) the date required by this law, or ii) within thirty (30)
7 days from the effective date of this law.

8 (ii) A notice of nonresponsibility shall be recorded at the
9 Department of Land Management and posted no later than: i) the
10 date required by this law, or ii) within ten (10) days from the
11 effective date of this law; in which case the person claiming the
12 benefits of nonresponsibility shall have such benefits from the
13 recordation and mailing of the notice of nonresponsibility.