

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

CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUÅHAN

This is to certify that **Substitute Bill No. 297 (EC), "AN ACT TO REPEAL AND REENACT CHAPTER 33 OF TITLE 7 OF THE GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING NEW MECHANICS' LIEN LAWS OF GUAM,"** was on the 21st day of November, 2008, duly and regularly passed.



Judith T. Won Pat, Ed. D.
Speaker

Attested:



Tina Rose Muña Barnes
Senator and Secretary of the Legislature

This Act was received by *I Maga'lahen Guåhan* this 25 day of Nov, 2008, at 9:41 o'clock A.M.



Assistant Staff Officer
Maga'lahi's Office

APPROVED:

FELIX P. CAMACHO
I Maga'lahen Guåhan

Date: _____

Public Law No. _____

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

Bill No. 297 (EC)

As substituted by the Author and
amended on the Floor.

Introduced by:

Ray Tenorio
v. c. pangelinan
Edward J.B. Calvo
Frank F. Blas, Jr.
B. J.F. Cruz
James V. Espaldon
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Judith P. Guthertz, DPA
Frank T. Ishizaki
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**AN ACT TO *REPEAL* AND *REENACT* CHAPTER 33 OF
TITLE 7 OF THE GUAM CODE ANNOTATED, RELATIVE
TO ESTABLISHING NEW MECHANICS' LIEN LAWS OF
GUAM.**

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

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

1 *shall* any owner's interest be subject to a claim of lien based upon a work of
2 improvement contracted for by a person claiming an estate under said owner, *nor*
3 *shall* such person be deemed that owner's agent, where the terms of estate interest
4 of said person claiming an estate is for a term of at least thirty (30) years from the
5 commencement of the work of improvement *or* where the terms of the estate
6 interest were negotiated at arms length upon commercially reasonable terms. Such
7 liens are preferred to any lien, mortgage, *or* other encumbrance upon the work of
8 improvement on the site, which attaches subsequent to the commencement of the
9 work of improvement. The term *work of improvement or site improvement* means
10 the entire structure *or* scheme of improvement as a whole, *except* where a project
11 consists in the construction of two (2) *or* more separate residential units, and then
12 each unit *shall* be considered a separate *work of improvement*.

13 **§33104. Completion of Separate Original Contract.** (a) Any claimant
14 under the provisions of this Chapter, in order to enforce a lien, and: (1) within
15 ninety (90) days after either, (A) completion of his contract on a work of
16 improvement; *or* (B) after he has ceased for thirty (30) consecutive days to
17 perform labor *or* furnish material, *or* both, for any work of improvement, *or* (2)
18 within forty-five (45) days after an owner has recorded a Notice of Completion
19 with the Department of Land Management and has mailed said Notice of
20 Completion to such claimant at the address stated in the claimant's twenty (20)-
21 day preliminary notice by registered *or* certified mail with return receipt requested,
22 and *shall* have published such notice in a newspaper of general circulation on
23 Guam, whichever of subsections (1) *or* (2) first occurs; must record a written
24 claim of lien with the Department of Land Management, stating the name and
25 address of the claimant, a general description of the kind of work done and

1 materials furnished, the amount owed therefor, the name of the person *or* firm by
2 whom he was employed *or* to whom he furnished the labor *or* materials, and a
3 description of the property sought to be charged with the lien sufficient for
4 identification. No mistake *or* errors in the claim of lien *shall* invalidate the lien,
5 unless the court finds that an error therein was willfully made with the intent to
6 defraud, which *shall* thereby forfeit the lien.

7 (b) Where the work of improvement is *not* made pursuant to one (1) original
8 contract for the work of improvement, but is made in whole *or* in part, pursuant to
9 two (2) *or* more original contracts, each covering a particular portion of the work
10 of improvement, the owner may, within ten (10) days after completion of any such
11 contract for a particular portion of the work of improvement, record a Notice of
12 Completion with the Department of Land Management. *If* such notice be so
13 recorded, and mailed and published as provided in subdivision (a)(2) of this
14 Section, then any claimant must, by the earlier of the deadline provided for in
15 subdivision (a)(1) and (a)(2) of this Section, record his claim of lien. *If* such
16 notice be *not* so recorded, mailed and published, then the period for recording
17 claims of lien *shall* be as provided in subdivision (a)(1) of this Section.

18 **§33105. Notice of Completion.** *Notice of Completion* means a written
19 notice, signed and verified by the owner *or* his agent, containing all of the
20 following:

21 (a) The date of completion. The recital of an erroneous date of
22 completion *shall not*, however, affect the validity of the notice *if* the true date of
23 completion is within ten (10) days preceding the date of recording of such notice.

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

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

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

6 (e) The name of the original contractor, *if any*, *or if* the notice is given
7 only of completion of a contract for a particular portion of such work of
8 improvement, then the name of the original contractor under such contract, and a
9 general statement of the kind of work done *or* materials furnished pursuant to such
10 contract.

11 The Notice of Completion *shall* be recorded at the Department of Land
12 Management within ten (10) days after such completion. *Completion* means, in
13 the case of any work of improvement, actual completion of the work of
14 improvement *or*, in the case of two (2) *or* more original contracts, each covering a
15 particular portion of the work of improvement, completion of that portion of the
16 work of improvement covered by such separate original contract, *or* any of the
17 following, which *shall* be deemed equivalent to a completion: (1) the occupation
18 *or* use of a work of improvement by the owner, *or* his agent, accompanied by
19 cessation of labor thereon; (2) the acceptance by the owner, *or* his agent, of the
20 work of improvement; or (3) after the commencement of a work of improvement, a
21 cessation of labor thereon for a continuous period of sixty (60) days.

22 *If* there is more than one (1) owner, any Notice of Completion signed by less
23 than all of such co-owners *shall* recite the names and addresses of all of such co-
24 owners; and provided further, that any Notice of Completion signed by a successor
25 in interest *shall* recite the names and addresses of his transferor *or* transferors.

1 *Owner* means the owner who causes a building, improvement, *or* structure,
2 to be constructed, altered, *or* repaired whether the interest *or* estate of such owner
3 be in fee, as vendee under a contract of purchase, as lessee, *or* other interest *or*
4 estate less than the fee. Where such interest *or* estate is held by two (2) *or* more
5 persons as joint tenants *or* tenants in common, any one (1) *or* more of the
6 cotenants may be deemed to be the *owner*.

7 **§33106. Notice to Property Owner.** *Except* one under direct contract
8 with the owner *or* one performing actual labor for wages, every lien claimant
9 shall, as a necessary prerequisite to the validity of any claim of lien, cause to be
10 given to the owner *or* reputed owner, either personally *or* by certified mail with
11 return receipt requested, a written preliminary notice *not later than* twenty (20)
12 days after the claimant has first furnished labor, service, equipment *or* materials to
13 the job site, containing: (a) a general description of the labor, service, equipment
14 *or* materials furnished, *or* to be furnished, and an estimate of the total price
15 thereof; (b) the name and address of the person furnishing such labor, service,
16 equipment, *or* materials; (c) the name of the person who contracted for purchase of
17 that labor, service, equipment, *or* materials; (d) a description of the jobsite
18 sufficient for identification; and (e) 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 you
2 this notice before making payment to your contractor; or (2) any other
3 method *or* device that is appropriate under the circumstances. *If*
4 labor, service, equipment, *or* materials have been furnished to a job
5 site by a claimant who did *not* give a preliminary notice at any time
6 thereafter, however such claimant *shall* be entitled to record a lien
7 only for labor, service, equipment, *or* material furnished within
8 twenty (20) days prior to the service of the preliminary notice, and at
9 any time thereafter.

10 **§33107. Release Bond.** *If* any person disputes the correctness *or*
11 validity of any claim of lien, he may record with the Department of Land
12 Management, either before *or* after the commencement of any action to enforce
13 such claim of lien, a bond executed by a corporation authorized to issue surety
14 bonds in Guam, in a penal sum equal of one and one-half (1 ½) times the amount
15 of the claim, which bond *shall* be conditioned for the payment of any sum which
16 the claimant may recover on the claim together with his costs of suit in the action,
17 *if* he recovers therein. Upon recording of such bond, the real property described in
18 such bond is released from the lien and the surety *shall* be substituted for the
19 owner as a party defendant in any lien foreclosure action.

20 **§33108. Time for Filing Foreclosure Suit.** *No* lien provided for in this
21 Chapter binds any property for a longer period of time than ninety (90) days after
22 recording the claim of lien, unless within that time an action to foreclose the lien is
23 commenced in the Superior Court. After commencement of an action to foreclose
24 the lien, the lien claimant *shall* within ten (10) days thereafter record a notice of *lis*
25 *pendens* with the Department of Land Management and cause a copy thereof to be

1 served either personally *or* by certified mail, return receipt requested, on the owner
2 of the work improvement. *If* the notice of *lis pendens* be *not* so filed, the owner
3 may likewise serve a written demand on the lien claimant to record such a notice,
4 and should the lien claimant fail *or* refuse to record such a notice within ten (10)
5 days after his receipt of the owner's demand, the lien foreclosure action *shall* be
6 dismissed with prejudice. Should the lien claimant *not* prevail in the lien
7 foreclosure action, the owner may record at the Department of Land Management
8 a certified copy of the judgment which *shall* conclusively establish for all persons
9 that the claimant's lien has been extinguished and is no longer a cloud on the title
10 to the work of improvement.

11 Should the lien claimant be the prevailing party in a lien foreclosure action,
12 the court *shall* order the foreclosure of the lien in accordance with the procedure
13 established for the judicial foreclosure of mortgages under Guam law.

14 It is the intent of this Section to allow any person to determine the status of
15 any mechanics' liens through a review of the record at the Department of Land
16 Management.

17 **§33109. Priority of Liens.** All liens timely filed have equal priority. *If*
18 a lien claimant obtains a judgment foreclosing a lien, all proceeds from the sale of
19 the property subject to the lien *shall* be deposited into escrow with the Superior
20 Court of Guam until the time for all other lien claimants to record their liens has
21 expired. Should one hundred fifty percent (150%) of the aggregate amount of all
22 claims of lien be *less than* the total amount of the proceeds in escrow, then the lien
23 claimants who have obtained a final judgment may apply to the Superior Court for
24 an order authorizing the disbursement of the full amount of said judgment with interest
25 accrued. However, should one hundred fifty percent (150%) of the aggregate

1 amount of all claims of lien be *more than* the total amount of the proceeds in
2 escrow, then the lien claimants who have obtained final judgment *shall only* be
3 entitled to a pro rata partial disbursement equal to the ratio their total judgment
4 with interest accrued bears to one hundred fifty percent (150%) of the aggregate
5 amount of all claims of lien, until such time when all lien claims have been
6 finalized by final judgment *or* dismissal, at which time the actual pro rata share of
7 each lien claimant can be determined and disbursed accordingly by court order.

8 **§33110. Lien Does Not Affect the Right to Maintain a Personal**
9 **Action or Issuance of a Writ of Attachment.** Nothing contained in this Chapter
10 affects the right of a claimant to maintain a personal action to recover a debt
11 against the person liable therefor under other Guam law, either in a separate action
12 *or* in the action to foreclose the lien, *nor* any right the claimant may have to the
13 issuance of a writ of attachment *or* execution, *or* to enforce a judgment by other
14 means.

15 **§33111. Contractor Shall Defend Owner Against Mechanics' Lien**
16 **Actions; Liability of Performance Bond.** In all cases where a claim of lien is
17 recorded for labor, services, equipment or materials furnished to any contractor, he
18 *shall* defend any action brought thereon at his own expense, and during the
19 pendency of any claim of lien the owner may withhold from the original contractor
20 the amount of money for which the claim of lien is recorded, to apply towards the
21 satisfaction thereof.

22 **§33112. Administration of this Chapter.**

23 (a) The effective date of this Act *shall* be sixty (60) days after it is
24 enacted into law.

25 (b) The 2008 Guam Mechanics' Lien Law will apply to all works

1 of improvement that commence after the effective date of this law. The
2 prior Guam Mechanics' Lien Law will *no longer* be applicable to any works
3 of improvement commencing after the effective date of this law.

4 (c) For all works of improvement that have been completed prior
5 to the effective date of this law, the prior Guam Mechanics' Lien Law will
6 continue to apply.

7 (d) For works of improvement that commenced prior to the
8 effective date of this law, but are *not* completed prior to the effective date of
9 this law, the following *shall* apply:

10 (1) For labor, services, materials, appliances *or* equipment
11 provided to that portion of the work of improvement prior to
12 enactment of this law, it *shall* be covered by the prior Guam
13 Mechanics' Lien Law.

14 (2) For labor, services, materials, appliances *or* equipment
15 provided to that portion of the work of improvement after the
16 effective date of this law, the 2008 Guam Mechanics' Lien Law *shall*
17 apply, but the required preliminary twenty (20)-day notice *shall* be
18 given *no later than*: (A) the date required by this law; *or* (B) within
19 thirty (30) days from the effective date of this law."

20 **Section 4.** This Act *shall* be known as the "2008 Guam Mechanics' Lien
21 Law." The effective date of this Act *shall* be sixty (60) days from enactment.