

A BILL FOR AN ACT

TO REPEAL AND REENACT CHAPTER 8, DIVISION 5, TITLE 4 OF THE
COMMONWEALTH CODE RELATING TO MECHANICS' LIENS, AND FOR OTHER
PURPOSES.

**BE IT ENACTED BY THE SIXTEENTH NORTHERN MARIANAS
COMMONWEALTH LEGISLATURE:**

1 **Section 1. Short Title.** This Act may be cited as the "The Mechanics' Lien Law
2 Reform Act of 2008."

3 **Section 2. Findings.** The Legislature finds that the mechanics' lien law
4 currently in effect in the Commonwealth does not provide certain assurances required by
5 title insurance companies doing business in the Commonwealth. As a result, title
6 insurance companies are presently unwilling to issue mechanics' lien endorsements to
7 their title policies. Without a title policy containing a mechanics' lien endorsement,
8 banks and other lenders are reluctant to provide traditional construction financing to
9 businesses and residents of the Commonwealth. This discourages economic growth and
10 the construction of new commercial and residential buildings. As a consequence, the
11 mechanics' lien law should be amended.

12 **Section 3. Repealer and re-enactment.** Chapter 8, Division 5, Title 4 of the
13 Commonwealth Code relating to mechanics' liens is repealed and reenacted to read as
14 follows:

15 **"Chapter 8. Mechanics' Lien.**

16 **§5801. Definitions**

17 **§5802. Liens, amount of lien, interests subject to lien**

18 **§5803. Application for a lien, notice of lien, service, hearing, expiration,**
19 **notice of completion**

1 **§5804. Notice of completion record**

2 **§5805. Release bond**

3 **§5806. Priorities, mortgages**

4 **§5807. Foreclosure proceedings, parties, consolidation**

5 **§5808. Withholding payment**

6 **§5809. Exceptions.**

7 **§5810. Limitations.**

8

9 **§5801. Definitions.** As used in this chapter, the following terms shall, unless the
10 context clearly indicates otherwise, have the following meanings:

11 (a) “Application for lien,” or “application” means a declaration setting forth the
12 amount of a claim, labor or material furnished, a legal description of the
13 property sufficient to identify the same, and any other matter necessary to a
14 clear understanding of a claim. A street address shall not constitute a
15 sufficient legal description for purposes of the application. The application
16 shall specify the names of the parties who contracted for the improvement, the
17 name of the general contractor and the names of the owners of the property.
18 The Application shall specify the names of all mortgagees.

19 (b) “Date of completion” means the time when the owner or the general
20 contractor for the improvement completes the publication of a notice that the
21 improvement has been completed or has been abandoned, and an affidavit of
22 the publication, together with a copy of the notice has been filed in the office
23 of the Clerk of the Superior Court and recorded in the Office of the
24 Commonwealth Recorder; provided that notice of completion shall not be
25 effective for any purpose unless prior to the notice of completion there has
26 been substantial completion of the improvement or the improvement has been
27 actually abandoned; and provided further that the notice shall not be published
28 or filed by the contractor until after the contractor has first made written
29 demand upon the owner to publish and file the notice and the owner has failed

1 to publish and file the notice within five calendar days from the date of the
 2 demand. The publication and filing of the notice by the contractor or the
 3 owner shall not be construed as an admission by either that the improvement
 4 has been satisfactorily completed. The notice required herein shall be
 5 published twice, seven calendar days apart in a newspaper of general
 6 circulation, printed and published in the Commonwealth, and the publishing
 7 newspaper shall promptly file the affidavit of publication above mentioned in
 8 the office of the Clerk of the Superior Court. If a valid notice of completion is
 9 not published and filed within one year after the actual completion or
 10 abandonment of the improvement, the “date of completion” shall be deemed
 11 to be one year after actual completion or abandonment.

12 (c) “Furnishing of materials” includes the supply of: materials incorporated in the
 13 improvement or substantially consumed in construction operations or
 14 specially fabricated for incorporation in the improvement; building materials
 15 used during construction but not remaining in the improvement, diminished
 16 by the salvage value of the materials; or transportation of the materials to the
 17 site of the improvement; tools, appliances, or machinery (but not including
 18 hand tools), used during the construction but not in excess of the reasonable
 19 rental value for the period of actual use.

20 The delivery of materials to the site of the improvement or the delivery of
 21 materials other than to the site of the improvement, but upon the written
 22 statement by the general contractor or the contractor’s agents that the
 23 materials are for a particular improvement, shall be prima facie evidence of
 24 incorporation of the materials in the improvement.

25 (d) “General contractor” means a person who enters into a contract with the
 26 owner for the improvement of real property.

27 (e) “Material person’s lien” means a particular lien claiming a right to retain
 28 property in respect of money or labor expended on such particular property;

- 1 (f) "Improvement" includes the construction, repair, alteration of or addition to
2 any building, structure, road, utility, railroad, or other undertaking or
3 appurtenances thereto, and includes any building, construction, erection,
4 demolition, excavation, grading, paving, filling in, landscaping, seeding,
5 sodding, and planting, or any part thereof existing, built, erected, placed,
6 made, or done on real property, or removed therefrom, for its benefit.
- 7 (g) "Licensed construction contractor" means any person who has been issued a
8 business license by the Commonwealth government to carry out construction
9 or other improvements of real property.
- 10 (h) "Lien" means the lien provided in Section 5802 of this chapter.
- 11 (i) "Notice of commencement" means an acknowledged notice signed by the
12 owner that work has commenced or is about to commence and which shall
13 contain a legal description of the real property upon which the work is or will
14 be conducted, the name of the owner, the nature of the owner's interest in the
15 property and a general description of the work being or to be performed. A
16 street address shall not constitute a sufficient legal description for purposes of
17 the notice of commencement.
- 18 (j) "Notice of lien," or "notice" means a notice setting forth the alleged facts by
19 virtue of which the declarant claims a lien.
- 20 (k) "Owner" means the owner of the real property or of any interest therein who
21 enters into a contract for the improvement thereof and who may be the owner
22 in fee of the real property or of a lesser estate therein, the lessee for a term of
23 years therein, the person having any right, title, or interest in the real property
24 which may be sold under legal process, or a vendee in possession under a
25 contract for the purchase of the real property or of any such right, title or
26 interest therein.
- 27 (l) "Person" includes natural persons, partnerships, corporations, firms,
28 unincorporated associations, joint ventures, and any other party recognized at
29 law as a person.

1 (m) "Visible commencement of work" means the first actual work of
2 improvement or the first delivery to the site of materials to be used in the
3 improvement, of such manifest and substantial character as to notify interested
4 persons that the real property is being improved or is about to be improved.

5 **§5802. Liens, amount of lien, interests subject to lien.**

6 (a) Any licensed construction contractor furnishing labor or material, and any
7 person supplying material in the improvement of real property, shall have a
8 lien upon the improvement as well as upon the interest of the owner of the
9 improvement in the real property upon which the same is situated, or for the
10 benefit of which the same was constructed, for the price agreed to be paid (if
11 the price does not exceed the value of the labor and materials), or if the price
12 exceeds the value thereof, or if no price is agreed upon by the contracting
13 parties, for the fair and reasonable value of all labor and materials covered by
14 their contract, express or implied. Individual laborers shall have no right to a
15 mechanics' lien except through their employer in cases in which the employer
16 is a licensed construction contractor.

17 (a) If the terms of a lease, contract of sale, or instrument creating a life tenancy
18 require the improvement of the real property, the interest of the lessor, vendor,
19 or remainderman in the improvement, and the land upon which the same is
20 situated, shall likewise be subject to the lien, and any provision for forfeiture
21 or other penalty against the lessee, vendee, or life tenant in case of the filing
22 of a mechanics' or material person's lien or actions to enforce the same, shall
23 not affect the rights of lien holders.

24 **§5803. Application for a lien, notice of lien, service, hearing, expiration,**
25 **notice of completion.**

26 (a) Requirements. Any licensed construction contractor or construction material
27 supplier claiming a lien shall apply therefor to the Superior Court. An
28 application for lien shall be accompanied by a written notice of lien. A copy
29 of the application and notice shall be served in the manner prescribed by law

1 for service of summons upon the owner of the property and any person with
2 an interest therein, and upon the party or parties who contracted for the
3 improvements if other than the owner of the property, or any person with an
4 interest therein. If any person entitled to notice cannot be served as provided
5 herein, notice may be given to the person by posting the same on the
6 improvement. The application and notice shall be returnable not less than
7 three nor more than 10 calendar days after service. On the return day, a
8 hearing shall be held by the court to determine whether probable cause exists
9 to permit the lien to attach to the property. Any person to whom notice is
10 required to be given shall be permitted to offer testimony and documentary
11 evidence on the issue of whether probable cause exists to permit the lien to
12 attach. If the person who contracted for the improvement from which the
13 requested lien arises claims a set-off against the lien holder, or if any person to
14 whom notice is required to be given otherwise disputes the amount of the
15 requested lien, then the court shall hear and receive all admissible evidence
16 offered and shall only permit the attachment of a lien in the net amount which
17 the court determines is the reasonable probable outcome of any such dispute.
18 The return day hearing may be continued by order of the court so that the
19 entire controversy need not be determined on the originally scheduled return
20 day. The lien shall not attach to the property until the court finds probable
21 cause exists and so orders and the court's order is properly recorded in the
22 Office of the Commonwealth Recorder. No such order shall be entered before
23 the application and notice have been served on the party contracting for the
24 improvement, the general contractor, and the owner of the property, and they
25 are given an opportunity to appear at the hearing.

- 26 (b) Time for filing. The application for lien and notice of lien shall be filed not
27 later than 45 calendar days after the date of completion of the improvement
28 against which it is filed. It shall be incumbent upon the lien holder to file a
29 certified copy of the Order Directing Lien To Attach in the Office of the

1 Commonwealth Recorder within seven calendar days after the entry thereof in
2 order to preserve the lien holder's rights against subsequent encumbrances or
3 purchasers of the property.

4 (c) Joint owner. If the fee title to the land involved is held in joint or common
5 ownership or as an estate by the entirety, service upon one of the owners of
6 the application for lien and notice of lien in accordance with this section shall
7 be deemed to be service upon all of the owners. Likewise, if the parties who
8 contracted for the improvement, if other than the owner in fee title of the
9 property involved, hold their interest in the premises in joint or common
10 ownership, or as an estate by the entirety, service upon one of the parties of
11 the application and notice in accordance with this section shall be deemed to
12 be service upon all of the parties.

13 (d) Owner acting through attorney-in-fact. In cases where materials have been
14 furnished or labor was performed at the request or upon the order of a person
15 acting under a duly executed and acknowledged power of attorney from the
16 owner and: (1) the power of attorney has not been revoked, or (2) the power of
17 attorney has been revoked subsequent to the furnishing of materials and labor
18 upon request or order and the owner cannot be found within the
19 Commonwealth, service of the application and notice upon the person acting
20 under the power of attorney shall be deemed to be service upon the owner.

21 (e) Duration of lien. The lien shall expire three months after recording the Order
22 Directing Lien to Attach unless proceedings are commenced within that time
23 to collect the amount due thereon by enforcing the same.

24 (f) Completion. Any of the following shall be deemed equivalent to completion:
25 (1) The occupation or use of the work of improvement by the owner, or
26 his/her agent, accompanied by cessation of labor thereon.
27 (2) The acceptance of the owner, or his/her agent, of the work of
28 improvement.

1 (3) After commencement of a work of improvement, a cessation of labor for a
2 continuous period of 60 calendar days.

3 **§5804. Notice of completion record.** The clerk of the Superior Court shall keep
4 a “notice of completion record” in which shall be entered an acknowledgement of each
5 notice of completion filed and the date of filing, arranged alphabetically by the last name
6 of the owner. There shall also be kept a “mechanic’s lien record” in which a
7 memorandum of each application for lien and notice of lien filed shall be entered,
8 arranged alphabetically by the last name of the claimants and showing the amount of the
9 lien or claim, the date of filing the Application and Notice, the date of the entry of the
10 Order Directing Lien To Attach, the date of withdrawal, discharge or cancellation of the
11 Application and Notice or of a lien which has been directed to attach, and any other
12 matters deemed necessary.

13 **§5805. Release bond.** Any mechanics’ and material person’s lien may be
14 discharged and considered null and void and of no further force and effect if, at any time,
15 the owner, lessee, principal contractor or intermediate subcontractor files with the Clerk
16 of the Superior Court cash or a bond for twice the amount of the sum for which the claim
17 for the lien is filed, conditioned for the payment of any sum for which the claimant may
18 obtain judgment upon the claimant’s claim.

19 **§5806. Priorities, mortgages.** The lien shall relate to and take effect from the
20 time of the visible commencement of work and the recording of a Notice of
21 Commencement with the Office of the Commonwealth Recorder; it shall rank equally in
22 priority subject to the provisos hereinafter contained with all other mechanics’ and
23 material person’s liens and shall have priority over all other liens of any nature, except
24 liens in favor of any branch of the government and mortgages, liens or judgments
25 recorded or filed prior to the time of the visible commencement of work and the
26 recording of the Notice of Commencement; provided that if a mortgage is recorded prior
27 to the date of completion, and all or a portion of the money advanced under and secured
28 by the mortgage is thereafter used for the purpose of paying for the improvement, the
29 mortgagee shall be entitled, to the extent of the payments, to priority over liens of

1 mechanics and material persons, but no such priority shall be allowed unless the
2 mortgage recites that the purpose of the mortgage is to secure the moneys advanced for
3 the purpose of paying for the improvement in whole or in part. Payments made in good
4 faith to the general contractor for such purposes shall be conclusively presumed to have
5 been used for the purpose of paying for the improvement. Whenever the lien or claim of
6 lien herein provided is satisfied (other than by the limitations expressed in §5803) a
7 written notice thereof shall be filed with the clerk of the Superior Court, which shall be
8 noted in the mechanic's lien record and in the Office of the Commonwealth Recorder.

9 **§5807. Foreclosure proceedings, parties, consolidation.** After demand and
10 refusal to pay the amount due or upon neglect to pay same upon demand, the lien may be
11 enforced by action filed in the Superior Court. The demand may be included in the
12 application and notice and when so included it shall not be necessary to make separate
13 demand upon any other person. The owner or the owners' assigns to whose property the
14 lien has attached may file a third-party action against a licensed construction contractor
15 whom the owner has paid for improvements. All proceedings concerning the same
16 improvement shall, unless good reason otherwise appears, be consolidated for trial and
17 the court may order publication and filing in the Office of the Commonwealth Recorder
18 of notice of the pendency of the action. Any person having or claiming an interest in any
19 such proceeding or in the property, including other claimants, lien holders, encumbrance
20 holders, sureties and indemnity holders may be joined as parties, may be interpleaded or
21 may be permitted to intervene, under such orders as the court may enter. Interlocutory
22 and final decrees for the foreclosure of the liens, for deficiency judgments, and relief
23 against the parties liable therefore, and fixing the priority of liens between the mechanics
24 and material persons as a group and other parties having liens against or interests in the
25 property shall be made and entered as near as may be in accordance with the practice on
26 foreclosure of mortgages. If the property or proceeds realized upon the foreclosure sale
27 are insufficient to satisfy all mechanics' and material person's liens filed against the
28 same, the property or proceeds shall be divided pro rata among the liens according to the
29 principal amounts of the liens, without regard to the order or priority in which the

1 respective applications and notices have been filed or the respective actions or
2 interventions commenced.

3 The court having jurisdiction of the action to foreclose the lien shall have all of
4 the powers pertaining to courts of equity, and in addition may direct the issuance of a writ
5 of attachment or execution upon the motion of any party against the property of any other
6 party, provided that the writ shall only issue where the claim upon which the motion
7 therefore is based is upon a contract, express or implied, between the parties. In addition
8 to costs of the action the court may allow any fee or fees for legal services rendered by
9 the attorneys for any of the parties, and apportion the same as costs for payment by and
10 between the parties or any of them, all as to the court deems equitable in the light of the
11 services performed and the benefits derived therefrom by the parties respectively.

12 **§5808. Withholding payment.** Whenever the work or material for which a lien
13 is filed is furnished to any contractor for use as set forth in §5802, the owner may retain
14 from the amount payable to the contractor sufficient funds to cover the amount due or to
15 become due to the person or persons who filed the lien.

16 **§5809. Exceptions.**

17 (a) Notwithstanding anything contained in this part to the contrary, in connection
18 with any repairs or improvements made or performed on property, no lien
19 shall exist either for the furnishing of materials to a general contractor as
20 defined in this chapter or his subcontractor either of whom was not a licensed
21 construction contractor or if unreasonable advancement of credit was given by
22 the furnisher of materials for the general contractor or subcontractor whether
23 or not such person was a licensed general contractor.

24 The issue of reasonable advancement of credit shall be decided by the
25 Superior Court judge at the return day hearing provided for in section
26 §5803(c); provided that if a party affected by the lien does not appear at the
27 return day hearing, he may raise the issue of unreasonable advancement of
28 credit at any time prior to the entry of a final or interlocutory decree of
29 foreclosure in the proceeding brought to enforce the lien under §5807. For the

1 purposes of this section, if the furnisher of materials has secured a credit
2 application form from the general contractor or the subcontractor to whom the
3 materials were furnished or has reasonably inquired into the credit status of
4 the general contractor or subcontractor, the advancement of credit by the
5 furnisher of materials shall be prima facie reasonable.

6 The credit application referred to herein shall be current and shall include at
7 least the following information:

8 A. For all persons:

- 9 1. Name
- 10 2. Address
- 11 3. Type of business (Example-plumbing subcontractor)
- 12 4. Date business started
- 13 5. Contractor's license number
- 14 6. Bonding companies generally used
- 15 7. Banks used
- 16 8. List of current creditors
- 17 9. Balance sheet
- 18 10. Total of all outstanding construction contracts \$_____.
- 19 11. Uncompleted portion of all contracts \$_____.

20 B. In addition, for corporate accounts:

- 21 1. Names of officers
- 22 2. Authorized capital
- 23 3. Paid in capital

24 C. In addition, for noncorporate accounts:

- 25 1. Names of all partners, all co-venturers, etc.

26 (b) Anything contained in this chapter to the contrary notwithstanding, no general
27 contractor as defined in this chapter or his subcontractor or the subcontractor's
28 subcontractor who is not a licensed construction contractor when the
29 improvements to the real property were made or performed, shall have lien

1 rights and no subcontractor or subcontractor's subcontractor not so licensed
2 shall have lien rights if his work was subcontracted to him by a general
3 contractor as defined in this chapter or his subcontractor who was not a
4 licensed construction contractor.

5 **§5810. Limitations.** No mechanics' liens shall be permitted upon public works
6 or improvements owned or operated by the Commonwealth government."

7 **Section 4. Severability.** If any provision of this Act or the application of any
8 such provision to any person or circumstance should be held invalid by a court of
9 competent jurisdiction, the remainder of this Act or the application of its provisions to
10 persons or circumstances other than those to which it is held invalid shall not be affected
11 thereby.

12 **Section 5. Savings clause.** This Act and any repealer contained herein shall not
13 be construed as affecting any existing right acquired under contract or acquired under
14 statutes repealed or under any rule, regulation or order adopted under the statutes.
15 Repealers contained in this Act shall not affect any proceeding instituted under or
16 pursuant to prior law. The enactment of the Act shall not have the effect of terminating,
17 or in any way modifying, any liability, civil or criminal, which shall already be in
18 existence on the date this Act becomes effective.

19 **Section 6. Effective date.** This Act shall take effect upon its approval by the
20 Governor or becoming law without such approval.


Prefiled: 5-14-08

Date: _____

Introduced By: _____

Rep. Justo S. Quitugua

Reviewed for Legal Sufficiency by:



House Legal Counsel

