

Expanding Mechanic's Lien Agent Requirements to Commercial Projects in Virginia

The General Assembly of Virginia added the mechanic's lien agent provisions to the Code of Virginia in 1992.¹ Since that Code amendment, any potential mechanic's lien claimants usually must give notice to the mechanic's lien agent (MLA) within 30 days after the contractor *begins* work if the project is one or two family residential dwellings.² A real estate owner *may* (but is not required to) designate a mechanic's lien agent when a building permit is issued. *If* an MLA is designated, then any contractor must provide notice within 30 days after the contractor *begins* work if the contractor wants to preserve its right to lien for all labor and materials furnished. A more detailed description of these Virginia Code mechanic's lien agent statutes is [here](#).³

House Bill 42 was submitted in the General Assembly of Virginia on January 14. The objective is to extend the mechanic's lien agent provisions to most commercial projects, in addition to most residential projects.⁴ It is respectfully submitted that House Bill 42 simply resubmits statutory policies submitted, debated and defeated in 1992. House Bill 42 would commercially benefit only a small group of title insurance companies and banks, while prejudicing a large group of material suppliers and contractors in the construction industry, ultimately increasing costs to consumers and real estate owners. House Bill 42 as submitted can be seen below.

It is my observation that the residential mechanic's lien agent statutes has significantly reduced the number of mechanic's liens filed and enforced on residential projects since 1992. Residential project mechanic's liens have always been restricted, because the claim dollar amounts tend to be low. The legal costs of filing residential project mechanic's liens can be very high, relative to the claimed dollar amount. The legal costs of filing residential project mechanic's liens can be just as high as on a commercial project, which typically involves a higher claim dollar amount. The required mechanic's lien agent notice adds to the cost of protecting rights. The "extra hurdle" of sending mechanic's lien agent notice probably reduced the number of residential project mechanic's liens even more. The notice must be sent very early, within 30 days after the contractor *begins* work, at a time when all participants normally assume there will be no payment problems. Residential contractors have simply not been good about sending these notices, even though the aid of legal counsel is not usually necessary. Construction lender banks always require title insurance. Title insurance companies always require a mechanic's lien agent on the building permit. As a result, almost all Virginia residential projects have mechanic's lien agent notice requirements. It seems certain that all Virginia commercial construction projects will have the same mechanic's lien agent notice requirements if this House Bill 42 is passed.

Proponents of mechanic's lien agent statutes suggest that this system results in timely payments to contractors, alleviating the need to ever file a mechanic's lien. MLA notices would provide owners and banks an accurate list of all potential mechanic's lien claimants. Owners and banks could then make sure they had waivers from all suppliers and contractors for all payments made by the owner. If that ever was the intent, it does not work. MLA notice requirements only increase administrative costs to suppliers and contractors and provide another hurdle to prevent them from protecting statutory lien rights, both of which increase costs passed on to owners and

consumers. Notices go to the mechanic's lien agents, who then do nothing with them. The only use of MLA notices is in the event of a mechanic's lien claim.

If the claimant had not sent an MLA notice, they summarily lose their mechanic's lien case. MLA notices do not create any additional obligation on owners & banks. They have only a negative effect. If a supplier or contractor sends an MLA notice, they will still be able to file a lien after work is complete if they are not paid. If a supplier or contractor does not send an MLA notice, they will simply be an unsecured creditor without the protection that the mechanic's lien statute has provided for hundreds of years. This is a significant difference between the Virginia (and North Carolina) MLA statutes and the Notice to Owner statutes in other states, which do result in timely payments and are popular with suppliers and contractors.⁵

Maryland actually passed the nation's first mechanic's lien law in 1791 "at the urging of [two Virginians] Thomas Jefferson and James Madison," to facilitate the speedy construction of the new capital city of Washington."⁶ Virginia passed its own mechanic's lien law soon after. The objective was to promote the development of the city and hold down construction costs to owners. The Federal government faced a very similar problem about one hundred years ago. It has never been possible to file a mechanic's lien on government property, as a result of sovereign immunity. You cannot sue the king, nor can you claim a lien on its real estate. As a result, suppliers and contractors had higher risk of default and nonpayment on government projects, resulting in higher risk premiums required by contractors and higher costs to owners. So, the Federal government provided something just as good, what are now known as Miller Act payment bonds. Most or all states have passed similar "Little Miller Acts" since then. Payment bonds in the construction industry are similar to a guaranty, providing contract rights against a second debtor that is usually a large insurance company.

The bonding company charges a significant premium for the bond policy usually anywhere from two per cent (2%) to five per cent (5%) of the contract amount. That increases a general contractor's cost on the project, but this cost is more than set off by the lower prices offered by suppliers and contractors, who have lower risk of nonpayment. As a result of the Miller Act payment bond, the taxpayer pays less for the project. Elimination, reduction, or increased costs in mechanic's lien rights will result in increased costs to owners, tenants and consumers. Avoiding these increased costs was the objective of the first mechanic's lien law in 1791, the Miller and Little Millers Acts across the country.

Mechanic's lien laws do NOT impose additional risks and costs on real estate owners. The owner of a Virginia construction project must pay for the project only once. If an owner can prove that it has paid the general contractor in full, then the owner has a "defense of payment" and all subcontractor liens will fail.⁷ Until the owner has received a notice of mechanic's lien (in the form and the manner prescribed by statute), the owner can continue to freely make payments to the general contractor, eroding the subs' ability to lien. If an owner has not paid the general contractor in full, then the general contractor, and all their subs, should have the security of mechanic's liens rights to protect against owner bankruptcy.

It is respectfully submitted that the only beneficiaries of the MLA statutes are title companies and perhaps banks. These commercial entities have historically covered their risks by setting

adequate premiums. It is correct that these increased premiums marginally increase construction costs to real estate owners. However, these costs are more than set off by the lower prices offered by suppliers and contractors in the construction process, resulting in ultimately lower costs to real estate owners. All owners and contractors are benefited by timely payments to contractors and protections from owner insolvency. The beneficiaries of the 1992 MLA statutes has been title companies, whose profits have increased. This would be even more true of the new MLA statutes for commercial projects, which should be rejected. The reader should be able to track progress on House Bill 42 [here](#).

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¹ Va. Code Anno. §43-4.01 (Michie 1950).

² Va. Code Anno. §43-4.01 (Michie 1950).

³ https://fullertonlaw.com/mechanics-liens-in-virginia#_Toc10937991.

⁴ The MLA statute applies only when project involves construction of one- and two-family residential dwellings. Va. Code Anno. §43-4.01(A) (Michie 1950). What is a two-family residential dwelling has never been clear to the author, probably a duplex. The statute probably does not apply to rental apartments or condominiums. Any contractor filing a lien for site development improvements under Virginia Code §43-3(B) (streets, storm or sanitary sewer, waterlines or roads) is expressly excluded from the MLA statute. Va. Code Anno. §43-4.01(C) (Michie 1950). The statute has never applied to offices, retail, industrial and other commercial projects.

⁵ This is a significant difference between the Virginia mechanic's lien agent provisions and the "Notice to Owner" NTO statutes in Florida and California. In those states any potential mechanic's lien claimant must also send notice to the owner soon after supplying any labor or material. However, if they do send the notice, the owner has an obligation to make sure the claimant gets paid. These Notice to Owner provisions seem popular with suppliers and contractors. Florida Statute §713.06, *et. seq.*, requires subcontractors, suppliers, and laborers without a direct contract with the owner to serve an NTO within 45 days of first furnishing labor or materials to preserve their right to file a mechanic's lien. CA Civ Code § 8200 (2024), *et. seq.* requires subcontractors and supplier without a direct contract with the owner to serve an NTO within 20 days of first furnishing labor or materials to preserve their right to file a mechanic's lien. Both the Florida and California NTOs inform that even if the owner has paid the contractor in full, if the person or firm that gave the notice is not paid in full, a lien may be placed on the property and could result in foreclosure of all or part of the property.

⁶ *Barry Properties v. Fick Bros. Roofing Co.*, 277 Md. 15, 17-18, 352 A.2d 222, 224-25 (1976).

⁷ *Maddux v. Buchanan*, 121 Va. 102, 92 S.E. 830 (1917).

HOUSE BILL NO. 42
Offered January 14, 2026
Prefiled December 23, 2025

A BILL to amend and reenact § [43-4.01](#) of the Code of Virginia, relating to posting of building permit; identification of mechanics' lien agent.

Patron—Simon

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § [43-4.01](#) of the Code of Virginia is amended and reenacted as follows:

§ [43-4.01](#). Posting of building permit; identification of mechanics' lien agent in building permit; notice to mechanics' lien agent; effect of notice.

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

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

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

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

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

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

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

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