



CARL T.C. GUTIERREZ
GOVERNOR OF GUAM

Refer to
Legislative Secretary

DEC 29 1998

The Honorable Antonio R. Unpingco
Speaker
Mina'Bente Kuattro na Liheslaturan Guahan
Twenty-Fourth Guam Legislature
Guam Legislature Temporary Building
155 Hesler Street
Hagåtña, Guam 96910

Dear Speaker Unpingco:

Enclosed please find Substitute Bill No. 201 (COR), "AN ACT TO REPEAL AND REENACT CHAPTER 33 OF TITLE 7 OF THE GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING NEW MECHANIC LIENS", which I have signed into law today as **Public Law No. 24-323**.

This bill makes a comprehensive revision of the mechanic's lien laws of Guam, which were enacted in 1962 and modeled on California's laws at that time. Today, there are many deficiencies in the old code and numerous updates and clarifications need to be made. This legislation addresses some of the concerns, however, the area still needs to be further addressed.

Many of the concerns of private contractors and subcontractors are resolved, however, it appears that further burdens are placed on the government. It is hoped that these burdens will be lightened in future amendments.

Some of the changes of the mechanic's lien law in this legislation are:

- 1) The insertion of a time certain for determination of "completion date" of a project. Currently, the completion date can be moveable or indeterminate. Since the "completion date" must occur before a lien can be filed, this ambiguity leads to litigation. This legislation

OFFICE OF THE GOVERNOR

11:25am

12-29-98

Office of the Speaker
ANTONIO R. UNPINGCO
Date: 12-29-98
Time: 11:25
Rec'd by: [Signature]
Print Name: [Signature]

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resolves this problem by allowing the party to determine the completion date by publishing 2 separate notices 7 days apart.

- 2) Lengthening of the time during which a "pre-claim" lien notice for subcontractors and material suppliers can be filed. This will cut down on the situations where an owner has already paid an irresponsible contractor before a subcontractor can establish a claim.
- 3) The elimination of a prior "loophole" where a lien could expire before the claimant is authorized to initiate a foreclosure, thus forcing the claimant to lose out on the claim.
- 4) The insertion of "Stop Notice" provisions, in order to give claimants time to notify owners and lenders that there is a lack of payment.
- 5) The insertion of a method to remove stale and outdated liens. Notice of liens have appeared on title reports long after the issues are closed.
- 6) Awarding of attorneys fees to the party who brings a lien foreclosure and prevails.

Some of the items of concern to the government, **and which should be addressed again** are:

- 1) The provision that the Department of Public Works act as a mediator in disputes between prime contractors and subcontractors. This legislation proposes that subcontractors inform DPW that they are not paid, and that DPW thereafter withhold payment from the prime contractor. This may slow down the completion of government projects, and make them more costly as prime contractors may raise their prices based on anticipation of disputes.
- 2) The time frames for taking certain actions are cumbersome and confusing, and therefore it is likely that they cannot be adhered to. For example, the giving notice for a "Stop Notice" is 20 days, recording it at Department of Land Management must occur 30 days after the notice of completion or 90 days after completion or cessation of work. Also, notice of the expiration of the 30 day period of notice of completion has to given no later than 10 days after filing the notice of completion and must be served personally on the

claimant or served by certified mail. This convoluted set of time frames need to be simplified.

Finally, there are 2 items of general concern. One, there are many instances throughout this legislation where a word giving a proper reference is left out. The word "Title", "Chapter", "Article", or "Section" needs to be inserted, as appropriate, in these blank spaces, to give the legislation its proper meaning. In fact, where these words are used may need to be reviewed also, for accuracy of meaning of the legislation. Some of the places where a word needs to be inserted are:

- 1) Page 20, line 5, word missing between "this" and "shall".
- 2) Page 24, line 23, word missing between "this" and "to".
- 3) Page 25, line 1, word missing between "this" and "as".
- 4) Page 30, line 20, word missing between "this" and "does".
- 5) Page 34, line 21, word missing between "this" and "do".

The last item of concern is that the terms "file" and "record" are interchanged in sections where a document has to be submitted to Department of Land Management. Filing a document, and recording a document, are not the same. This inconsistency needs to be resolved.

Very truly yours,



Carl T. C. Gutierrez
I Maga'lahañ Guåhan
Governor of Guam

Attachment: copy attached for signed bill
 original attached for vetoed bill

cc: The Honorable Joanne M. S. Brown
 Legislative Secretary

MINA'BENTE KUATTRO NA LIHESLATURAN GUAHAN
1998 (SECOND) Regular Session

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

This is to certify that Substitute Bill No. 201 (COR), "AN ACT TO REPEAL AND REENACT CHAPTER 33 OF TITLE 7 OF THE GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING NEW MECHANIC LIENS," was on the 11th day of December, 1998, duly and regularly passed.



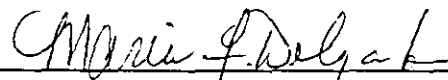
ANTONIO R. UNPINGCO
Speaker

Attested:



JOANNE M.S. BROWN
Senator and Legislative Secretary

This Act was received by *I Maga'lahaen Guahan* this 17 day of December, 1998,
at 3:50 o'clock P.M.



Assistant Staff Officer
Maga'lahi's Office

APPROVED:



CARL T. C. GUTIERREZ
I Maga'lahaen Guahan

Date: 12-29-98

Public Law No. 24-323

MINA'BENTE KUATTRO NA LIHESLATURAN GUAHAN
1997 (FIRST) Regular Session

Bill No. 201 (COR)

As substituted by the Author
and as further substituted
on the Floor.

Introduced by:

F. E. Santos
T. C. Ada
F. B. Aguon, Jr.
A. C. Blaz
J. M.S. Brown
Felix P. Camacho
Francisco P. Camacho
M. C. Charfauros
E. J. Cruz
W. B.S.M. Flores
Mark Forbes
L. F. Kasperbauer
A. C. Lamorena, V
C. A. Leon Guerrero
L. A. Leon Guerrero
V. C. Pangelinan
J. C. Salas
A. L.G. Santos
A. R. Unpingco
J. Won Pat

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

1 BE IT ENACTED BY THE PEOPLE OF GUAM:

2 Section 1. Chapter 33 of Title 7 of the Guam Code Annotated is hereby
3 *repealed and reenacted* to read as follows:

4 "CHAPTER 33.

5 WORKS OF IMPROVEMENT.

- 6 1. General Definitions.
- 7 2. Mechanics' Liens.
- 8 3. Stop Notices for Private Works of Improvement.
- 9 4. Stop Notice for Public Works.
- 10 5. General Provisions Relating to Bonds.
- 11 6. Payment Bond for Private Works.
- 12 7. Miscellaneous Provisions.

13 ARTICLE 1.

14 GENERAL DEFINITIONS.

- 15 Section 33101. Definitions as Governing Construction of Part.
- 16 Section 33102. Bonded Stop Notice.
- 17 Section 33103. Claim of Lien.
- 18 Section 33104. Claimant.
- 19 Section 33105. Completion and Notice of.
- 20 Section 33106. Construction Lender.
- 21 Section 33107. Contract.
- 22 Section 33108. Laborer.
- 23 Section 33109. Materialman.
- 4 Section 33110. Ninety (90) day Public Works Preliminary Bond

1 Notice; Requisites; Service.

2 Section 33111. Notice of Nonresponsibility; Posting.

3 Section 33112. Original Contractor.

4 Section 33113. Payment Bond.

5 Section 33114. Preliminary Twenty (20) Day Notice (Private
6 Work); Procedure.

7 Section 33115. Preliminary Twenty (20) Day Notice (Public Work,
8 Stop Notice, Service, Effect of Failure to Give Notice.)

9 Section 33116. Public Entity.

10 Section 33117. Public Work.

11 Section 33118. Site.

12 Section 33119. Site Improvement.

13 Section 33120. Stop Notice; Service.

14 Section 33121. Subcontractor.

15 Section 33122. Subdivision.

16 Section 33123. Work of Improvement.

17
18 Section 33101. Definitions as Governing Construction of Part.

19 Unless the context otherwise requires, the provisions in this Article govern
20 the construction of this Chapter.

21 Section 33102. Bonded Stop Notice. *'Bonded stop notice'* means a
22 stop notice, given to any construction lender, accompanied by a bond with
23 good and sufficient sureties in a penal sum equal to one and one-fourth
24 ($1\frac{1}{4}$) times the amount of such claim conditioned that if the defendant
25 recovers judgment in an action brought on such verified claim or on the

1 lien filed by the claimant, the claimant will pay all costs that may be
2 awarded against the owner, original contractor, construction lender, or any
3 of them, and all damages that such owner, original contractor, or
4 construction lender may sustain by reason of the equitable garnishment
5 effected by the claim or by reason of the lien, not exceeding the sum
6 specified in the bond. To be effective such bonded stop notice shall be
7 delivered to the manager or other responsible officer or person at the office
8 of the construction lender or must be sent to such office by registered or
9 certified mail.

10 **SUGGESTED FORM**
11 **INDIVIDUAL SURETY BOND TO ACCOMPANY STOP NOTICE**
12 **GIVEN TO CONSTRUCTION LENDER**

13 Whereas, _____ (Claimant) has _____ performed labor,
14 consisting of _____ (describe labor in general terms) for or
15 furnished _____ (materials or equipment or services or any
16 combination of these), consisting of _____ (general description), to
17 _____ [name of contractor or other person acting under authority of
18 owner], which _____ [labor was or materials were or labor and materials
19 were] actually used in _____ [description of improvement], located at
20 _____ [legal or other certain description] in the Municipality of
21 _____, Guam; And whereas, claimant herewith serves on
22 _____ [lender or other person holding construction funds] a verified claim
23 in the amount of \$ _____ and a stop notice;

24 Now, therefore, we, the claimant and _____ and
25 _____, sureties, residing in the Municipality of _____

1 Guam, undertake jointly and severally in the sum of \$_____, being not less
2 than one and one-quarter (1 ¼) times the amount of claimant's verified claim, that
3 claimant will pay all costs and damages recovered by _____[name of
4 contractor or other person acting under authority of owner] as judgment in any
5 action on claimant's stop notice and claim, or on any lien filed by claimant and
6 all damages that may be sustained by said contractor, owner, or yourself because
7 of the equitable garnishment created by such notice and claim of lien, not
8 exceeding the sum of this undertaking.

9 Dated_____

10 [Signature of claimant]

11 [Signature of sureties]

2 **Section 33103. Claim of Lien.** (a) '*Claim of lien*' means a
13 written statement, signed and verified by the claimant or by the claimant's
14 agent, containing all of the following:

15 (1) A statement of the claimant's demand after
16 deducting all just credits and offsets.

17 (2) The name of the owner or reputed owner, if
18 known.

19 (3) A general statement of the kind of labor, services,
20 equipment, or materials furnished by the claimant.

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

24 (5) A description of the site sufficient for identification.

25 (b) A claim of lien in otherwise proper form, verified and

1 containing the information required by this Section shall be accepted
2 by the recorder for recording and shall be deemed duly recorded
3 without acknowledgment.

4 **Section 33104. Claimant.** *'Claimant'* means any person entitled
5 under this Title to record a claim of lien, to give a stop notice in connection
6 with any work of improvement or to recover on any payment bond, or any
7 combination of the foregoing.

8 **Section 33105. Completion, Notice of.** The term *'Completion'* or
9 *'Date of Completion'* as used in this title means the time the owner or the
10 general contractor for the improvement completes the publication of a
11 Notice that the improvement has been completed or has been abandoned
12 and an affidavit of the publication, together with a copy of the Notice, has
13 been filed with the Department of Land Management; said Notice shall
14 contain the name and address of the owner or reputed owner, if known; the
15 name of the original contractor; and a description of the site sufficient for
16 identification; provided that Notice of Completion shall not be effective for
17 any purpose unless prior to the Notice there has been substantial
18 completion of the improvement or the improvement has been actually
19 abandoned; and provided further that the Notice shall not be published by
20 the contractor until after the contractor has first made written demand
21 upon the owner to publish the Notice and the owner has failed to publish
22 the Notice within five (5) days from the date of the demand. The
23 publication of the Notice by the contractor or the owner shall not be
24 construed as an admission by either that the improvement has been
25 satisfactorily completed. The Notice required herein shall be published

1 twice, seven (7) days apart, in a newspaper of general circulation on Guam,
2 and an Affidavit of Publication shall be promptly filed with the
3 Department of Land Management. If a valid of Notice of Completion is
4 not published and recorded within one hundred eighty days (180) after the
5 actual completion or abandonment of the improvement, the Date of
6 Completion shall be deemed to be one hundred eighty days (180) after
7 actual completion of abandonment.

8 **Section 33106. Construction Lender.** *'Construction lender'* means
9 any mortgagee or holder of any security interest who lends funds with
10 which the cost of the work of improvement is, wholly or in part, to be
11 defrayed, or any assignee or successor in interest of either, or any escrow
2 holder or other party holding any funds furnished or to be furnished by the
13 owner or lender or any other person as a fund from which to pay
14 construction costs.

15 **Section 33107. Contract.** *'Contract'* means an agreement between
16 an owner and any original contractor providing for the work of
17 improvement or any part thereof.

18 **Section 33108. Laborer.** *'Laborer'* means any person who, acting
19 as an employee, performs labor upon or bestows skill or other necessary
20 services on any work of improvement.

21 **Section 33109. Materialman.** *'Materialman'* means any person
22 who furnishes materials or supplies to be used or consumed in any work
23 of improvement.

24 **Section 33110. Ninety (90) day Public Works Preliminary Bond**
25 **Notice; Requisites; Service.** *'Ninety(90) day public works preliminary bond*

1 *notice* means a notice which must be given by any claimant pursuant to
2 §5304(d) of Title 5 of the Guam Code Annotated.

3 **Section 33111. Notice of Non-responsibility; Posting.** *Notice of*
4 *non-responsibility* means a written notice, signed and verified by a person
5 owning or claiming an interest in the site who has not caused the work of
6 improvement to be performed, or his agent, containing all of the following:

7 (a) A description of the site sufficient for identification.

8 (b) The name and nature of the title or interest of the person
9 giving the notice.

10 (c) The name of the purchaser under contract, if any, or
11 lessee, if known.

12 (d) A statement that the person giving the notice will not be
13 responsible for any claims arising from the work of improvement.

14 Within ten (10) days after the person claiming the benefits of non-
15 responsibility has obtained knowledge of the work of improvement,
16 the notice provided for in this Section shall be posted in some
17 conspicuous place on the site. Within the same ten (10) day period
18 provided for the posting of the notice, the notice shall be recorded in
19 the Department of Land Management.

20 **Section 33112. Original Contractor.** *Original contractor* means
21 any contractor who has a direct contractual relationship with the owner.

22 **Section 33113. Payment Bond.** *Payment bond* means a bond with
23 good and sufficient sureties which is conditioned for the payment in full of
24 the claims of all claimants and which also be its terms is made to inure to
25 the benefit of all claimants so as to give such persons a right of action to

1 recover upon such bond in any suit brought to foreclose the liens provided
2 for in this Title or in a separate suit brought on such bond. Either an owner
3 or an original contractor may be the principal upon any payment bond.

4 **Section 33114. Preliminary Notice (Private Work); Procedure.**

5 *'Preliminary notice (private work)'* means a written notice from the original
6 contractor to the owner, identifying the name and address of every
7 business or firm who furnishes labor, service, equipment or material for
8 which a lien otherwise can be claimed under this Title. Such notice shall
9 be furnished to the property owner within twenty (20) days after such
10 potential lien claimant has commenced furnishing labor, service,
11 equipment or material to the project, and shall include a statement
12 containing substantively the following:

13 **'NOTICE TO PROPERTY OWNER**

14 By law your contractor must provide you with the name and address
15 of all subcontractors and persons who furnish labor, service, equipment or
16 material used in the construction of improvements to your property. If
17 bills are not paid in full for the labor, services, equipment, or materials
18 furnished or to be furnished, a mechanic's lien leading to the loss, through
19 court foreclosure proceedings, of all or part of your property being so
20 improved may be placed against the property even though you have paid
21 your contractor in full, and even though your contractor has failed to
22 properly identify all potential lien claimants. You may wish to protect
23 yourself against this consequence by (1) requiring a contractor to furnish
24 a signed release from his subcontractors and suppliers or (2) any other
25 method or device that is appropriate under the circumstances.'

1 (a) Where the contract price to be paid to every person or firm who
2 furnishes labor, service, equipment or material on a particular work of
3 improvement exceeds Four Hundred Dollars (\$400.00), the failure of the
4 original contractor to give the notice provided for in this Section constitutes
5 grounds for disciplinary action by the Guam Contractor's License Board.

6 (b) Every governmental authority issuing building permits, shall,
7 in its application form for a building permit, provides space and a
8 designation for the applicant to enter the name, branch, designation, if any,
9 and address of the construction lender and shall keep the information on
10 file open for public inspection during the regular business hours of the
11 authority. If there is no known construction lender, that fact shall be noted
12 in such designated space.

13 If a notice contains a general description required by Subdivision (a)
14 or (b) of the materials, services, labor or equipment furnished to the date
15 of notice, it is not defective because, after such date, the person giving
16 notice furnishes materials, services, labor or equipment not within the
17 scope of such general description.

18 (c) A mortgage, or other instrument securing a loan, any of the
19 proceeds of which may be used for the purpose of constructing
20 improvements on real property, shall bear the designation 'Construction
21 Mortgage' prominently on its face and shall state all of the following:

22 (1) the name and address of the lender, and the name and
23 address of the owner of the real property described in the instrument,
24 and

25 (2) a legal description of the real property which secures the

1 loan and, if known, the street address of the property.

2 The failure to be so designated or to state any of the information
3 required by this subdivision shall not affect the validity of any such
4 mortgage, or other instrument. The Department of Land Management shall
5 indicate in the general index of the official records of Guam that such
6 instrument secures a construction loan. Failure to provide such
7 information on such an instrument when recorded shall not relieve persons
8 required to give preliminary notice under this Section from such duty.

9 (d) Every written contract entered into between a property owner
10 and an original contractor shall provide space for the owner to enter his
11 name and address of residence; and place of business if any. The original
12 contractor shall make available the name and address of residence of the
13 owner to any person seeking to serve notice required by this Section.

14 **Section 33115. Preliminary Twenty (20) Day Notice (Public**
15 **Work), Stop Notice; Service; Effect of Failure to Give Notice.**

16 *'Preliminary twenty (20) day notice (public work), stop notice'* means a
17 written notice from a claimant that was given prior to the filing of a stop
18 notice from a claimant that was given prior to the filing of a stop notice on
19 public work, and is required to be given under the following
20 circumstances:

21 (a) In any case in which the law of Guam affords a right to a
22 person furnishing labor or materials for a public work who has not been
23 paid therefor has the right to file a stop notice with the public agency
24 concerned, and thereby cause the withholding of payment from the
25 contractor for the public work. Any such person having no direct

1 contractual relationship with the contractor, other than a person who
2 performed actual labor for wages, may file such a notice, but no payment
3 shall be withheld from any such contractor, pursuant to any such notice,
4 unless such person has caused written notice to be given to such contractor,
5 and the public agency concerned, not later than twenty (20) days after the
6 claimant has first furnished labor, services, equipment or materials to the
7 jobsite, stating with substantial accuracy a general description of labor,
8 service, equipment, or materials furnished or to be furnished, and the name
9 of the party to whom the same was furnished. Such notice shall be served
10 by mailing the same by first-class mail, registered mail or certified mail,
11 postage prepaid, in an envelope addressed to the contractor at any place he
12 maintains an office or conducts his business, or his residence, or by
13 personal service. In case of any public constructed by the Department of
14 Public Works or the General Services Agency. Such notice shall be served
15 by mailing in the same manner as above, addressed to the office of the
16 contracting officer of the department or agency constructing the work, or
17 by personal service upon such officer. When service is by registered or
18 certified mail, service is complete at the time of the deposit of the
19 registered or certified mail.

20 (b) Where the contract price to be paid to any subcontractor on a
21 particular work of improvement exceeds Four Hundred Dollars (\$400.00),
22 the failure of that contractor to give the notice provided for in this Section
23 constitutes grounds for disciplinary action by the Guam Contractors
24 License Board.

25 Section 33116. Public Entity. 'Public entity' means the

1 government of Guam, or any municipality, public authority, public agency,
2 and any other political subdivision or public corporation in Guam.

3 **Section 33117. Public Work.** *'Public work'* means any work of
4 improvement contracted for by a public entity.

5 **Section 33118. Site.** *'Site'* means the real property upon which the
6 work of improvement is being constructed or performed.

7 **Section 33119. Site Improvement.** *'Site improvement'* means the
8 demolishing or removing of improvements, trees, clearing and grubbing,
9 or drilling test holes, performing archeological monitoring or mitigation,
10 or the grading, filling or otherwise improving of any lot or tract of land or
11 the street, highway, or sidewalk in front of or adjoining any lot or tract of
12 land, or constructing or installing sewers or other public utilities therein,
13 or constructing any areas, vaults, cellars, or rooms under said sidewalks,
14 or making any improvements thereon.

15 **Section 33120. Stop Notice; Service.** *'Stop notice'* means a written
16 notice, signed and verified by the claimant or his or her agent, stating in
17 general terms all of the following:

18 (a) The kind of labor, services, equipment, or materials furnished
19 or agreed to be furnished by such claimant.

20 (b) The name of the person to or for whom the same was done or
21 furnished.

22 (c) The amount in value, near as may be, of that already done or
23 furnished and of the whole agreed to be done or furnished.

24 (d) The name and address of the claimant.

25 The notice, in the case of any work of improvement other than a

1 public work, shall be delivered to the owner personally or left at his or her
2 residence or place of business with some person in charge, or delivered to
3 his or her architect, if any. The notice, in the case of any public work, shall
4 be filed with the director of the department which let the contract and, in
5 the case of any other public work, shall be filed in the office of the
6 contracting officer or with the commissioners, managers, trustees, officers,
7 board of supervisors, board of trustees, common council, or other body by
8 whom the contract was awarded. No stop notice shall be invalid by reason
9 of any defect in form if it is sufficient to substantially inform the owner of
10 the information required. Any stop notice may be served by registered or
11 certified mail with the same effect as by personal service.

2 **Section 33121. Subcontractor.** *'Subcontractor'* means any
3 contractor who has no direct contractual relationship with the owner.

4 **Section 33122. Subdivision.** *'Subdivision'* means a work of
5 improvement consisting of two (2) or more separate residential units or two
6 (2) or more building, mining claims, or other improvements owned or
7 reputed to be owned by the same person or on which the claimant has been
8 employed by the same person. A separate residential unit means one (1)
9 residential structure, together with any garage or other improvements
10 appurtenant thereto.

11 **Section 33123. Work of Improvement.** *'Work of*
12 *improvement'* includes, but is not restricted to, the construction, alteration,
13 addition to, or repair, in whole or in part, of any building, wharf, bridge,
14 ditch, flume, aqueduct, well, tunnel, fence, machinery, railroad, or road, the
15 seeding, sodding, or planting of any lot or tract of land for landscaping
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1 purposes, the filling, leveling, or grading of any lot or tract of land, the
2 demolition of buildings, and the removal of buildings.

3 Except as otherwise provided in this Title, *'work of improvement'*
4 means the entire structure or scheme of improvement as a whole.

5 ARTICLE 2.

6 MECHANICS' LIENS.

7 §33201. Application of Chapter.

8 §33202. Enumeration of Persons Entitled.

9 §33203. Claimant Making Site Improvement at Instance or
10 Request of Owner.

11 §33204. Recordation of Claim of Lien.

12 §33205. Claimant Other Than Original Contractor.

13 §33206. Notice of Completion; Work Completed Pursuant to
14 Two or More Original Contracts.

15 §33207. Willfully Including in Claim Labor, etc., Not Furnished;
16 Forfeiture of Lien.

17 §33208. Lien to be for Reasonable Value of Services or Materials
18 Furnished or for Agreed Price; Effect of Alteration of
19 Contract; Notice of Changes in Contract.

20 §33209. Lien of Claimant Employed by Contractor
21 Subcontractor; Effect of Filing Contract or
22 Modification.

23 §33210. Work and Land to Which Lien Attaches; Interest Less
24 than Fee Simple Estate.

§ 33211. Work, etc., Performed with Knowledge or Owner;

- 1 Notice of Non-responsibility.
- 2 §33212. Single Claim Filed Against Two or More Buildings or
3 Work of Improvement by Claimant Against Old Owner
4 or Employer; Procedure.
- 5 §33213. Commencement of Running of Lien on Two or More
6 Separate Residential Units; Status of Materials
7 Consumed on Portion of Entire Work of Improvement.
- 8 §33214. Liens Other Than Liens for Site Improvements.
- 9 §33215. Site Improvement Provided for in Contract Separate
10 from Contract for Construction of Residential Units or
11 Other Structures.
- 12 §33216. Priority of Original Obligatory Commitment of Lender
13 Under Mortgage or Other Security Interest.
- 14 §33217. Liens for Site Improvements.
- 15 §33218. Payment Bond; Procurement, etc., by Holder of
16 Mortgage or Subordinate under §33215.
- 17 §33219. Procurement, etc., by Holder of Mortgage or
18 Subordinate Under §33218.
- 19 §33220. Original Contractor, etc.; Restriction as to Amount
20 Recoverable under Recorded Claim of Lien.
- 21 §33221. Owner, etc., Disputing Claim of Lien; Recording of
22 Bond as Releasing Property from Lien.
- 23 §33222. Period During which Property is Bound after
24 Recordation of Claim of Lien; Exceptions; Effect of
j Failure to Commence Action to Foreclose Lien within

1 Time Limit.

2 §33223. Notice of Recording of Release Bond to Lien Holder.

3 §33224. Effect of Giving Credit or Extension of Lien on Good-
4 Faith Purchaser or Encumbrancer who Acquired Rights
5 Subsequent to Expiration of Period.

6 §33225. Time and Place for Recording Notice of Lis Pendens;
7 Effect of Notice on Purchaser or Encumbrancer.

8 §33226. Action to Foreclose Lien; Limitation Period; Dismissal
9 for Want of Prosecution.

10 §33227. Effect of Dismissal or of Judgment that no Lien Exists.

11 §33228. Joinder of Claimants; Right of Court to Consolidate
12 Separate Actions.

13 §33229. What Costs Must be Allowed; Persons to Whom Costs
14 Allowed; Attorney's Fees.

15 §33230. Deficiency Judgment Following Sale of Property.

16 §33231. Collection of Debt Owed to Claimant.

17 §33232. Action on Claim of Lien Recorded for Labor Furnished
18 to Contractor; Procedure.

19 §33233. Cancellation of Lien.

20 Section 33201. Application of Chapter. This Chapter
21 does not apply to any public work.

22 Section 33202. Enumeration of Persons Entitled. Mechanics,
23 materialmen, contractors, subcontractors, lessors of equipment, artisans,
24 architects, registered engineers, licensed land surveyors, archaeologists,
25 machinists, builders, teamsters and draymen, and all persons and laborers

1 of every class performing labor upon or bestowing skill or other necessary
2 services on, or furnishing materials or leasing equipment to be used or
3 consumed in or furnishing appliances, teams, or power contributing to a
4 work of improvement shall have a lien upon the property upon which they
5 have bestowed labor or furnished materials or appliances or leased
6 equipment for the value of such labor done or materials furnished and for
7 the value of the use of such labor done or materials furnished and for the
8 value of the use of such appliances, equipment, teams, or power whether
9 done or furnished at the instance of the owner or of any person acting by
10 his authority or under him as contractor or otherwise. For the purpose of
11 this Chapter, every contractor, subcontractor, sub-subcontractor, architect,
12 builder, or other person having charge of a work of improvement or
13 portion thereof shall be held to be the agent of the owner.

14 **Section 33203. Claimant Making Site Improvement at Instance**
15 **or Request of Owner** Any claimant who, at the instance or request
16 of the owner, or any other person acting by his authority or under him, as
17 contractor or otherwise, of any lot or tract of land, has made any site
18 improvement has a lien upon such lot or tract of land for work done or
19 materials furnished.

20 **Section 33204. Recordation of Claim of Lien.** Each original
21 contractor, in order to enforce a lien, must record his claim of lien after he
22 completes his contract and before the expiration of ninety (90) days after
23 the completion of the work of improvement as defined in §33105.

24 **Section 33205. Claimant Other Than Original Contractor.** Each
25 claimant other than an original contractor, in order to enforce a lien, must

1 record his claim of lien after he has ceased furnishing labor, services,
2 equipment, or materials, and before the expiration of sixty (60) days after
3 completion of the work of improvement.

4 **Section 33206. Notice of Completion; Work Completed Pursuant**
5 **to Two or More Original Contracts.** Where the work of improvements
6 is not made pursuant to one original contract for the work of improvement
7 but is made in whole or in part pursuant to two or more original contracts,
8 each covering a particular portion of the work of improvement, the owner
9 may, within ten (10) days after completion of any such contract for a
10 particular portion of the work of improvement, record a notice of
11 completion with the Department of Land Management and publish the
12 notice twice, seven (7) days apart, in a newspaper of general circulation on
13 Guam, and an affidavit of publication shall be promptly filed with the
14 Department of Land Management. If such notice of completion be
15 recorded and published, notwithstanding the provisions of §§33204 and
16 33205, the original contractor under the contract covered but such notice
17 must, within ninety (90) days after the second publication of such notice,
18 and any claimant under such contract other than the original contractor
19 must, within sixty (60) days after the second publication of such notice of
20 completion, record his claim of lien. If such notice is not published, then
21 the period for recording claims of lien shall be as provided for in §§33204
22 and 33205.

23 **Section 33207. Willfully Including in Claim Labor, etc., Not**
24 **Furnished; Forfeiture of Lien.** Any person who shall willfully
25 include in his claim of lien labor, services, equipment, or materials not

1 furnished for the property described in such claim shall thereby forfeit his
2 lien.

3 **Section 33208. Lien to be for Reasonable Value of Services or**
4 **Materials Furnished or for Agreed Price; Effect of Alteration of Contract;**
5 **Notice of Changes in Contract.** (a) The liens provided for in this shall

6 be direct liens, and shall be for the reasonable value of the labor, services,
7 equipment, or materials furnished or for the price agreed upon by the
8 claimant and the person with whom he or she contracted, whichever is less.

9 The lien shall not be limited in amount by the price stated in the contract
10 as defined in §33107, except as provided in §§33601 and 33602 and in
11 Subsection (c) of this Section.

12 (b) This Section does not preclude the claimant from including in
13 the lien any amount due for labor, services, equipment or materials
14 furnished based on a written modification of the contract or as a result of
15 the rescission, abandonment, or breach of the contract. However, in the
16 event of rescission, abandonment or breach of the contract, the amount of
17 the lien may not exceed the reasonable value of the labor, services,
18 equipment and materials furnished by the claimant.

19 (c) The owner shall notify the prime contractor and construction
20 lenders of any changes in the contract if the change has the effect of
21 increasing the price stated in the contract by five percent (5%) or more.

22 **Section 33209. Lien of Claimant Employed by Contractor**
23 **Subcontractor; Effect of Filing Contract or Modification.** In any case
24 where the claimant was employed by a contractor or subcontractor, his
25 claim of lien shall not extend to any labor, services, equipment or materials

1 not included in the contract between the owner and original contractor or
2 any modification thereof, if the claimant had actual knowledge or
3 constructive notice of the contract as defined in §33107 or any such
4 modification before he furnished such labor, service, equipment or
5 materials. The filing of a contract for a work of improvement or of a
6 modification of such contract with the Department of Land Management,
7 before the commencement of work, shall be equivalent to the giving of
8 actual notice of the provisions thereof by the owner to all persons
9 performing work or furnishing materials thereunder.

10 **Section 33210. Work and Land to Which Lien Attaches; Interest**
11 **Less Than Fee Simple Estate.** The liens provided for in this
12 Chapter shall attach to the work of improvement and the land on which it
13 is situated together with a convenient space about the same or so much as
14 may be required for the convenient use and occupation thereof, if at the
15 commencement of the work or of the furnishing of the materials for the
16 same the land belonged to the person who caused such work of
17 improvement to be constructed, but if such person owned less than a fee
18 simple estate in such land then only this interest therein is subject to such
19 lien, except as provided in §33211.

20 **Section 33211. Work, etc., Performed with Knowledge of Owner;**
21 **Notice of Non-responsibility.** Every work of improvement constructed
22 upon any land and all work or labor performed or materials furnished in
23 connection therewith with the knowledge of the owner or of any person
24 having or claiming any estate therein shall be held to have been
25 constructed, performed, or furnished at the instance of such owner or

1 person having or claiming any estate therein and such interest shall be
2 subject to any lien recorded under this, unless such owner or person having
3 or claiming any estate therein shall give a notice of non-responsibility
4 pursuant to §33111.

5 Section 33212. Single Claim Filed Against Two or More
6 Buildings or Work of Improvement by Claimant Against Old Owner or
7 Employer; Procedure. In every case in which one claim is filed
8 against two (2) or more building or other works of improvement owned or
9 reputed to be owned by the same person or on which the claimant has been
10 employed by the same person to do his work or furnish his materials,
11 whether such works of improvement are owned by one (1) or more owners,
12 the person filing such claim must at the same time designate the amount
13 due to him on each of such works of improvement; otherwise the lien of
14 such claim is postponed to other liens. If such claimant has been employed
15 to furnish labor or materials under a contract providing for a lump sum to
16 be paid to him for his work or materials on such works of improvement as
17 a whole, and such contract does not segregate the amount due for the work
18 done and materials furnished on such works of improvement separately,
19 then such claimant, for the purposes of this Section, may estimate an
20 equitable distribution of the sum due him over all of such works of
21 improvement based upon the proportionate amount of work done or
22 materials furnished upon such respective works of improvement. The lien
23 of such claimant does not extend beyond the amount designated as against
24 other creditors having liens, by judgment, mortgage, or otherwise, upon
25 either such works or improvement or upon the land upon which the same

1 are situated.

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

8 **Section 33213. Commencement of Running of Lien on Two or**
9 **More Separate Residential Units; Status of Materials Consumed on**
10 **Portion of Entire Work of Improvement.** If a work of

11 improvement consists in the construction of two (2) or more separate
12 residential units, each such unit shall be considered a separate '*work of*
13 *improvement,*' and the time for filing claims of lien against each such
14 residential unit shall commence to run upon the completion of each such
15 residential unit. A separate residential unit means one (1) residential
16 structure, including a residential structure containing multiple
17 condominium units, together with any common area, or any garage or
18 other improvements appurtenant thereto. The provisions of this
19 qualification shall not impair any rights conferred under the provisions of
20 §§33203 and 33212. Materials delivered to or upon any portion of such
21 entire work of improvement or furnished to be used in such entire work of
22 improvement and ultimately used or consumed in one (1) of such separate
23 residential units shall, for all the purposes of this Title, be deemed to have
24 been furnished to be used or consumed in the separate residential unit in
25 which the same shall have been actually used or consumed; provided,

1 however, that if the claimant is unable to segregate the amounts used on or
2 consumed in such separate units, he shall be entitled to all the benefits of
3 §33212.

4 **Section 33214. Liens Other Than Liens for Site Improvements.**

5 The liens provided for in this Article, other than with respect to site
6 improvements are, subject to the exception in §33218, preferred to any lien,
7 mortgage, or other encumbrance upon the work of improvement and the
8 site, which attaches subsequent to the commencement of the work of
9 improvement, and also to any lien, mortgage, or other encumbrance of
10 which the claimant had no notice and which was unrecorded at the time of
11 commencement of the work of improvement.

12 **Section 33215. Site Improvement Provided for in Contract**
13 **Separate from Contract for Construction of Residential Units or Other**
14 **Structures.**

15 If any site improvement is provided for in a separate contract from any
16 contract with respect to the erection of residential units or other structure,
17 then the site improvement shall be considered a separate work of
18 improvement and the commencement thereof shall not constitute a
19 commencement of the work of improvement consisting of the erection of
20 any residential unit or other structure.

21 **Section 33216. Priority of Original Obligatory Commitment of**
22 **Lender Under Mortgage or Other Security Interest.** A mortgage or other
23 security interest which would be prior to the liens provided for in this to
24 the extent of obligatory advances made thereunder in accordance with the
25 commitment of the lender shall also be prior to the liens provided for in

1 this as to any other advances, secured by such mortgage or other security
2 interest, which are used in payment of any claim of lien which is recorded
3 at the date or dates of such other advances and thereafter in payment of
4 costs of the work of improvement. Such priority shall not, however, exceed
5 the original obligatory commitment of the lender as shown in such
6 mortgage or other security interest.

7 **Section 33217. Liens for Site Improvements.** The liens
8 provided for in §33203 with respect to site improvements are, subject to the
9 exception in §33219, preferred to (a) any mortgage, or other encumbrance
10 which attached subsequent to the commencement of the site improvement
11 work; and (b) any mortgage, or other encumbrance of which the claimant
12 had no notice and which was unrecorded at the time of the commencement
13 of such site improvement; and (c) any mortgage, or other encumbrance
14 before the commencement of the site improvement work which was given
15 for the sole or primary purpose of financing such site improvements, unless
16 the loan proceeds are, in good faith, placed in the control of the lender
17 under a binding agreement with the borrower to the effect that such
18 proceeds are to be applied to the payment of claims of claimants and that
19 no portion of such process will be paid to the borrower in the absence of
20 satisfactory evidence that all such claims have been paid or that the time for
21 recording claims of liens has expired and no such claims have been
22 recorded.

23 **Section 33218. Payment Bond; Procurement, etc., by Holder of**
24 **Mortgage or Subordinate Under §33214.** If the holder of any
25 mortgage or other encumbrance which is subordinate pursuant to §33214

1 to any lien, shall procure a payment bond as defined in §33112 in an
2 amount not less than seventy-five percent (75%) of the principal amount of
3 such mortgage or other encumbrance which bond refers to such mortgage
4 or other encumbrance and shall record such payment bond in the office of
5 the county recorder in the county where the site is located, then such
6 mortgagor other encumbrance shall be preferred to all liens for labor,
7 services, equipment or materials furnished after such recording.

8 **Section 33219. Procurement, etc., by Holder of Mortgage or Other**
9 **Encumbrance Subordinate Under §33217.** If the owner of the
10 land or holder of any mortgage or other encumbrance, which is
11 subordinate pursuant to §33217 to any lien, shall procure a payment bond
12 in an amount not less than fifty percent (50%) of the principal amount of
13 such mortgage or other encumbrance and shall record such payment bond
14 in the office of the Department of Land Management before completion of
15 the work of improvement, then such mortgage or other encumbrance shall
16 be preferred to all such liens provided in §33203.

17 **Section 33220. Original Contractor, etc.; Restriction as to Amount**
18 **Recoverable Under Recorded Claim of Lien.** Any original contractor or
19 subcontractor shall be entitled to recover, upon a claim of lien recorded by
20 him, only such amount as may be due him according to the terms of his
21 contract after deducting all claims of other claimants for labor, services,
22 equipment or materials furnished and embraced within his contract.

23 **Section 33221. Owner, etc., Disputing Claim of Lien; Recording**
24 **of Bond as Releasing Property from Lien.** If the owner of property, or
25 the owner of any interest therein, sought to be charged with a claim of lien,

1 or if any original contractor or subcontractor disputes the correctness or
2 validity of any claim of lien, he may record with the Department of Land
3 Management, either before or after the commencement of any action to
4 enforce such claim of lien, a bond executed by a corporation authorized to
5 issue surety bonds in Guam, in a penal sum equal to one and one-half (1 ½)
6 times the amount of the claim or at one and one-half (1 ½) times the amount
7 allocated in the claim of lien to the parcel of parcels of real property sought
8 to be released, which bond shall be conditioned for the payment of any
9 sum which the claimant may recover on the claim together with his costs
10 of suit in this action, if he recovers therein. Upon the recording of such
11 bond the real property described in such bond is released from the lien and
12 from any action brought to foreclose such lien. The principal upon such
13 bond may be either the owner of the property or the owner of any interest
14 therein, or any original contractor, subcontractor or sub-subcontractor
15 affected by such claim of lien.

16 **Section 33222. Period During Which Property is Bound After**
17 **Recordation of Claim of Lien; Exceptions; Effect of Failure to Commence**
18 **Action to Foreclose Lien Within Time Limit.** (a) No lien provided for
19 in this binds any property for a longer period of time than ninety (90) days
20 after the recording of the claim of lien, unless within that time an action to
21 foreclose the lien is commenced in a proper court, except that, if credit is
22 given and notice of the fact and terms of such credit is recorded in the
23 office of the county recorder subsequent to the recording of such claim of
24 lien and prior to the expiration of such ninety (90) day period, then such
25 lien continues in force until ninety (90) days after the expiration of such

1 credit, but in no case longer than one (1) year from the time of completion
2 of the work of improvement.

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

6 **Section 33223. Notice of Recording of Release Bond to**
7 **Lienholder.**

8 Any person who obtains a lien release bond which is recorded pursuant to
9 §33222 shall give notice of the recording to the lien holder by mailing a
10 copy of the bond to the lien holder at the address appearing on the lien.
11 Service of the notice shall be by certified or registered mail, return receipt
12 requested. Failure to give the notice provided by this Section shall not
13 affect the validity of the lien release bond, but the statute of limitations on
14 any action on the bond shall be tolled until the notice as given. Any action
15 on the lien release bond shall be commenced by the claimant within six (6)
16 months of the recording of the lien release bond.

17 **Section 33224. Effect of Giving Credit or Extension of Lien on**
18 **Good-Faith Purchaser or Encumbrancer Who Acquired Rights**
19 **Subsequent to Expiration of Period.** As against any purchaser or
20 encumbrancer for value and in good faith whose rights are acquired
21 subsequent to the expiration of the ninety (90) day period following the
22 recording of the claim of lien, no giving of credit or extension of the lien or
23 of the time to enforce the same shall be effective unless evidenced by a
24 notice or agreement recorded with the Department of Land Management
25 prior to the acquisition of the rights of such purchaser or encumbrancer.

1 Section 33225. Time and Place for Recording Notice of Lis
2 Pendens; Effect of Notice on Purchaser or Encumbrancer. After the
3 filing of the complaint in the proper court, the plaintiff may record with the
4 Department of Land Management a notice of the pendency of such
5 proceedings, as provided in §14103 of this Title. Only from the time of
6 recording such notice shall a purchaser or encumbrancer of the property
7 affected thereby be deemed to have constructive notice of the pendency of
8 the action, and in that event only of its pendency against parties designated
9 by their real names.

10 Section 33226. Action to Foreclose Lien; Limitation Period;
11 Dismissal for Want of Prosecution. If the action to foreclose the
12 lien is not brought to trial within two (2) years after the commencement
13 thereof, the court may in its discretion dismiss the same for want of
14 prosecution.

15 Section 33227. Effect of Dismissal or of Judgment that no Lien
16 Exists. In all cases the dismissal of an action to foreclose the lien, unless
17 it is expressly stated that the same is without prejudice, or a judgment
18 rendered therein that no lien exists shall be equivalent to the cancellation
19 and removal from the record of such lien.

20 Section 33228. Joinder of Claimants; Right of Court to
21 Consolidate Separate Actions. Any number of persons claiming
22 liens on the same property may join in the same action to foreclose their
23 liens and when separate actions are commenced the court may consolidate
24 them.

25 Section 33229. What Costs Must be Allowed; Persons to Whom

1 **Costs Allowed; Attorney's Fees.** In addition to any other costs allowed
2 by law, the court in an action to foreclose a lien must also allow as costs the
3 money paid for verifying and recording the lien, such costs to be allowed
4 each claimant whose lien is established, whether he be plaintiff or
5 defendant, and award to the prevailing party, as defined in §33316 herein,
6 reasonable attorney's fees.

7 **Section 33230. Deficiency Judgment Following Sale of Property.**

8 Whenever on the sale of the property subject to any liens provided for this,
9 under a judgment of foreclosure of such lien, there is a deficiency of
10 proceeds, judgment for the deficiency may be entered against any party
11 personally liable therefor in like manner and which like effect as in an
12 action for the foreclosure of a mortgage.

13 **Section 33231. Collection of Debt Owed to Claimant.** Nothing

14 contained in this Title affects the right of a claimant to maintain a personal
15 action to recover a debt against the person liable therefor either in a
16 separate action or in the action to foreclose the lien, nor any right the
17 claimant may have to the issuance of a writ of attachment or execution or
18 to enforce a judgment by other means. In an application for a writ of
19 attachment, the claimant shall refer to this Section. A lien held by the
20 claimant under this does not affect the right to procure a writ of
21 attachment. The judgment, if any, obtained by the claimant in a personal
22 action, or personal judgment obtained in a mechanic's lien action, does not
23 impair or merge a lien held by the claimant under this, but any money
24 collected on the judgment shall be credited on the amount of the lien.

25 **Section 33232. Action on Claim of Lien Recorded for Labor**

1 **Furnished to Contractor; Procedure.** In all cases where a claim of lien
2 is recorded for labor, services, equipment or materials furnished to any
3 contractor, he shall defend any action brought thereon at his expense, and
4 during the pendency of such action the owner may withhold from the
5 original contractor the amount of money for which the claim of lien is
6 recorded. In case of judgment in such action against the owner or his
7 property upon the lien, the owner shall be entitled to deduct from any
8 amount then or thereafter due from him to the original contractor the
9 amount of such judgment and costs. If the amount of such judgment and
10 costs exceeds the amount due from him to the original contractor, or if he
11 has settled with the original contractor in full, he shall be entitled to recover
12 back from the original contractor, or the sureties on any bond given by him
13 for the faithful performance of his contract, any amount of such judgment
14 and costs in excess of the contract price, and for which the original
15 contractor was originally the party liable.

16 **Section 33233. Cancellation of Lien.** (a) At any time after the
17 expiration of the time period specified by §33223 with regard to the period
18 during which property is bound by a lien after recordation of a claim of
19 lien, where no action has been brought to enforce such lien the owner of the
20 property or the owner of any interest therein may file an accusation in the
21 Department of Land Management for an administrative adjudication that
22 the property is released from the lien. Unless as otherwise provided in this
23 Chapter, the procedure to be followed for such an adjudication shall be in
24 accordance with the Administrative Adjudication Law, Chapter 9 of Title
25 5 of the Guam Code Annotated.

1 (b) The accusation shall be verified and shall allege all of the
2 following:

3 (1) The date of recordation of the claim of lien.

4 (2) The legal description of the property affected by such
5 claim of lien.

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

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

11 (5) That the owner of the property or interest in the property
12 has not filed for relief under any law governing bankrupts, and that
13 there exists no other restraint to prevent the lien claimant from filing
14 to foreclose his or her lien. A certified copy of the claim of lien shall
15 be attached to the accusation.

16 (c) A copy of the accusation, together with the statutory notice
17 pursuant to §§9210 and 9211 of Title 5 of the Guam Code Annotated shall
18 be served upon the lien claimant in the manner in which a summons is
19 required to be served, or by certified or registered mail, postage prepaid,
20 return receipt requested, addressed to the lien claimant at the claimant's
21 address as shown:

22 (1) in the records of the Guam Contractors License Board,

23 (2) on the contract on which the lien is based, or

24 (3) on the claim of lien itself.

25 When service is made by mail as provided in this Section, service is

1 complete on the fifth (5th) day following the day of the deposit of such mail.

2 (d) In the event an adjudication is rendered in favor of the
3 petitioner, the decree shall indicate all of the following:

4 (1) The date the lien was recorded.

5 (2) The recorder's instrument number on the lien in the
6 official records where the lien is recorded.

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

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

10 (f) The prevailing party shall be entitled to attorneys' fees not to
11 exceed One Thousand Dollars (\$1,000.00).

12 (g) Nothing in this Section shall be construed to bar any other
13 cause of action or claim for relief by the owner of the property or an interest
14 in the property, nor shall a decree canceling a claimant's lien bar the lien
15 claimant from bringing any other cause of action or claim for relief, other
16 than an action foreclosing such lien. However, no other action or claim
17 shall be joined with the claim for relief established by this Section.

18 ARTICLE 3.

19 STOP NOTICES FOR PRIVATE WORKS OF IMPROVEMENT.

20 §33301. Not Applicable to Public Works.

21 §33302. Stop Notice to Owner.

22 §33303. Stop Notice to Construction Lender.

23 §33304. Requisites for Validity of Service of Stop Notice;
24 Preliminary 20-Day Notice (Private Work); Service
25 Within Statutory Period.

- 1 §33305. Duties of Owner Upon Receipt of Stop Notice.
- 2 §33306. Rights, Duties and Liabilities of Construction Lender
- 3 Upon Receipt of Stop Notice.
- 4 §33307. Procedure Where Construction Lender Objects to
- 5 Sufficiency of Sureties on Bond Accompanying Bonded
- 6 Stop Notice.
- 7 §33308. Assignment of Construction Loan Funds.
- 8 §33309. Money Withheld Pursuant to Stop Notice Insufficient
- 9 to Pay Claims in Full; Procedure.
- 10 §33310. Forfeiture for Willfully Giving False Stop Notice.
- 11 §33311. Challenge as to Correctness or Validity of Stop Notice.
- 12 §33312. Action to Enforce Payment of Claims Stated in Stop
- 13 Notice.
- 14 §33313. Dismissal for Want of Prosecution.
- 15 §33314. Effect of Dismissal.
- 16 §33315. Joinder of Parties; Consolidation of Actions.
- 17 §33316. Right of Prevailing Party to Attorney's Fees and
- 18 Costs.
- 19 §33317. Inclusion of Interest in Amount Awarded on Claim.

20 Section 33301. Not Applicable to Public Works. The provisions
21 of this do not apply to any public work.

22 Section 33302. Stop Notice to Owner. Any of the persons named
23 in §§33202 and 33203, other than the original contractor, may give to the
24 owner a stop notice. Any person who shall fail to serve such a stop notice
after a written demand therefor from the owner shall forfeit his right to a

1 mechanic's lien.

2 Section 33303. Stop Notice to Construction Lender. Any of the
3 persons named in §§33202 and 33203 may, prior to the expiration of the
4 period within which his or her claim of lien must be recorded under Article
5 2, commencing with §33201, give to a construction lender a stop notice or
6 a bonded stop notice. If a payment bond has previously been recorded
7 with the Department of Land Management in accordance with §33601 or
8 in accordance with §33306, then the construction lender shall withhold
9 funds pursuant to a bonded stop notice filed by an original contractor and
10 may, at its option, withhold funds pursuant to a stop notice or bonded stop
11 notice given by anyone other than an original contractor. The construction
12 lender may elect not to withhold pursuant to a bonded stop notice by
13 reason of a payment bond having previously been recorded in accordance
14 with §33601. If, when giving the construction lender the stop notice, the
15 claimant makes a written request for notice of the election, accompanied by
16 a preaddressed, stamped envelope, the construction lender shall furnish
17 the claimant a copy of the bond within thirty (30) days after making the
18 election. A lender shall not be liable for a failure to furnish a copy of the
19 bond if the failure was not intentional and resulted from a *bona fide* error,
20 if the lender maintains reasonable procedures to avoid such an error, and
21 if the error was corrected not later than twenty (20) days from the date on
22 which the violation was discovered. The payment bond may be recorded
23 at any time prior to the serving of the first (1st) stop notice. The notice may
24 only be given for materials, equipment, or services furnished, or labor
25 performed. In the case of a stop notice or bonded stop notice filed by the

1 original contractor or by a subcontractor contracting directly with an
2 owner, the original contractor or subcontractor shall only be entitled to
3 recover on his or her stop notice or bonded stop notice the net amount due
4 the original contractor or subcontractor after deducting the stop notice
5 claims of all subcontractors, or material suppliers who have filed bonded
6 stop notices on account of work done on behalf of the original contractor
7 or the subcontractor.

8 **Section 33304. Requisites for Validity of Service of Stop Notice;**
9 **Preliminary Twenty (20)-Day Notice (Private Work); Service Within**
10 **Statutory Period.** Service of a stop notice or a bonded stop notice shall be
11 effective only if the claimant:

12 (a) Gave the preliminary twenty (20)-day notice (private work) in
13 accordance with the provisions of §33114 if required by that Section; and

14 (b) Served his stop notice as defined in §33120 or his bonded stop
15 notice as defined in §33102 prior to the expiration of the period within
16 which his claim of lien must be recorded under §§33205, 33206 and 88207.

17 **Section 33305. Duties of Owner Upon Receipt of Stop Notice.**

18 It shall be the duty of the owner upon receipt of a stop notice
19 pursuant to §33302 to withhold from the original contractor or from any
20 person acting under his or her authority and to whom labor or materials,
21 or both, have been furnished, or agreed to be furnished, sufficient money
22 due or to become due to such contractor to answer such claim and may
23 claim of lien that may be recorded therefor, unless a payment bond has
24 been recorded pursuant to the provisions of §33601, in which case the
25 owner may, but is not obligated to, withhold such money.

1 If the owner elects not to withhold pursuant to a stop notice by
2 reason of a payment bond having been previously recorded, then the
3 owner shall, within thirty (30) days after receipt of the stop notice, given a
4 written notice to the claimant at the address shown in the stop notice that
5 the bond has been recorded and furnish to the claimant a copy of that
6 bond.

7 **Section 33306. Rights, Duties and Liabilities of Construction**
8 **Lender Upon Receipt of Stop Notice.** Upon receipt of a stop notice

9 pursuant to §33303, the construction lender may, and upon receipt of a
10 bonded stop notice the construction lender shall, withhold from the
11 borrower or other person to whom it or the owner may be obligated to
12 make payments or advancement out of the construction fund, sufficient
13 money to answer the claim and any claim of lien that may be recorded
14 therefor. If a payment bond has previously been recorded in accordance
15 with §33601, then the construction lender shall withhold funds pursuant to
16 a bonded stop notice filed by an original contractor and may, at its option,
17 withhold funds pursuant to a stop notice or bonded stop notice given by
18 anyone other than an original contractor. The construction lender may
19 elect not to withhold pursuant to a bonded stop notice by reason of a
20 payment bond having previously been recorded in the office of the county
21 recorder of the county where the site is located in accordance with §33601.

22 If, when giving the construction lender the stop notice or bonded stop
23 notice, the claimant makes a written request for notice of the election,
24 accompanied by a preaddressed, stamped envelope, the construction
25 lender shall furnish the claimant a copy of the bond within thirty (30) days

1 after making the election. A lender shall not be liable for a failure to
2 furnish a copy of the bond if the failure was not intentional and resulted
3 from a *bona fide* error, if the lender maintains reasonable procedures to
4 avoid such an error, and if the error was corrected not later than twenty
5 (20) days from the date on which the violation was discovered. The
6 payment bond may be recorded at any time prior to the serving of the first
7 stop notice.

8 **Section 33307. Procedure Where Construction Lender Objects to**
9 **Sufficiency of Sureties on Bond Accompanying Bonded Stop Notice.**

10 If the construction lender objects to the sufficiency of the sureties on
11 the bond accompanying the bonded stop notice, he must give notice in
12 writing of such objection to the claimant within twenty (20) days after the
13 service of the bonded stop notice. The claimant may within ten (10) days
14 after the receipt of such written objection substitute for the initial bond a
15 bond in like amount executed by a corporate surety licenses to write such
16 bonds in Guam. If the claimant fails to do so, the construction lender may
17 disregard the bonded stop notice and release all funds withheld in
18 response thereto.

19 **Section 33308. Assignment of Construction Loan Funds.** No
20 assignment by the owner or contractor of construction loan funds, whether
21 made before or after a stop notice or bonded stop notice is given to a
22 construction lender, shall be held to take priority over the stop notice or
23 bonded stop notice, and such assignment shall have not effect insofar as the
24 rights of claimants who give the stop notice or bonded stop notice are
25 concerned.

1 Section 33309. Money Withheld Pursuant to Stop Notice
2 Insufficient to Pay Claims in Full; Procedure. (a) If the money withheld
3 or required to be withheld pursuant to any bonded stop notice shall be
4 insufficient to pay in full the valid claims of all persons by whom such
5 notices were given, the same shall be distributed among such persons in
6 the same ratio that their respective claims bear to the aggregate of all such
7 valid claims. Such pro rata distribution shall be made among the persons
8 entitled to share therein without regard to the order of time in which their
9 respective notices may have been given or their respective actions, if any,
10 commenced.

11 (b) If the money withheld or required to be withheld pursuant to
12 any stop notice shall be insufficient to pay in full the valid claims of all
13 persons by whom such notices were given, the same shall be distributed
14 among such persons in the same ratio that their respective claims bear to
15 the aggregate of all such valid claims. Such pro rata distribution shall be
16 made among the persons entitled to share therein without regard to the
17 order of time in which their respective notices may have been given or their
18 respective actions, if any, commenced.

19 Section 33310. Forfeiture for Willfully Giving False Stop Notice.
20 Any person who willfully gives a false stop notice or bonded stop notice or
21 who willfully includes in his notice labor, services, equipment or materials
22 not furnished for the property described in such notice forfeits all rights to
23 participate in the pro rata distribution of such money and all right to any
24 lien under Article 2, commencing with §33201.

25 Section 33311. Challenge as to Correctness or Validity of Stop

1 **Notice.** If the owner, construction lender or any original contractor or
2 subcontractor disputes the correctness or validity of any stop notice or
3 bonded stop notice, he may file with the person upon whom such notice
4 was served a bond executed by good and sufficient sureties in a penal sum
5 equal to one and one-fourth (1 ¼) times the amount stated in such notice,
6 conditioned for the payment of any sum not exceeding the penal obligation
7 of the bond which the claimant may recover on the claim, together with his
8 costs of suit in the action, if he recovers therein. Upon the filing of such
9 bond, the funds withheld to respond to the stop notice or bonded stop
10 notice shall forthwith be released.

11 **Section 33312. Action to Enforce Payment of Claims Stated in**
12 **Stop Notice.** An action against the owner or construction lender to
13 enforce payment of the claim stated in the stop notice or bonded stop notice
14 may be commenced at any time after ten (10) days from the date of the
15 service of the stop notice upon either the owner or construction lender and
16 shall be commenced not later than ninety (90) days following the expiration
17 of the period within which claims of lien must be recorded as prescribed
18 in Article 2, commencing with §33201. No such action shall be brought to
19 trial or judgment entered until the expiration of said ninety (90) day period.
20 No money shall be withheld by reason of any such notice longer than the
21 expiration of such ninety (90) day period unless such action is commenced.
22 If no such action is commenced, such notice shall cease to be effective and
23 such moneys shall be paid or delivered to the contractor or other person to
24 whom they are due. Notice of commencement of any such action shall be
25 given within five (5) days after commencement thereof to the same person

1 and in the same manner as provided for service of a stop notice or bonded
2 stop notice.

3 **Section 33313. Dismissal for Want of Prosecution.** In case
4 such action is commenced as provided in §33312, but is not brought to trial
5 within two (2) years after the commencement thereof, the court may in its
6 discretion dismiss the action for want of prosecution.

7 **Section 33314. Effect of Dismissal.** Upon the dismissal of an
8 action to enforce a stop notice or bonded stop notice, unless expressly
9 stated to be without prejudice, or upon a judgment rendered therein
10 against the claimant, the stop notice or bonded stop notice shall cease to be
11 effective and the moneys withheld shall be paid or delivered to the person
2 to whom they are due.

13 **Section 33315. Joinder of Parties; Consolidation of Actions.** Any
14 number of persons who have given stop notices or bonded stop notices
15 may join in the same action, and when separate actions are commenced, the
16 court first acquiring jurisdiction may consolidate them. Upon the motion
17 of the owner or construction lender the court shall require all claimants to
18 the moneys withheld pursuant to stop notices and bonded stop notices to
19 be impleaded in one (1) action, to the end that the respective rights of all
20 parties may be adjudicated therein.

21 **Section 33316. Right of Prevailing Party to Attorney Fees and**
22 **Costs.**

23 In any action against an owner or construction lender to enforce payment
24 of a claim stated in a bonded stop notice, the prevailing party shall be
25 entitled to collect from the party held liable by the court for payment of the

1 claim, reasonable attorney's fees in addition to other costs and in addition
2 to any liability for damages.

3 The court, upon notice and motion by a party, shall determine who
4 is the prevailing party for purposes of this Section, whether or not the suit
5 proceeds to final judgment. Except as otherwise provided by this Section,
6 the prevailing party shall be the party who recovered a greater relief in the
7 action. The court may also determine that there is no prevailing party.
8 Where an action has been voluntarily dismissed or dismissed pursuant to
9 a settlement of the case, there shall be no prevailing party for purposes of
10 this Section.

11 Where the defendant alleges in his or her answer that he or she
12 tendered to the plaintiff the full amount to which he or she was entitled,
13 and thereupon deposits in court for the plaintiff, the amount so tendered,
14 and the allegation is found to be true, then the defendant is deemed to be
15 a prevailing party.

16 **Section 33317. Inclusion of Interest in Amount Awarded on**
17 **Claim.**

18 If the plaintiff is the prevailing party in any action against an owner or
19 construction lender to enforce payment of a claim stated in a bonded stop
20 notice, any amount awarded on the claim shall include interest at the legal
21 rate calculated from the date the bonded stop notice is served upon the
22 owner or construction lender pursuant to §33312.

23 **ARTICLE 4.**

24 **STOP NOTICE FOR PUBLIC WORKS.**

25 **§33401. Application of Chapter.**

- 1 §33402. Persons Entitled.
- 2 §33403. Conditions to Enforcement of Stop Notice.
- 3 §33404. Periods for Service of Stop Notice.
- 4 §33405. Notice by Public Entity of Expiration of Period.
- 5 §33406. Duty of Public Entity on Receipt of Stop Notice.
- 6 §33407. When Payment may be Made to Original Contractor.
- 7 §33408. Pro Rata Distribution When Moneys Insufficient;
8 Procedure.
- 9 §33409. Right of Claimant to Recover Deficit After Distribution.
- 10 §33410. Effect of Willfully Giving False Stop Notice.
- 11 §33411. Effect of Assignment by Original Contractor.
- 12 §33412. Dispute by Contractor as to Correctness, Validity or
13 Enforceability of Stop Notice.
- 14 §33413. Challenge by Contractor as to Validity of Claim.
- 15 §33414. Affidavit by Contractor as to Improper Withholding of
16 Moneys and Bonds.
- 17 §33415. Service of Affidavit, Demand for Release, and Notice
18 Upon Claimant.
- 19 §33416. Counteraffidavit of Claimant.
- 20 §33417. Action for Declaration of Rights of Parties; Hearing.
- 21 §33418. Burden of Proof; Pleadings.
- 22 §33419. Determination and Order of Court.
- 23 §33420. Right to Jury Trial.
- 24 §33421. Res Judicata Effect of Summary Determination.
- 25 §33422. Action to Enforce Payment of Claim Stated in Stop

1 Notice.

2 §33423. Notice of Commencement of Action.

3 §33424. Dismissal for Want of Prosecution.

4 §33425. Effect of Dismissal.

5 §33426. Joinder of Parties; Consolidation of Actions.

6 Section 33401. Application of Chapter. The Provisions of this
7 Chapter apply only to a public work.

8 Section 33402. Persons Entitled. Except for an original
9 contractor, any person mentioned in §§33202, or 33203, or §5304 of Title 5
10 of the Guam Code Annotated, or furnishing provisions, provender, or other
11 supplies, may serve a stop notice upon the public entity responsible for the
2 public work in accordance with this Chapter.

13 Section 33403. Conditions to Enforcement of Stop Notice.

14 A claimant shall be entitled to enforce a stop notice only if he has
15 complied with each of the following conditions:

16 (a) He shall have given the preliminary twenty (20) day notice
17 (public work) in accordance with §33116 if required by that Section.

18 (b) He shall have filed his stop notice as defined in §33121 and in
19 accordance with §33403.

20 Section 33404. Periods for Service of Stop Notice. To be
21 effective, any stop notice pursuant to this Chapter must be served before
22 the expiration of:

23 (a) Thirty (30) days after the recording of a notice of completion,
24 sometimes referred to in public works as a notice of acceptance, or notice
25 of cessation, if such notice is recorded.

1 (b) If no notice of completion or notice of cessation is recorded,
2 ninety (90) days after completion or cessation.

3 **Section 33405. Notice by Public Entity of Expiration of Period.**

4 No later than ten (10) days after the filing of a notice of completion
5 or after the cessation of labor has been deemed a completion of the public
6 work or after the acceptance of completion, whichever is later, the public
7 entity shall give notice of the expiration of such period to each stop notice
8 claimant by personal service, or registered or certified mail. When service
9 is by registered or certified mail, service is complete at the time of the
10 deposit of the registered or certified mail in a United States post office,
11 addressed to the claimant at the address shown upon his stop notice claim.

12 No such notice need be given unless the claimant shall have paid to
13 the public entity the sum of Two Dollars (\$2.00) at the time of filing his stop
14 notice.

15 **Section 33406. Duty of Public Entity on Receipt of Stop Notice.**

16 It shall be the duty of the public entity, upon receipt of a stop notice
17 pursuant to this Chapter, to withhold from the original contractor, or from
18 any person acting under his authority, money or bonds, where bonds are
19 to be issued in payment for the work of improvement, due or to become
20 due to such contractor in an amount sufficient to answer the claim stated
21 in such stop notice and to provide for the reasonable cost of any litigation
22 thereunder.

23 **Section 33407. When Payment may be Made to Original**
24 **Contractor.**

25 This Article does not prohibit: (a) the payment of any money or bonds to

1 the original contractor or his assignee unless a stop notice is on file before
2 the disbursing officer has actually surrendered possession of either the
3 warrant, check, bonds, or money, or (b) the payment to the original
4 contractor or his assignee of any money due him in excess of an amount
5 sufficient to answer the total amount of the claims stated in stop notices on
6 file at the time of such payment plus such interest and court costs as might
7 be reasonably anticipated in connection with the claims.

8 **Section 33408. Pro Rata Distribution When Moneys Insufficient;**
9 **Procedure.** If the money withheld pursuant to stop notices shall be
10 insufficient to pay in full all of the valid claims stated in such notices, the
11 same shall be distributed among the stop notice claimants in the same ratio
12 that their respective claims bear to the aggregate of such valid claims,
13 without regard to the order of time in which their respective notices may
14 have been served or their respective actions, if any, commenced.

15 **Section 33409. Right of Claimant to Recover Deficit after**
16 **Distribution.** Nothing in this Article shall impair the right of any stop
17 notice claimant to recover from the contractor or his sureties any deficit
18 that may remain unpaid after such pro rata distribution in an action upon
19 the bond provided for by §5304 of Chapter 5 of Title 5 of the Guam Code
20 Annotated.

21 **Section 33410. Effect of Willfully Giving False Stop Notice.** Any
22 person who willfully gives a false stop notice to the public entity or who
23 willfully includes in his notice labor, services, equipment or materials not
24 furnished for the work of improvement with respect to which such notice
25 is given, forfeits all right to participate in the pro rata distribution of money

1 or bonds withheld.

2 **Section 33411. Effect of Assignment by Original Contractor.** No
3 assignment by the original contractor of any of the money due or to become
4 due to the original contractor under the contract, or for 'extras' in
5 connection therewith whether made before or after the service of a stop
6 notice, takes priority over a stop notice under this Chapter and such
7 assignment has no effect on the rights of stop notice claimants.

8 **Section 33412. Dispute by Contractor as to Correctness, Validity**
9 **or Enforceability of Stop Notice.** If the original contractor or
10 subcontractor disputes the correctness or validity or enforceability of any
11 stop notice, the public entity may, in its discretion, permit the original
12 contractor to file with the public entity a bond executed by a corporate
13 surety, in an amount equal to one hundred twenty-five percent (125%) of
14 the claim stated in the stop notice conditioned for the payment of any sum
15 which the stop notice claimant may recover on the claim together with his
16 costs of suit in the action, if he recovers therein. Upon the filing of such
17 bond with the public entity, the public entity shall not withhold any money
18 or bonds, where bonds are to be issued in payment for the work of
19 improvement, from the original contractor on account of the stop notice.
20 The surety or sureties upon such bond shall be jointly and severally liable
21 to the stop notice claimant with the surety or sureties upon any payment
22 bond furnished pursuant to §5304 of Chapter 5 of Title 5 of the Guam Code
23 Annotated.

24 **Section 33413. Challenge by Contractor as to Validity of Claim.**
25 If the original contractor asserts: (1) that the claim upon which the stop

1 notice is based is not included within the types or classifications of claim
2 referred to in this Article, or (2) that the claimant is not one of the persons
3 named in §33402, or (3) that the amount of the claim as specified in the stop
4 notice is excessive, or (4) that there is no basis in law for the claim as
5 referred to and set out in the stop notice, he may have the question
6 determined in a summary proceedings in accordance with the provisions
7 of §§33414 through 33421, inclusive.

8 **Section 33414. Affidavit by Contractor as to Improper**
9 **Withholding of Moneys and Bonds.** The original contractor shall serve
10 upon the public entity an affidavit and a copy thereof alleging the legal
11 grounds upon which he bases his claim and the facts in support thereof,
12 and demanding the release of all or such portion of such money or bonds
13 as is alleged to be withheld improperly or in an excessive amount. Such
14 affidavit shall also state the address of the original contractor within this
15 state for the purpose of permitting service by mail upon him of any notice
16 or legal document.

17 **Section 33415. Service of Affidavit, Demand for Release, and**
18 **Notice Upon Claimant.** The public entity shall serve upon the
19 claimant, either personally or by registered or certified mail, addressed to
20 the last known address of the claimant, a copy of the affidavit and the
21 demand for release together with a written notice stating that the public
22 entity will release such money or bonds, or such portion of either as has
23 been demanded, unless the claimant files with the public entity a
24 counteraffidavit on or before a time designated in the notice, which shall
25 not be less than ten (10), nor more than twenty (20) days, after service upon

1 the claimant of the copy of such affidavit. Proof of service shall be made
2 by an affidavit.

3 **Section 33416. Counteraffidavit of claimant.** If the
4 claimant desires to contest the original contractor's affidavit and demand
5 for release, he shall, within the time allowed, serve upon the public entity
6 a counteraffidavit alleging the details of his claim and shall also set forth
7 in detail the specific basis upon which he contests or rebuts the allegations
8 of the original contractor's affidavit, together with proof of service of a copy
9 of such counteraffidavit upon the original contractor. If no such
10 counteraffidavit with proof of service is served upon the public entity
11 within the time allowed, then the public entity shall forthwith release the
12 money or bonds, or such portion thereof as has been demanded by such
13 affidavit, without further notice to the claimant, and the public entity shall
14 not be liable in any manner for making such release. The public entity shall
15 not be responsible for the validity of the affidavit or counteraffidavit.

16 **Section 33417. Action for Declaration of Rights of Parties;**
17 **Hearing.**

18 If such counteraffidavit, together with proof of service, is so filed, either the
19 original contractor or the claimant may file an action in the Superior Court
20 for a declaration of the respective rights of the parties. After the filing of
21 such action, either the original contractor or the claimant shall be entitled
22 to a hearing by the court for the purpose of determining his rights under
23 the affidavit and demand for release and the counteraffidavit. Such
24 hearing must be granted by the court within fifteen (15) days from the date
25 of making of such motion, unless continued by the court for good cause.

1 The party making the motion for hearing must give not less than five days'
2 notice in writing of such hearing to the public entity and to the other party.

3 **Section 33418. Burden of Proof; Pleadings.** At such hearing,
4 the original contractor shall have the burden of proof. The affidavit and
5 counteraffidavit shall be filed with the court by the public entity and they
6 shall constitute the pleadings, subject to the power of the court to permit
7 an amendment in the interest of justice. The affidavit of the original
8 contractor shall be deemed controverted by the counteraffidavit, and both
9 shall be received in evidence.

10 **Section 33419. Determination and Order of Court.** No findings
11 shall be required in a summary proceeding under this Article. When the
12 hearing is before the court sitting without a jury and no evidence other
13 than the affidavit and counteraffidavit is offered, if the court is satisfied
14 that sufficient facts are shown thereby, it may make its determination
15 thereon; otherwise, it shall order the hearing continued for the production
16 of other evidence, oral or documentary, or the filing of other affidavits and
17 counteraffidavits. At the conclusion of the hearing, the court shall make
18 and enter its order determining whether the demand for release shall be
19 allowed or not, which order shall be determinative as to the right of the
20 claimant to have the money or bonds further withheld by the public entity.
21 The original contractor shall serve a copy of such order on the public
22 entity.

23 **Section 33420. Right to Jury Trial.** Nothing contained in this
24 Article shall be construed to deprive any party of the right to a trial by jury
25 in any case where such right is given by the laws of Guam but a jury trial

1 may be waived in like manner as in the trial of an action.

2 **Section 33421. Res Judicata Effect of Summary Determination.**

3 No determination in the summary proceedings under this Article
4 shall be res judicata with respect to any right of action by the claimant
5 against either principal or surety on any labor and material bond or with
6 respect to any right of action against any party personally liable to the
7 claimant.

8 **Section 33422. Action to Enforce Payment of Claim Stated in Stop**
9 **Notice.** An action against the original contractor and the public entity
10 to enforce payment of the claim stated in the stop notice may be
11 commenced at any time after ten (10) days from the date of the service of
12 the stop notice upon the public entity and shall be commenced not later
13 than ninety (90) days following the expiration of the period within which
14 stop notices must be filed as provided in §33403. No such action shall be
15 brought to trial or judgment entered until the expiration of said ninety (90)
16 day period. No money or bond shall be withheld by reason of any such
17 notice longer than the expiration of such ninety (90) day period, unless
18 proceedings be commenced in a proper court within that time by the
19 claimant to enforce his claim, and if such proceedings have not been
20 commenced such notice shall cease to be effective and the moneys or bonds
21 withheld shall be paid or delivered to the contractor or other person to
22 whom they are due.

23 **Section 33423. Notice of Commencement of Action.**

24 Notice of the commencement of any such action shall be given to the
25 public entity within five (5) days after commencement of the action

1 described in §33421 in the same manner as provided in §33121.

2 **Section 33424. Dismissal for Want of Prosecution.** In
3 case such action is commenced as provided in §33421, but is not brought to
4 trial within two (2) years after the commencement thereof, the court may
5 in its discretion dismiss the same for want of prosecution.

6 **Section 33425. Effect of Dismissal.** In all cases upon the
7 dismissal of an action commenced as provided in §33421, unless expressly
8 stated to be without prejudice, or upon a judgment rendered therein
9 against the claimant, the stop notice shall cease to be effective and the
10 moneys or bonds withheld shall be paid or delivered to the person to
11 whom they are due.

2 **Section 33426. Joinder of Parties; Consolidation of Actions.** Any
13 number of persons who have given stop notices may join the same action
14 and when separate actions are commenced the court first acquiring
15 jurisdiction may consolidate them. Upon the request of the public entity
16 the court shall require all claimants to the moneys withheld pursuant to
17 stop notices to be impleaded in one (1) action, to the end that the respective
18 rights of all parties may be adjudicated therein.

19 **ARTICLE 5.**

20 **GENERAL PROVISIONS RELATING TO BONDS.**

21 **§33501. Liability of Sureties.**

22 **§33502. Construction of Bonds; Effect of Breach of Contact.**

23 **Section 33501. Liability of Sureties.** The surety or sureties on
24 any bond given pursuant to any of the provisions of this Title shall not be
25 exonerated or released from the obligation of the bond by any change,

1 alteration, or modification in or of any contract, plans, specifications, or
2 agreement pertaining or relating to any scheme or work of improvement
3 or pertaining or relating to the furnishing of labor, materials, or equipment
4 therefor, nor by any change or modification of any terms of payment or
5 extension of the time for any payment pertaining or relating to any scheme
6 or work of improvement, nor by any rescission or attempted rescission of
7 the contract, agreement or bond, nor by any conditions precedent or
8 subsequent in the bond attempting to limit the right of recovery of
9 claimants otherwise entitled to recover under any such contract or
10 agreement or under the bond, nor, where the bond is given for the benefit
11 of claimants, by any fraud practiced by any person other than the claimant
12 seeking to recover on the bond.

13 **Section 33502. Construction of Bonds; Effect of Breach of**
14 **Contract.**

15 Any bond given pursuant to the provisions of this Title will be construed
16 most strongly against the surety and in favor of all persons for whose
17 benefit such bond is given, and under no circumstances shall a surety be
18 released from liability to those for whose benefit such bond has been given,
19 by reason of any breach of contract between the owner and original
20 contractor or on the part of any obligee named in such bond, but the sole
21 conditions of recovery shall be that claimant is a person described in
22 §§33202 or 33203, and has not been paid the full amount of his claim.

23 **ARTICLE 6.**

24 **PAYMENT BOND FOR PRIVATE WORKS.**

25 **§33601. Restrictions on Recovery.**

1 §33602. Limitation of Owner's Liability.

2 §33603. Provision Limiting Period for Commencement of
3 Action.

4 §33604. Notice to Sureties.

5 §33605. Manner of Giving Written Notice to Sureties.

6 **Section 33601. Restrictions on Recovery.** In case the original
7 contract for a private work of improvement is filed with the Department of
8 Land Management before the work is commenced, and the payment bond
9 of the original contractor in an amount not less than fifty percent (50%) of
10 the contract price named in such contract is recorded in such office, then
11 the court must, where it would be equitable so to do, restrict the recovery
12 under lien claims to an aggregate amount equal to the amount found to be
13 due from the owner to the original contractor and render judgment against
14 the original contractor and his sureties on such bond for any deficiency or
15 difference there may remain between such amount so found to be due to
16 the original contractor and the whole amount found to be due to claimants.

17 **Section 33602. Limitation of Owner's Liability.** It is the intent
18 and purpose of §33601 to limit the owner's liability, in all cases, to be
19 measure of the contract price where he shall have filed or caused to be filed
20 in good faith his original contract and recorded a payment bond as therein
21 provided. It shall be lawful for the owner to protect himself against any
22 failure of the original contractor to perform his contract and make full
23 payment for all work done and materials furnished thereunder by exacting
24 such bond or other security as he may deem necessary.

25 **Section 33603. Provision Limiting Period for Commencement of**

**COMMITTEE ON JUDICIARY, PUBLIC SAFETY AND
C O N S U M E R P R O T E C T I O N
T W E N T Y - F O U R T H G U A M L E G I S L A T U R E**

173 ASPINALL AVENUE, ADA PLAZA CENTER SUITE 108A, AGANA, GUAM 96910


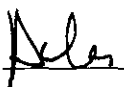
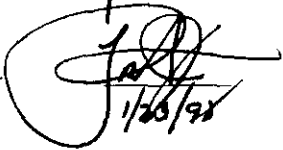
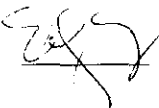
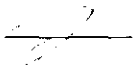
SENATOR ELIZABETH BARRETT-ANDERSON
Chairperson

SENATOR JOHN C. SALAS
Vice-Chairperson

SPEAKER ANTONIO R. UNPINGCO
Ex-Officio Member

VOTING SHEET

Bill No. 201: As Substituted by the Author. An act to repeal and reenact Chapter 33, Chapter 7, Guam Code Annotated, relative to establishing new mechanic liens.

<u>COMMITTEE MEMBERS</u>	<u>INITIALS</u>	<u>TO DO PASS</u>	<u>NOT TO PASS</u>	<u>ABSTAIN</u>
1). Sen. Elizabeth Barrett-Anderson Chairperson		✓		
2). Sen. John C. Salas Vice-Chairperson		✓		
3). Sen. Frank B. Aguon, Jr. Member		✓		
4). Sen. Anthony C. Blaz Member				
5). Sen. Joanne M.S. Brown Member				
6). Sen. Edwardo J. Cruz M.D. Member		✓		
7). Sen. Mark Forbes Member				
8). Sen. Vicente C. Pangelinan Member		✓		
9). Speaker Antonio Unpingco Ex-Officio Member				

**COMMITTEE ON JUDICIARY, PUBLIC SAFETY AND
COMSUMER PROTECTION**

**ELIZABETH BARRETT-ANDERSON
CHAIRPERSON**

Twenty-Fourth Guam Legislature

REPORT

on

**Bill No. 201: AN ACT TO REPEAL AND
REENACT, 7 GCA CHAPTER 33, RELATIVE
TO ESTABLISHING NEW MECHANIC LIENS.**

I. Overview

The Committee on Judiciary, Public Safety and Consumer Protection held a public hearing on Thursday, June 19, 1997 at 9:30 a.m. on Bill No. 201 at the Legislative public hearing room. Public Notice was announced in the June 13, 15 & 19, 1997 issues of the Pacific Daily News.

Committee Members Present:

Senator Elizabeth Barrett-Anderson, Chairperson
Senator Eduardo J. Cruz M.D.
Senator Frank C. Aguon
Senator Vicente Pangelinan

Providing Public Testimony on the Bill:

Jerry Roads, **oral/written**
Tom Tarpley, **oral**
Arthur Chan, **oral**
Calvin Holloway, **oral**
Curtis Van develd, **oral**

Purpose:

The purpose of the bill is to repeal and reenact Chapter 33 of Title 7 GCA, the statutory provisions relating to mechanics' liens.

Relationship to Existing Law:

The bill is a massive rewrite of the statutes on mechanics' liens that constitute one chapter in the title in GCA known as *Judiciary and Civil Procedure*. It repeals some 29 existing statutes, most of which were enacted in 1961 by P.L. 6-133, replacing them with 112 new ones. It will require the drafters of Bill 201 to compare its numerous detailed provisions with existing law and to explain the changes that would be made in present procedures by the bill.

Mechanics' Liens Generally

A mechanic's lien is generally defined as a claim created by law for the purpose of securing payment of the price or value of work performed and materials furnished in erecting or repairing a building or other structure or in the making of other improvements on land, and as such it attaches to the land as well as to the buildings erected thereon. Ordinarily, there cannot be a mechanic's lien unless it is a lien upon real estate. However, there are

exceptions to this rule, for, under certain conditions and certain statutes, a lien may attach to the building or improvement as distinct from the land. Also, the mechanic's lien statutes relate to liens for things constructed upon the land, as distinguished from certain other statutes which may confer a lien for work upon the land which does not involve buildings or other structures.

The statutes may or may not confer the right to a lien upon "mechanics" as such, and where they do, the lien is not limited to "mechanics", but also applies to others. Normally the lien is conferred upon specifically designated persons, person in specific occupations, or persons doing particular kinds of work or furnishing materials for particularly described purposes. Thus, since the right to a lien is given to contractors, subcontractors, laborers, materialmen, etc., the qualifying term "mechanics" may be misleading. However, the term is of historical significance, since the lien is a statutory extension or development of the common-law mechanic's lien---the possessory lien of artisans, tradesmen, mechanics, and laborers, on personal property. Thus what is generally designated a mechanic's lien---a term which extends to others than mechanics---is sometimes specifically referred to as a "contractor's lien", "subcontractor's lien", often a "materialman's lien", and infrequently a "laborer's lien".

In the United States the right to acquire and enforce such a lien exists solely by positive legislative enactment. It is a creature of and dependent upon statute, or on constitution and statute, since in some states mechanics' liens are provided for in the state constitution. Mechanics' lien laws have been enacted in every state in the union and in the District of Columbia.

Their object and purpose is to afford effective security or protection, when their terms have been complied with, to the persons designated in the statute who have done the things or acts described in the statute---normally contractors, mechanics, and materialmen who furnish labor or materials in the making of improvements on the property of others. Once furnished and put into the improvement, the labor and materials lose all further value to the mechanic and materialman, but enhance the value of the property to the benefit of the owner and those who may take under him.

Thus, such legislation is remedial. The statutes afford new remedies, creating a new means of securing the claims of a particular class of creditors. Despite the rightful emphasis on the purpose of mechanics' lien statutes to secure or protect the persons performing work or providing materials, the statutes, which may vary in different jurisdictions, have another purpose which is not to be disregarded, that is, a purpose to protect the owner of land. While the essential purpose of the mechanics' lien statutes is to protect those who have performed labor or furnished material toward the improvement of the property of another, inherent in this concept is a recognition also of the rights of the owner of the benefitted property. Lien laws are for the protection of property owners as well as lien claimants. One of the purposes of the mechanics' lien law is to assure to

the owner, in an arm's-length transaction, that so long as he complies in good faith with its provisions he will be able to construct a specific improvement on his property for a given contract price. **53 Am Jur 2d, *Mechanics' Liens*, §§1-6**

II. Summary of Testimony

MR. JERRY ROADS CONTRACTORS LICENSE BOARD

Mr. Roads testified that the Contractors License Board does not support Bill 201. Mr. Roads stated that the Board represents about a thousand (1000) contractors. Mr. Roads testified that there are about seventy-five (75) to a hundred (100) contractors that could operate under the terms of Bill 201. Mr. Roads stated that the remaining eight hundred (800) or so will have difficulty fulfilling the obligations of this law, in particular small contractors will be hit hard, especially with regard to bonding issues. Mr. Roads stated that with regard to "pre-liens" he felt that it generated a lot of paper work based on the assumption of a lien versus the necessity of having a lien. Mr. Roads stated that he much rather see a law that supports a lien when the need arises. Mr. Roads testified that the small contractor who cannot file a lien and get relief in the process is the same guy who cant afford to get a lawyer to go to court.

MR. TOM TARPLEY ATTORNEY AT LAW

Mr. Tarpley testified in favor of the Bill stating that he had drafted the Bill in 1994 for Hawaiian Rock as a result problems with the current mechanic lien laws. Mr. Tarpley stated that all fifty states have mechanic lien laws statutorily providing for a remedy for contractors and vendors. Mr. Tarpley identified problems with the current law, including but not limited to definite definition of "completion date" (see 7 GCA §33302), short pre-claim period, subcontractor and vendors allowed to file a lien as soon as they are done with their work even if the project is not completed (7 GCA §33302(a)), no stop notice which gives notice to an owner that you have been paid and allow for owner to withhold payment. Mr. Tarpley testified that the Bill would remedy these problems. Mr. Tarpley emphasized that this Bill was modeled after the California Mechanics lien law. Mr. Tarpley stated that Hawaii statutes were used in the notice of a project completion section of the Bill. Mr. Tarpley testified that he felt that this Bill was well balanced protecting both owners and contractors. Mr. Tarpley stated that he would provide a assistance with regard to technical amendments.

MR. ARTHUR J. CHAN GUAM CONTRACTORS ASSOCIATION, PRESIDENT

HAWAIIAN ROCK

Mr. Chan testified in support of Bill 201.

CALVIN HOLLOWAY ATTORNEY GENERAL

Mr. Holloway testified in support of the Bill with the exception of the claims act against the Government of Guam.

CURTIS VAN DE VELD ATTORNEY AT LAW

Mr. Van de Veld testified against Bill 201 stating that he was concerned about changing the law for the law as written has plenty of judicial history in interpreting the code. Mr. Van de Veld stated that a change in the law may cause a lot of questions and chaos that does not exist today. Mr. Van de Veld stated that it has been his experience that people have conflicts with their contractor for non-performance or quality of construction not over liens. Mr. Van de Veld stated that the present of law is adequate and well developed, stating “you don’t need to fix what isn’t broken.”

III. Findings and recommendations

The Committee on Judiciary, Public Safety and Consumer Protection finds support for the passage of Bill No. 201 as substituted by the Author. The Committee on Judiciary, Public Safety and Consumer Protection presents its findings with the recommendation to do pass Bill No. 201 as substituted by the Author.

1 **Action.** No provision in any payment bond given pursuant to any of
2 the provisions of this Chapter attempting by contract to shorten the period
3 prescribed in Article 3, Chapter 11 of Title 7 of the Guam Code Annotated
4 for the commencement of an action thereon shall be valid if such provision
5 attempts to limit the time for commencement of action thereon to a shorter
6 period than six (6) months from the completion of any work of
7 improvement, nor shall any provision in any of such bonds attempting to
8 limit the period for the commencement of actions thereon be valid insofar
9 as actions brought by claimants are concerned, unless such bond is
10 recorded, before the work of improvement is commenced, with the
11 Department of Land Management.

2 **Section 33604. Notice to Sureties.** In case the surety or
13 sureties on any payment bond given pursuant to this record such bond
14 with the Department of Land Management before the work of
15 improvement is completed, then no action may be maintained thereon,
16 unless there shall previously have been either a mechanic's lien claim
17 recorded pursuant to this Title or written notice given to the surety on such
18 bond before the expiration of the time prescribed in this Title for recording
19 a lien to enforce such claim, which notice shall contain all of the following:

20 (a) The kind of labor, services, equipment, or materials
21 furnished or agreed to be furnished by such claimant.

22 (b) The name of the person to or for whom the same was
23 done or furnished.

24 (c) The amount in value, as near as may be, of that already
25 done or furnished and of the whole agreed to be done or furnished.

1 The filing of an action to foreclose such lien shall not be a condition
2 precedent to a recovery on such bond. If such bond has been so
3 recorded then any suit brought against such surety or sureties shall
4 be filed within six (6) months after completion of said work of
5 improvement.

6 **Section 33605. Manner of Giving Written Notice to Sureties.**The
7 written notice to be given to the surety or sureties as provided in §33604
8 may be given by delivery thereof personally to, or by depositing same in
9 the mail, postage prepaid, and certified or registered, addressed in
10 accordance with any of the following which may be applicable:

11 (a) If to an individual surety, at his residence or place of
12 business, if known.

13 (b) If to an individual surety and his or her residence is
14 unknown, then in care of the Director of the Insurance, Securities,
15 Banking and Real Estate Division of the Department of Revenue and
16 Taxation.

17 (c) If to a corporate surety, at the office or care of the agent
18 designated by the surety in the bond as the address to which such
19 notice shall be sent.

20 (d) At the office or care of any officer of the surety in Guam.

21 (e) At the office of or care of the statutory agent of the surety
22 in Guam.

23 (f) By service in the manner provided by law for the service
24 of a summons in a civil action.

25 **ARTICLE 7.**

1 MISCELLANEOUS PROVISIONS.

2 §33701. Duties of the Department of Land Management; Fees.

3 §33702. Disbursement of Retention Proceeds; Penalty for
4 Failure to Comply.

5 §33703. Effect of Mistakes or Errors in Statement of Demand.

6 §33704. Prohibition Against Contractual Provision for Waiver
7 of Claims or Liens of Other Persons; Requirement and
8 Form of Written Waiver and Release.

9 §33705. Effect of Owner's Good Faith.

10 §33706. Procedures Governing Enforcement of Stop Notice
11 Against Public Entity.

12 Section 33701. Duties of the Department of Land Management;
13 Fees. The Department of Land Management shall number, index, and
14 preserve all contract, plans, and other papers presented for filing pursuant
15 to this Chapter, and shall number, index, and transcribe into the official
16 records in the same manner as a conveyance of land, all notices, claims of
17 lien, payment bonds, and other papers recorded pursuant to this Chapter.
18 He shall receive therefor the fees prescribed by the Regulations of the
19 Department of Land Management.

20 Section 33702. Disbursement of Retention Proceeds; Penalty for
21 Failure to Comply. (a) This Section is applicable with respect to all
22 contracts entered into on or after January 1, 1999, relating to the
23 construction of any private work of improvement.

24 (b) The retention proceeds withheld from any payment by the
25 owner from the original contractor, or by the original contractor from any

1 subcontractor, shall be subject to this Section.

2 (c) Within forty five (45) days after the date of contract completion,
3 the retention withheld by the owner shall be released. However, release of
4 retentions withheld for any portion of the work of improvement which
5 ultimately will become the property of a public agency, may be conditioned
6 upon the acceptance of the work by the public agency. In the event of a
7 dispute between the owner and the original contractor, the owner may
8 withhold from the final payment an amount not to exceed one hundred
9 fifty percent (150%) of the disputed amount.

10 (d) Subject to Subdivision (e), within ten (10) days from the time
11 that all or any portion of the retention proceeds are received by the original
12 contractor, the original contractor shall pay each of its subcontractor's share
13 of the retention received. However, if a retention payment received by the
14 original contractor is specifically designated for a particular subcontractor,
15 payment of the retention shall be made to the designated subcontractor, if
16 the payment is consistent with the terms of the subcontract.

17 (e) The original contractor may withhold from a subcontractor its
18 portion of the retention proceed if a *bona fide* dispute exists between the
19 subcontractor and the original contractor. The amount withheld from the
20 retention payment shall not exceed one hundred fifty percent (150%) of the
21 estimated value of the disputed amount.

22 (f) Within ten (10) days of receipt of written notice by the owner
23 from the original contractor or by the original contractor from the
24 subcontractor, as the case may be, that any work in dispute has been
25 completed in accordance with the terms of the contract, the owner or

1 original contractor shall advise the notifying party of the acceptance or
2 rejection of the disputed work. Within ten (10) days of acceptance of the
3 disputed work, the owner or original contractor, as the case may be, shall
4 release the retained portion of the retention proceeds.

5 (g) In the event that retention payments are not made within the
6 time periods required by this Section, the owner or original contractor
7 withholding the unpaid amounts shall be subject to a charge of two percent
8 (2%) per month on the improperly withheld amount, in lieu of any interest
9 otherwise due. Additionally, in any action for the collection of funds
10 wrongfully withheld, the prevailing party shall be entitled to his or her
11 attorney's fees and costs.

2 (h) It shall be against public policy for any party to require any
13 other party to waive any provision of this Section.

14 (i) This Section shall not be construed to apply to retentions
15 withheld by a lender in accordance with the construction loan agreement.

16 **Section 33703. Effect of Mistakes or Errors in Statement of**
17 **Demand.** No mistake or errors in the statement of the demand, or of the
18 amount of credits and offsets allowed, or of the balance asserted to be due
19 the claimant, or in the description of the property against which the lien is
20 recorded, shall invalidate the lien, unless the court finds that such mistake
21 or error in the statement of the demand, credits and offsets, or of the
22 balance due, was made with the intent to defraud, or that an innocent third
23 party, without notice, direct or constructive, has since the claim was
24 recorded become the *bona fide* owner of the property, and that the notice of
25 claim was so deficient that it did not put the party on further inquiry in any

1 manner.

2 Section 33704. Prohibition Against Contractual Provision for
3 Waiver of Claims or Liens of Other Persons; Requirement and Form of
4 Written Waiver and Release. (a) Neither the owner nor original

5 contractor by any term of their contract, or otherwise, shall waive, affect,
6 or impair the claims and liens of other persons whether with or without
7 notice except by their written consent, and any term of the contract to that
8 effect shall be null and void. Any written consent given by any claimant
9 pursuant to this Subdivision shall be null, void, and unenforceable, unless
10 and until the claimant executes and delivers a waiver and release. Such a
11 waiver and release shall be binding and effective to release the owner,
12 construction lender, and surety on a payment bond from claims and liens
13 only if the waiver and release follows substantially one (1) of the forms set
14 forth in this Section and is signed by the claimant or his or her authorized
15 agent, and, in the case of a conditional release, there is evidence of payment
16 to the claimant. Evidence of payment may be by the claimant's
17 endorsement on a single or joint payee check which has been paid by the
18 bank upon which it was drawn or by written acknowledgement of
19 payment given by the claimant.

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

25 (c) This Section does not affect the enforceability of either an

1 accord and satisfaction regarding a *bona fide* dispute or any agreement
2 made in settlement of an action pending in any court provided the accord
3 and satisfaction or agreement and settlement make specific reference to the
4 mechanic's lien, stop notice, or bond claims.

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

8 (1) Where the claimant is required to execute a waiver and
9 release in exchange for, or in order to induce the payment of, a
10 progress payment and the claimant is not, in fact, paid in exchange
11 for the waiver and release or a single payee check or joint payee
12 check is given in exchange for the waiver and release, the waiver and
13 release shall follow substantially the following form:

1 it, said party should verify evidence of payment to the undersigned.

2 Dated: _____

3 (Company Name)

4 By _____

5 (Title)

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

11 **UNCONDITIONAL WAIVER AND RELEASE**

12 **UPON PROGRESS PAYMENT**

13 The undersigned has been paid and has received a progress payment
14 in the sum of \$_____ for labor, services, equipment, or material
15 furnished to _____ (Your Customer) on the job of _____
16 (Owner) located at _____ (Job Description) and does hereby
17 release any *** (indicates omissions) mechanic's lien, stop notice, or bond
18 right that the undersigned has on the above referenced job to the following
19 extent. This release covers a progress payment for labor, services,
20 equipment, or materials furnished to _____ (Your Customer) through
21 _____ (date) only and does not cover any retentions retained
22 before or after the release date; extras furnished before the release date for
23 which payment has not been received; extras or items furnished after the
24 release date. Rights based upon work performed or items furnished after
25 the release date. Rights based upon work performed or items furnished

1 after the release date. Rights based upon work performed or items
2 furnished under a written change order which has been fully executed by
3 the parties prior to the release date are covered by this release unless
4 specifically reserved by the claimant in this release. This release of any
5 mechanic's lien, stop notice, or bond right shall not otherwise affect the
6 contract rights, including rights between parties to the contract based upon
7 a rescission, abandonment, or breach of the contract, or the right of the
8 undersigned to recover compensation for furnished labor, services,
9 equipment, or materials covered by this release if that furnished labor,
10 services, equipment, or material was not compensated by the progress
11 payment.

2 Dated: _____

13 (Company Name)

14 By _____

15 (Title)

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

19 'NOTICE: THIS DOCUMENT WAIVES RIGHTS
20 UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID
21 FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS
22 ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE
23 NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A
24 CONDITIONAL RELEASE FORM.'

25 (3) Where the claimant is required to execute a waiver and

1 release in exchange for, or in order to induce the payment of, a final
2 payment and the claimant is not, in fact, paid in exchange for the
3 waiver and release or a single payee check or joint payee check is
4 given in exchange for the waiver and release, the waiver and release
5 shall follow substantially the following form:

6 **CONDITIONAL WAIVER AND RELEASE**
7 **UPON FINAL PAYMENT**

8 Upon receipt by the undersigned of a check form _____ in the
9 sum of \$_____ payable to _____ and when the check has been
10 properly endorsed and has been paid by the bank upon which it is drawn,
11 this document shall become effective to release any mechanic's lien, stop
12 notice, or bond right the undersigned has on the job of _____ (*Owner*)
13 located at _____ (*Job Description*).

14 This release covers the final payment to the undersigned for all labor,
15 services, equipment, or material furnished on the job, except for disputed
16 claims for additional work in the amount of \$_____. Before any
17 recipient of this document relies on it, the party should verify evidence of
18 payment to the undersigned.

19 Dated: _____

20 (Company Name)

21 By _____

22 (Title)

23 (4) Where the claimant is required to execute a waiver and
24 release in exchange for, or in order to induce payment of, a final
25 payment and the claimant asserts in the waiver it has, in fact, been

1 paid the final payment, the waiver and release shall follow
2 substantially the following form:

3 UNCONDITIONAL WAIVER AND RELEASE
4 UPON FINAL PAYMENT

5 The undersigned has been paid in full for all labor, services,
6 equipment or material furnished to _____ (Your Customer) on the
7 job of _____ (Owner) located at _____ (Job
8 Description) and does hereby waive and release any right to a mechanic's
9 lien, stop notice, or any right against a labor and material bond on the job,
10 except for disputed claims for extra work in the amount of \$_____.

11 Dated: _____

12 _____
(Company Title)

13 By

14 _____
(Title)

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

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

24 Section 33705. Effect of Owner's Good Faith. No act
25 done by an owner in good faith and in compliance with any of the

1 provisions of this Title shall be held to be a prevention of the performance
2 of any contract between the owner and an original contractor by an original
3 contractor, or to exonerate the sureties on any bond given for faithful
4 performance or for the payment of claimants.

5 **Section 33706. Procedures Governing Enforcement of Stop**
6 **Notice Against Public Entity.** The claim filing procedures set forth in
7 the Government Act, Chapter 6 of Title 5 of the Guam Code Annotated, do
8 not apply to actions commenced pursuant to §33422 of this Chapter.”

9 **Section 2.** Section 29148 of Title 21 of the Guam Code Annotated is hereby
10 amended to read as follows:

11 **“Section 29148. Duty of Registrar Where Instrument Affecting**
12 **Registered Land Offered for Filing.** Nothing in this Chapter
13 shall be deemed to limit, modify or invalidate any mechanic lien or
14 mechanic lien rights afforded under Guam’s mechanic lien laws. Any
15 instrument offered for filing with the registrar which affects registered land
16 must have noted thereon a statement of the fact that said land is registered
17 land, with the name of the registered owner and with the number or
18 numbers of the certificate or certificates of the last registration thereof;
19 otherwise, none of such instruments shall be filed, nor shall the same affect
20 the title for the whole or any part of said land, nor will the same impart any
21 notice to the registered owner or to any person dealing with such land.”

22 **Section 3.** Section 29188 of Title 21 of the Guam Code Annotated is hereby
23 amended to read as follows:

24 **“Section 29188. Action Affecting Registered Land Not Notice**
25 **Until Notice of Pendency Filed with Registrar.** No suit, bill, or

1 proceeding at law or in equity for any purpose whatever, affecting
2 registered land, or any estate, or interest therein, or any charge upon the
3 same, shall be deemed to be lis pendens or notice to any person dealing
4 with the same until notice of the pendency of such suit, bill, or proceeding
5 shall be filed with the registrar and a memorial thereof entered by him
6 upon the register of the last certificate of title to be affected; provided,
7 however, this Section shall *not* apply to attachment proceedings when the
8 officer making the levy shall file his certificate as hereinafter provided.
9 Nothing in this Section shall be deemed to limit, modify or invalidate any
10 mechanic lien or mechanic lien rights afforded under Guam's mechanic
11 lien laws."

LAW OFFICES

THOMAS M. TARPLEY, JR.

A PROFESSIONAL CORPORATION

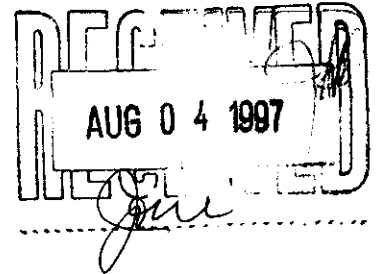
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July 18, 1997



VIA HAND DELIVERY

Elizabeth Barrett-Anderson, Chairperson
COMMITTEE ON JUDICIARY, PUBLIC SAFETY,
& CONSUMER PROTECTION
24th Guam Legislature
Ada Plaza Center
Suite 108-A
173 Aspinall Avenue
Agana, Guam 96910

Re: **BILL No. 201 - RELATIVE TO ESTABLISHING A NEW
MECHANIC'S LIEN LAW**

Dear Mrs. Barrett-Anderson:

Pursuant to your request at the public hearing held on June 19, 1997 regarding the above, I am pleased to submit the following written comments as to Bill No. 201.

All 50 states have mechanic lien laws. Guam's current laws were enacted in 1962 and modeled on the California statutes which were in place at that time, with a few differences. California has since substantively revised its laws. Therefore, only Guam has the current version of these old California laws. In January of 1995 my office drafted the revised mechanic lien laws which make up Bill No. 201 in order to address various shortcomings of Guam's current mechanic lien laws.

The first of these problems is the definition of a project's "completion" date. All states give claimants so many days after project "completion" to record a lien, after which the lien is lost. Guam's current law (7 GCA §33302) creates a moving window of opportunity for filing liens. This opportunity varies considerably depending on various factors. Multiple rules and facts must be considered to determine a project's "completion" date, such as: whether a "Notice of Completion" was recorded with Land Management (which shortens the time period); or whether project has been "accepted" by the owner; whether there has been a "cessation of labor" for 60 days (unless a Notice of Cessation has been recorded with Land Management, then the period may drop to 30 days); whether there has been "substantial completion" as opposed to actual

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completion. Accordingly, it can be rather difficult to determine when one should file a mechanic lien, especially for material suppliers who may never see the construction project.

Secondly, the current law provides for a relatively short "pre-claim" lien notice for subcontractors and material suppliers. The current law (7 GCA §33301) requires a subcontractor or material supplier to give a 15 day notice to the owner and prime contractor before recording the lien. In most instances this is done, if at all, shortly before the actual recording of the lien. By this time an owner may have already paid an irresponsible contractor for the work or materials being claimed by the subs. Moreover, if a Notice of Completion has been filed, it could shorten the window of opportunity for material suppliers to record its lien to less than 15 days. Thus, the current law creates a trap for unwary suppliers and subcontractors. At the same time, owners are prone to having to pay twice for labor and materials furnished on their project.

Third, the current law contains a curious loophole about foreclosures. The current law allows subcontractors and vendors to file liens as soon as they finish their own work (7 GCA §33302)(a)). These liens can therefore be recorded before project completion. However 7 GCA §33402 states that there shall be no foreclosure initiated until after the period in which to file all claims of lien have expired (i.e., 60-90 days after project "completion"). On the other hand, §33403 states that no lien will bind any property for more than 90 days after recording unless a foreclosure proceeding is initiated. Thus it is quite possible that a lien duly recorded will necessarily expire without recourse because it will be incapable of being foreclosed upon.

Fourth, the current law contains no "Stop Notice" provisions, which are common in most jurisdictions as alternatives to liens on real property. Stop Notice provisions allow lien claimants to give notice to owners and construction lenders that there has been a lack of payment for material and labor supplied on a project.

Fifth, the current laws contain no procedure whereby "stale" liens can be expunged if not foreclosed upon. Notice of liens can therefore sit for years in Land Management and appear on title reports.

Sixth, lien foreclosures are expensive. The current laws contain no provision for an allowance of attorney fees to the prevailing party.

Seventh, there is a significant problem, not addressed in the current draft of Bill No. 201, regarding a conflict between Guam's Mechanic Lien Laws and Guam's Land Registration Act. Bill No. 201 should be revised to include a provision whereby this conflict of law problem is addressed and remedied by the legislature.

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With the exception of this conflict of law problem, the current draft of Bill No. 201 addresses the above referenced problems. First, §33105 of Bill No. 201 (page 5-6) more clearly defines when a project is "completed" for lien recording purposes. This section is modeled on Hawaiian Law (Haw. Rev. Stat. 507-43). This section would require the owner, after a demand from the prime contractor, to publish a Notice of Completion on two occasions, seven days apart, in a local newspaper. An Affidavit of Publication would also be recorded with the Department of Land Management. This would give realistic and effective notice to all concerned as to when a project is "completed" for lien purposes. This would alleviate the guess work involved under the current law, and get rid of the "moving window" of opportunity. Under the present law, as a practical matter, no one knows whether a notice of completion has been recorded or not.

Secondly, Bill No. 201 substantively revises "pre-claim" notice provisions. Bill No. 201 allows recording of liens only for labor and materials furnished after 20 days prior to the service of pre-lien notices on owners. This will encourage giving early notice to the owner of potential claims of subcontractors and material suppliers, thus helping to avoid the situation in which an owner has to pay twice for the same labor and materials. This provision is substantively identical to current California Law. There was concern expressed by Mr. Jerry Rhodes of the Contractors Licensing Board regarding this section. Mr. Rhodes raised the legitimate objection that Bill No. 201, as currently drafted, requires all subcontractors and material suppliers to send out pre-claim lien notices on every project even though liens are actually recorded on a relatively small percentage of projects, thus creating a lot of unnecessary paper work. In order to balance this concern with the legitimate public policy of providing an owner with advance notice of potential lien claims, this statute could instead require the prime contractor, rather than the potential lien Claimants, to provide the owner with a list of all subcontractors, sub-subcontractors and vendors within 20 days of the commencement of supplying such labor and materials. This would place the onus on the prime contractor to give the owner notice of potential lien claimants, rather than upon the remote subcontractors and vendors themselves. While under such a provision an owner could be prejudiced if the prime contractor omits naming a potential lien claimant, it is, after all, the owner who selected the prime contractor in the first place. Under this alternative provision, it would be the owner and the prime contractor who would be jointly responsible for seeing that all downstream laborers and materialmen have been paid for work performed for the owner's benefit. I therefore have drafted an alternative to §§33114, 33116, 33204.

I should point out here that there is an error on page 14, on lines 12-20 of Bill No. 201. This entire section, beginning with the words "Where such notice is required..." should be deleted.

Elizabeth Barrett-Anderson

July 18, 1997

Page 4

There is no quote paragraph (6) of subdivision (c) in Bill 201. This language was lifted from the corresponding California statute, which references paying money into a trust fund per a collective bargaining agreement, which is not applicable to Guam. This correction, as well as others, have been inserted into the red-line version of substitute Bill No. 201 submitted herewith.

The Contractor's License Board also raised a concern that §33114 of Bill No. 201 is unclear and that it seems to require the burdensome obligation of a lien claimant to give any pre-claim notice also to a construction lender as a prerequisite to filing a Mechanic Lien. I do not believe this was the intention of the California Legislature, and it certainly was not my intention in drafting this provision to require any pre-claim lien notice be given to a construction lender unless a Stop Notice was to be filed against the lender. It was not meant to be a condition precedent to filing a mechanics lien. This can be clarified by adding the words "if a Stop Notice is to be served" to page 9 line 21 after the word "and". (See redline version of substitute Bill No. 201 submitted herewith).

The new law would also contain a procedure to expunge stale liens. See §33234 on page 41 of the proposed bill. The Chairman suggested that it may be preferable to create this procedure administratively to the department of Land Management, rather than the Superior Court of Guam. Accordingly §33234 has been amended to reflect this suggestion in the redline copy of the substituted Bill No. 201. The procedures would be controlled by Guam's Administrative Adjudication Act.

The new law would also allowed and awarded attorney's fees to a prevailing party on a lien foreclosure or Stop Notice claim. (See §§33230 and 33316 respectively).

The new law's Stop Notice provisions have separate application to private work and public work projects. See §§33301 and 33401, respectively. These sections were taken verbatim from current California statutes. The Stop Notice provisions essentially provide that an owner or a construction lender, after receiving notice of non-payment from the contractor, subcontractor, or vendor, as the case may be, may withhold funds from the contract balance to assure proper payment, otherwise the lender or owner may become subject to a claim for payment. These provisions therefore allow a cause of action against the owner or lender without privity of contract. On public projects enforcement is directly against the Government in Superior Court outside the procedures in the Government Claims Act (which otherwise require a six month claim period).

Lastly, the problem concerning the conflict of law between the Guam's Land Registration Act and the current mechanic lien laws is

Elizabeth Barrett-Anderson

July 18, 1997

Page 5

not addressed to the Bill No. 201, but is addressed in substitute Bill No. 201 submitted herewith. Guam follows two distinct land ownership schemes. One is land registration under the Torrens System, which has been abandoned in the majority of jurisdictions. This land registration scheme is codified in Guam's Land Registration Act, 21 GCA §29101 et. sec. An apparent conflict exist between §29148 and §29188 of the Land Registration Act on one hand, and 7 GCA §33401 of the Mechanic Lien Law on the other hand. Under the latter law, mistakes or errors in the description of the real property liened will not invalidate the lien unless such a mistake or error was made with the intent to defraud, or an innocent third party without notice became a bona fide purchaser of the property. The Land Registration Act, however, holds that no lien is valid unless it has a notation thereon of the Certificate of Title number, nor shall any lien encumber property until a memorial of the lien is recorded on the duplicate original of the Certificate of Title. As a practical matter, a contractor is ignorant of whether the land on which he is constructing a project is registered land, much less the number of the Certificate of Title. This information is not included on building permits, which is the chief source for the property description under the mechanic lien laws. Moreover, Land Management, as a practice, enters memorials on Certificate of Titles only periodically upon request. Thus the entire scheme of mechanic lien laws can be usurped and liens may become invalidated if one applies one set of laws over the other. This serves as merely a trap for the unwary, especially when there has been no prejudice to the property owners as a result of any failure to record a Certificate of Title number on the lien. Substitute Bill No. 201, submitted herewith, remedies this problem by amending the above referenced provisions of the Land Registration Act to read "Nothing in this Act shall be deemed to limit, modify or invalidate any mechanic lien or mechanic lien rights afforded under Guam's mechanic lien laws."

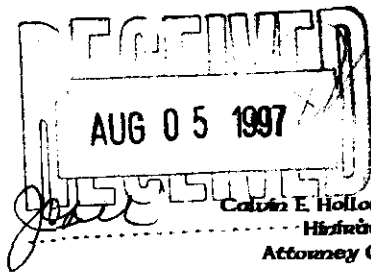
I hope this lengthy letter has be helpful for your deliberations on revising Guam's outdated mechanic lien laws. Of course I am available to discuss any of these matters at your convenience. Please feel free to contact me should you have any questions or comments.

Very truly yours,

Thomas M. Tarpley, Jr.
A Professional Corporation

cc: Hawaiian Rock Products
Contractors Licensing Board
Senator Albert Santos

DEPARTMENT OF LAW



Carl T.C. Gutierrez
Magañáti
Governor

Madeleine Z. Bordallo
Tiente Gobernadora
Lt. Governor

Upisinan Hinikát Abugao
Territorial Guahan
Office of the Attorney General
Territory of Guam

Calvin E. Holloway, Sr.
Hinikát Abugao
Attorney General

Case F. Diaz
Atkódi, Sigundo Hinikát Abugao
Chief Deputy Attorney General

August 4, 1997

The Honorable Elizabeth Barrett-Anderson
Chairperson
Committee on Judiciary, Public Safety & Consumer Protection
Twenty-Fourth Guam Legislature
Ada Plaza Center - Suite 108A
173 Aspinall Avenue, Agana, Guam 96910

Re: Review of Bill No. 201

Dear Senator Barrett-Anderson:

Buenas yan Hafa Adai! Greetings from one of the busiest departments in the government.

During your hearing on Bill No. 201, you requested that we provide information on the number of consumer complaints made against contractors, etc. Our Consumer Protection Unit has received a total of twenty eight (28) complaints as reflected in the attached memorandum from our Civil Division.

After a thorough review of Bill No. 201, we are of the opinion that it should not be enacted into law unless major revisions are made. Please review the comments of Mr. Patrick Mason, Deputy, Civil Division.

If there are either questions, or concerns, please do not hesitate to call me.

With thanks in anticipation of your consideration.

Dangkulo Na Agradesimiento - Thank you very much !

Sinceru yan magahet,

CALVIN E. HOLLOWAY, SR.
Attorney General

cc: Deputy, Civil Division
Deputy, Solicitors Division

SNEBA201.mcp



Commonwealth Now!



Carl T.C. Gutierrez
Maga'láhi
Governor

Calvin E. Holloway, Sr.
Hinirát Abugao
Attorney General

Madeleine Z. Bordallo
Tiñente Gubelnadora
Lt. Governor

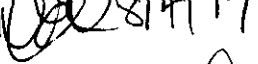
Ofisinan Hinirát Abugao
Tiritorian Guáhan


Gus F. Diaz
Atkádi, Sigundo Hinirát Abugao
Chief Deputy Attorney General

Office of the Attorney General
Territory of Guam

August 4, 1997

Intra-Office Memorandum

To: Attorney General 

Via: Chief Deputy Attorney General 

From: Deputy Attorney General, Civil Division

Subject: Bill No. 201

Hafa Adai!

This is in response to your request for comments on the above bill and its effect on the government claims act and your request for certain statistics relating to consumer complaints against contractors.

Bill 201 sets up a very complex procedure which puts the government in the middle of disputes between a contractor and its subcontractors, employees and material suppliers. The bill will no-doubt be costly to the government and create a great deal of litigation.

Under current law, only the original contractor has privity of contract with the government. Therefore, in public work projects, claims for nonpayment of wages or nonpayment for materials must be made against the contractor who did not make the payment, not against the government.



Commonwealth Now!

Suite 2-200E, Judicial Center Bldg., 120 West O'Brien Drive, Agaña, Guam U.S.A. 96910
Phone: (671) 475-3324 Fax: (671) 472-2493 E-mail: law@ns.gov.gu

Bill 201 requires the government to withhold funds from a contractor when a laborer, subcontractor or supplier makes a nonpayment claim against the contractor. The government is required not only to hold an amount sufficient to answer the claim, but also to hold an additional amount sufficient to provide for interest on money owed and the reasonable costs of any litigation. §§ 33406 and 33407. (Thus the government, which is not directly involved in the dispute, is required to determine the amount of interest and the reasonable costs of litigation.) Section 33422 then requires a claimant to bring an action against the contractor and the government to enforce payment of a claim. (Presumably the government is brought into court because it is the stake holder.) The claimant goes directly to court. The government claims act does not apply to such actions. § 33706.

For public work projects in addition to withholding funds from a contractor and becoming a party to the litigation for payment of the funds, the government is required to: give notices of completion of a project to all claimants (§ 33405); determine the amount of each claimant's pro-rata share of withheld funds and then distribute the funds (§ 33408); determine whether to accept a bond in lieu of holding funds due a contractor (§ 33412); and receive and serve the affidavits of the adverse parties (§§ 33414, 33415 & 33416).

For all projects, both private and public, the Department of Land Management is required to provide the staff, equipment and space necessary to make public records of all documents filed pursuant to the bill. Under § 33701, the Department must "number, index, and preserve all contract (sic), plans, and other papers presented for filing pursuant to this Chapter, and shall number, index, and transcribe into the official records in the same manner as a conveyance of land, all notices, claims of lien, payment bonds, and other papers recorded pursuant to this chapter."

Bill 201 sets up a complex set of rules which will be difficult for contractors, laborers and suppliers to follow and which will require a great deal of lawyer time and court time to sort out. It also establishes a new bureaucracy within the Department of Land Management.

In response to your inquiry regarding consumer complaints, from 1995 to July 1997, twenty-eight complaints made against contractors; twenty-five of those complaints were referred to the Contractors' Licensing Board and/or private attorneys; two complaints were resolved by our consumer unit; and one case was filed in court. We have a judgement in the court case and have seized personal property of the defendant.

Esta.


J. PATRICK MASON

97R0111LM01\mbla

TWENTY-FOURTH GUAM LEGISLATURE

PUBLIC HEARING

SENATOR ELIZABETH BARRETT-ANDERSON

Chairperson, Committee on Judiciary, Public Safety and Consumer Protection

WITNESS SIGN-IN SHEET

Public Hearing Room 155 Hesler Street, Agana, Guam 96910

Thursday, June 19, 1997

Public Hearing on Bill No. 201

Table with 5 columns: NAME (Please print), ORGANIZATION, My Testimony: Oral/Written, I am For Bill 201, I am Against Bill 201. Rows 1-4 contain handwritten entries for Jerry Rhoads, J. Arthur Chan, Tom Tappley, and Curtis Van de Veld.

**Guam Contractors License Board
Guahan Inetnon Manlisenaiyen Kontratista
Government of Guam**

542 N. Marine Dr., Suite A Tamuning, Guam 96911 (671)646-7262; 649-2211/9676; 649-2210(Fax)

JUN 19 1997

Elizabeth Barrett-Anderson

Chairperson

Committee on Judiciary, Public Safety and Consumer Protection

Twenty-Fourth Guam Legislature

REF.: Legislative Review: Bill No. 201 (COR) - An Act to repeal and reenact Chapter 33, Chapter 7, Guam Code Annotated, related to establishing new Mechanic Leans.

Buenas Yan Hafa Adai,

I recommend against this Bill. Liens are an accident of construction not an anticipated occurrence on every job. This bill sets up a situation of people trying to fight each other over a lien that will probably never take place and before a job has hardly started.

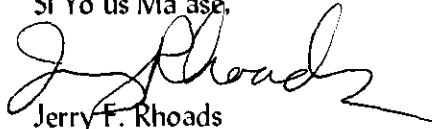
- 1.) Every job, regardless of the necessity of a lien, will require extensive paper work just in case at some future date the need for a lien may occur. Why require all this paper work if there is no lien??? The "Pre" Lien notice will create great opportunities for litigation. It will do nothing to help prevent the need for liens.
- 2.) The "Pre" Lien as I read it, means to denied the lien rights of small unsophisticated contractors, material, equipment, and service providers. Failure to "Pre" Lien on time or to notify all required parties will diminish or eliminate lien rights.
- 3.) The "Pre" Lien notice must go to the "original" contractor, the owner, and the lending institution. At this stage you have caused a small contractor (supplier, etc.) To initiate a legal document to at least three (3) different individuals or organization who must also handle, file, record and take some kind of notice of a potential lien that odds are will not occur.
- 4.) It appears that there are no obligations for the owner to identify the lender, but it is quite clear that "Pre" Lien and other such documents must be provided to the lender. Must the small Businessman also become a financial detective to protect his lien rights.
- 5.) Service of these "Pre" Liens requires personally delivered notices with "proof of service affidavit" or registered or certified mail. Now we have a small contractor 1. Making a legal document, that if he errors on can loose him his lien rights. 2. If he is a sub he may have to research who the original contractor is, who the owner is, and some how find out who the lender is, and if he fails

to notify any of these people he can lose his liens rights. 3. If he makes it through steps one and two and he fails to deliver the "Pre" Liens properly then he has once again diminished or lost his liens rights. Great for owners and lawyers, bad for small business.

- 6.) There is a bond requirement to file a lien. While the purpose of this is to stop frivolous liens, it means that the legitimate small businessman with a legitimate lien must now go through the added expense of "bonding" the money that is "owed" to him. That is assuming that he can even get or afford the bond!!! Great for owners and lawyers, bad for small business.

I am not a lawyer and much of the bill was Greek to me, however what I did understand leads me to believe that this is not a bill to correct problems in the current lien laws. It is an effort to eliminate the small business man from access to lien protection.

Si Yo'us Ma'ase,



Jerry F. Rhoads

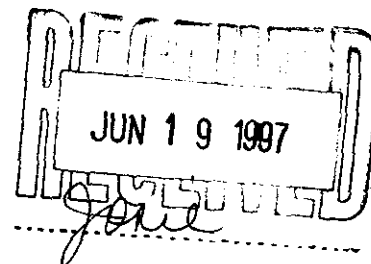
Executive Secretary (Registrar)



CARL T. C. GUTIERREZ
Governor

MADELEINE Z. BORDALLO
Lieutenant Governor

DEPARTMENT OF LAND MANAGEMENT
(DIPATTAMENTON TANO)
GOVERNMENT OF GUAM
AGANA, GUAM 96910
TEL: (671) 475-LAND - FAX: (671) 477-0883



CARL J. C. AGUON
Acting Director

FRANCISCO P. SAN NICOLAS
Deputy Director

June 18, 1997

Hon. Elizabeth Barrett-Anderson
Chairperson
Committee on Judiciary, Public Safety
and Consumer Protection
Twenty-fourth Guam Legislature

Re: Request for Comments on Proposed Bill No. 201 - Relative to Establishing a New
Mechanic's Liens

Hafa Adai Senadot Barrett-Anderson.

Thank you for the opportunity to comment on proposed Bill No. 201 relative to establishing a
new mechanic's liens.

The bill, as presented, appears to be in best interest of all parties involved in, and serviced by the
construction industry, to include lending institutions.

Bill No. 201 expands the existing sections from having four (4) Articles to that of eight (8)
Articles, thereby providing a more comprehensive understanding and coverage of the whole issue
involving Mechanics' Liens. I did notice however, that the bill failed to identify or define the
word "Lien" as is currently defined in Section 33101 under Chapter 33 of Title 7 of the Guam
Code Annotated as "A lien is a charge imposed upon specific property, by which it is made
security for the performance of an act." In order to avoid any conflict, confusion or debate as to
what constitutes a lien, I recommend the definition currently used be incorporated into Bill No.
201.

Aside from the issue of not defining "Lien", in a simple and concise manner, I have no objection
to your proposed bill and support its passage.

Senseramente,


CARL J. C. AGUON
Director
Department of Land Management

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To	Senator Barrett-Anderson	From	John Anderson
Co.			

**FISCAL NOTE
BUREAU OF BUDGET AND MANAGEMENT RESEARCH**

Bill No. 201 Date Received June 2, 1997
 Amendatory Bill YES X NO Date Reviewed June 18, 1997
 Department/Agency Affected: Department of Public Works
 Department/Agency Head: Mr. Tony Quinata, Acting Director
 Total FY appropriation to Date: \$27,955,635

Bill Title (Preamble): An Act to Repeal and Reenact Chapter 33, Chapter 7, Guam Code Annotated, Relative to Establishing New Mechanic Liens.

Change in Law: Repeal and Reenact Chapter 33, Chapter 7 of the Guam Code Annotated

Bill's Impact on Present Program Funding:

 Increase Decrease Reallocation X No Change
 Bill is for: Operations Capital Improvement X Other

FINANCIAL/PROGRAM IMPACT

ESTIMATED SINGLE-YEAR FUND REQUIREMENTS (Per Bill)

PROGRAM CATEGORY	GENERAL FUND	OTHER	TOTAL
<u>Infrastructure & Utilities</u>	<u>-0-</u>	<u> </u>	<u>-0-</u>

ESTIMATED MULTI-YEAR FUND REQUIREMENTS (Per Bill)

FUND	1st	2nd	3rd	4th	5th	TOTAL
GENERAL FUND	<u>see comments</u>					<u> </u>
OTHER	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
TOTAL	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>

FUNDS ADEQUATE TO COVER INTENT OF THE BILL? YES/NO - IF NO, ADD'L AMOUNT REQUIRED n/a

AGENCY/PERSON/DATE CONTACTED: Dept. of Public Works / Mr. Sabino Flores, Chief of Engineering,

Capital Imprv. Projects Division / June 24, 1997

ESTIMATED POTENTIAL MULTI-YEAR REVENUES

FUND	1st	2nd	3rd	4th	5th	TOTAL
GENERAL FUND	<u>n/a</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
OTHER	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>
TOTAL	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>

ANALYST Frank Lizama DATE 6/24/97 DIRECTOR Joseph E. Rivera DATE JUN 27 1997
Acting Director

Footnotes: Any administrative costs resulting in the implementation of the proposed legislation cannot be determined at this time. However, it was recommended that the Guam Contractors License Board (GCLB) be the primary administrative entity in administering the provisions of the bill should it become law. Therefore, any fiscal impact will be placed on the GCLB operations.

Senator Elizabeth Barrett Anderson

Chairperson, Committee
on Judiciary, Public Safety
& Consumer Protection



NOTICE OF PUBLIC HEARING

The Committee will hold a Public Hearing and Oversight Hearing on Thursday, June 19, 1997, at 9:30 a.m. and 2:00 p.m. in the Legislature's Public Hearing Room, 155 Hesler Street, Agana, on the following bills:

9:30 a.m.:

BILL NO. 129 - Relative to keeping violent felons in prison.

BILL NO. 201 - Relative to establishing a new mechanic's liens.

BILL NO. 240 - Relative to revoking a Driver's License or Permit for the Defacement of Property.

BILL NO. 275 - Relative to providing sufficient staff to the Dept of Law to implement the Model Notary Law.

2:00 p.m.:

BILL NO. 256 - Relative to establishing fees for fire safety services and Oversight Hearing of the Guam Fire Dept.

THE PUBLIC IS INVITED TO PRESENT
WRITTEN AND/OR ORAL TESTIMONY, YOU
MAY ALSO FAX 472-3433 AND E-MAIL YOUR
TESTIMONY TO
ebanderson@kuentos.guam.net