

7 GCA CIVIL PROCEDURE
CH. 33 LIENS IN GENERAL

CHAPTER 33
LIENS IN GENERAL

SOURCE: This chapter was repealed by P.L. 24-323:1. Reenacted by P.L. 25-035:3 (June 7, 1999). Repealed and reenacted by P.L. 29-119:3 (Dec. 22, 2008), effective 60 days from date of enactment pursuant to P.L. 29-119:4.

2020 NOTE: Past publications of the GCA included the older version of Chapter 33 enacted by P.L. 25-035, recognizing that it applied to works of improvement completed prior to February 2009. However, to avoid confusion, future publications of the GCA will no longer include the older version. To view P.L. 25-035, visit the Guam Legislature Archives website.

2009 NOTE: Pursuant to § 33112(c): “For all works of improvement that have been completed prior to the effective date of this law, the prior Guam Mechanics’ Lien Law will continue to apply.” Therefore, the text of this chapter as it existed prior to the enactment of P.L. 29-119 is included at the end of this chapter.

- § 33101. Persons Who Have Lien Rights.
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- § 33104. Completion of Separate Original Contract.
- § 33105. Notice of Completion.
- § 33106. Notice to Property Owner.
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- § 33111. Contractor *Shall* Defend Owner Against Mechanics’ Lien Actions.
- § 33112. Administration of this Chapter.

§ 33101. Persons Who Have Lien Rights.

All persons and association of persons, including corporations, performing labor upon *or* bestowing skill *or* other necessary services on, furnishing materials *or* leasing equipment to be used *or* consumed in *or* for a work of improvement of real property, *except* Public Works, *shall* have a lien upon such property as security for the payment of the value of such labor, materials, skill *or* equipment so furnished, whether performed *or*

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furnished at the request of the owner *or* of any person acting by his authority *or* under him as contractor *or* otherwise. For the purposes of this Chapter, every contractor, subcontractor, architect, builder *or* other person having charge of work of improvement *or* a portion thereof *shall* be held to be the agent of the owner.

§ 33102. Amount of Lien; Charge.

The liens provided for in this Chapter *shall* be direct liens, and *shall* be for the reasonable value of the labor, services, equipment, *or* materials furnished *or* for the price agreed upon by the claimant and the person with whom he *or* she contracted, *whichever is less*. The right to lien under this Chapter may *not* be privately waived, impaired, *or* released *except* with the written consent of the lien claimant.

§ 33103. Attachment of Interest in Real Property.

Such liens *shall* only attach to the interest in the real property of the owner of the improvement *or* for whose benefit the improvement was constructed; *provided* that in *no* event *shall* any owner's interest be subject to a claim of lien based upon a work of improvement contracted for by a person claiming an estate under said owner, *nor shall* such person be deemed that owner's agent, where the terms of estate interest of said person claiming an estate is for a term of at least thirty (30) years from the commencement of the work of improvement *or* where the terms of the estate interest were negotiated at arms length upon commercially reasonable terms. Such liens are preferred to any lien, mortgage, *or* other encumbrance upon the work of improvement on the site, which attaches subsequent to the commencement of the work of improvement. The term *work of improvement or site improvement* means the entire structure *or* scheme of improvement as a whole, *except* where a project consists in the construction of two (2) *or* more separate residential units, and then each unit *shall* be considered a separate *work of improvement*.

§ 33104. Completion of Separate Original Contract.

(a) Any claimant under the provisions of this Chapter, in order to enforce a lien, and:

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(1) within ninety (90) days after either,

(A) completion of his contract on a work of improvement; *or*

(B) after he has ceased for thirty (30) consecutive days to perform labor *or* furnish material, *or* both, for any work of improvement, *or*

(2) within forty-five (45) days after an owner has recorded a Notice of Completion with the Department of Land Management and has mailed said Notice of Completion to such claimant at the address stated in the claimant's twenty (20)-day preliminary notice by registered *or* certified mail with return receipt requested, and *shall* have published such notice in a newspaper of general circulation on Guam, whichever of subsections (1) *or* (2) first occurs; must record a written claim of lien with the Department of Land Management, stating the name and address of the claimant, a general description of the kind of work done and materials furnished, the amount owed therefor, the name of the person *or* firm by whom he was employed *or* to whom he furnished the labor *or* materials, and a description of the property sought to be charged with the lien sufficient for identification. No mistake *or* errors in the claim of lien *shall* invalidate the lien, unless the court finds that an error therein was willfully made with the intent to defraud, which *shall* thereby forfeit the lien.

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

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claims of lien *shall* be as provided in subdivision (a)(1) of this Section.

§ 33105. Notice of Completion.

Notice of Completion means a written notice, signed and verified by the owner *or* his agent, containing all of the following:

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

(b) The name and address of the owner.

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

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

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

The Notice of Completion *shall* be recorded at the Department of Land Management within ten (10) days after such completion. *Completion* means, in the case of any work of improvement, actual completion of the work of improvement *or*, in the case of two (2) *or* more original contracts, each covering a particular portion of the work of improvement, completion of that portion of the work of improvement covered by such separate original contract, *or* any of the following, which *shall* be deemed equivalent to a completion: (1) the occupation *or* use of a work of improvement by the owner, *or* his agent, accompanied by cessation of labor thereon; (2) the acceptance by

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the owner, *or* his agent, of the work of improvement; or (3) after the commencement of a work of improvement, a cessation of labor thereon for a continuous period of sixty (60) days.

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

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

§ 33106. Notice to Property Owner.

(a) *Except* one under direct contract with the owner *or* one performing actual labor for wages, every lien claimant *shall*, as a necessary prerequisite to the validity of any claim of lien, cause to be given to the owner *or* reputed owner, either personally *or* by certified mail with return receipt requested, a written preliminary notice *not later than* twenty (20) days after the claimant has first furnished labor, service, equipment *or* materials to the job site, containing:

(1) a general description of the labor, service, equipment *or* materials furnished, *or* to be furnished, and an estimate of the total price thereof;

(2) the name and address of the person furnishing such labor, service, equipment, *or* materials;

(3) the name of the person who contracted for purchase of that labor, service, equipment, *or* materials;

(4) a description of the job site sufficient for identification; and

(5) the following statement in boldface type:

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NOTICE TO PROPERTY OWNER

If bills are not paid in full for the labor, services, equipment, or materials furnished or to be furnished, a mechanics' lien leading to the loss, through court foreclosure proceedings, of all or part of your property being so improved may be placed against the property even though you have paid your contractor in full. You may wish to protect yourself against this consequence by:

(i) requiring your contractor to furnish a signed release by the person or firm giving you this notice before making payment to your contractor; or

(ii) any other method or device that is appropriate under the circumstances.

(b) *If labor, service, equipment, or materials have been furnished to a job site by a claimant who did not give a preliminary notice, that claimant shall not be precluded from giving a preliminary notice at any time thereafter, however such claimant shall be entitled to record a lien only for labor, service, equipment, or material furnished within twenty (20) days prior to the service of the preliminary notice, and at any time thereafter.*

SOURCE: Amended by P.L. 31-112:1 (Sept. 30, 2011), effective, retroactive to February 4, 2009, the effective date of P.L. 29-119, pursuant to P.L. 31-112:2..

§ 33107. Release Bond.

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

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§ 33108. Time for Filing Foreclosure Suit.

No lien provided for in this Chapter binds any property for a longer period of time than ninety (90) days after recording the claim of lien, unless within that time an action to foreclose the lien is commenced in the Superior Court. After commencement of an action to foreclose the lien, the lien claimant *shall* within ten (10) days thereafter record a notice of *lis pendens* with the Department of Land Management and cause a copy thereof to be served either personally *or* by certified mail, return receipt requested, on the owner of the work improvement. *If* the notice of *lis pendens* be *not* so filed, the owner may likewise serve a written demand on the lien claimant to record such a notice, and should the lien claimant fail *or* refuse to record such a notice within ten (10) days after his receipt of the owner's demand, the lien foreclosure action *shall* be dismissed with prejudice. Should the lien claimant *not* prevail in the lien foreclosure action, the owner may record at the Department of Land Management a certified copy of the judgment which *shall* conclusively establish for all persons that the claimant's lien has been extinguished and is no longer a cloud on the title to the work of improvement.

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

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

§ 33109. Priority of Liens.

All liens timely filed have equal priority. *If* a lien claimant obtains a judgment foreclosing a lien, all proceeds from the sale of the property subject to the lien *shall* be deposited into escrow with the Superior Court of Guam until the time for all other lien claimants to record their liens has expired. Should one hundred fifty percent (150%) of the aggregate amount of all claims of lien be *less than* the total amount of the proceeds in escrow, then the lien claimants who have obtained a final judgment may apply to the Superior Court for an order authorizing the disbursal of the

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

§ 33110. Lien *Does Not* Affect the Right to Maintain a Personal Action or Issuance of a Writ of Attachment.

Nothing contained in this Chapter affects the right of a claimant to maintain a personal action to recover a debt against the person liable therefor under other Guam law, either in a separate action *or* in the action to foreclose the lien, *nor* any right the claimant may have to the issuance of a writ of attachment *or* execution, *or* to enforce a judgment by other means.

§ 33111. Contractor *Shall* Defend Owner Against Mechanics' Lien Actions.

In all cases where a claim of lien is recorded for labor, services, equipment or materials furnished to any contractor, he *shall* defend any action brought thereon at his own expense, and during the pendency of any claim of lien the owner may withhold from the original contractor the amount of money for which the claim of lien is recorded, to apply towards the satisfaction thereof.

SOURCE: Repealed/Reenacted by P.L. 30-010:2 (Apr. 17, 2009).
Amended by P.L. 31-034:1 (Apr. 18, 2011).

§ 33112. Administration of this Chapter.

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

(b) The 2008 Guam Mechanics' Lien Law will apply to all works of improvement that commence after the effective date of

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

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

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

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

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

SOURCE: Subsection (c) amended by P.L. 30-010:1 (Apr. 17, 2009) (incorrect reference to § 30111 (c) corrected by Compiler). Subsection (d) amended by P.L. 30-010:3 (Apr. 17, 2009).
