

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SOURCE: This chapter was repealed by P.L. 24-323:1.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. 25-35-3. Repealed and reenacted by P.L. 29-119:3 (Dec. 22, 2008), effective 60 days from date of enactment pursuant to P.L. 29-119:4.

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.
- § 33102. Amount of Lien; Charge.
- § 33103. Attachment of Interest in Real Property.
- § 33104. Completion of Separate Original Contract.
- § 33105. Notice of Completion.
- § 33106. Notice to Property Owner.
- § 33107. Release Bond.
- § 33108. Time for Filing Foreclosure Suit.
- § 33109. Priority of Liens.
- § 33110. Lien *Does Not* Affect the Right to Maintain a Personal Action or Issuance of a Writ of Attachment.
- § 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* 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:

(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

7 GCA CIVIL PROCEDURE
CH. 33 LIENS IN GENERAL

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 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*,

7 GCA CIVIL PROCEDURE
CH. 33 LIENS IN GENERAL

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 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)

7 GCA CIVIL PROCEDURE
CH. 33 LIENS IN GENERAL

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:

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

7 GCA CIVIL PROCEDURE
CH. 33 LIENS IN GENERAL

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.

§ 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 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 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.

7 GCA CIVIL PROCEDURE
CH. 33 LIENS IN GENERAL

(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).

2009 NOTE: See NOTE preceding this chapter. The following is a reproduction of Chapter 33 as it existed prior to the enactment of P.L. 29-119.

CHAPTER 33
ENFORCEMENT OF LIENS

NOTE: This Chapter was repealed by P.L. 24-323:1. However, P.L. 25-35-3 repealed the new Mechanics' Lien Law and reinstated this Chapter. In so doing, the Legislature stated:

§ 2. Legislative Statement. *I Liheslaturan Guåhan* finds that while the enactment of Bill Number 201 (COR), Public Law No. 24-323, makes a comprehensive revision of the mechanics' lien laws; it did *not* resolve many of the concerns of the private contractors and subcontractors; thereby placing further burden on both the government and the contractor. To resolve this problem, *I Liheslaturan Guåhan* is of the opinion that Pubic Law Number 24-323 be repealed and the old mechanics' lien law be reenacted, until such time that a comprehensive measure is presented and passed by *I Liheslaturan Guåhan*.

In addition, the Legislature, in § 4, provided the following transition periods,

7 GCA CIVIL PROCEDURE
CH. 33 LIENS IN GENERAL

This Chapter became law on June 7, 1999.

Transition Time Frames. (a) Notwithstanding any provision of Chapter 33 of Title 7 of the Guam Code Annotated, as hereby reenacted, the deadline by which a person must record a claim of lien shall be the *earlier* of:

(i) the deadline that would have been established under Public Law Number 24-323; *or*

(ii) the deadline as established by Chapter 33 of Title 7 of the Guam Code Annotated, as hereby reenacted.

(b) For purposes of § 4(a)(ii) above, the date of completion shall be the later of:

(i) the date of enactment of this public law; *or*

(ii) the date of completion as established under Chapter 33 of Title 7 of the Guam Code Annotated, as hereby reenacted; provided, however, any person whose deadline to file a claim of lien shall be determined to be less than thirty (30) days after the date of enactment of this Act shall *not* have to provide the owner with a fifteen (15) day notice of claim as required by § 33301 of Title 7 of the Guam Code Annotated, as hereby reenacted.

- Article 1. Liens in General.
- Article 2. Mechanics' Liens & Others on Real Property.
- Article 3. Claims of Lien.
- Article 4. General & Procedural Provisions.

ARTICLE 1
LIENS IN GENERAL

§ 33101. Definition of Lien.

A lien is a charge imposed upon specific property, by which it is made security for the performance of an act.

SOURCE: CCP § 1180 added by P.L. 6-133. All SOURCE references in this Chapter will be to P.L. 6-133 (7/26/62) unless a different source is stated.

ARTICLE 2
LIENS OF MECHANICS AND OTHERS UPON REAL PROPERTY

- § 33201. Mechanics, to have Lien for Value of Labor.
- § 33202. Work of Improvement: Improvement: Contractor, Deemed Agent.
- § 33203. Land Subject to Lien: Building Deemed Constructed, at Owner's Instance: Interest Subject to Lien: Notice of Non-responsibility: Posting, Filing, Time for: Requisites of Notice: Verification.
- § 33204. Liens on Lots for Improvements.

7 GCA CIVIL PROCEDURE
CH. 33 LIENS IN GENERAL

- § 33205. Nature and Limitations of Lien: Filing Contracts or Modifications: Bond of Contractor.
- § 33206. Amount Recoverable by Contractor: Defense of Action on Lien: Withholding Amount of Lien: Deduction or Recovery of Excess of Judgment and Costs: Owner's Act Not Prevention of Performance or Exoneration of Sureties.
- § 33207. Waiver or Impairment of Claims or Liens of Others; Written Consent.
- § 33208. Priority of Liens and Mortgages or Deeds of Trust.
- § 33209. Mortgage or Deed of Trust Inferior to Liens Arising Out of Work of Improvement Upon Property: Filing Bond: Priority: Requisites of Bond: Liens not Within Application of Section.
- § 33210. Improvements Provided for by Separate Contract: Preferences.

§ 33201. Mechanics, to Have Lien for Value of Labor.

Mechanics, materialmen, contractors, subcontractors, artisans, architects, registered engineers, licensed land surveyors, machinists, builders, teamsters and draymen, and all persons and laborers of every class performing labor upon or bestowing skill or other necessary services on, or furnishing materials to be used or consumed in, or furnishing appliances, teams, or power contributing to, the construction, alteration, addition to, or repair, either in whole or in part, of any building, structure, or other work of improvement shall have a lien upon the property upon which they have bestowed labor or furnished materials or appliances for the value of such labor done or material furnished, and for the value of the use of such appliances, teams, or power, whether done or furnished at the instance of the owner or of any person acting by his authority or under him, as contractor or otherwise.

SOURCE: CCP § 1181.

NOTE: Final sentence corrected from 1993 publication.

§ 33202. Work of Improvement: Contractor, Deemed Agent.

(a) For the purposes of this Chapter, *work of improvement* includes, but is not restricted to, the construction, alteration, addition to, or repair, in whole or in part, of any building, wharf, bridge, ditch, flume, aqueduct, well, tunnel, fence, machinery, railroad, or wagon road, the seeding, sodding, or planting of any lot or tract of land for landscaping purposes, the filling, leveling, or grading of any lot or tract of land, the demolition of buildings, and the removal of buildings.

(b) For the purposes of this Chapter, except as otherwise provided herein, *work of improvement* and *improvement* mean the entire structure or scheme of improvement as a whole.

(c) For the purposes of this Chapter, every contractor, subcontractor, architect, builder, or other person having charge of the construction, alteration, addition to, or repair, in whole or in part, of any building or other work of improvement shall be held to be the agent of the owner.

SOURCE: CCP § 1182.

§ 33203. Land Subject to Lien: Building Deemed Constructed, at Owner's Instance: Interest Subject to Lien: Notice of Non-responsibility: Posting, Filing, Time for: Requisites of Notice: Verification.

7 GCA CIVIL PROCEDURE
CH. 33 LIENS IN GENERAL

(a) The land upon which any building, improvement, well or structure is constructed, together with a convenient space about the same, or so much as may be required for the convenient use and occupation thereof, to be determined by the court on rendering judgment, is also subject to the lien, if at the commencement of the work, or of the furnishing of the material for the same, the land belonged to the person who caused said building, improvement, well or structure to be constructed, altered or repaired, but if such person owned less than fee simple estate in such land, then only his interest therein is subject to such lien, except as provided in paragraph (b) of this section.

(b) Every building or other improvement or work mentioned in this Chapter, constructed, altered, or repaired upon any land, with knowledge of the owner or of any person having or claiming any estate therein, and the work or labor done or materials furnished mentioned in any of said sections, with the knowledge of the owner or persons having or claiming any estate in the land, shall be held to have been constructed, performed or furnished at the instance of such owner or person having or claiming any estate therein, and such interest owned or claimed shall be subject to any lien filed in accordance with the provisions of this Chapter, unless such owner or person having or claiming any estate therein shall, within ten (10) days after he shall have obtained knowledge of such construction, alteration or repair or work or labor, give notice that he will not be responsible for the same by posting a notice in writing to that effect in some conspicuous place upon the property, and shall also, within the same period, file for record a verified copy of said notice in the Department of Land Management. Said notice shall contain a description of the property affected thereby sufficient for identification, with the name, and the nature of the Chapter or interest of the person giving the same, name of purchaser under contract, if any, or lessee if known; said copy so recorded may be verified by anyone having a knowledge of the facts, on behalf of the owner or person for whose protection the notice is given.

SOURCE: CCP § 1183.

§ 33204. Liens on Lots for Improvements.

Any person who, at the instance or request of the owner (or any other person acting by his authority or under him, as contractor or otherwise) of any lot or tract of land, grades, fills in, or otherwise improves the same, or the street, highway, or sidewalk in front of or adjoining the same, or constructs or installs, sewers or other public utilities therein, or constructs any areas, or vaults, or cellars, or rooms, under said sidewalks, or makes any improvements in connection therewith, has a lien upon said lot or tract of land for his work done and materials furnished.

SOURCE: CCP § 1184.

§ 33205. Nature and Limitations of Lien: Filing Contracts or Modifications: Bond of Contractor. (a) Direct lien: not limited by contract price: limitation as to maximum amount and extent.

The liens provided for by this Chapter shall be direct liens and shall not, in the case of any claimant other than the contractor, be limited as to amount, by any contract price agreed upon between the contractor and the owner except as hereinafter provided. Such liens shall not in any case exceed in amount the reasonable value of the labor done or materials furnished, or both, for which the lien is claimed, nor the price agreed upon for the same between the claimant and the person by whom he was employed. Such liens shall not, in any case where the claimant was employed by a

7 GCA CIVIL PROCEDURE
CH. 33 LIENS IN GENERAL

contractor or subcontractor, extend to any labor or materials not embraced within or covered by the original contract between the contractor and the owner, or any modification thereof made by or with the consent of such owner, and of which such contract or modification thereof the claimant shall have had actual notice before the performance of such labor or the furnishing of such materials.

(b) Filing contract or modification: effect. The filing of an original contract for a work of improvement or of a modification of such original contract in the Department of Land Management before the commencement of the work, shall be equivalent to the giving of actual notice of the provisions thereof by the owner to all persons performing work or furnishing materials thereunder.

(c) Bond of contractor: minimum amount: nature and extent. In case said original contract shall, before the work is commenced, be so filed, together with a bond of the contractor, with good and sufficient sureties in an amount not less than fifty percent (50%) of the contract price named in said contract, which bond shall, in addition to any conditions for the performance of the contract, be also conditioned for the payment in full of the claims of all persons performing labor upon or furnishing materials to be used in, or furnishing appliances, teams, or power contributing to such work, and shall also by its terms be made to inure to the benefit of any and all persons who perform labor upon or furnish materials to be used in or furnish appliances, teams, or power contributing to the work described in said contract as to give such persons right of action to recover upon said bond in any suit brought to foreclose the liens provided for in this Chapter, or in a separate suit brought on said bond, then the court must, where it would be equitable so to do, restrict the recovery under such liens to an aggregate amount equal to the amount found to be due from the owner to the contractor, and render judgment against the contractor and his sureties on said bond for any deficiency or difference there may remain between said amount so found to be due to the contractor and the whole amount found to be due to claimants for such labor or materials or both.

(d) Intent and purpose of section: limitation of owner's liability: exaction of security. It is the intent and purpose of this section to limit the owner's liability, in all cases, to the measure of the contract price where he shall have filed or caused to be filed in good faith with his original contract a valid bond with good and sufficient sureties in the amount and upon the conditions as herein provided. It shall be lawful for the owner to protect himself against any failure of the contractor to perform his contract and make full payment for all work done and materials furnished thereunder by exacting such bond or other surety as he may deem necessary.

SOURCE: CCP § 1185.

§ 33206. Amount Recoverable by Contractor: Defense of Action on Lien: Withholding Amount of Lien: Deduction or Recovery of Excess of Judgment and Costs: Owner's Act Not Prevention of Performance or Exoneration of Sureties.

(a) Any contractor shall be entitled to recover upon a lien filed by him, only such amount as may be due him according to the terms of his contract, after deducting all claims of other parties for work done and materials furnished, as aforesaid, and embraced within his contract.

(b) In all cases where a claim of lien shall be filed under this Article for work done or for materials furnished to any contractor, he shall defend any action brought thereon at his own expense; and during the pendency of such action, the owner may

7 GCA CIVIL PROCEDURE
CH. 33 LIENS IN GENERAL

withhold from the contractor the amount of money for which such lien is filed. In case of judgment of such action against the owner or his property upon the lien, the said owner shall be entitled to deduct from any amount due, or to become due by him to the contractor, the amount of such judgment and costs; and if the amount of such judgment and costs shall exceed the amount due by him to the contractor, or if the owner shall have settled with the contractor in full, he shall be entitled to recover back from the contractor, or his bondsmen or sureties on any bond given for the faithful performance of his contract, any amount so paid by him, the said owner, in excess of the contract price, and for which the contractor was originally the party liable.

(c) No act done by such owner in compliance with any of the provisions of this Chapter shall be held to be a prevention of the performance of any such contract by the contractor, or to have exonerated the sureties on such or any bond given for faithful performance, or for the payment of liens of persons performing labor or furnishing materials, or both; provided, that such act was done in good faith and without design to injure or harass anyone.

SOURCE: CCP § 1186.

§ 33207. Waiver or Impairment of Claims or Liens of Others; Written Consent.

It shall not be competent for the owner and contractor, or either of them, by any term of their contract, or otherwise, to waive, affect, or impair the claims and liens of other persons, whether with or without notice, except by their written consent, and any term of the contract to that effect shall be null and void.

SOURCE: CCP § 1187.

§ 33208. Priority of Liens and Mortgages or Deeds of Trust.

The liens provided for in this Chapter are preferred to any lien, mortgage, deed of trust, or other encumbrance upon the premises and improvements to which the liens provided for in this Chapter attach which may have attached subsequent to the time when the building, improvement, structure, or work of improvement in connection with which the lien claimant has done his work or furnished his material was commenced; also to any liens, mortgage, deed of trust, or other encumbrance of which the lien claimant had no notice and which was unrecorded at the time the building, improvement, structure, or work of improvement on which such lien claimant has done his work or for which he has furnished his material, appliances or power was commenced.

A mortgage or deed of trust which would be prior to any of the liens provided for in this Chapter, to the extent of obligatory advances made thereunder in accordance with the commitment of the lender, shall also be prior to the liens provided for in this Chapter as to any other advances secured by such mortgage or deed of trust, which are used in payment of any claim of lien as provided for in this Chapter, if any, which is recorded at the date or dates of such other advances and thereafter in the payment of all or any part of the costs of any work of improvement on the property which is subject to such mortgage or deed of trust; provided, that the priority of such mortgage or deed of trust shall not exceed in total, for both obligatory advances made in accordance with the commitment of the lender and other advances, the amount of the original obligatory commitment of the lender as shown in said mortgage or deed of trust.

SOURCE: CCP § 1188.

**7 GCA CIVIL PROCEDURE
CH. 33 LIENS IN GENERAL**

§ 33209. Mortgage or Deed of Trust Inferior to Liens Arising Out of Work of Improvement Upon Property: Filing Bond: Priority: Requisites of Bond: Liens Not Within Application of Section.

In the event the holder of any mortgage or deed of trust which otherwise would be inferior to the liens provided for in § 33201 through § 33208 inclusive of this Chapter, which liens arise out of a work of improvement upon the property to which the mortgage or deed of trust attaches, shall procure or cause to be procured a bond with good and sufficient sureties which complies with the requirements of this section and shall file such bond for record in the Department of Land Management in which the property is situated, either concurrently with or after the filing for record of such mortgage or deed of trust, then such mortgage or deed of trust shall be prior and paramount to the liens of all persons arising out of such work of improvement for work done or materials furnished subsequent to the time such bond is filed as herein provided. Such bond, upon which either the contractor or owner may be the principal, must comply with the following requirements: (1) it must be in an amount not less than seventy-five percent (75%) of the face principal amount of such mortgage or deed of trust, (2) it must refer to the mortgage or deed of trust in connection with which the bond is given, and (3) it must be conditioned for the payment in full of the claims of all persons performing labor upon or furnishing materials to be used in, or furnishing appliances, teams, or power contributing to such work of improvement, and there must be incorporated in such bond a provision by its express terms making it inure to the sole benefit of any and all persons who perform labor upon, or furnish materials to be used in, or furnish appliances, teams, or power contributing to such work of improvement, so as to give such persons a right to recover upon said bond in any suit to foreclose such liens, or in a separate suit brought on said bond.

The provisions of this section shall not apply to liens provided for by § 33204 this Title, the priority of such liens being as provided by § 33210(b) of this Title.

The original record of any bond, or a certified copy thereof, which has been filed for record pursuant to this Article, may be read in evidence in an action or proceeding with the like effect as the original instrument, without further proof.

SOURCE: CCP § 1189.

§ 33210. Improvements Provided for by Separate Contract: Preferences.

(a) If the work of improvement of the character referred to in § 33204 is provided for in a separate contract from any contract or agreement with respect to the erection of residential units or other structures upon said lot or tract of land, then the work of improvement of the character referred to in that section shall be deemed a separate work of improvement and the commencement thereof shall not constitute a commencement of the work of improvement, consisting of the erection of any residential unit or other structure upon said lot or tract of land.

(b) The liens provided for in § 33204 are preferred to (1) any mortgage, deed of trust, or other encumbrance which may have attached subsequent to the time when the work of improvement of the character referred to in that section, in connection with which the lien claimant has done his work or furnished his materials was commenced; or to (2) any mortgage, deed of trust, or other encumbrance of which the lien claimant had no notice and which was unrecorded at the time when such work of improvement was commenced; or to (3) any mortgage, deed of trust, or other encumbrance recorded before the commencement of the work of improvement of the character referred to in

7 GCA CIVIL PROCEDURE
CH. 33 LIENS IN GENERAL

that section, which was given for the sole or primary purpose of financing such work of improvement, unless the loan proceeds are, in good faith, placed in the control of the lender under a binding agreement with the borrower to the effect that such proceeds are to be applied to the payment of claims for labor performed or materials used or consumed in such work of improvement, and that no portion of such proceeds will be paid to the borrower in the absence of satisfactory evidence that all claims for such labor or materials have been paid, or that the time for filing claims of lien arising out of such work of improvement has expired and no such claims have been filed; provided, however, that in the event the owner of the land or the holder of any mortgage, deed of trust, or other encumbrance thereon shall procure or cause to be procured a bond with good and sufficient sureties which shall be conditioned for the payment in full of the claims of all persons performing labor upon, or furnishing materials to be used in, or furnishing appliances, teams, or power contributing to such work of improvement, and shall cause to be incorporated in said bond a provision by its express terms making it inure to the benefit of any and all persons who perform labor upon, or furnish materials to be used in, or furnish appliances, teams, or power contributing to such work of improvement, so as to give such persons a right to recover upon said bond in any suit brought to foreclose the liens provided for in this Chapter, or in a separate suit brought on said bond, then such mortgage, deed of trust, or other encumbrance shall be prior and paramount to the liens provided for in that section arising out of such work of improvement, irrespective of whether or not such mortgage, deed of trust, or other encumbrance attached before or after the time when the work of improvement commenced and irrespective of the nature or provisions for payment of the consideration of such mortgage, deed of trust, or encumbrance. Such bond given under this section must, in order to comply with its requirements, be either (1) a statutory labor and materials bond, complying with all of the provisions of § 33205 of this Article, save and except that said last mentioned bond may, instead of being filed with the original contract before the work of improvement is commenced, be filed for record in the Department of Land Management at any time before such work of improvement has been completed, or such bond may be (2) a bond with good and sufficient sureties in an amount not less than fifty percent (50%) of the face principal amount of such mortgage, deed of trust, or other encumbrance, and shall be given for the sole benefit of persons performing labor upon, or furnishing materials to be used in, or furnishing appliances, teams, or power contributing to the work of improvement to which said bond refers, upon which last mentioned bond either the contractor or the owner may be principal, and which last mentioned bond shall be filed for record, in order to comply with the requirements of this section, before the work of improvement to which said bond refers is completed.

SOURCE: CCP § 1190.

ARTICLE 3
CLAIMS OF LIEN

- § 33301. Notice of Claim of Lien: Contents: When to be Given: Waiver: Service: Furnishings, Materials, etc., Not Within Scope of General Description.
- § 33302. Claim of Lien of Original Contractor or Person Performing Labor or

7 GCA CIVIL PROCEDURE
CH. 33 LIENS IN GENERAL

- Furnishing Material: Time for Filing: Notice of Completion: Notice of Cessation: Effect on Filing Claim of Lien: Owner Defined: Requisites of Claim of Lien: Forfeiture of Lien.
- § 33303. Bond of Person Disputing Lien: Recording: Amount: Freeing Property: Permissible Principals.
- § 33304. Claim Against Two or More Pieces of Property: Designation of Amount Due on Each: Estimation Under Lump-sum Contract: Lien Limited to Amount Designated: Single Structure on More Than One Parcel of Land, Segregation and Distribution of Lien: Joinder of Parties.
- § 33305. Claim Against Improvement Consisting of Two or More Separate Residential units: Time For Filing: Separate Residential Unit: Application of Section: Materials Delivered to Portion of Entire Work and Used in One Separate Unit.

§ 33301. Notice of Claim of Lien: Contents: When to be Given: Waiver: Service: Furnishings, Materials, etc., Not Within Scope of General Description.

(a) Except one under direct contract with the owner or one performing actual labor for wages, every person who furnishes labor, service, equipment or material for which a lien otherwise can be claimed under this Article, must, as a necessary prerequisite to the validity of any claim of lien subsequently filed, cause to be given not later than fifteen (15) days prior to the filing of a claim of lien, a written notice as prescribed by this section, to the owner or reputed owner and to the original contractor. The notice shall contain a general description of the labor, service, equipment or materials furnished, the name and address of such person furnishing such labor, services, equipment or materials, and the name of the person who contracted for purchase of such labor, services, equipment or materials. If an invoice for such materials contains this information, a copy of such invoice, transmitted in the manner prescribed by this section, shall be sufficient notice. The notice may be sent at any time after any labor, service, equipment or materials are furnished, but in no event later than fifteen (15) days prior to the expiration of the time within which to file a claim of lien.

(b) Any agreement made or entered into by an owner whereby the owner agrees to waive the rights or privileges conferred upon him by this section, shall be void and of no effect.

(c) Service of notice required under this section may be given by delivering the same to the person to be notified, personally, or by leaving it at his address or place of business with some person in charge, or by registered or certified mail, postage prepaid, addressed to the person to whom notice is to be given, at the address shown by the building permit on file with the authority issuing a building permit for the work. If no building permit has been issued or if the building permit does not contain the address of the person on whom notice was required to be served under this section, then service of such notice shall be by certified or registered mail addressed to the job site with the envelope setting forth the name of the owner or reputed owner, if known, or if not known, then merely owner, or to the original contractor, if known, or if not known, then to General Contractor. When service is by registered or certified mail, service is complete at the time of the deposit of the registered or certified mail.

7 GCA CIVIL PROCEDURE
CH. 33 LIENS IN GENERAL

(d) A person required by this section to give notice to the owner and to an original contractor need give only one such notice to the owner and to the original contractor with respect to all materials, service, labor, or materials he furnishes for a work of improvement, unless the same is furnished under contracts with more than one subcontractor, in which event the notice requirements must be met with respect to materials, services, labor, or equipment furnished to each such subcontractor.

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

SOURCE: CCP § 1191.

§ 33302. Claim of Lien of Original Contractor or Person Performing Labor or Furnishing Material: Time for Filing: Notice of Completion: Notice of Cessation: Effect on Filing Claim of Lien: Owner Defined: Requisites of Claim of Lien: Forfeiture of Lien.

(a) Every original contractor claiming the benefit of this Title, after the completion of his contract and within the periods of time as provided in this section, and every person, other than an original contractor, claiming the benefit of this Title, after he has ceased to perform labor or furnish material, or both, for any work of improvement, and before the expiration of the periods of time as provided in this section, may file for record with the Department of Land Management in which the property is situated, a claim of lien as provided in subdivision (i) of this section.

(b) Where the work of improvement is not made pursuant to one original contract for the work of improvement but is made in whole or in part pursuant to two 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, file for record a notice of completion thereof as provided in subdivision (e) of this section. If such notice be so filed, then the original contractor under the contract covered by such notice must, within sixty (60) days after the date of filing for record such notice, and all other persons claiming the benefit of this Title for work done or materials furnished under such contract, must within thirty (30) days after the date of filing for record such notice, file for record his claim of lien. If such notice be not so filed, then the period for filing claims of lien shall be as provided in subdivision (c) of this section.

(c) The owner shall within ten (10) days after the completion of the work of improvement, file for record a notice of completion as provided in subdivision (e) of this section. If such notice be so filed, then, except as to any persons who were required to file a claim of lien as provided in subdivision (b) of this section, every original contractor must within sixty (60) days after the date of filing for record such notice, and every person, other than an original contractor, claiming the benefit of this Title must within thirty (30) days after the date of filing for record such notice, file for record his claim of lien. If such notice be not so filed, then, except as to any persons who were required to file for record claims of lien as provided in subdivision (b) of this section, all persons claiming the benefit of this Title shall have ninety (90) days after the completion of such work of improvement within which to file their claims of lien.

7 GCA CIVIL PROCEDURE
CH. 33 LIENS IN GENERAL

(d) In all cases, any of the following 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 from labor thereon; (2) the acceptance by 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 or a cessation of labor thereon for continuous period of thirty (30) days or more if the owner files for record a notice of cessation as provided for in subdivision (g) of this section, except that the time for and manner of filing claims of lien where there has been such a cessation of labor shall be as provided in subdivisions (f) and (g) of this section.

(e) The notice of completion provided for in this section shall be filed in the Department of Land Management, shall be signed and verified by the owner or his agent, and shall set forth the following: (1) the date of completion of such work of improvement or of such particular portion of the work of improvement; provided, that the recital of an erroneous date of completion shall not affect the validity of the notice if the true date of completion is within ten (10) days preceding the date of filing for record such notice; (2) the name and address of such owner; (3) the nature of the interest or estate of such owner; (4) a description of the property sufficient for identification, which description shall contain the street address of such property if any such street address shall have been given to such property by any competent public or governmental authority; provided, that if a sufficient legal description of the property is given, the validity of the notice shall not be affected by the fact that the street address recited is erroneous or that such street address is omitted; (5) the name of the original contractor, if any, for the work of improvement, or if the notice is given only of completion of a contract for a particular portion of such work of improvement as provided in subdivision (b) of this section, 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.

(f) If, after the commencement of a work of improvement, there shall be a cessation of labor thereon for a continuous period of sixty (60) days, then all persons claiming the benefit of this Title shall within ninety (90) days from the expiration of such sixty (60) day period file for record their claims of lien; provided, that if, after there shall be a cessation of labor thereon for a continuous period of thirty (30) days or more, the owner files for record a notice of cessation as provided in subdivision (g) of this section, every original contractor must within sixty (60) days after the date of filing for record such notice, and every other person claiming the benefit of this Title must within thirty (30) days after the date of filing for record such notice, file for record his claim of lien. Nothing contained in this subdivision shall, however, extend the time for the filing for record of a claim of lien required to be filed for record by reason of the filing of record prior to cessation of a notice of completion as provided in subsection (b).

(g) The notice of cessation provided for in subsection (f) of this section shall be filed for record in the Department of Land Management, shall be signed and verified by the owner or his agent and shall set forth the following: (1) the date on or about when the cessation from labor commenced; (2) a statement that such cessation continued until the giving of such notice of cessation; (3) the name and address of the owner; (4) the nature of the interest or estate of such owner; (5) a description of the property sufficient for identification, which description shall contain the street address

7 GCA CIVIL PROCEDURE
CH. 33 LIENS IN GENERAL

of such property if any such street address shall have been given to such property by any competent public or governmental authority; provided, that if a sufficient legal description of the property is given, the validity of the notice shall not be affected by the fact that the street address recited is erroneous or that such street address is omitted; (6) the name of the original contractor, if any, for the work of improvement as a whole.

(h) The word *owner* as used in subsections (e) and (g) of this section is hereby defined to mean the owner who caused the building, improvement, or structure, to be constructed, altered, or repaired (or his successor in interest at the date a notice of completion or cessation from labor is filed for record) 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; and where such interest or estate is held by two or more persons as joint tenants or tenants in common, any one or more of the co-tenants may be deemed to be the owner within the meaning of this section; provided, that any notice of completion or cessation from labor 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.

(i) A claim of lien filed for record by any person claiming the benefit of this Chapter shall be signed and verified by the claimant or some person on his behalf and shall contain the following: (1) a statement of his demand after deducting all just credits and offsets; (2) the name of the owner or reputed owner, if known; (3) a general statement of the kind of work done or materials furnished by him, or both; (4) the name of the person by whom he was employed or to whom he furnished the materials; (5) a description of the property sought to be charged with the lien sufficient for identification.

(j) Any person who shall willfully include in his claim of lien filed for record pursuant to this Title, work not performed upon, or materials, appliances or power not furnished for, the property described in such claim, shall thereby forfeit his lien.

SOURCE: CCP § 1192.

2006 COMMENT: This section is identical to section 1193.1 of the 1955 California Code of Civil Procedure (West), except that CCCP § 1193.1(e) was not adopted by Guam Public Law 6-133 (July 26, 1962). However, P.L. 6-133 only partially corrected references in 7 GCA § 33302 to account for the omission of CCCP § 1193.1(e). These incorrect references within 7 GCA § 33302 were corrected by Compiler.

Note that in P.L. 6-133 the original first sentence of § 33302(d) contained a reference to the omitted CCCP § 1193.1(e) as follows: "In all cases, except as provided in subdivision (e) of this section..." This reference to the omitted subdivision (e) was removed by the Compiler as a manifest clerical error.

§ 33303. Bond of Person Disputing Lien: Recording: Amount: Freeing Property: Permissible Principals.

If the owner of the property sought to be charged with a claim of lien as provided in § 33301 Chapter, or if any contractor named in said claim of lien or whose duty it is under his contract with the owner to keep such property free from liens, or any subcontractor named in said claim of lien as the person by whom the claimant was

7 GCA CIVIL PROCEDURE
CH. 33 LIENS IN GENERAL

employed to perform his labor or to whom he furnished the materials, disputes the correctness or validity of such claim of lien, he may record or cause to be recorded either before or after the commencement of an action to enforce such claim of lien, in the Department of Land Management in which such claim or lien was recorded, a bond executed by some corporation authorized to issue surety bonds in Guam, in a penal sum equal to one and one-half (1 ½) times the amount of the claim, or, if such claim of lien affects more than one parcel or parcels in the claim of lien, which bond shall guarantee 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; if the owner or other person falling into any of the classes above-named records, or causes to be recorded, such bond, then the real property described in such bond shall be freed from the effect of such claim of lien and any action brought to foreclose such lien. The principal upon such a bond may be either the owner of the property or the owner of an interest in the said property, or the contractor, or any subcontractor affected by said claim of lien.

SOURCE: CCP § 1193.

§ 33304. Claim Against Two or More Pieces of Property: Designation of Amount Due on Each: Estimation Under Lump-sum Contract: Lien Limited to Amount Designated: Single Structure on More Than One Parcel of Land, Segregation and Distribution of Lien: Joinder of Parties.

(a) In every case in which one claim is filed against two or more buildings, mining claims, or other improvements owned or reputed to be owned by the same person, or on which the lien claimant has been employed by the same person to do his work or furnish his materials, whether said parcels are owned by one or more owners, the person filing such claim must at the same time designate the amount due to him on each of such buildings, mining claims, or other improvements; otherwise the lien of such claim is postponed to other liens. In the event such lien claimant has been employed to furnish labor or materials under a contract providing for a lump-sum to be paid to him for his work or materials on said buildings, mining claims, or other improvements as a whole, and such contract does not segregate the amount due for the work done and materials furnished on such buildings, mining claims, or other improvements separately, then such lien claimant, for the purposes of this section, may estimate an equitable distribution of the sum due him over all of said buildings, mining claims, or other improvements, based upon the proportionate amount of work done or materials furnished upon said respective buildings, mining claims, or other improvements. The lien of such claimant does not extend beyond the amount designated as against other creditors having liens, by judgment, mortgage, or otherwise, upon either of such buildings or other improvements, or upon the land upon which the same are situated.

(b) Provided, however, that, for all purposes of this section, if there is a single structure on more than one parcel of land owned by one or more different owners, it shall not be the duty of the lien claimant to segregate the proportion of material or labor entering into the structure on any one of said parcels; but upon the trial thereof, the court may, where it deems it equitable so to do, distribute the lien equitably as among the several parcels involved; provided, further, that all persons interested as owners of, encumbrancers on, contractors, subcontractors, or entitled to liens on any of said parcels, may be joined in one section to foreclose the liens hereinabove referred to.

SOURCE: CCP § 1194.

7 GCA CIVIL PROCEDURE
CH. 33 LIENS IN GENERAL

§ 33305. Claim Against Improvement Consisting of Two or More Separate Residential Units: Time for Filing: Separate Residential Unit: Application of Section: Materials Delivered to Portion of Entire Work and Used in One Separate Unit.

If a work of improvement consists in the construction of two or more separate residential units, each such unit shall be considered a separate work of improvement or improvement, and the time for filing claims of lien against each such residential unit, as provided in this Chapter, shall commence to run upon the completion of each such residential unit. A separate residential unit is defined as consisting of one residential structure together with any garages or other outbuildings appurtenant thereto. The provisions of this qualification shall not impair any rights conferred under the provisions of § 33303, § 33305 and § 33204 of this Chapter. Materials delivered to or upon any portion of said work of improvement or furnished to be used in said entire work of improvement and ultimately used or consumed in one of such separate residential units shall, for all the purposes of this Title, be deemed to have been furnished to be used or consumed in the separate residential unit in which the same shall have been actually used or consumed; provided, however, that if the lien claimant is unable to segregate the amounts used on or consumed in such separate unit, he shall be entitled to all the benefits of § 33305 of this Chapter.

SOURCE: CCP § 1195.

ARTICLE 4
GENERAL AND PROCEDURAL PROVISIONS

- § 33401. Lien Not Invalidated by Mistakes in Statement: Exceptions.
- § 33402. Actions to Enforce Payment of Claim.
- § 33403. Duration of Lien: Commencement of Proceedings for Enforcement: Necessity of Recordation in Order that Rights of Subsequent Purchaser or Encumbrancer be Effective.
- § 33404. Notice of Pendency of Proceedings.
- § 33405. Joinder of Parties Claiming Liens: Consolidation of Actions: Allowance of Costs for Verifying and Recording Liens.
- § 33406. Deficiency Judgment Upon Foreclosure of Lien.
- § 33407. Right to Maintain Personal Action for Debt not Impaired: Attachment Affidavit Need not Negative Security: Judgment, Construction and Credit of Amount Collected to Lien.
- § 33408. Liability of Sureties: Provisions Limiting Action: Filing of Bond: Notice to Sureties: Presumption.
- § 33409. Materials not Subject to Attachment: Exception.
- § 33410. Preservation of Contracts and Plans: Recordation of Notices and Lien Claims: Fee.

§ 33401. Lien not Invalidated by Mistakes in Statement: Exceptions.

No mistake or errors in the statement of the demand, or of the amount of credits and offsets allowed or of the balance asserted to be due to claimant, or in the description of the property against which the claim is filed, shall invalidate the lien, unless the court finds that such mistake or error in the statement of the demand, credits

7 GCA CIVIL PROCEDURE
CH. 33 LIENS IN GENERAL

and offsets, or of the balance due, was made with the intent to defraud, or the court shall find that an innocent third party, without notice, direct or constructive, has, since the claim was filed, become the bona fide owner of the property liened upon, and that the notice of claim was so deficient that it did not put the party upon further inquiry in any manner.

SOURCE: CCP § 1196.

§ 33402. Actions to Enforce Payment of Claim.

(a) Time for commencing action: limitation of time for withholding money or bond: dismissal for want of prosecution: effect. No action to enforce the payment of any claim, notice of which may be given pursuant to Article 2, shall be commenced against the owner prior to the expiration of the period within which claims of lien must be filed for record, as prescribed by this Chapter, nor shall any such suit be commenced later than ninety (90) days following the expiration of such period. No money or bond shall be withheld by reason of any such notice as is prescribed by this Chapter longer than said ninety (90) days following the expiration of such period, unless proceedings be commenced in a proper court within that time by the claimant to enforce his claim; and in case such proceedings be so commenced but be not prosecuted to trial within two (2) years after the commencement thereof, the court may in its discretion dismiss the same for want of prosecution; and in all cases, upon the dismissal of such proceedings, unless it be expressly stated that the same is without prejudice or upon a judgment rendered therein against the claimant, or upon the termination of said ninety (90) days above provided if such proceedings have not been commenced, such notice shall cease to be effective and the moneys or bonds withheld shall be paid or delivered to the contractor or other person to whom they are due.

(b) Notice of proceedings. Notice of such proceedings shall be given or filed within five (5) days after the commencement thereof to the same persons and in the same manner as provided in Article 2 of this Chapter with respect to notice of claim.

(c) Joinder of parties; consolidation of actions. Any number of persons who have given such notices may join in the same action and when separate actions are commenced, the court first acquiring jurisdiction may consolidate them.

(d) Impleading claimants. Upon the demand of the owner, the court shall require all claimants to the moneys withheld by the owner in response to such notices to be impleaded in said action, to the end that the respective rights of all parties may be adjudicated and settled therein.

SOURCE: CCP § 1197.

§ 33403. Duration of Lien: Commencement of Proceedings for Enforcement: Necessity of Recordation in Order that Rights of Subsequent Purchaser or Encumbrancer be Effective.

(a) No lien provided for in this Chapter binds any property for a longer period than ninety (90) days after the same has been filed, except as hereinafter provided, unless within that time, proceedings to enforce the same be commenced in a proper court. If a credit be given and notice of the fact and terms of such credit be filed in the Department of Land Management subsequent to the filing of such lien and prior to the expiration of said ninety (90) day period, then such lien continues in force until ninety (90) days after the expiration of such credit, but no lien continues in force by reason of any agreement to give credit for a longer time than one (1) year from the time the work

7 GCA CIVIL PROCEDURE
CH. 33 LIENS IN GENERAL

is completed. If the proceedings to enforce the lien be not prosecuted to trial within two (2) years after the commencement thereof, the court may in its discretion dismiss the same for want of prosecution, and in all cases, the dismissal of such action (unless it be expressly stated that the same is without prejudice) or a judgment rendered therein that no lien exists shall be equivalent to the cancellation and removal from the record of such lien.

(b) As against any purchaser or encumbrancer for value and in good faith, whose rights are acquired subsequent to the expiration of the ninety (90) day period following the filing of such lien, no giving of credit, or extension of the lien, or time to enforce the same shall be effective unless evidenced by a notice or agreement filed for record in the Department of Land Management prior to the acquisition of the rights of such purchaser or encumbrancer.

SOURCE: CCP § 1198.

§ 33404. Notice of Pendency of Proceedings.

After the filing of the complaint in the proper court, the plaintiff may file for record a notice of the pendency of such proceedings, as provided in § 14103 of this Title. Only from the time of filing such notice for record, shall a purchaser or encumbrancer of the property affected thereby be deemed to have constructive notice of the pendency of the action, and in that event, only of its pendency against parties designated by their real names.

SOURCE: CCP § 1199.

§ 33405. Joinder of Parties Claiming Liens: Consolidation of Actions: Allowance of Costs for Verifying and Recording Liens.

Any number of persons claiming liens may join in the same action and when separate actions are commenced, the court may consolidate them. In addition to any other costs allowed by law, the court must also allow as costs the money paid for verifying and recording the lien, such costs to be allowed each claimant whose lien is established whether he be plaintiff or defendant, or whether they all join in one action, or separate actions are consolidated.

SOURCE: CCP § 1200.

§ 33406. Deficiency Judgment Upon Foreclosure of Lien.

Whenever on the sale of the property subject to any of the liens provided for in this Chapter, under the judgment or decree of foreclosure of such lien, there is a deficiency of proceeds, judgment for the deficiency may be entered against the party personally liable therefor in like manner and with like effect as in action for the foreclosure of mortgages.

SOURCE: CCP § 1201.

§ 33407. Right to Maintain Personal Action for Debt not Impaired: Attachment Affidavit Need Not Negative Security: Judgment, Construction and Credit of Amount Collected to Lien.

Nothing contained in this Article shall be construed to impair or affect the right of any person to whom any debt may be due for work done or materials furnished, or furnishing appliances, teams, or power contributing to any work of improvement to maintain a personal action to recover said debt against the person liable therefor and

7 GCA CIVIL PROCEDURE
CH. 33 LIENS IN GENERAL

to, either in an action to foreclose his lien or in a separate action, take out an attachment or execution therefor, or obtain a separate personal judgment in such mechanics' lien action, against the person personally liable for such debt notwithstanding his lien, and in his affidavit to procure an attachment he need not state that his demand is not secured by lien, but the judgment, if any, obtained by the plaintiff in such personal action, or personal judgment obtained in such mechanics' lien action, shall not be construed to impair to merge any lien held by said plaintiff under this Chapter; provided, only, that any money collected on said judgment shall be credited on the amount of such lien in any action brought to enforce the same, in accordance with the provisions of this Chapter.

SOURCE: CCP § 1202.

§ 33408. Liability of Sureties: Provisions Limiting Action: Filing of Bond: Notice to Sureties: Presumption.

(a) Liability of sureties. The surety or sureties on any bond given pursuant to any of the provisions of this Chapter shall not be exonerated or released from the obligation of the bond by any change, alteration, or modification in or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement or pertaining or relating to the furnishing of labor, materials or equipment therefor, nor by any change or modification of any terms of payment or extension of the time for any payment relating or pertaining to any scheme or work of improvement, nor by any rescission or attempted rescission of any such contract or agreement, nor by rescission or attempted rescission of the bond, nor by any conditions precedent or subsequent in the bond attempting to limit the right of recovery of laborers or materialmen otherwise entitled to recover under any such contract or agreement or under the bond, nor, where the bond is given for the benefit of laborers, materialmen, or other persons entitled to claim a lien under this Chapter, by any fraud practiced by any person other than such laborer, materialmen, or like person as is seeking to recover on the bond.

(b) Bond to be Construed Against Sureties. All bonds given pursuant to the provisions of this Chapter will be construed most strongly against the surety and in favor of all persons for whose benefit such a bond is given, and under no circumstances shall a surety be in anywise released from liability to the said laborers or materialmen, or persons furnishing appliances, teams, or power, for whose benefit said bond has been written, by reason of any breach of contract between owner and contractor, or on the part of any obligee named in said bond, but the sole condition of recovery on the part of such person furnishing labor or material, or appliances, teams, or power, as aforesaid, shall be that said labor or material has been used or consumed in, or said appliances, teams, or power have contributed to the work of improvement to which said bond refers, and that the said third person for whose benefit said bond has so been made to inure has not been actually paid some part or all of the sums due him for the same.

(c) Provisions limiting actions. No provision in any of the bonds given pursuant to any of the provisions of this Chapter, attempting by contract to shorten the period prescribed for the commencement of an action thereon, as laid down in § 11303 of this Title, shall be valid if such provision attempts to limit the time for commencement of action thereon to a shorter period than six (6) months from the completion of said structure or work of improvements, as "completion" is defined in this Chapter, nor

7 GCA CIVIL PROCEDURE
CH. 33 LIENS IN GENERAL

shall any provision in any of said bonds attempting to limit the period for the commencement of actions thereon be valid insofar as actions brought by persons furnishing labor or materials, appliances or teams or power, as aforesaid, are concerned, unless said bond be filed for record, with the contract to which it refers, before the work of improvement is commenced, with the Department of Land Management in which the property referred to therein, or some part thereof, is situated.

(d) Filing and Recording of Bond; When no Action be Maintained: Time for Bringing Suit Against Sureties. In case the surety or sureties on any bond given as in this Chapter provided shall have caused said bond to be filed and recorded in the Department of Land Management in which the property is situated, before the work of improvement is completed, then no action may be maintained thereon, unless there shall previously have either been filed a mechanics' lien claim as in this Chapter provided or unless written notice shall previously have been given to the surety on said bond before the expiration of the time prescribed in this Chapter for filing a lien to enforce such claim, which notice shall state that the person giving such notice has performed labor or furnished materials, or both, or furnished appliances, teams, or power to the contractor or other person acting by the authority of the owner, or that they have agreed to do so, stating in general terms the kind of labor, materials, appliances, teams, or power, and the name of the person to or for whom the same was done or furnished, or both, and the amount in value, as near as may be, of that already done or furnished, or both, and of the whole agreed to be done or furnished, or both. The filing of an action to foreclose such lien shall not be a condition precedent to a recovery on said bond. If said bond has been so filed as herein last provided, then any suit brought against such surety or sureties shall be filed within six (6) months after completion of said structure or work of improvement, as "completion" is defined in this Chapter.

(e) Notice to Sureties. The written notice to be given to the surety or sureties hereinabove provided for, may be given by delivery thereof personally to, or by depositing same in the mail, postage prepaid, and registered, addressed:

(1) If to an individual surety, at his residence or place of business, if known, or

(2) If to an individual surety and his residence is unknown, then in care of the Director of Land Management in which said bond has been so filed, or

(3) At the place designated as the residence of the surety in the certificate, if any, filed by such surety or sureties as provided by § 1163 of the Civil Code¹, or

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

(5) At the office or care of any officer of the surety in Guam, or

(6) At the office or of care of the statutory agent of the surety in Guam, or

(7) By service in the manner prescribed for the service of summons as provided by § 406.1 of the Civil Code.

(f) When bond conclusively presumed good and sufficient. Any bond given pursuant to any of the provisions of this Chapter which otherwise fully complies there-

7 GCA CIVIL PROCEDURE
CH. 33 LIENS IN GENERAL

with, shall be conclusively presumed a good and sufficient bond if the surety thereon is a corporation duly authorized to issue surety bonds in Guam.

SOURCE: CCP § 1203.

NOTE: No § 1163 existed in the Civil Code of Guam.

§ 33409. Materials Not Subject To Attachment: Exception.

Whenever materials shall have been furnished for use in the construction, alteration, or repair of any building or other improvement, such materials shall not be subject to attachment, execution, or other legal process to enforce any debt due by the purchaser of such materials, except a debt due for the purchase money thereof, so long as in good faith the same are about to be applied to the construction, alteration, or repair of such building, mining claim, or other improvement.

SOURCE: CCP § 1204.

§ 33410. Preservation Of Contracts And Plans: Recordation Of Notices And Lien Claims: Fee.

The Director of Land Management shall number, index, and preserve all contracts, plans, bonds and other papers presented to him for filing pursuant to this Article, and shall number, index, and transcribe into the official records in his office, in the same manner as a conveyance of land, all notices, claims of lien, and other papers filed for record with him pursuant to this Title. He shall receive therefor the fees prescribed by law.

SOURCE: CCP § 1205.
