

3/17/15

9:48 A.M.

Chapter No. 348

15/SS26/R253

aj 1/6/15

SENATE BILL NO. 2364

Originated in Senate

Ziguelich

Secretary

SENATE BILL NO. 2364

AN ACT TO AMEND SECTION 85-7-433, MISSISSIPPI CODE OF 1972, TO REVISE THE "NOTICE OF CONTEST OF LIEN" FORM TO CLARIFY THE TIME IN WHICH THE NOTICE IS TO BE FILED AND TO CONFORM THE FORM TO SECTION 85-7-423; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Section 85-7-433, Mississippi Code of 1972, is amended as follows:

85-7-433. (1) The following form is the Interim Waiver and Release Upon Payment form referred to in Section 85-7-419:

INTERIM WAIVER AND RELEASE UPON PAYMENT

STATE OF MISSISSIPPI

COUNTY OF _____

THE UNDERSIGNED MECHANIC AND/OR MATERIALMAN HAS BEEN EMPLOYED BY _____ (NAME OF CONTRACTOR) TO FURNISH _____ (DESCRIBE MATERIALS AND/OR LABOR) FOR THE CONSTRUCTION OF IMPROVEMENTS KNOWN AS _____ (TITLE OF THE PROJECT OR BUILDING) WHICH IS LOCATED IN THE CITY OF _____, COUNTY OF _____, AND IS OWNED BY

_____ (NAME OF OWNER) AND MORE PARTICULARLY DESCRIBED AS
FOLLOWS:

(DESCRIBE THE PROPERTY UPON WHICH THE IMPROVEMENTS WERE MADE
BY USING EITHER A METES AND BOUNDS DESCRIPTION, THE LAND LOT
DISTRICT, BLOCK AND LOT NUMBER, OR STREET ADDRESS OF THE PROJECT.)

UPON THE RECEIPT OF THE SUM OF \$_____, THE MECHANIC
AND/OR MATERIALMAN WAIVES AND RELEASES ANY AND ALL LIENS OR CLAIMS
OF LIENS IT HAS UPON THE FOREGOING DESCRIBED PROPERTY OR ANY
RIGHTS AGAINST ANY LABOR AND/OR MATERIAL BOND THROUGH THE DATE OF
_____ (DATE) AND EXCEPTING THOSE RIGHTS AND LIENS THAT THE
MECHANIC AND/OR MATERIALMAN MIGHT HAVE IN ANY RETAINED AMOUNTS, ON
ACCOUNT OF LABOR OR MATERIALS, OR BOTH, FURNISHED BY THE
UNDERSIGNED TO OR ON ACCOUNT OF SAID CONTRACTOR FOR SAID BUILDING
OR PREMISES.

SIGNATURE

BY: _____
(PRINT NAME)

ITS: _____
(PRINT TITLE)

SWORN TO AND SUBSCRIBED BEFORE ME, THIS THE ____ DAY OF
_____, 20__.

NOTARY PUBLIC

NOTICE: WHEN YOU EXECUTE AND SUBMIT THIS DOCUMENT, YOU SHALL BE CONCLUSIVELY DEEMED TO HAVE BEEN PAID IN FULL THE AMOUNT STATED ABOVE, EVEN IF YOU HAVE NOT ACTUALLY RECEIVED THE PAYMENT, SIXTY (60) DAYS AFTER THE DATE STATED ABOVE UNLESS YOU FILE EITHER AN AFFIDAVIT OF NONPAYMENT OR A CLAIM OF LIEN BEFORE THE EXPIRATION OF THE SIXTY-DAY PERIOD. THE FAILURE TO INCLUDE THIS NOTICE LANGUAGE ON THE FACE OF THE FORM SHALL RENDER THE FORM UNENFORCEABLE AND INVALID AS A WAIVER AND RELEASE UNDER SECTION 85-7-419, MISSISSIPPI CODE OF 1972.

(2) The following form is the Waiver and Release Upon Final Payment form referred to in Section 85-7-419:

WAIVER AND RELEASE UPON FINAL PAYMENT

STATE OF MISSISSIPPI

COUNTY OF _____

THE UNDERSIGNED MECHANIC AND/OR MATERIALMAN HAS BEEN EMPLOYED BY _____ (NAME OF CONTRACTOR) TO FURNISH _____ (DESCRIBE MATERIALS AND/OR LABOR) FOR THE CONSTRUCTION OF IMPROVEMENTS KNOWN AS _____ (TITLE OF THE PROJECT OR BUILDING) WHICH IS LOCATED IN THE CITY OF _____, COUNTY OF _____, AND IS OWNED BY _____ (NAME OF OWNER) AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

(DESCRIBE THE PROPERTY UPON WHICH THE IMPROVEMENTS WERE MADE BY USING EITHER A METES AND BOUNDS DESCRIPTION, THE LAND LOT DISTRICT, BLOCK AND LOT NUMBER, OR STREET ADDRESS OF THE PROJECT.)

UPON THE RECEIPT OF THE SUM OF \$ _____, THE MECHANIC AND/OR MATERIALMAN WAIVES AND RELEASES ANY AND ALL LIENS OR CLAIMS OF LIENS IT HAS UPON THE FOREGOING DESCRIBED PROPERTY OR ANY RIGHTS AGAINST ANY LABOR AND/OR MATERIAL BOND ON ACCOUNT OF LABOR OR MATERIALS, OR BOTH, FURNISHED BY THE UNDERSIGNED TO OR ON ACCOUNT OF SAID CONTRACTOR FOR SAID PROPERTY.

SIGNATURE

BY: _____

(PRINT NAME)

ITS: _____

(PRINT TITLE)

SWORN TO AND SUBSCRIBED BEFORE ME, THIS THE ____ DAY OF _____, 20__.

NOTARY PUBLIC

NOTICE: WHEN YOU EXECUTE AND SUBMIT THIS DOCUMENT, YOU SHALL BE CONCLUSIVELY DEEMED TO HAVE BEEN PAID IN FULL THE AMOUNT STATED ABOVE, EVEN IF YOU HAVE NOT ACTUALLY RECEIVED THE PAYMENT, SIXTY (60) DAYS AFTER THE DATE STATED ABOVE UNLESS YOU FILE EITHER AN AFFIDAVIT OF NONPAYMENT OR A CLAIM OF LIEN BEFORE THE EXPIRATION OF THE SIXTY-DAY PERIOD. THE FAILURE TO INCLUDE THIS NOTICE LANGUAGE ON THE FACE OF THE FORM SHALL RENDER THE FORM UNENFORCEABLE AND INVALID AS A WAIVER AND RELEASE UNDER SECTION 85-7-419, MISSISSIPPI CODE OF 1972.

SIGNATURE

BY: _____

(PRINT NAME)

ITS: _____

(PRINT TITLE)

SWORN TO AND SUBSCRIBED BEFORE ME, THIS THE ____ DAY OF
_____, 20__.

NOTARY PUBLIC

(3) The following form is the Affidavit of Nonpayment referred to in Section 85-7-419:

AFFIDAVIT OF NONPAYMENT

STATE OF MISSISSIPPI

COUNTY OF _____

THE UNDERSIGNED MECHANIC AND/OR MATERIALMAN HAS BEEN EMPLOYED BY _____ (NAME OF CONTRACTOR) TO FURNISH _____ (DESCRIBE MATERIALS AND/OR LABOR) FOR THE CONSTRUCTION OF IMPROVEMENTS KNOWN AS _____ (TITLE OF THE PROJECT OR BUILDING) WHICH IS LOCATED IN THE CITY OF _____, COUNTY OF _____, AND IS OWNED BY _____ (NAME OF OWNER) AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

(DESCRIBE THE PROPERTY UPON WHICH THE IMPROVEMENTS WERE MADE BY USING EITHER A METES AND BOUNDS DESCRIPTION, THE LAND LOT DISTRICT, BLOCK AND LOT NUMBER, OR STREET ADDRESS OF THE PROJECT.)

PURSUANT TO SECTION 85-7-419 THE UNDERSIGNED EXECUTED A LIEN WAIVER AND RELEASE WITH RESPECT TO THIS PROPERTY DATED _____, _____. THE AMOUNT SET FORTH IN THE WAIVER AND RELEASE (\$ _____) HAS NOT BEEN PAID, AND THE UNDERSIGNED HEREBY GIVES NOTICE OF THE NONPAYMENT.

THE ABOVE FACTS ARE SWORN TRUE AND CORRECT BY THE UNDERSIGNED.

SIGNATURE

BY: _____

(PRINT NAME)

ITS: _____

(PRINT TITLE)

SWORN TO AND SUBSCRIBED BEFORE ME, THIS THE _____ DAY OF _____, 20__.

NOTARY PUBLIC

WITHIN TWO (2) DAYS OF FILING THIS AFFIDAVIT OF NONPAYMENT, THE FILING PARTY SHALL SEND A COPY OF THE AFFIDAVIT BY REGISTERED OR CERTIFIED MAIL OR STATUTORY OVERNIGHT DELIVERY TO THE OWNER OF THE PROPERTY. WHENEVER THE OWNER OF THE PROPERTY IS AN ENTITY ON FILE WITH THE SECRETARY OF STATE'S OFFICE, SENDING A COPY OF THE AFFIDAVIT TO THE COMPANY'S ADDRESS OR THE REGISTERED AGENT'S ADDRESS ON FILE WITH THE SECRETARY OF STATE SHALL BE DEEMED SUFFICIENT.

(4) The following form is the Notice of Contest of Lien form referred to in Section 85-7-423:

NOTICE OF CONTEST OF LIEN

STATE OF MISSISSIPPI

COUNTY OF _____

TO: [NAME AND ADDRESS OF LIEN CLAIMANT]

YOU ARE NOTIFIED THAT THE UNDERSIGNED CONTESTS THE CLAIM OF LIEN FILED BY YOU ON _____ 20____, AND RECORDED IN _____ BOOK _____, PAGE _____ OF THE PUBLIC RECORDS OF _____ COUNTY, MISSISSIPPI, AGAINST PROPERTY OWNED BY _____, AND THAT THE TIME WITHIN WHICH YOU MAY COMMENCE A PAYMENT ACTION TO ENFORCE YOUR LIEN IS LIMITED TO * * * NINETY (90) DAYS FROM RECEIPT OF THIS NOTICE. THIS _____ DAY OF _____, 20____.

THIS ABOVE-REFERENCED LIEN WILL EXPIRE AND BE VOID IF YOU DO NOT: (1) COMMENCE A PAYMENT ACTION FOR RECOVERY OF THE AMOUNT OF THE LIEN CLAIM PURSUANT TO SECTION 85-7-405, MISSISSIPPI CODE OF 1972, WITHIN * * * NINETY (90) DAYS FROM RECEIPT OF THIS NOTICE; AND (2) FILE A LIS PENDENS NOTICE OF * * * THE PAYMENT ACTION * * * WITH THE CHANCERY CLERK UPON COMMENCEMENT OF THE PAYMENT ACTION WITH A COPY TO THE LIEN CLAIMANT, OWNER AND CONTRACTOR.

SIGNATURE

BY: _____

(PRINT NAME)

ITS: _____

(PRINT TITLE)

SWORN TO AND SUBSCRIBED BEFORE ME, THIS THE ____ DAY OF _____, 20__.

NOTARY PUBLIC

(5) The following form is the Pre-Lien Notice form referred to in Section 85-7-409(3):

PRE-LIEN NOTICE TO OWNER

TO: [NAME AND ADDRESS OF OWNER]

TAKE NOTICE THAT THE UNDERSIGNED IS A PERSON HAVING A RIGHT TO A LIEN PURSUANT TO SECTION 85-7-403, MISSISSIPPI CODE OF 1972, WHO DOES NOT HAVE A DIRECT CONTRACT WITH THE OWNER, HAS PROVIDED LABOR, SERVICES OR MATERIALS FOR THE IMPROVEMENT OF PROPERTY COMMONLY KNOWN AS _____

("THE PROPERTY"), FOR THE SUM OF \$ _____ FOR WHICH THE UNDERSIGNED HAS NOT BEEN PAID, AND INTENDS TO FILE A CLAIM OF SPECIAL LIEN ON THE SUBJECT PROPERTY IN TEN (10) OR MORE DAYS FROM THE DATE HEREOF.

SO NOTIFIED, THIS THE ____ DAY OF _____, 20__.

LIEN CLAIMANT: _____

(PRINT NAME)

BY: _____

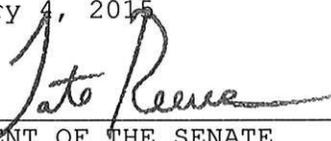
(SIGNATURE)

ITS: _____

(PRINT TITLE)

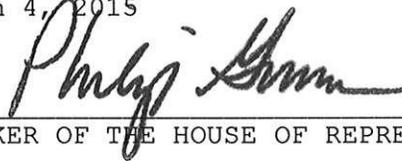
SECTION 2. This act shall take effect and be in force from and after July 1, 2015.

PASSED BY THE SENATE
February 4, 2015



PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES
March 4, 2015



SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR



GOVERNOR

3/17/15
9:48am