

38-22-105.5. Notice of lien law.

(1) Upon issuing a building permit for the improvement, restoration, remodeling, or repair of or the construction of improvements or additions to residential property, the agency or other authority issuing the permit shall send a written notice, as set forth in subsection (2) of this section, by first-class mail addressed to the property for which the permit was issued.

(2) The notice shall be in at least ten-point bold-faced type, if printed, or in capital letters, if typewritten, shall identify the contractor by name and address, and shall state substantially as follows:

"IMPORTANT NOTICE TO OWNERS: UNDER COLORADO LAW, SUPPLIERS, SUBCONTRACTORS, OR OTHER PERSONS FURNISHING LABORERS OR PROVIDING LABOR OR MATERIALS FOR WORK ON YOUR RESIDENTIAL PROPERTY MAY HAVE A RIGHT TO COLLECT THEIR MONEY FROM YOU BY FILING A LIEN AGAINST YOUR PROPERTY. A LIEN CAN BE FILED AGAINST YOUR RESIDENCE WHEN A SUPPLIER, SUBCONTRACTOR, OR OTHER PERSON IS NOT PAID BY YOUR CONTRACTOR FOR SUCH LABORERS, LABOR, OR MATERIALS. HOWEVER, IN ACCORDANCE WITH THE COLORADO GENERAL MECHANICS' LIEN LAW, SECTIONS 38-22-102 (3.5) AND 38-22-113

(4), COLORADO REVISED STATUTES, YOU HAVE AN AFFIRMATIVE DEFENSE IN ANY ACTION TO ENFORCE A LIEN IF YOU OR SOME PERSON ACTING ON YOUR BEHALF HAS PAID YOUR CONTRACTOR AND SATISFIED YOUR LEGAL OBLIGATIONS. YOU MAY ALSO WANT TO DISCUSS WITH YOUR CONTRACTOR, YOUR ATTORNEY, OR YOUR LENDER POSSIBLE PRECAUTIONS, INCLUDING THE USE OF LIEN WAIVERS OR REQUIRING THAT EVERY CHECK ISSUED BY YOU OR ON YOUR BEHALF IS MADE PAYABLE TO THE CONTRACTOR, THE SUBCONTRACTOR, AND THE SUPPLIER FOR AVOIDING DOUBLE PAYMENTS IF YOUR PROPERTY DOES NOT SATISFY THE REQUIREMENTS OF SECTIONS 38-22-102 (3.5) AND 38-22-113 (4), COLORADO REVISED STATUTES. YOU SHOULD TAKE WHATEVER STEPS NECESSARY TO PROTECT YOUR PROPERTY."

(3) The notice prescribed by this section shall not be required when a building permit is issued for new residential construction or for residential property containing more than four living units.

(4) As used in this section:

(a) "New residential construction" means the construction or addition of living units on real property that was previously unimproved or was used for nonresidential purposes.

(b) "Residential property" means any real property, including improvements, containing living units used for human habitation.

(5) To offset the cost of issuing the notice required by this section, the appropriate authority may raise the fee for a building permit by one dollar.

(6) The failure of the agency or other authority which issues building permits to provide the notice required by this section shall not be an affirmative defense to any lien claimed pursuant to the provisions of this article; nor shall the agency or any employee of the agency incur liability as a result of such failure.

(7) The agency or other authority which issues building permits may deliver the notice required by this section personally to the owner of the property, in lieu of mailing the notice as provided by subsection (1) of this section.

Source: L. 79: Entire section added, p. 1389, § 1, effective January 1, 1980. L. 81: Entire section R&RE, p. 1822, § 1, effective July 1. L. 88: (2) R&RE, p. 1253, § 1, effective April 14. L. 2000: (2) amended, p. 208, § 6, effective August 2.

38-22-109. Lien statement.

(1) Any person wishing to use the provisions of this article shall file for record, in the office of the county clerk and recorder of the county wherein the property, or the principal part thereof, to be affected by the lien is situated, a statement containing:

(a) The name of the owner or reputed owner of such property, or in case such name is not known to him, a statement to that effect;

(b) The name of the person claiming the lien, the name of the person who furnished the laborers or materials or performed the labor for which the lien is claimed, and the name of the contractor when the lien is claimed by a subcontractor or by the assignee of a subcontractor, or, in case the name of such contractor is not known to a lien claimant, a statement to that effect;

(c) A description of the property to be charged with the lien, sufficient to identify the same; and

(d) A statement of the amount due or owing such claimant.

(2) Such statement shall be signed and sworn to by the party, or by one of the parties, claiming such lien, or by some other person in his or their behalf, to the best knowledge, information, and belief of the affiant; and the signature of any such affiant to any such verification shall be a sufficient signing of the statement.

(3) In order to preserve any lien for work performed or laborers or materials furnished, there must be a notice of intent to file a lien statement served upon the owner or reputed owner of the property or the

owner's agent and the principal or prime contractor or his or her agent at least ten days before the time of filing the lien statement with the county clerk and recorder. Such notice of intent shall be served by personal service or by registered or certified mail, return receipt requested, addressed to the last known address of such persons, and an affidavit of such service or mailing at least ten days before filing of the lien statement with the county clerk and recorder shall be filed for record with said statement and shall constitute proof of such service.

(4) All such lien statements claimed for labor and work by the day or piece, but without furnishing laborers or materials therefore, must be filed for record after the last labor for which the lien claimed has been performed and at any time before the expiration of two months next after the completion of the building, structure, or other improvement.

(5) Except as provided in subsections (10) and (11) of this section, the lien statements of all other lien claimants must be filed for record at any time before the expiration of four months after the day on which the last labor is performed or the last laborers or materials are furnished by such lien claimant.

(6) New or amended statements may be filed within the periods provided in this section for the purpose of curing any mistake or for the purpose of more fully complying with the provisions of this article

(7) No trivial imperfection in or omission from the said work or in the construction of any building, improvement, or structure, or of the alteration, addition to, or repair thereof, shall be deemed a lack of completion, nor shall such imperfection or omission prevent the filing of any lien statement or filing of or giving notice, nor postpone the running of any time limit within which any lien statement shall be filed for record or served upon the owner or reputed owner of the property or such owner's agent and the principal or prime contractor or his or her agent, or within which any notice shall be given. For the purposes of this section, abandonment of all labor, work, services, and fu materials under any unfinished contract or upon any unfinished building, improvement, or structure, or the alteration, addition to, or repair thereof, shall be deemed equivalent to a completion thereof. For the purposes of this section, "abandonment" means discontinuance of all labor, work, services, and furnishing of laborers or materials for a three-month period.

(8) Subject to the prior termination of the lien under the provisions of section 38-22-110, no lien claimed by virtue of this article shall hold the property, or remain effective longer than one year from of such lien, unless within thirty days after each annual anniversary of the filing of said lien statement there is filed in the office of the county clerk and recorder of the county wherein the property is located an affidavit by the person or one of the persons claiming the lien, or by some person in his behalf, stating that the improvements on said property have not been completed.

(9) Upon the filing of the notice required and the commencement of an action, within the time and in the manner required by said section 38-22-110, no annual affidavit need be filed thereafter.

(10) Within the applicable time period provided in subsections (4) and (5) of this section and subject to

the provisions of section 38-22-125, any lien claimant granted a lien pursuant to section 38-22-101 may file with the county clerk and recorder of the county in which the real property is situated a notice stating the legal description or address or such other description as will identify the real property; the name of the person with whom he has contracted; and the claimant's name, address, and telephone number. One such notice may be filed upon more than one property, and, in the case of a subdivision, one notice may describe only the part thereof upon which the claimant has or will obtain a lien pursuant to section 38-22-101. The filing of said notice shall serve as notice that said person may thereafter file a lien statement and shall extend the time for filing of the mechanic's lien statement to four months after completion of the structure or other improvement or six months after the date of filing of said notice, whichever occurs first. Unless sooner terminated as provided in subsection (11) of this section, the notice provided for in this subsection (10) shall automatically terminate six months after the date said notice is filed. In the event that said structure or other improvements have not been completed prior to the termination of said notice, a claimant, prior to said termination date, may file a new or amended notice which shall remain effective for an additional period of six months after the date of filing or four months after the date of completion of said structure or other improvements, whichever occurs first.

(11) Upon termination of agreement to provide labor, laborers, or materials, the owner, or someone in such owner's behalf, may demand from the person filing said notice a termination of said notice, which termination shall identify the properties upon which labor has not been performed or to which laborers or materials have not been furnished and as to which said notice is terminated. Upon the filing of said termination in the office of the county clerk and recorder in the county wherein said property is situated, such notice no longer constitutes notice as provided in subsection (10) of this section as to the property described in said termination.

(12) The notices provided for in subsections (10) and (11) of this section shall be recorded in the office of the county clerk and recorder of the county wherein the real property is located.

Source: L. 1899: p. 269, § 9. R.S. 08: § 4033. C.L. 8 6450. CSA: C. 101, § 23. CRS 53: § 86-3-9. L. 55: p. 537, § 1. C.R.S. 1963: § 86-3-9. L. 65: pp. 851, 856, §§ 4, 6. L. 75: (3) R&RE and (4), (5), (7), 1423, §§ 1, 2, 3, effective October 1. L. 79: (8), (10), and (11) amended and (12) R&RE, pp. 1390, 1391, §§ 2, 3, effective January 1, 1980. L. 83: (10) amended, p. 1229, § 16, effective July 1. L. 2000: IP(1), (1)(b), (3) to (5), (7), and (11) amended, p. 209, § 8, effective August 2.

ANNOTATION

Analysis

I. General Consideration. II. Contents of Lien Statement.

A. In General. B. Name of Owner or Reputed Owner. C. Name of Claimant. D. Description of Property. E. Amount of Indebtedness. F. Verification. G. Service of Notice.

H. Time of Filing. III. Completion of Work or Contract.

A. In General. B. Abandonment of Work. C. Trivial Imperfections or omissions.

1. GENERAL CONSIDERATION.

Am. Jur.2d. See 53 Am. Jur.2d, Mechanics' Liens, SS 191-217.

C.J.S. See 56 C.J.S., Mechanics' Liens, SS 133-195.

Law reviews. For article, "Property Law", see 32 Dicta 420 (1955). For article, "Highlights of the 1955 Colorado Legislative Session -- Security Transactions", see 28 Rocky Mt. L. Rev. 76 (1955). For article, "Mechanic's Liens - - The 'Intent Provisions Explored", see 11 Colo. Law. 1492 (1982). For article, "Assemblage, Design and Construction for Real Estate Developments", see 11 Colo. Law. 2297 (1982). For article, "The Mechanics' Lien Trust Fund Statute -- Theft or Not Theft", see 16 Colo. Law. 1968 (1987).

Construction lenders not deprived of due process. This article does not deprive construction lenders of property without due process of law, even though lien statements are filed ex parte, without prior hearing, and contain conclusory allegations of entitlement to a lien, and the lien may be extended indefinitely by filing an affidavit stating that the improvement has not been completed. Bankers Trust Co. V. El Paso Pre-Cast Co., 192 Colo. 468, 560 P.2d 457 (1977).
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To require the full panoply of due process protections before filing a lien statement would impair the notice function of the lien statements. Bankers Trust Co. v. El Paso Pre-Cast Co., 192 Colo. 468, 560 P.2d 457 (1977).

Purpose of this section is to assure that the owner is given notice of liens filed by persons with whom he has not dealt directly. First Nat'l Bank v. Sam McClure & Son, 163 Colo. 473, 431 P.2d 460 (1967); Tighe v. Kenyon, 681 P.2d 547 (Colo. App. 1984).

Where the charges at issue are in the nature of taxes, the lien is already perfected. Pursuant to § 32-1-1001 (101), a district's fees constitute a perpetual lien on and against the property served; therefore, it was unnecessary for a special district to serve a notice of intent to file a lien statement because the district's lien was perpetual and perfected. Skyland Metro. Dist. v. Mtn. W. Enter., LLC, P.3d_(Colo. App. 2007).

Materialman furnishing materials directly to owner treated as principal contractor. A materialman furnishing materials directly to the owner is treated as a principal contractor under the mechanics' lien statutes. First Nati Bank v. Sam McClure & Son, 163 Colo. 473, 431 P. 2d 460 (1967).

Filing of lien notice in county where land located. The party who claims a lien shall file his

notice in every county wherein the land or property is located, on which the lien is claimed to cover. Arkansas River, Land,

Reservoir & Canal Co. v. Flinn, 3 Colo. App. 381, 33 P. 1006 (1893).

Claimant's status changes where contract not filed as required. Where the contract is not filed for record as required by this section, the lien claimant's status is changed with respect to the time for filing a lien, that is, it becomes a principal contractor and therefore by subsection (5) is given three (now four) months from the completion of the work within which to file the lien statement. W.B. Barr Lumber Co. v. Thompson, 131 Colo. 347, 281 P. 2d 1016 (1955).

Indebtedness must exist in favor of claimant. A prime requisite to the establishment of a valid lien is that an indebtedness exists in favor of the claimant for labor or materials. Sperry & Mock, Inc. v. Security Sav. & Loan Ass'n, 37 Colo. App. 357, 549 P.2d 412 (1976).

Assignment of lien claim. Medical Arts Bldg., Inc. v. Ervin, 127 Colo. 458, 257 P. 2d 969 (1953).

Applied in Rico Reduction & Mining Co. v. Musgrave, 14 Colo. 79, 23 P. 458 (1890); Branham v. Nye, 9 Colo. App. 19, 47 P. 402 (1896); Perkins v. Boyd, 16 Colo. App. 266, 65 P. 350 (1901); Sickman v. Wollett, 31 Colo. 58, 71 P. 1107 (1903); Tabor-Pierce Lumber Co. v. International Trust Co., 19 Colo. App. 108, 75 P. 150 (1903); Clark Howe. Co. v. Centennial Tunnel Mining Co., 22 Colo. App. 174, 123 P. 322 (1912); Curtis V. Nunns, 54 Colo. 554, 131 P. 403 (1913); Atkinson v. Colo. Title & Trust Co., 59 Colo. 528, 151 P. 457 (1915); Armour & Co. v. McPhee & McGinnity Co., 85 Colo. 262, 275 P.12 (1929); Chain O'Mines v. Lewison, 100 Colo. 186, 66 P.2d 802 (1937); Trustee Co. V. Bresnahan, 119 Colo. 311, 203 P.2d 499 (1949); Lierz v. Cook, 136 Colo. 221, 315 P.2d 535 (1957); Bulow v. Ward Terry & Co., 155 Colo. 560, 396 P. 2d 232 (1964); Am. Factors Assocs. V. Triangle Heating & Sheet Metal Co., 31 Colo. App. 240, 503 P.2d 163 (1972); Meurer, Serafini & Meurer, Inc. v. Skiland Corp., 38 Colo. App. 61, 551 P.2d 1089 (1976); Jordan v. Lone Pines, Ltd., 41 Colo. App. 152, 580 P.2d 1273 (1978); Amco Elec. Co. v. First Nat'l Bank, 42 Colo. App. 124, 596 P.2d 70 (1979).

II. CONTENTS OF LIEN STATEMENT.

A. In General.

Statement of completion time not required. The statement is not required to state the time of the completion of the work, and a recital of the time of such completion in the statement is not binding on the lienor; he may show by other evidence that the work was completed at a later date. Burleigh Bldg. Co. v. Merchant Brick & Bldg. Co., 13 Colo. App. 455, 59 P. 83 (1899).

Showing of dates material furnished permissible. Lienor may show when either the first or the last material was furnished. *Mouat Lumber & Inv. Co. V. Freeman*, 7 Colo. App. 152, 42 P. 1040 (1895).

Statement not avoided by misstatement of unrequired material. A statement which contains everything required will not be avoided because it contains a statement or a misstatement of something not required and not material. *Bitter v. Mouat Lumber & Inv. Co.*, 10 Colo. App. 307, 51 P. 519 (1897), *affd*, 27 Colo. 120, 59 P. 403 (1899).

A statement in part for articles not the subject of lien will not vitiate the claim if it was not wilfully false, and the court will permit the claimant by proof to make the necessary segregation, throw out the value of such articles, and declare a lien for the remainder. *Lowell Hdwe. Co. v. May*, 59 Colo. 475, 149 P. 831 (1915); *Barnes v. Colo. Springs & C.C.D. Ry.*, 42 Colo. 461, 94 P. 570 (1908).

Nondeceptive mistakes overlooked. Mistakes that do not tend to deceive parties interested may be overlooked. *Cannon v. Williams*, 14 Colo. 21, 23 P. 456 (1890); *Wigham Excavating v. Colo. Fed. S & L*, 796 P.2d 23 (Colo. App. 1990).

When an account embraced in a lien statement includes items which cannot be made the subject of the lien claimed, it will not defeat the right thereto for the value of those items which are properly chargeable as a lien. *Rice v. Rhone*, 49 Colo. 41, 111 P. 585 (1910).

The requirement of subsection (1)(a) that a subcontractor on filing a lien statement shall give the name of the contractor to whom material was sold or work performed is for the benefit of the owner, and where a party named in the statement as the contractor was in fact the agent of the owner of the property and purchased the material as such agent, the owner could not be misled. *Bitter v. Mouat Lumber & Inv. Co.*, 10 Colo. App. 307, 51 P. 519 (1897), *affd*, 27 Colo. 120, 59 P. 403 (1899).

Proof of identification not precluded by prior misidentification. That a claimant identified itself as a subcontractor in the lien statement does not preclude it from pleading and proving facts showing it to be a principal contractor. *First Nat'l Bank v. Sam McClure & Son*, 163 Colo. 473, 431 P.2d 460 (1967).

B. Name of Owner or Reputed Owner.

Failure to name the true owner does not void the lien statement. *Campbell v. Graham*, 144 Colo. 532, 357 P.2d 366, 94 A.L.R.2d 1165 (1960).

Lien statement is not void because it fails to name the actual owners of the property. *Mcintire & Quiros of Colo., Inc. v. Westinghouse Credit Corp.*, 40 Colo. App. 398, 576 P.2d 1026 (1978).

"Reputed owner" is defined as one who has to all appearances the title to, and possession of, the property. *Moore Elec. Co. v. Ambassador Bldr. Corp.*, 653 P.2d 90 (Colo. App. 1982).

"Reputed" construed. The word "reputed", referred to in subsection (1)(a), has a much weaker sense than its derivation would appear to warrant, importing merely a supposition or opinion derived or made up from outward appearances, and often unsupported by fact, and the term "reputed owner" is frequently employed in this sense. *Lowell Hdwe. Co. v. May*, 59 Colo. 475, 149 P. 831 (1915).

If name of owner is not known, it need not be given and an affidavit to that effect is sufficient, and where the name of the reputed owner is given, no such affidavit is required. *Lowell Hdwe. Co. v. May*, 59 Colo. 475, 149 P. 831 (1915).

It is sufficient to designate a particular person in the conjunctive as owner and reputed owner, or in the alternative as owner or reputed owner where a statement of the name of the owner or reputed owner is required. *Lowell Hdwe. Co. v. May*, 59 Colo. 475, 149 P. 831 (1915).

Owner at date lien filed deemed person charged. The owner at the date the lien is filed is the owner who is to be named as the person charged. *Rice v. Carmichael*, 4 Colo. App. 84, 34 P. 1010 (1893); *Sprague Inv. Co. v. Mouat Lumber & Inv. Co.*, 14 Colo. App. 107, 60 P. 179. (1899).

Lien claimant only chargeable **with knowledge of property ownership**. A lien claimant can only be charged with knowledge of the ownership of property as apparent upon the public records. *Bitter v. Mouat Lumber & Inv. Co.*, 10 Colo. App. 307, 51 P. 519 (1897), *affd*, 27 Colo. 120, 59 P. 403 (1899).

Statement incorrectly designating owner defective against subsequent lienors. Statement designating owner of an equitable title instead of the owner of the legal title is defective and invalid as against subsequent encumbrancers and lienors although good as against the equitable owner. *Sprague Inv. Co. v. Mouat Lumber & Inv. Co.*, 14 Colo. App. 107, 60 P. 179 (1899).

C. Name of Claimant.

Name of each person performing labor must be set out. There can be no substantial compliance with the requirements of subsection (1)(b) unless the name of each person who performed the labor which is the basis for a mechanic's lien appears on the lien statement. *Ridge Erection Co. v. Mountain States Tel. & Tel. Co.*, 37 Colo. App. 477, 549 P.2d 408 (1976).

It was not necessary for contractor to name in the statement of lien each subcontractor hired to perform the contract or to list the amounts owed to those subcontractors individually in order to fulfill the requirements of this section where the contractor dealt directly with the developer and thus was the "person" who furnished the labor. *FCC Constr., Inc. v. Casino Creek*

Holdings, 916 P.2d 1196 (Colo. App. 1996).

Where contracts were made with person who held an interest which was part of the "labor done" claimable under § 38-22-101(1), the person has standing to claim a lien under this section and the names of the persons who actually performed the labor were not required. Tighe v. Kenyon, 681 P.2d 547 (Colo. App. 1984).

A verification and second signature is only required when the notice of lien form is signed on behalf of the claimant by another, and is not required when the lien claimant personally signs the form. Sheldon v. Platte Valley Sav., 794 P.2d 1083 (Colo. App. 1990).

D. Description of Property.

Object of a description of the land is to give notice to creditors of, and purchasers from the owners of the property, hence, it is permissible in determining the sufficiency of a description, to consider the interest of the parties to the suit and the rights to be affected. Cary Howe. Co. v. McCarty, 10 Colo. App. 200, 50 P. 744 (1897).

Property must be mentioned in statement for lien to attach. No lien can attach to property other than that mentioned in the lien statement. First Nat'l Bank v. Sam McClure & Son, 163 Colo. 473, 431 P.2d 460 (1967).

Property descriptions in lien statements **are adequate** so long as they are "sufficient to identify" the property. McIntire & Quiros of Colo., Inc. v. Westinghouse Credit Corp., 40 Colo. App. 398, 576 P.2d 1026 (1978).

Sufficient identification is constituted by description which distinguishes the property sought to be charged from every other piece of property and a notice which gives the numbers of the lots, block, and addition, regardless of the fact that there is no mention of the city, county, or state in which the property is located. Sayre Newton Lumber Co. V. Park, 4 Colo. App. 482, 36 P. 445 (1894); Pacific Lumber Co. v. Watters, 74 Colo. 147, 219 P. 782 (1923).

Description enabling party familiar with locality to identify premises **sufficient**. If there is enough in the description to enable a party familiar with the locality to identify the premises intended to be described with reasonable certainty to the exclusion of others, it is sufficient. Cary Hdwe. Co. v. McCarty, 10 Colo. App. 200, 50 P. 744 (1897).

Description of property by metes and bounds sufficient. A legal description of property by metes and bounds in a lien statement serves the function of accurate identification of the property. McIntire & Quiros of Colo., Inc. V. Westinghouse Credit Corp., 40 Colo. App. 398, 576 P.2d 1026 (1978).

Effect of variance in description. A variance between the description set forth in the lien statement and the actual description is of no consequence where the street address was given. *Campbell v. Graham*, 144 Colo. 532, 357 P.2d 366, 94 A.L.R.2d 1165 (1960).

Courts reluctant to set aside claim for **looseness of description**. Courts are reluctant to set aside a claim of mechanic's lien for looseness of description, and it is not necessary that the description shall be either full or precise. *Cary Howe. Co. v. McCarty*, 10 Colo. App. 200, 50 P. 744 (1897).

Lien should not fail because claimant described too large a tract of land, if the land properly subject to the lien was embraced in the tract described, especially where it does not appear that any innocent party has been misled and prejudiced thereby. *Cary Hdwe. Co. v. McCarty*, 10 Colo. App. 200, 50 P. 744 (1897).

E. Amount of Indebtedness.

Purpose of subsection (1)(d) is to have the statement inform any interested party to the actual condition of the account and the amount for which a lien is claimed. *Harris v. Harris*, 9 Colo. App. 211, 47 P. 841 (1897).

Merely stating balance due is not substantial compliance with this section. *Cannon v. Williams*, 14 Colo. 21, 23 P. 456 (1890).

Discrepancy by mistake in claim would not affect standing lien. In the enforcement of a mechanics' lien a small discrepancy between the statement in the lien claim and the evidence as to the amount due, which was purely the result of mistake and did not mislead or injure anyone, would not affect the standing of the lien. *Chicago Lumber Co. v. Newcomb*, 19 Colo. App. 265, 74 P. 786 (1903).

Contents of lien statement including numerous claims, A lien statement which includes a number of assigned claims should set forth each separate indebtedness with credits thereon, but an omission to mention credits is equivalent to a statement that the claim is not entitled to one, and it need not show credit for amounts paid after assignment except as against the gross amount claimed. *Small v. Foley*, 8 Colo. App. 435, 47 P. 64 (1896).

A lien statement filed by one who is claiming as the assignee of numerous claims must show the balance due with respect to each separate claim; a lien statement which merely states the aggregate amount of indebtedness is defective and insufficient. *Ridge Erection Co. v. Mountain States Tel. & Tel. Co.*, 37 Colo. App. 477, 549 P.2d 408 CI. (1976).

Statement of claims which fails to show balance is defective. A statement filed by one claiming

to be the assignee of numerous demands which sets forth the aggregate amount of indebtedness, but does not show the balance due with respect to each separate claim, was held defective and insufficient. *Hanna v. Colo. Sav. Bank*, 3 Colo. App. 28, 31 P. 1020 (1892).
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A lien statement filed by assignees which contained only the aggregate amount claimed as due and owing to the assignees was inadequate and ineffectual to assert a lien. *Ridge Erection Co. V. Mountain States Tel. & Tel. Co.*, 37 Colo. App. 477, 549 P.2d 408 (1976).

F. Verification.

Filing of an unverified statement is void and of no effect. *Rice v. Carmichael*, 4 Colo. App. 84, 34 P. 1010 (1893).

Absence of statement in verification deemed not fatal. The fact that in a verification there is no statement that the affidavit was made in behalf of the claimant is not fatal to its validity. *Consumers' Lumber & Inv. Co. V. Hayutin*, 75 Colo. 483, 226 P. 860 (1924).

Verification held in substantial compliance with subsection (2). The verification of a claimant to his lien statement that "he has read the same and is familiar with the contents thereof, and that the same is true, as he verily believes, and that the amount therein stated as due is due", and one to the effect that the statement "is true and that the amount of indebtedness therein stated as due is due and unpaid", are in substantial compliance with the requirement of subsection (2). *Gutshall v. Kornaley*, 38 Colo. 195, 88 P. 158 (1906).

G. Service of Notice.

Statutory notice required to perfect valid lien. The 1975 amendment to subsection (3) demonstrates a clear legislative intent to require statutory notice in order to perfect a valid lien. *Daniel V. M.J. Dev., Inc.*, 43 Colo. App. 92, 603 P.2d 947 (1979); *Moore Elec. Co. v. Ambassador Bidr. Corp.*, 653 P.2d 90 (Colo. App. 1982).

Service of notice under this section is effected when the notice is delivered in person or, in the alternative, when notice is properly addressed, registered, and mailed. No requirement exists that a mailed notice must be received in order to be effective. *6S Corp. v. Martinez*, 831 P. 2d 509 (Colo. App. 1992).

Service of notice essential for jurisdiction. The service of the statutory notice is essential to give the court jurisdiction to charge the property. *Sayre-Newton Lumber Co. v. Park*, 4 Colo. App. 482, 36 P. 445 (1894).

Party improving leased premises not required to make service. Party improving leased premises

for the tenant was not a subcontractor, and was not required to serve a copy of the statement. Fisher v. McPhee & McGinnity Co., 24 Colo. App. 420, 135 P. 132 (1913).

Averment of service and filing in complaint with **separate causes of actions unnecessary**. Where several causes of action are declared upon in one complaint in favor of one and the same plaintiff, whether the liens are possessed by him as assignee, or in his own right, and where, after the assignment, he has served the written notice and filed the statement required by this section, and whether he has included therein all of said claims owned by him, and for which he has brought suit, it is not necessary to aver in each separate cause of action arising out of said liens that he served the written notice and filed the statement; but it is sufficient if, either at the beginning or the end of the complaint relating to said causes of action, there is a general statement or averment of the service of the notice and filing of the statement. Rialto Mining & Milling Co. v. Lowell, 23 Colo. 253, 47 P. 263 (1896).

Notice served upon purchaser deemed notice to vendor. Under a contract of sale of real estate that requires the purchaser to make certain improvements, the purchaser is the agent of the vendor for the purpose of making the improvements, so that a notice of an intention to file a mechanic's lien for labor and materials furnished in making the improvements, served upon the purchaser, was notice to the vendor. Colo. Iron Works v. Taylor, 12 Colo. App. 451, 55 P. 942 (1899), appeal dismissed, 27 Colo. 310, 61 P. 233 (1900).

Service of corporation upon cashier and bookkeeper held sufficient. The defendant being a foreign corporation, service of the statement of the lien required by this section upon its cashier and bookkeeper, at the factory in the town where the building was erected, was held sufficient. Great W. Sugar Co. v. Gilcrest Lumber Co., 25 Colo. App. 24, 136 P. 562 (1913).

Service upon agent's owner sufficient. Service upon the agent of the owner of the premises in charge of the erection of the building held sufficient. Curtis v. McCarthy, 53 Colo. 284, 125 P. 109 (1912).

Service upon clerk of superintendent of company insufficient. Service upon a clerk of the superintendent of the defendant company, the owner, was not such service as this section prescribes. Union Pac. Ry. v. Davidson, 21 Colo. 93, 39 P. 1095 (1895).

Lien claimant has burden of proving his right to lien under this section and this burden includes the requirement of giving statutory notice. Daniel v. M.J. Dev., Inc., 43 Colo. App. 92, 603 P.2d 947 (1979).

Defense of lack of notice. The owners' failure to raise in their pleadings the defense of lack of notice is not material, and they need not establish prejudice resulting from a lack of notice. Daniel v. M.J. Dev., Inc., 43 Colo.

App. 92, 603 P.2d 947 (1979).

Failure to record an affidavit of service of notice of intent upon the principal contractor invalidates the lien. *Everitt Lumber Co. v. Prudential Ins. Co. of Am.*, 660 P.2d 925 (Colo. App. 1983).

H. Time of Filing.

Claimants not required to wait for property's completion. This section does not require that the lien claimants wait until the property is completed, because that time might never arrive. *State Bank v. Plummer*, 54 Colo. 144, 129 P. 819 (1912).

Lien filed from time changes in work completed. Where after a building is turned over to the owner by the contractor it is insisted by the owner that certain parts of the work are not according to contract and changes are made to make the work comply with the contract, the changes are a part of the construction and the time within which a mechanic's lien must be filed would date from the time the changes were completed. *Stidger v. McPhee*, 15 Colo. App. 252, 62 P. 332 (1900).

Unnecessary addition to smelter does not extend filing period. The addition to a smelter, after it is put in operation, of conveniences which are not a necessary part of the plant, and without which it can be operated, e.g., trackage facilities for handling ore, buckets and screw conveyors, or a refinery, does not extend the period within which the lien statement must be filed. *Mine & Smelter Supply Co. v. Kuenzel Process Smelter Co.*, 56 Colo. 326, 138 P. 31 (1914).

It is **necessary that reasonable** filing of lien statements be shown and, unless the evidence shows that the liens were filed within the time required, they are too late. *John F. Rice Lumber Co. v. Chipeta Mining, Milling & Smelting Co.*, 77 Colo. 133, 234 P. 1066 (1925).

Plaintiff must **prove statement** filed within **statutory period**. The burden is on the plaintiff to prove that he filed his lien statement within the prescribed statutory period. *Stiger v. McPhee*, 15 Colo. App. 252, 62 P. 332 (1900); *Foley v. Coon*, 41 Colo. 432, 93 P. 13 (1907); *First Nat'l Bank v. Sam McClure & Son*, 163 Colo. 473, 431 P.2d 460 (1967).

"Blanket lien" subject to filing within time limits. *Hill Development Corp. v. Cordova*, 714 P.2d 927 (Colo. App. 1986).

Time for filing **statements commences upon laborers' completion of work**. As to laborers working directly for the owner of the property, time for filing lien statements does not commence to run until the completion of the work on which they are engaged. *Tiger Placers Co. v. Fisher*, 98 Colo. 221, 54 P.2d 891 (1936).

Principal contractor has four months to file lien statement. One who furnishes materials to the owner is a principal contractor, and has three (now four) months after completion of the building within which to file his lien statement. *Park Lane Properties v. Fisher*, 89 Colo. 591, 5 P.2d 577 (1931); *Mortgage Brokerage Co. V. Barr Lumber Co.*, 91 Colo. 445, 16 P.2d 32 (1932).

Where the contract to furnish material for the construction of a house is between the lien claimant and the owner, the claimant is, in virtue of section 38-22-108(1)(b), a principal contractor and has three (now four) months after the completion of the building in which to file his lien statement. *Platte Valley Lumber Co. v. Courtright*, 70 Colo. 57, 197 P. 235 (1921).

A mechanics' lien secures in rem recovery against property, and generally, a party claiming for labor and materials must perfect its lien by filing within four months "after the day on which the last labor was performed or the last material furnished by such lien claimant". *Richter Plumbing and Heating v. Rademacher*, 729 P.2d 1009 (Colo. App. 1986).

Subcontractor deemed principal contractor for filing time of statement. A subcontractor under a building contract which is not filed for record, is a principal contractor with respect to the time for filing a lien statement. *Western Elaterite Roofing Co. v. Fisher*, 85 Colo. 5, 273 P. 19 (1928).

Prematurely filed claim. Since there would be no debt until the materials had been furnished or labor performed, the fact that the materials were later furnished and labor was later performed would not validate a lien claim that had been prematurely filed when no debt existed. *Sperry & Mock, Inc. v. Security Sav. & Loan Ass'n*, 37 Colo. App. 357, 549 P.2d 412 (1976).

Liens held partially valid. Although mechanics' lien claims for the entire cost of a job were filed more than three months after some of the work had been performed, where there was a time lag of over three months during which plaintiff furnished neither material nor labor and plaintiff subsequently furnished labor and material, the statutorily designated period had not commenced at the time of the filing of the lien claim statements, and the liens were valid and enforceable to the extent of the value of the material furnished and labor performed prior to the filing thereof. *Sperry & Mock, Inc. v. Security Sav. & Loan Ass'n*, 37 Colo. App. 357, 549 P.2d 412 (1976).

It is the date of mailing of the notice, not of its receipt, which establishes the commencement of the 10-day waiting period under subsection (3) before the lien statement itself may be recorded. *Weyerhaeuser Co. v. Colo. Quality Research, Inc.*, 778 P.2d 290 (Colo. App. 1989).

Notice of intent and related affidavit of service must be served upon the owner not less than ten days before the lien statement is filed with the county clerk and recorder, but a copy of the lien may be served on the owner at the same time as the notice of intent without affecting the perfection of the lien. *Manguso v. Am. Sav. and Loan Ass'n*, 782 P.2d 866 (Colo. App. 1989); *United Floor Co. v. Eigel*, 807 P.2d 1209 (Colo. App. 1990).

A mechanics' lien **statement with accompanying affidavit of service is perfected** if it has actually been filed not less than 10 days following proper service of notice of intent to file that lien statement. *United Floor Co. v. Eigel*, 807 P.2d 1209 (Colo. App. 1990).

III. COMPLETION OF WORK OR CONTRACT.

A. In General.

"Completion" construed. In the absence of any statutory qualifications or definition of the term "completion", it should be construed to mean actual completion, dating from the time when the last work was done. *Lichty v. Houston Lumber Co.*, 39 Colo. 53, 88 P. 846 (1907).

Work completed when essential parts of job completed. Where in a mechanic's lien case involving repairs to a roof, labor of laying the roofing material was completed May 6, but mopping of the seams, which was an essential part of the work, was not done until July 5, following, it was held, under the attending circumstances, that for the purposes of a mechanic's lien, the work was completed on the latter date. *Western Elaterite Roofing Co. v. Fisher*, 85 Colo. 5, 273 P. 19 (1928).

B. Abandonment of Work.

Section creates a conclusive presumption of completion on proof of 30 days (now 90 days) cessation (now abandonment) from labor. *First Nat'l Bank v. Sam McClure & Son*, 163 Colo. 473, 431 P. 2d 460 (1967).

Labor performed in furtherance of completion not abandonment from labor. Whenever any labor, whatever its character, is performed on a building (or improvement) in furtherance of its completion, there is no cessation (now abandonment) from labor. *First Nat'l Bank v. Sam McClure & Son*, 163 Colo. 473, 431 P. 2d 460 (1967).

Affirmative showing of no abandonment not required. Cases do not require an affirmative showing on the part of the lien claimant that there was no cessation (now abandonment) from labor of 30 days (now 90 days) or more. *First Nat'l Bank v. Sam McClure & Son*, 163 Colo. 473, 431 P.2d 460 (1967).

Abandonment provisions in subsection (7) are applicable in situations where: (1) Work is abandoned pursuant to an unfinished contract for work on a building, improvement, or structure; or (2) the entire project is abandoned and the building, improvement, or structure goes unfinished. Abandonment occurs at the end of the three-month period, not at the beginning. *Merrick & Co. v. Estate of Verzuh*, 987 P.2d 950 (Colo. App. 1999).

Burden is upon owner to take advantage of statutory presumption. If the owner wishes to take advantage of this statutory presumption in order to be relieved of liability, the burden is upon

him to come forward with sufficient evidence to justify raising the presumption. *First Nat'l Bank v. Sam McClure & Son*, 163 Colo. 473, 431 P. 2d 460 (1967).

Trial court determines abandonment of work. In an action to foreclose a mechanic's lien, whether or not certain work was done during a period when it was alleged there was a cessation (now abandonment) of work for 30 days (now 90 days), is a question to be determined by the trial court. *Farmers' Life Ins. Co. v. Connor*, 82 Colo. 81, 257 P. 260 (1927).

Engineering services contract constituted work on a building or improvement and, consequently, subsection (7) would extend the filing period if the engineering firm had abandoned work on the project before its completion. Because the trial court found a genuine issue of material fact as to whether the firm had abandoned its contract before completion, summary judgment should not have been entered. *Merrick & Co. v. Estate of Verzuh*, 987 P.2d 950 (Colo. App. 1999).

C. Trivial Imperfections or omissions.

Subsection (7) applies to all lien claimants. *Kehn v. Spring Creek Village I*, 38 Colo. App. 550, 563 P. 2d 969 (1977).

Subsection (7) applies when project completed. It only comes into play when a project is deemed completed. *Kehn v. Spring Creek Village I*, 38 Colo. App. 550, 563 P.2d 969 (1977).

Extension of filing time by trivial alterations prohibited. It is not competent for mechanics by trivial work and trivial alterations to extend the time within which the lien may be filed. *Burleigh Bldg. Co. v. Merchant Brick & Bldg. Co.*, 13 Colo. App. 455, 59 P. 83 (1899).

Alien claimant may not extend the filing period by doing work related to a trivial imperfection in or omission from work or construction performed on a project deemed completed. *Richter Plumbing and Heating V. Rademacher*, 729 P.2d 1009 (Colo. 1986).

However, all repairs and shakedown work following the construction of a house need not precede completion. *Richter Plumbing and Heating v. Rademacher*, 729 P.2d 1009 (Colo. 1986).

Determination of completion date is within the province of the trier of fact and will not be overturned on appeal where the evidence supports its finding. *Richter Plumbing and Heating v. Rademacher*, 729 P.2d 1009 (Colo. 1986).

All repairs need not precede completion. All repairs and "fixing of bugs" following the construction of a house need not precede "completion". *Kaibab Lumber Co. v. Osburne*, 171 Colo. 49, 464 P.2d 294 (1970).

Incomplete mantel and fireplace not trivial imperfection. The lack of completion of a mantel and

fireplace is not a trivial imperfection or omission from the work. *Lichty v. Houston Lumber Co.*, 39 Colo.53, 88 P. 846 (1907).

Insignificant plumber's labor months after completion of plumbing trivial, Labor performed by a plumber, of the value of \$6.75, months after he had practically completed the plumbing in a building, is "trivial" under this subsection (7). *Boise-Payette Lumber Co. v. Longwedel*, 88 Colo. 233, 295 P. 791 (1930).

Where the contract was not completed and the architect was performing tasks at the request of the owner pursuant to a contract which had not been terminated, the concept of "triviality" of the work has no applicability.

38-22-118. Satisfaction of lien - failure to release.

The claimant of any such lien, the statement of which has been filed, on the payment of the amount thereof, together with the costs of filing and recording such lien, and the acknowledgment of satisfaction, and accrued costs of suit in case a suit has been brought thereon, at the request of any person interested in the property charged therewith, shall enter or cause to be entered an acknowledgment of satisfaction of the same of record, and if he neglects or refuses to do so within ten days after the written request of any person so interested, he shall forfeit and pay to such person the sum of ten dollars per day for every day of such neglect or refusal, to be recovered in the same manner as other debts. A valid tender of payment, refused by any such claimant, shall be equivalent to a payment for the purpose of this section. Any such statement may be satisfied of record in the same manner as mortgages.

Source: L. 1899: p. 275, § 18. R.S. 08: § 4042. C.L. § 6459. CSA: C. 101, § 32. CRS 53: § 86-3-18. C.R.S. 1963: § 86-3-18.

ANNOTATION

Am. Jur.2d. See 53 Am. Jur.2d, Mechanics' Liens, 9315.

C.J.S. See 56 C.J.S., Mechanics' Liens, § 270.

Law reviews, For article, "Discharge of Security Transactions", see 26 Rocky Mt. L. Rev. 115 (1954).