

LIENS

CHAPTER 293

SENATE BILL NO. 2250

(Senators Holmberg, Triplett)

AN ACT to create and enact a new section to chapter 35-27 of the North Dakota Century Code, relating to attorney's fees under construction liens; to amend and reenact sections 28-01-17, 28-05-09, 35-15-06, 35-21-01, 35-27-02, 35-27-04, 35-27-13, 35-27-14, 35-27-16, 35-27-18, 35-27-22, 35-27-24, 35-27-25, and 47-18-04 of the North Dakota Century Code, relating to mechanic's and construction liens; and to repeal sections 35-27-05, 35-27-11, 35-27-12, and 35-27-26 of the North Dakota Century Code, relating to outdated mechanic's lien provisions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 28-01-17 of the North Dakota Century Code is amended and reenacted as follows:

28-01-17. Actions having three-year limitations - Exceptions. The following actions must be commenced within three years after the claim for relief has accrued:

1. An action against a sheriff or coroner upon a liability incurred by the doing of an act in the sheriff's or coroner's official capacity and by virtue of that office, or by the omission of an official duty, including the nonpayment of money collected upon an execution. However, this subsection does not apply to an action for an escape.
2. An action upon a statute for a penalty or forfeiture, if the action is given to the party aggrieved, or to such party and the state, unless the statute imposing it prescribes a different limitation.
3. An action for the foreclosure of a ~~mechanic's~~ construction lien.

SECTION 2. AMENDMENT. Section 28-05-09 of the North Dakota Century Code is amended and reenacted as follows:

28-05-09. When lis pendens not required. ~~No~~ A notice of the pendency of an action in a district court is not required if the action is for the foreclosure of a mortgage or for the enforcement of a ~~mechanic's~~ construction lien or miner's lien.

SECTION 3. AMENDMENT. Section 35-15-06 of the North Dakota Century Code is amended and reenacted as follows:

35-15-06. Foreclosure - When lienholders joined in action. Any person holding a miner's lien may foreclose the same in the same manner as a ~~mechanic's~~ construction lien may be foreclosed. In an action for the foreclosure of such lien, ~~all persons each person~~ claiming ~~liens~~ a lien upon the property charged must be made

parties a party to the action, and the rights of all parties must be determined by the court and such order made in regard thereto as shall preserve and protect the rights of all parties.

SECTION 4. AMENDMENT. Section 35-21-01 of the North Dakota Century Code is amended and reenacted as follows:

35-21-01. Release of lien by undertaking authorized. When any ~~mechanic's construction~~ lien, garage storage lien, repairman's lien, agricultural processor's lien, agricultural supplier's lien, unpaid earned insurance premium lien, or miner's lien is filed against the property of a resident of this state, the property affected may be released by an undertaking in the manner provided in this chapter.

SECTION 5. AMENDMENT. Section 35-27-02 of the North Dakota Century Code is amended and reenacted as follows:

35-27-02. Persons entitled to ~~mechanic's construction~~ lien - Notice. Any person ~~who that~~ improves real estate ~~by the contribution of labor, skill, or materials,~~ whether under contract with the owner of such real estate or under contract with any agent, trustee, contractor, or subcontractor of the owner, has a lien upon the improvement and upon the land on which ~~it the improvement~~ is situated or to which ~~it the improvement~~ may be removed for the price or value of such contribution. Provided, however, that the amount of the lien is only for the difference between the price paid by the owner or agent and the price or value of the contribution. If the owner or agent has paid the full price or value of the contribution, no lien is allowed. Provided further that if the owner or an agent of the owner has received a waiver of lien signed by the person ~~who that~~ improves the real estate ~~by the contribution of labor, skill, or materials,~~ no a lien is not allowed.

Any person ~~who that~~ extends credit or makes a contract with any agent, trustee, contractor, or subcontractor of the owner for the improvement of real estate, ~~shall,~~ upon demand, ~~have has~~ the right to request and secure evidence of the legal description of the real estate upon which the improvement is located, including the name of the title owner of the real estate. Written notice that a lien will be claimed must be given to the owner of the real estate by certified mail at least ten days before the recording of the construction lien.

SECTION 6. AMENDMENT. Section 35-27-04 of the North Dakota Century Code is amended and reenacted as follows:

35-27-04. When lien attaches - Exception - Notice - Filing. As against a mortgage given in good faith for the purpose of providing funds for the payment of materials or labor for the improvement, ~~no such a~~ lien may ~~not~~ be preferred ~~to such mortgage~~ even though such mortgage is recorded ~~subsequent to after~~ the time the first item of material or labor is furnished upon the premises, or ~~subsequent to after~~ the actual visible beginning of the improvement unless the person furnishing such labor, skill, or material for such improvement ~~shall, prior to before~~ the recording of such mortgage, file files for record a notice of the person's intention to claim a mechanic's construction lien pursuant to the provisions of section 35-27-05.

SECTION 7. AMENDMENT. Section 35-27-13 of the North Dakota Century Code is amended and reenacted as follows:

35-27-13. How lien perfected - ~~Mechanic's Construction~~ lien recorded. Every person desiring to perfect the person's lien shall record with the recorder of the county in which the property to be charged with the lien is situated, within ninety days

after all the person's contribution is done, and having complied with the provisions of this chapter, a mechanic's lien describing the property and stating the amount due, the dates of the first and last contribution, and the person with which the claimant contracted.

SECTION 8. AMENDMENT. Section 35-27-14 of the North Dakota Century Code is amended and reenacted as follows:

35-27-14. Lien not lost for failure to file within time - Exception. A failure to file the lien account within ninety days does not defeat the lien except as against purchasers or encumbrancers in good faith and for value whose rights accrue after the ninety days and before any claim for the lien is filed, and as against the owner to the extent of the amount paid to a contractor after the expiration of the ninety days and before the filing recording of the account lien. A lien may not be filed more than three years after the date of the first item of material is furnished.

SECTION 9. AMENDMENT. Section 35-27-16 of the North Dakota Century Code is amended and reenacted as follows:

35-27-16. Inaccuracies in lien statement. In no case may the liens A lien given by this chapter be is not affected by any inaccuracy in the particulars of the lien account, but, as against all persons except the owner of the property, the lien claimant must be concluded by the dates therein given, showing the first and last items of the claimant's account. In no case may a A lien may not exist for a greater amount than the sum claimed in the lien account, nor for any amount, if it be made to appear that the claimant has knowingly demanded in the statement more than is justly due.

SECTION 10. AMENDMENT. Section 35-27-18 of the North Dakota Century Code is amended and reenacted as follows:

35-27-18. Mechanic's Construction lien on railway contracts obtainable. Every person who that furnishes any labor, skill, or material for constructing, altering, or repairing any line of railway, or any improvement or structure appertaining to any line of railway by virtue of any contract with the owner, or the owner's agent, contractor, or subcontractor authorized in writing to contract for the owner, has a lien upon such line of railway and the right of way thereof of such railway, and upon all bridges, depots, offices, and other structures appertaining to the line of railway, and all franchises, privileges, and immunities granted to the owner of the line of railway for the construction and operation thereof, to secure the payment for the labor, skill, and materials, upon filing recording a statement of the person's demand therefor in accordance with the provisions of section 35-27-13 lien, within ninety days from the last day of the month in which the labor or material was furnished, but a failure to file the same record within the time aforesaid ninety days does not defeat the lien except to the extent specified in section 35-27-14.

SECTION 11. AMENDMENT. Section 35-27-22 of the North Dakota Century Code is amended and reenacted as follows:

35-27-22. Order of priority of classes of mechanics' construction liens.

1. Liens perfected under the provisions of this chapter have priority in the following order:
4. a. For manual labor.

2. b. For materials.
 3. c. Subcontractors other than manual laborers.
 4. d. Original contractors.
2. Liens for manual labor filed within the ninety-day period must share ratably in the security. Liens for manual labor filed ~~thereafter~~ after the ninety-day period have priority in the order of the filing of such liens. Liens for materials filed within the ninety-day period must share ratably in the security and ~~such~~ liens filed ~~thereafter~~ after the ninety-day period have priority in the order of the filing of such liens.

SECTION 12. AMENDMENT. Section 35-27-24 of the North Dakota Century Code is amended and reenacted as follows:

35-27-24. Action to enforce mechanic's construction lien - Notice of - Deficiency judgment. Any person having a lien by virtue of this chapter may bring an action to enforce the lien in the district court of the county in which the property is situated. Any number of persons claiming liens against the same property may join in the action and when separate actions are commenced the court may consolidate ~~them~~ the actions. Before a lienholder may enforce a lien, the lienholder shall give written notice of the lienholder's intention so to do, which notice must be given by personal service upon the record owner of the property affected at least ten days before an action to enforce the lien is commenced, or by registered mail directed to the owner's last-known address at least twenty days before the action is commenced. The judgment may direct that in the event that a deficiency remains after the sale of the real ~~or personal~~ property subject to the lien an execution may issue for such deficiency.

SECTION 13. A new section to chapter 35-27 of the North Dakota Century Code is created and enacted as follows:

Costs and attorney's fees. Any owner that successfully contests the validity or accuracy of a construction lien by any action in district court must be awarded the full amount of all costs and reasonable attorney's fees incurred by the owner.

SECTION 14. AMENDMENT. Section 35-27-25 of the North Dakota Century Code is amended and reenacted as follows:

35-27-25. Requiring suit to be commenced - Demand - Limitations of action. Upon written demand of the owner, that person's agent, or contractor, served on the person holding the lien, suit must be commenced and filed with the clerk of court within thirty days thereafter or the lien is forfeited. The demand must contain a provision informing the person holding the lien that if suit is not commenced within thirty days, the person holding the lien forfeits the lien. ~~No~~ A lien is not valid or effective as such, nor may be enforced in any case, unless the holder ~~thereof~~ of the lien asserts the same by complaint filed with the clerk of court within three years after the date of recording of the ~~verified notice of intention to claim a mechanic's~~ verified notice of intention to claim a lien. If a summons and complaint asserting the validity of the lien is not filed in the office of the clerk of court of the county in which the lien is recorded within the limitations provided by this section, the lien is deemed satisfied and the clerk of court ~~shall~~, upon request of any interested person, shall certify to the recorder that no summons and complaint has been filed and the lien is deemed satisfied under this section, who then shall record the verified certificate.

¹²⁵ **SECTION 15. AMENDMENT.** Section 47-18-04 of the North Dakota Century Code is amended and reenacted as follows:

47-18-04. When homestead subject to execution. A homestead is subject to execution or forced sale in satisfaction of judgments obtained in the following cases:

1. On debts secured by mechanics', construction, or laborers' liens for work or labor done or performed or material furnished exclusively for the improvement of the same.
2. On debts secured by mortgage on the premises executed and acknowledged by both husband and wife, or an unmarried claimant.
3. On debts created for the purchase thereof and for all taxes accruing and levied thereon.
4. On all other debts when, upon an appraisal as provided by section 47-18-06, it appears that the value of said homestead is more than eighty thousand dollars over and above liens or encumbrances ~~thereon~~ on the homestead, and then only to the extent of any value in excess of the sum total of such liens and encumbrances plus said eighty thousand dollars.

SECTION 16. REPEAL. Sections 35-27-05, 35-27-11, 35-27-12, and 35-27-26 of the North Dakota Century Code are repealed.

Approved April 28, 2009
Filed May 1, 2009

¹²⁵ Section 47-18-04 was also amended by section 9 of House Bill No. 1039, chapter 276.

CHAPTER 294

HOUSE BILL NO. 1229

(Representatives Martinson, Karls, Keiser, Weiler)

AN ACT to create and enact a new chapter to title 35 of the North Dakota Century Code, relating to a lien on property stored in a portable storage unit.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 35 of the North Dakota Century Code is created and enacted as follows:

Definitions. As used in this chapter, unless the context otherwise requires:

1. "Default" means failure of the lessee to pay the rent and other charges at the time and in the manner set forth in the rental agreement.
2. "Last-known address" means the address provided by the lessee in the latest rental agreement or the address provided by the lessee in a subsequent written change of address notice.
3. "Lessee" means a person who leases a portable storage unit, regardless of the unit's location, under a rental agreement. The term includes a sublessee, successor, and assignee.
4. "Owner" means a person who owns, leases, subleases, manages, or operates a portable storage unit and receives rent from a lessee under a rental agreement.
5. "Personal property" means movable property not affixed to land, including merchandise and household goods.
6. "Portable storage unit" includes a portable container, overseas shipping container, or semitrailer which may be moved by the owner to a location designated by the lessee or moved by the lessee to one of several locations, in accordance with the rental agreement, and in which the lessee customarily stores and removes personal property.
7. "Rental agreement" means a written agreement between the owner and the lessee which establishes or modifies the terms and conditions of the lessee's use of the portable storage unit.

Lien against property. The owner of a portable storage unit has a lien on all personal property stored under a rental agreement in a portable storage unit for rent, labor, and other charges, and for expenses reasonably incurred in the sale or other disposition of the property under law. This lien is superior to other security interests except those perfected before the date the lien attaches. The lien attaches upon default by the occupant as stated in the notice of default served on the occupant as provided in this chapter.

Custody and control of property. Unless the rental agreement provides otherwise, until a sale under this chapter, the lessee is responsible for the care,

custody, and control of all property stored in the portable storage unit unless the owner secures the property elsewhere during the sale proceedings.

Notice of proceedings.

1. Before conducting a sale, the owner shall deliver in person or send by certified mail a notice of default to prior lienholders and to the lessee at the lessee's last-known address. A notice under this section is presumed delivered if the notice is deposited with the United States postal service and properly addressed with postage prepaid. The notice must include:
 - a. A statement that the contents of the portable storage unit are subject to the owner's lien and that the lessee is denied access to the portable storage unit until the owner's claim is satisfied;
 - b. The name of the lessee and the address at which the portable storage unit is located;
 - c. A statement of the charges due, the date of default, and a demand for payment of the charges due within a specified time, which may not be fewer than ten days after the date of the notice;
 - d. A statement in bold type providing that, unless the claim is paid within the time stated, the contents of the portable storage unit will be sold; and
 - e. The name, address, and telephone number of the owner or other person that the lessee may contact in response to the notice.
2. In addition to the requirements of subsection 1, an owner shall also publish, once a week for two consecutive weeks, with the first publication not more than thirty days before the sale and the last publication at least seven days before the sale, the time, place, and terms of the sale in a newspaper of general circulation in the county where the portable storage unit is located.

Sale of property - Application of proceeds. At any time before the sale, the lessee may pay the amount necessary to satisfy the lien and redeem the lessee's property. If a sale is held, the owner shall satisfy the lien from the proceeds of the sale and hold the balance, if any, for delivery on demand to the lessee or any other recorded lienholder for a period of six months from the date of sale. Any amount not claimed by the lessee from the owner within the six-month period is subject to the reporting requirements of section 47-30.1-08.

Protection of purchaser in good faith. A purchaser in good faith of any property sold under this chapter takes the property clear of any rights of persons against whom the lien was valid, subject to the rights of prior lienholders.

Liability of owner. If the owner complies with this chapter, the owner's liability to the lessee is limited to the application of the proceeds received from the sale of the property necessary to satisfy the lien. The owner's liability to other lienholders is limited to the proceeds received from the sale of any property covered by the other lien, less the amount necessary to satisfy the owner's lien.

Validity of certain rental agreements. Any rental agreement entered before August 1, 2009, remains valid and may be enforced or terminated in accordance with its terms or as permitted by law.

Sale proceedings - Titled vehicles. The sale proceedings in this chapter are sufficient to provide the instruments or documents of authority to obtain a transfer of title to vehicles under section 39-05-19. However, the rights of a prior listed lienholder are not affected by this transfer and the department may not remove a prior lienholder in this transfer of title without a release from the lienholder.

Approved April 21, 2009
Filed April 22, 2009

CHAPTER 295

SENATE BILL NO. 2404 (Senators Miller, O'Connell, Wardner) (Representatives S. Meyer, Rust, Weiler)

AN ACT to provide a lien for oil and gas owners to secure payment for the sale of oil and gas.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act:

1. "First purchaser" means the first person who purchases oil or gas from an interest owner at or after the time the oil or gas is severed.
2. "Interest owner" means a person owning an entire or fractional interest of any kind or nature in the oil or gas at the time it is severed, or a person who has a right, either express or implied, to receive a monetary payment determined by the value of the oil or gas severed.
3. "Operator" means a person engaged in the severance of oil or gas.
4. "Purchaser" means a person who purchases oil or gas from a first purchaser.
5. "Severed" means the taking, extraction, or production from the land of oil or gas in any manner.

SECTION 2. Extent of lien - Dispute as to amount due - Notice - Buyer in ordinary course of business.

1. To secure payment from the sale of oil or gas, an interest owner, subject to section 4 of this Act, has a continuing security interest in and a lien on the oil or gas severed, or the proceeds of sale if the oil or gas has been sold, to the extent of the interest owner's interest until the purchase price has been paid to the interest owner.
2. In the event of a bona fide dispute as to the amount due the interest owner, the security interest and the lien do not accrue if the person holding the proceeds upon which a lien is claimed tenders to the interest owner the amount which that person in good faith believes to be due and payable.
3. A security interest or lien claimed pursuant to this Act is not effective against an interest owner, operator, first purchaser, or purchaser until a copy of the notice of lien required to be filed under section 4 of this Act has been delivered to the interest owner, operator, first purchaser, or purchaser by registered mail.
4. Notwithstanding any other provision in this Act to the contrary, a person who pays the purchase price for oil or gas severed from a well to the interest owner with whom that person has a contract regarding

purchases from the well or to one who is authorized to receive payment on behalf of or for the interest owner is deemed a buyer in the ordinary course of business and takes the oil or gas free of the security interest and lien granted to the interest owner by this Act, and the first purchaser or purchaser who makes the payment and all its property is free from and not subject to the security interest or lien granted to the interest owner by this Act.

SECTION 3. Validity of lien. The validity of the security interest and lien granted to an interest owner under this Act is not dependent upon possession of the oil or gas by an interest owner or operator and a security interest or lien does not become or may not be deemed to be void or expired by reason of a change or transfer of the actual or constructive possession or title of the oil or gas from the interest owner or an operator to a first purchaser or purchaser.

SECTION 4. Perfection of lien - Verified notice - Effect of instruments - Effective date of lien.

1. If the proceeds for oil or gas which are required to be paid are not paid to the interest owner when due, the interest owner may perfect the security interest and lien by filing a form UCC-1A in the central indexing system and recording the lien in the real estate records in the office of the county recorder of the county in which the well is located. If the oil and gas owner's lien is not filed within ninety days from the date of production, the security interest is not perfected and does not give the interest owner priority over a perfected security interest in the same oil, gas, or proceeds of the oil or gas.
2. All instruments that are presented to a county recorder for filing in accordance with subsection 1 are effective as financing statements even though the signature of the debtor may not appear on the lien. Liens must be filed in the central indexing system and recorded in the real estate records of the county. Liens may be terminated in the same manner as financing statements.
3. Upon perfection by filing, the security interest and lien of the interest owner takes priority over the rights of all persons whose rights or claims arise or attach thereafter to the oil or gas unpaid for, or the proceeds of oil or gas if the oil or gas has been sold, including those that arise or attach between the time the security interest and lien attaches and the time of filing. The security interest and lien created pursuant to this Act do not have priority over the security interest and lien rights previously created and perfected or an operating agreement or other voluntary agreement for the development and operation of the property.

SECTION 5. Rights of first purchasers. Neither this Act nor the filing of a lien permitted under this Act affects the time at which legal title to the oil and gas may pass from an interest owner or operator to a first purchaser or the ownership of the oil and gas before severed as reflected by the records affecting real property or the right of a first purchaser to take or receive oil and gas under the terms of a division order or similar agreement for the sale and purchase of oil or gas. Notwithstanding this Act, a first purchaser or purchaser is free to transport products out of the state and to sell the products without permission or release of lien.

SECTION 6. Expiration of lien - Enforcement - Joinder and consolidation - Costs - Personal actions - Other rights and remedies.

1. The security interest and lien granted to an interest owner follow the oil and gas unpaid for or the proceeds of the oil or gas if the oil or gas has been sold. The security interest and lien expire one year after the date of the filing of the notice of lien unless proper action to enforce the lien is commenced within such time in the district court of the county in which the well is located, or wherever the oil or gas unpaid for or the proceeds of oil or gas sold may be found. Persons claiming security interests and liens with respect to the oil or gas from the same well may join in the same action, and where separate actions are commenced the court may consolidate them. The court may allow as part of the costs of the action moneys paid for filing and recording instruments and reasonable attorney's fees for the prevailing party. If an action is commenced after the filing of a lien, the lien is considered a lien upon the oil or gas severed, or the proceeds of sale if the oil or gas has been sold, to the extent of the interest of the claimant, for payment of the amount due the claimant and the security interest and lien of the claimant may be enforced in the manner provided by law.
2. This Act does not impair or affect the right of a person to whom a debt may be due to maintain a personal action to recover the debt against the person liable for payment of the debt.
3. This Act does not impair or affect the rights, priorities, or remedies of a person under the Uniform Commercial Code and this Act is cumulative to and not a limitation on or a substitution for any rights or remedies otherwise provided by law to a creditor against the creditor's debtor.

Approved April 22, 2009
Filed April 23, 2009