

LIENS

CHAPTER 237

H. B. No. 779

(Hagen, Renfrow, Klinger, Sorlie,
(Shablow, Glaspey)

CROP LIENS

AN ACT

To create a lien upon crops in favor of any person who furnishes motor fuel to be used in the production of such crops.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1.) Any person who furnishes gasoline, diesel fuel, tractor fuel, or other motor fuel to another to be used for the production of any agricultural crop shall be entitled to a lien upon all crops produced by the use of such fuel to secure the payment of the purchase price thereof upon compliance with the provisions of this Act.

§ 2.) At any time after the fuel has been furnished, but in no event later than the first day of November in the year such fuel was furnished, the person selling such fuel shall perfect his lien by filing in the office of the register of deeds of the county in which the crop is produced a verified statement showing the name and address of the person claiming the lien, the name of the person to whom the fuel has been furnished, the name of the crop or crops grown by such purchaser, a description of the land upon which the crop was grown and the amount of fuel furnished.

§ 3.) From and after the date of filing of the statement provided in section 2, the claimant shall have a lien upon the crops therein described to the amount of the purchase price of the fuel sold. Such lien shall have priority over all other liens except threshing liens, seed liens, farm labor liens and crop production liens.

§ 4.) The register of deeds shall charge a fee of one dollar for the filing of a verified statement perfecting the lien. Such lien shall be indexed and filed in the same manner as chattel mortgages are filed and may be satisfied by an instrument similar to a satisfaction of chattel mortgages.

Approved March 11, 1961.

CHAPTER 238

H. B. No. 584

(Loewen, Haugland, Karabensh,)
(Saugstad, Balerud, Bader, Dahl, Maragos)

MECHANIC'S LIENS

AN ACT

Creating mechanic's liens; relating to lands subject to such liens; prescribing procedures to perfect and enforce such liens; declaring certain acts as larceny; providing penalty for filing unlawful liens; making the provisions of title 35 of the North Dakota Century Code not in conflict herewith applicable to this Act; and repealing chapter 35-12 of the North Dakota Century Code.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. **Definitions.**) In this Act unless the context or subject matter otherwise requires:

1. "Contract" means any agreement for improving real property, written or unwritten, express or implied;
2. "Materials" means materials or fixtures which are incorporated in the improvement and those which become normal wastage in construction operations, custom or specially fabricated materials for incorporation in the improvement, building materials used for construction, but not remaining in the improvement, subject to diminution by the salvage value of such materials, tools, appliances, or machinery, excluding hand tools, used in the construction of the improvement to the extent of the reasonable value for the period of actual use. The rental value shall not be determinable by the contract for rental unless the owner is a party thereto;
3. "Improve" means to build, erect, place, make, alter, remove, repair or demolish any improvement upon, connected with, or beneath the surface of any land, or excavate any land, or furnish materials for any of such purposes, or dig or construct any fences, wells or drains upon such improvement, or perform any labor or services upon such improvement; or perform any labor or services or furnish any materials in laying upon the real estate or in the adjoining street or alley any pipes, wires, fences, curbs, gutters, paving, sewer pipes or conduit, or sidewalks, or in grading, seeding, sodding or planting for landscaping purposes, or in equipping any such improvement with fixtures or permanent apparatus;
4. "Improvement" means any building, structure, erection, construction, alteration, repair, removal, demolition,

excavation, landscaping, or any part thereof, existing, built, erected, improved, placed, made or done on real estate for its permanent benefit;

5. "Owner" means the legal or equitable owner and also every person for whose immediate use and benefit any building, erection, or improvement is made, having the capacity to contract, including guardians of minors or other persons, and including any agent, trustee, contractor, or subcontractor of such owner;
6. "Subcontractor" means all persons contributing any skill, labor or materials to the improvement except such as have contracts therefor directly with the owner; and, includes any person who enters into a contract with a subcontractor as above defined, for the performance of any part of such subcontractor's contract; and
7. "Person" means every natural person, fiduciary, association or corporation.

§ 2. Who Entitled to Mechanic's Lien.) Any person who improves real estate by the contribution of labor, skill or materials, whether under contract with the owner of such real estate, or at the instance of any agent, trustee, contractor or subcontractor of such owner, shall have a lien upon the improvement, and upon the land on which it is situated or to which it may be removed, for the price or value of such contribution.

§ 3. When Lien Attaches.) As against the owner of the land, such liens shall attach and take effect from the time the first item of material or labor is furnished upon the premises for the beginning of the improvement. As against a bona fide purchaser, mortgagee, or encumbrancer without notice, no lien shall attach prior to the actual and visible beginning of the improvement on the ground. Subject to the exception set forth in section 4 of this Act, all such liens shall be preferred to any mortgage or other encumbrance not then of record, unless the lienholder had actual notice thereof.

§ 4. 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 lien shall be preferred to such mortgage even though such mortgage is recorded subsequent to the time the first item of material or labor is furnished upon the premises, or subsequent to the actual visible beginning of the improvement unless the person furnishing such labor, skill or material for such improvement shall, prior to the recording of such mortgage, file for record a notice of his intention to claim a mechanic's lien pursuant to the provisions of section 5 of this Act.

§ 5. Notice of Intention to Claim Lien—Filing.) Any person having a contract for the improvement of land may file for record, with the clerk of court of the county within which the land is situated, a notice of intention to claim a mechanic's lien, which notice shall be notice to all of his intention to perfect a lien for the contract price or value of all contributions to such improvement thereafter made by him or at his instance. Such notice of intention to claim a mechanic's lien shall contain the following:

1. The name of the person in possession of the land;
2. The description of the property to be charged with the lien;
3. The date of the contract; and
4. That a mechanic's lien against the building, improvement, or premises will be perfected according to law unless the account shall have been paid.

The clerk of court shall file and record the notice of intention to claim a mechanic's lien as is provided in section 12 of this Act.

§ 6. Extent and Amount of Lien.) If the contribution be made under a contract with the owner and for an agreed price, the lien as against him shall be for the sum so agreed upon, otherwise, and in all cases as against others than the owner, it shall be for the reasonable value of the work done, and of the skill and material furnished.

§ 7. Title of Vendor or Consenting Owner—Subject To.) When land is sold under an executory contract requiring the vendee to improve the same and such contract is forfeited or surrendered after liens have attached by reason of such improvements, the title of the vendor shall be subject thereto, but he shall not be personally liable if the contract was made in good faith. When improvements are made by one person upon the land of another, all persons interested therein otherwise than as bona fide prior encumbrancers or lienors shall be deemed to have authorized such improvements, insofar as to subject their interest to liens therefor. Any person who has not authorized the same may protect his interest from such liens by serving upon the person doing work or otherwise contributing to such improvement within five days after knowledge thereof, written notice that the improvement is not being made at his instance, or by posting like notice, and keeping the same posted, in a conspicuous place on the premises. As against a lessor no lien is given for repairs made by or at the instance of his lessee, unless the lessor shall have actual or constructive notice thereof and not object thereto.

§ 8. Contractor or Subcontractor Improperly Using Proceeds of Payment—Larceny.) Any contractor or subcontractor

improving real estate within the meaning of this Act who, with intent to defraud, shall use a payment made to him by the owner of the real estate or the person having the improvement made for any purpose other than the payment for labor performed upon the improvement, or for materials, machinery, or fixtures furnished for the improvement while the labor was performed, or for materials, machinery, or fixtures furnished for the improvement which have not been paid for at the time of the payment, is guilty of larceny. If the amount of the payment so used exceeds one hundred dollars, the contractor or subcontractor is guilty of grand larceny. If the amount of the payment so used is the sum of one hundred dollars or less, he is guilty of petit larceny.

§ 9. Payment to Contractors Withheld.) The owner may withhold from his contractor so much of the contract price as may be necessary to meet the demands of all persons, other than such contractor, having a lien upon the premises for labor, skill, or material furnished for the improvement, and for which the contractor is liable, and he may pay and discharge all such liens and deduct the cost thereof from such contract price. Any such person having a lien under the contractor, may serve upon the owner at any time, a notice of his claim. The owner, within fifteen days after the completion of the contract, may require any person having a lien hereunder, by written request therefor, to furnish to him an itemized and verified account of his claim, the amount thereof, and his name and address, and no action or other proceeding shall be commenced for the enforcement of such lien until ten days after such statement is so furnished. The word "owner", as used in this section, includes any person interested in the premises otherwise than as a lienor thereunder.

§ 10. Mingling of Charges Defeats Right to Lien.) The mingling of charges for materials to be used in the construction, alteration, repair, or improvement of the property of different persons, except in the cases of joint ownership or ownership in common, shall defeat the right to a lien against either or any of such persons.

§ 11. Itemized Account and Demand Conditions Precedent to Obtaining Lien for Materials.) No person shall be entitled to a lien under this Act unless he shall:

1. Keep an itemized account thereof separate and apart from all other items of account against purchaser;
2. Serve a written notice by registered or certified mail upon the owner demanding payment of such account and notifying such owner if payment is not made within fifteen days of the date of mailing such notice a lien will be perfected according to law; and

3. File with the clerk of the district court of the county in which the land, building, or improvement is situated a notice in writing signed by the person entitled to the mechanic's lien or by his authorized agent stating:
 - a. The name of the person in possession of the land;
 - b. The description of the property to be charged with the lien;
 - c. The date of the contract; and
 - d. That a mechanic's lien against the building, improvement, or premises will be perfected according to law unless the account shall have been paid.

§ 12. Clerk of Court to Record Notice.) The clerk of district court shall file and record the notice of intention to file a lien in a book entitled, "book of mechanic's lien notice". The "book of mechanic's lien notice" shall be indexed according to tracts. The fee for such filing and indexing shall be one dollar.

§ 13. How Lien Perfected—Account Filed.) Every person desiring to perfect his lien shall file with the clerk of the district court of the county in which the property to be charged with the lien is situated, within ninety days after all his contribution is done, and having complied with the provisions of this Act, a true account of the demand due him after allowing all credits and containing a correct description of the property to be charged with a lien, which account shall be verified by affidavit.

§ 14. Lien Not Lost for Failure to File Within Time—Exception.) A failure to file the lien account within ninety days shall 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 of the account.

§ 15. Account—Duty of Clerk of Court.) The clerk of the district court shall endorse upon every account the date of its filing and shall make an abstract thereof in a book to be kept by him for that purpose, and properly indexed, containing the date of its filing, the name of the person filing the lien, the amount of the lien, the name of the person against whose property the lien is filed, and a description of the property to be charged with the same. He also shall make and keep a tract index in which shall be entered a description of all property covered or charged with the lien.

§ 16. Inaccuracies in Lien Statement.) In no case shall the liens given by this Act be 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 shall be concluded by the dates therein given, showing the first and last items of his account. In no case shall a lien 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.

§ 17. Single Contract for Several Buildings — Amount of Claim Apportioned.) If labor is done or materials furnished under a single contract for several buildings, structures, or improvements, the person furnishing the same shall be entitled to a lien therefor as follows:

1. If the improvements are upon a single farm, tract, or lot, upon all such buildings, structures and improvements and the farm, tract, or lot upon which the same are situated; and
2. If the improvements are upon separate farms, tracts, or lots, upon all the buildings, structures, and improvements and the farms, tracts, or lots upon which the same are situated, but upon the foreclosure of the lien the court, in the cases provided for in this subsection, may apportion the amount of the claim among the several farms, tracts, or lots in proportion to the enhanced value of the same produced by means of the labor or materials, if such apportionment is necessary to protect the rights of third persons.

§ 18. Mechanic's Lien on Railway Contracts Obtainable.) Every person who 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, his agent, contractor, or subcontractor, shall have a lien upon such line of railway and the right-of-way thereof, 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 a statement of his demand therefor in accordance with the provisions of section 13, 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 within the time aforesaid shall not defeat the lien except to the extent specified in section 14.

§ 19. Land Subject To Lien.) The entire land upon which any building, structure, or other improvement is situated, or to improve which labor is done or materials furnished, includ-

ing that portion of the land not covered thereby, shall be subject to all liens created under this Act to the extent of all the right, title, and interest of the owner for whose immediate use or benefit the labor was done or materials furnished.

§ 20. Collateral Security Does Not Impair Lien—Exception.) The taking of collateral or other security for an indebtedness for which a lien might be claimed under the provisions of this Act shall in no way impair the right to the lien unless the security, by express agreement, shall be given and received in lieu of the lien.

§ 21. Complete and Independent Building—Lien Independent of Land—Notice to Owner.) In addition to the lien provided by this chapter, when material is furnished or labor performed in the erection or construction of an original, complete, and independent building, structure, or improvement, whether the same is placed upon a foundation or not, the lien shall attach to the building or improvement in preference to any prior title, claim, lien, encumbrance, or mortgage upon the land upon which the building, erection, or improvement is erected. Upon the foreclosure of the lien, the building or improvement may be sold separately from the land and may be removed from the land within thirty days after the sale. The sale and removal of a structure or improvement separately from the land shall operate as a full satisfaction and discharge of the lien upon the real estate. At the time the material is furnished for such improvement, the seller shall notify the purchaser by delivering to him a written notice stating that the seller claims the right to foreclose the lien under the laws of the state, and in the event that there is a default in payment for the improvement, to remove the building from the real estate upon which it is placed regardless of whether or not said building is placed upon a foundation.

§ 22. Order of Priority of Classes of Mechanic's Liens.) Liens perfected under the provisions of this Act shall have priority in the following order:

1. For manual labor;
2. For materials;
3. Subcontractors other than manual laborers; and
4. Original contractors.

Liens for manual labor filed within the ninety-day period shall share ratably in the security. Liens for manual labor filed thereafter shall have priority in the order of the filing of such liens. Liens for materials filed within the ninety-day period shall share ratably in the security and such liens filed thereafter shall have priority in the order of the filing of such liens.

§ 23. Improvements on Leasehold Interest—Extent of Lien —Sale of Building.) When the interest owned in land by the owner of the building, structure, or other improvement for which a lien is claimed, is only a leasehold interest, the forfeiture of the lease for nonpayment of rent or for noncompliance with any of the stipulations of the lease shall not impair the lien so far as it applies to the building, structures, or improvements, but the improvements may be sold to satisfy the lien and may be removed by the purchaser within thirty days after the sale.

§ 24. Action to Enforce Mechanic's Lien—Notice of Deficiency Judgment.) Any person having a lien by virtue of this Act 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. Before a lienholder may enforce a lien, he shall give written notice of his intention so to do, which notice shall 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.

§ 25. Requiring Suit To Be Commenced—Demand—Limitations of Action.) Upon written demand of the owner, his agent, or contractor, served on the person holding the lien, suit shall be commenced within thirty days thereafter if the debt for which the lien is security is due, and if not due, within thirty days after the same becomes due, or the lien shall be forfeited. No lien shall be valid or effective as such, nor shall the same be enforced in any case, and the clerk of the district court shall cancel any such lien of record, unless the holder thereof shall assert the same either by complaint or answer within six years after the date of the last item of his claim as set forth in the recorded lien account, or within six years after it becomes due, if the lien account shows that it is not then due. If a summons and complaint or answer asserting the validity of the lien is not filed in the office of the clerk of court in which the lien is filed within the limitation herein provided, the clerk of court, upon request of any interested person, shall cancel the lien of record.

§ 26. Penalty for Filing Unlawful Lien.) Any person who signs and files a mechanic's lien and who knowingly and willfully includes, in the statement of lien filed in connection

therewith, classes of material not subject to a mechanic's lien under the provisions of this Act is guilty of a misdemeanor.

§ 27. **Assignment of Claims.)** Any claim for which a lien may be or has been filed and the right of action to recover therefor under the provisions of this Act may be assigned by an instrument in writing. Such assignment shall vest in the assignee all rights and remedies herein given, subject to all defenses that might have been interposed if such assignment had not been made.

§ 28. **General Provisions.)** The general provisions of title 35 of the North Dakota Century Code not in conflict with the provisions of this Act shall be applicable to this Act.

§ 29. **Repeal.)** Chapter 35-12 of the North Dakota Century Code is hereby repealed.

Approved March 7, 1961.

CHAPTER 239

S. B. No. 147

(Wartner, Gefreh, Garaas)

FORECLOSURE OF REAL ESTATE MORTGAGES

AN ACT

To amend and reenact section 35-22-01 of the North Dakota Century Code, relating to foreclosure of mortgages of real property.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. **Amendment.)** Section 35-22-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

35-22-01. Foreclosure Under Power of Sale—Prohibition—Exception.) Every mortgage of real property executed to the manager of the Bank of North Dakota, as mortgagee, and every mortgage of real property heretofore or hereafter executed to the Bank of North Dakota, as mortgagee, and every mortgage negotiated by the board of university and school lands to the state of North Dakota as mortgagee, containing a power of sale, upon default being made in the conditions of such mortgage, may be foreclosed by advertisement in the manner provided by law. No other mortgage of real property shall be so foreclosed, but must be foreclosed by action.

Approved February 24, 1961.

CHAPTER 240

H. B. No. 909
(Lynch, Backes, Vinje,
(Fossum, Glaspey, Bloom)

OIL AND GAS WORKING INTEREST

AN ACT

To create and enact subsection 13 of section 35-24-01 of the North Dakota Century Code, relating to definitions of "working interest" for well or pipeline construction liens.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1.) Subsection 13 of section 35-24-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

13. "Working interest" shall mean interest in oil and gas that may be produced from a well but shall not include royalty or overriding royalty interests.

Approved March 8, 1961.