

**Sixty-first Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2009**

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liens; and to repeal sections 35-27-05, 35-27-11, 35-27-12, and 35-27-26 of the North Dakota Century Code, relating to outdated mechanic's lien provisions.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:
 - ~~1.~~ 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 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.

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.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-first Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2250.

Senate Vote: Yeas 44 Nays 0 Absent 3

House Vote: Yeas 85 Nays 0 Absent 9

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2009.

Approved at _____ M. on _____, 2009.

Governor

Filed in this office this _____ day of _____, 2009,
at _____ o'clock _____ M.

Secretary of State