

LIENS

CHAPTER 384

SENATE BILL NO. 2101
(Melland)

REPAIRMAN'S LIEN

AN ACT to amend and reenact sections 35-13-01, 35-13-02, 35-13-03, and 35-13-04 of the North Dakota Century Code, relating to authorization for a repairman's lien, contents of a lien statement and requirement of filing, inclusion of separate articles in one statement, and priority of liens.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 35-13-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

35-13-01. REPAIRMAN'S LIEN AUTHORIZED.) Any blacksmith, machinist, farm equipment dealer, welder, garage keeper, mechanic, or aviation operator, having an established place of business within this state who makes, alters, or repairs any automobile, truck, engine, ~~threshing--machine,~~ combine, tractor, ~~power-driven~~ farm equipment, well machine, or aircraft at the request of the owner or legal possessor of the property shall have a lien thereon, and on any accessories and parts placed upon the same property, for his reasonable charges for work done and materials furnished, until the charges are paid. If the cost of repair would exceed one thousand dollars or twenty-five percent of the value of the property, in its repaired condition, whichever is greater, and the repairman intends to have the entire repair bill constitute a lien with priority over the mortgage or financing statement of record, the repairman shall give notice by registered or certified mail to the record holder of the mortgage or financing statement of the proposed repair, the estimated cost of repair, and the estimated value of the property in its repaired condition.

SECTION 2. AMENDMENT.) Section 35-13-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

35-13-02. LIEN STATEMENT - CONTENTS - WHEN REQUIRED - FILING.) When a person entitled to a lien under this chapter who retains possession of the property made, altered, or repaired, he shall not be required to file any statement to perfect his the lien,

~~but--when-he-shall-relinquish.~~ If the possession of the property so made, altered, or repaired, he is relinquished, the person shall file, within one-hundred-twenty ninety days after the materials are furnished or the labor is performed, shall file completed, in the office of the register of deeds of the county in which the owner or legal possessor of the property resides, a verified written statement in-writing showing:

1. The labor performed.
2. The materials furnished.
3. The price agreed upon for the labor performed or materials furnished, or, if no price was agreed upon, the reasonable value thereof.
4. The name of the person for whom the labor was performed or to whom the materials were furnished.
5. A description of the property upon which the lien is claimed.

~~Unless--the~~ A person filing a verified statement shall within twenty days serve notice of the filing, by registered or certified mail, upon the owner or legal possessor of the property. A person entitled to the lien ~~shall file such~~ who fails to file a verified statement within the time limited in this section, ~~he shall be is~~ deemed to have waived ~~his~~ the right to a lien.

SECTION 3. AMENDMENT.) Section 35-13-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

35-13-03. SEPARATE ARTICLES OF PERSONAL PROPERTY MAY BE INCLUDED IN ONE LIEN STATEMENT.) ~~If-any~~ Any person entitled to a lien under this chapter who makes, alters, or repairs more than one article of personal property for the same owner or legal possessor thereof, ~~he~~ may include all the articles of personal property so made, altered, or repaired within ~~one--hundred--twenty ninety~~ days preceding the filing of the lien statement in the same statement, and the statement shall have the same force and effect ~~as--to--each article--enumerated--therein~~ as though a separate statement had been filed for each ~~such~~ article.

SECTION 4. AMENDMENT.) Section 35-13-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

35-13-04. PRIORITY OF LIEN.) A lien obtained under this chapter shall have priority over all other liens, chattel mortgages, or encumbrances against the personal property upon which the lien is secured ~~if-the-lien-does-not-exceed-one-thousand-dollars,---Any amount-of-the-lien-in-excess-of-one-thousand-dollars-shall-be-a-lien upon-the-property-subject-to-any-prior-encumbrances-thereon, but if the repairman has failed to notify the record holder of the mortgage or financing statement as provided in section 35-13-01, or if such~~

notice was given and the holder of the mortgage or financing statement, within five days after receiving such notice, communicated in writing to the repairman an objection to all the proposed repair costs becoming a lien against the property with priority over the mortgage or financing statement, then only that portion of the mechanic's lien up to one thousand dollars or twenty-five percent of the retail value, whichever is greater, in its repaired condition, shall have priority over the mortgage or financing statement.

Approved March 12, 1979

CHAPTER 385

SENATE BILL NO. 2300
(Lips)

PERSONS ENTITLED TO MECHANIC'S LIEN

AN ACT to amend and reenact section 35-27-02 of the North Dakota Century Code, relating to the claiming of a mechanic's lien by a contractor who contracts with an agent of the owner of real estate.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 35-27-02 of the 1977 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

35-27-02. WHO PERSONS 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 under contract with any agent, trustee, contractor or subcontractor of the 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. Provided, however, that the amount of the lien shall only be 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 shall be allowed. ~~No person shall have a lien for improving real estate resulting from extending credit to or making a contract with any agent, trustee, contractor, or subcontractor of such owner, unless such person first notifies the owner in writing of the provisions of chapter 35-27 and obtains a copy of the contract by which the owner authorizes his agent, trustee, contractor, or subcontractor to seek credit or make contracts in the owner's name, or by which the owner personally assumes responsibility for payment upon default by the owner's agent, trustee, contractor, or subcontractor. In all latter cases, any person claiming a lien for improving real estate shall first proceed by judicial action against the owner's agent, trustee, contractor, or subcontractor and exhaust his remedies of collection upon obtaining judgment before he shall have a lien upon the improvement, or upon the land on which it is situated or to which it may be removed.~~ Provided further that if the owner or an agent of

the owner has received a waiver of lien signed by the person who improves the real estate by the contribution of labor, skill or materials, no lien shall be allowed.

Any person who 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 the right to request and secure evidence of the legal description of the real estate upon which the improvement shall be located, including the name of the title owner of the real estate.

Approved March 19, 1979

CHAPTER 386

HOUSE BILL NO. 1675
(Winkjer)

UNIFORM FEDERAL LIEN REGISTRATION ACT

AN ACT to create and enact the Uniform Federal Lien Registration Act, as chapter 35-28.1 of the North Dakota Century Code, relating to the filing and recording of federal tax liens and other federal liens; and to repeal chapter 35-28 of the North Dakota Century Code, relating to the filing and recording of federal tax liens.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

* SECTION 1.) Chapter 35-28.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

35-28.1-01. SCOPE.) This chapter applies only to federal tax liens and to other federal liens notices of which under any Act of Congress or any regulation adopted pursuant thereto are required or permitted to be filed in the same manner as notices of federal tax liens.

35-28.1-02. PLACE OF FILING.)

1. Notices of liens, certificates, and other notices affecting federal tax liens or other federal liens must be filed in accordance with this chapter.
2. Notices of liens upon real property for obligations payable to the United States and certificates and notices affecting the liens shall be filed in the office of the register of deeds of the county in which the real property subject to the liens is situated.
3. Notices of federal liens upon personal property, whether tangible or intangible, for obligations payable to the United States and certificates and notices affecting the liens shall be filed as follows:

- a. If the person against whose interest the lien applies is a corporation or partnership whose principal

* NOTE: This chapter is codified as North Dakota Century Code Chapter 35-29.

executive office is in this state, as these entities are defined in the internal revenue laws of the United States, in the office of the secretary of state.

- b. In all other cases, in the office of the register of deeds of the county where the person against whose interest the lien applies resides at the time of filing of the notice of lien.

35-28.1-03. EXECUTION OF NOTICES AND CERTIFICATES.) Certification of notices of liens, certificates, or other notices affecting federal liens by the secretary or the treasury of the United States or the secretary's delegate, or by any official or entity of the United States responsible for filing or certifying of notice of any other lien, entitles them to be filed and no other attestation, certification, or acknowledgment is necessary.

35-28.1-04. DUTIES OF FILING OFFICER.)

1. If a notice of federal lien, a refiling of a notice of federal lien, or a notice of revocation of any certificate described in subsection 2 is presented to a filing officer who is:
 - a. The secretary of state, the secretary shall cause the notice to be marked, held, and indexed in accordance with the provisions of subsection 4 of section 41-09-42 as if the notice were a financing statement within the meaning of title 41; or
 - b. Any other officer described in section 35-28.1-02, the officer shall endorse thereon the officer's identification and the date and time of receipt and immediately file it alphabetically or enter it in an alphabetical index showing the name and address of the person named in the notice, the date and time of receipt, the title and address of the official or entity certifying the lien, and the total amount appearing on the notice of lien.
2. If a certificate of release, nonattachment, discharge, or subordination of any lien is presented to the secretary of state for filing the secretary shall do all of the following:
 - a. Cause a certificate of release or nonattachment to be marked, held, and indexed as if the certificate were a termination statement within the meaning of title 41, but the notice of lien to which the certificate relates may not be removed from the files.
 - b. Cause a certificate of discharge or subordination to be marked, held, and indexed as if the certificate

were a release of collateral within the meaning of title 41.

3. If a refiled notice of federal lien referred to in subsection 1 or any certificate or notice referred to in subsection 2 is presented for filing to any other filing officer specified in section 35-28.1-02, the officer shall permanently attach the refiled notice or the certificate to the original notice of lien and enter the refiled notice or the certificate with the date of filing in any alphabetical lien index on the line where original notice of lien is entered.
4. Upon request of any person, the filing officer shall issue the officer's certificate showing whether there is on file, on the date and hour stated therein, any notice of lien or certificate or notice affecting any lien filed under this chapter or chapter 35-28 as it existed prior to enactment of this chapter, naming a particular person, and if a notice or certificate is on file, giving the date and hour of filing of each notice or certificate. The fee for a certificate is one dollar and twenty-five cents for each notice or certificate reported therein. Upon request, the filing officer shall furnish a copy of any notice of federal lien, or notice or certificate affecting a federal lien, for a fee of one dollar, plus seventy-five cents for the second and each succeeding page.

35-28.1-05. FEES.)

1. The fee for filing and indexing each notice of lien is:
 - a. For a lien on real estate, five dollars, plus two dollars for the second and each succeeding page.
 - b. For a lien on tangible and intangible personal property, three dollars.
 - c. For a certificate of discharge or subordination, there is no fee.
 - d. For all other notices, including a certificate of release or nonattachment, there is no fee.
2. The officer shall not file or record an instrument under this chapter unless the person offering the instrument for filing or recording has first paid the requisite filing or recording fee.

35-28.1-06. SHORT TITLE.) This chapter may be cited as the Uniform Federal Lien Registration Act.

SECTION 2. REPEAL.) Chapter 35-28 of the North Dakota Century Code is hereby repealed.

Approved March 15, 1979