

**Sixty-eighth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 3, 2023**

HOUSE BILL NO. 1323
(Representatives Cory, Grueneich, Koppelman, Louser, Roers Jones, Rohr)
(Senators Kannianen, J. Roers)

AN ACT to amend and reenact sections 35-27-01, 35-27-02, 35-27-03, 35-27-07, 35-27-18, and 35-27-24 of the North Dakota Century Code, relating to a claimant's right to maintain a construction lien for furnishing materials and improvements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 35-27-01 of the North Dakota Century Code is amended and reenacted as follows:

35-27-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Contract" means any agreement for improving real property, written or unwritten, express or implied.
2. "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~~these purposes, or dig or construct any fences, wells, or drains upon ~~such~~the improvement, or perform any labor or services upon ~~such~~the improvement; ~~or~~ perform any architectural services, construction staking, engineering, land surveying, mapping, or soil testing upon or in connection with the 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.
3. "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.
4. "Materials" means materials or fixtures ~~which~~that 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~~the 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~~is not ~~be~~ determinable by the contract for rental unless the owner is a party ~~thereto~~to the rental contract.
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. "Person" means every natural person, fiduciary, association, corporation, or limited liability company.
7. "Subcontractor" means ~~all persons~~a person contributing any skill, labor, or materials to the improvement ~~except such as have contracts therefor directly~~which does not have a direct

contract with the owner; and, includes any person ~~whothat~~ enters into a contract with a subcontractor ~~as above defined~~, for the performance of any part of ~~suchthe~~ subcontractor's contract.

SECTION 2. AMENDMENT. Section 35-27-02 of the North Dakota Century Code is amended and reenacted as follows:

35-27-02. Persons entitled to construction lien - Notice - Prohibition.

1. Any person that improves real estate, ~~whether~~ under a contract with the owner of ~~suchthe~~ 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 the improvement is situated or to which the improvement may be removed for the price or value of ~~suchthe~~ contribution. ~~Provided, however, that the~~
2. ~~The amount of the lien is only for~~limited to the difference between the price paid by the owner, trustee, or agent and the price or value of the contribution. If the owner, trustee, or agent has paid the full price or value of the contribution, no lien is allowed. ~~Provided further that if~~
3. If the owner, trustee, or an agent of the owner has received a valid waiver of lien, signed by the person that improves the real estate, a lien is not allowed.
4. Any person that extends credit or makes a contract with any agent, trustee, contractor, or subcontractor of the owner for the improvement of real estate, upon demand, 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~~legal or equitable owner of the real estate. Written notice ~~that a lien will be claimed~~ must be given to the legal or equitable owner of the real estate by certified mail at least ten days before the recording of the construction lien.

SECTION 3. AMENDMENT. Section 35-27-03 of the North Dakota Century Code is amended and reenacted as follows:

35-27-03. When lien attaches.

1. As against the legal and equitable owner of the land, subject to section 35-27-02, such liens 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.
2. ~~As against a bona fide purchaser, mortgagee, or encumbrancer without notice, no~~A lien may attach prior to ~~may not attach against a person that acquires an interest in real estate, in good faith, without actual or constructive notice of the claimant's rights, before the actual and visible beginning of the improvement on the grounds~~subject property. Subject to the exception set forth
3. Except as provided in section 35-27-04, all ~~such~~ liens under this chapter are preferred to any unrecorded mortgage or other encumbrance ~~not then of record~~, unless the lienholder had actual notice thereof ~~of the unrecorded interest~~.

SECTION 4. AMENDMENT. Section 35-27-07 of the North Dakota Century Code is amended and reenacted as follows:

35-27-07. Title of vendor or consenting owner - Subject to liens.

1. When land is sold under an executory contract requiring the vendee to improve the ~~same~~land and such contract is forfeited or surrendered after liens have attached by reason of such improvements, the title of the vendor is subject thereto, but the vendor is not 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~~in the land, other than as bona fide

prior encumbrancers or lienors, are deemed to have authorized ~~such~~the improvements, ~~insofar as to and~~ are subject their interests to the liens therefor attached to the real estate. Any person who has not authorized the same may protect the person's interest from such liens

2. A person may object to any unauthorized improvements by serving:
 - a. Serving upon the person doing work or otherwise contributing to such improvement making the improvements, within five days after knowledge thereof of the improvements, written notice that the improvement is not being made at the person's instance, unauthorized; or by posting like
 - b. Posting a notice objecting to the unauthorized improvements, and keeping the same notice 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 the lessor's lessee, unless the lessor has actual or constructive notice thereof and does not object thereto.
3. If the legal or equitable owner's tenant orders improvements on leased real estate, no lien is allowed unless the legal or equitable owner has actual or constructive notice of the improvements and fails to object to the improvements on the leased property.

SECTION 5. AMENDMENT. Section 35-27-18 of the North Dakota Century Code is amended and reenacted as follows:

35-27-18. Construction lien on railway contracts obtainable.

Every person 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~~the line of railway and the right of way of ~~such~~the 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 legal or equitable owner of the line of railway for the construction and operation ~~thereof of the railway~~, to secure the payment for the labor, skill, and materials, upon recording a lien, within ninety days from the last day of the month in which the labor or material was furnished, but a failure to record within the ninety days does not defeat the lien except to the extent specified in section 35-27-14.

SECTION 6. AMENDMENT. Section 35-27-24 of the North Dakota Century Code is amended and reenacted as follows:

35-27-24. Action to enforce 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 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~~legal or equitable 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 if~~ a deficiency remains after the sale of the real property subject to the lien an execution may issue for ~~such~~the deficiency.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-eighth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1323.

House Vote: Yeas 91 Nays 0 Absent 3

Senate Vote: Yeas 46 Nays 1 Absent 0

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2023.

Approved at _____ M. on _____, 2023.

Governor

Filed in this office this _____ day of _____, 2023,

at _____ o'clock _____ M.

Secretary of State