

Nebraska

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CHAPTER 33. FEES AND SALARIES.

Section 33-109. Register of deeds; county clerk; fees.

(1) The register of deeds and the county clerk shall receive for recording a deed, mortgage, or release, recording and indexing of a will, recording and indexing of a decree in a testate estate, recording proof of publication, or recording any other instrument, a fee of ten dollars for the first page and six dollars for each additional page. Two dollars and fifty cents of the ten-dollar fee for recording the first page and fifty cents of the six-dollar fee for recording each additional page shall be used exclusively for the purposes of preserving and maintaining public records of the office of the register of deeds and for modernization and technology needs relating to such records and preserving and maintaining public records of a register of deeds office that has been consolidated with another county office pursuant to section 22-417 and for modernization and technology needs relating to such records. The funds allocated under this subsection shall not be substituted for other allocations of county general funds to the register of deeds office or any other county office for the purposes enumerated in this subsection.

(2) The cost for a certified copy of any instrument filed or recorded in the office of county clerk or register of deeds shall be one dollar and fifty cents per page.

CHAPTER 52. LIENS.

52-125. Act, how cited.

Sections 52-125 to 52-159 shall be known and may be cited as the Nebraska Construction Lien Act.

52-126. Sections, purpose.

Sections 52-125 to 52-159 creates, and provides for the attachment and enforceability of, a lien against real estate in favor of a person furnishing services or materials under a real estate improvement contract. Except as provided in sections 52-125 to 52-159, no nonconsensual lien arises against real estate by reason of improvements made thereon.

52-127. Terms, defined.

As used in sections 52-125 to 52-159, unless the context otherwise requires:

(1) Claimant shall mean a person having a right to a lien under sections 52-125 to 52-159 upon real estate and includes his or her successor in interest;

(2) Contract price shall mean the amount agreed upon by the contracting parties for performing services and furnishing materials covered by the contract, increased or diminished by the price of change orders or extras, amounts attributable to altered specifications, or breach of contract, including but not limited to defects in workmanship or materials. Liquidation of damages between the owner and a prime contractor does not diminish the contract price as to other claimants. If no price is agreed upon by the contracting parties, contract price shall mean the reasonable value of all services or materials covered by the contract;

(3) Contracting owner shall mean a person who owns real estate and who, personally or through an agent, enters into a contract, express or implied, for the improvement of the real estate;

(4) Construction lien or lien shall mean a lien arising under sections 52-125 to 52-159, and shall not include a security interest;

(5) Notice of commencement shall mean the notice specified in section 52-145, whether recorded by an owner or by a claimant;

(6) Notice of termination shall mean a notice terminating a notice of commencement;

(7) Prime contract shall mean any real estate improvement contract made between the contracting owner and a prime contractor;

(8) Prime contractor shall mean any person who makes a real estate improvement contract with a contracting owner;

(9) Services shall not include financing or activities in connection with financing;

(10) Construction security interest shall mean a security interest created by a security agreement that contains a legend on the first page clearly stating that it is a Construction Security Agreement and that secures an obligation which the debtor incurred for the purpose of making an improvement of the real estate in which the security interest is given if the instrument recorded to perfect the interest states that it is a construction security interest;

(11) Good faith shall mean honesty in fact and the observance of reasonable standards of fair dealing in the conduct or transaction involved;

(12) Judicial proceeding shall mean action at law or suit in equity, and any other proceeding in which rights are judicially determined;

(13) To record shall mean to present to the register of deeds for the county where the land is situated a document which he or she accepts and either enters in a daily log or notes thereon an identifying number, regardless of whether under applicable law the register of deeds is directed to file the document or otherwise to maintain a record of it. Recorded and recording have corresponding meanings;

(14) Record location shall mean the location, whether book and page, document number, electronic retrieval code, or other specific place, of a document in the public records accessible in the same recording office where the document containing the reference to the location is found; and

(15) Security interest shall mean a consensual interest in real estate which secures payment or performance of an obligation.

52-128. Contracting owner; presumption of agency.

For the purpose of determining whether an owner is a contracting owner, agency is presumed, in the absence of clear and convincing evidence to the contrary, between employer and employee, between spouses, between joint tenants, and among tenants in common.

52-129. Protected party, residential real estate, defined.

(1) Protected party shall mean:

(a) An individual who contracts to give a real estate security interest in, or to buy or to have improved, residential real estate all or a part of which he or she occupies or intends to occupy as a residence;

(b) A person obligated primarily or secondarily on a contract to buy or have improved residential real estate or on an obligation secured by residential real estate if, at the time he or she becomes obligated, he or she is related to an individual who occupies or intends to occupy all or a part of the real estate as a residence; or

(c) With respect to a security agreement, a person who acquires residential real estate and assumes or takes subject to the obligation of a prior protected party under the real estate security agreement.

(2) Residential real estate shall mean, in relation to a protected party, real estate, improved or to be improved, containing not more than four dwelling units and no nonresidential uses for which the protected party is a lessor. A condominium unit that is otherwise residential real estate remains so even though the condominium development contains more than four dwelling units or units used for nonresidential purposes.

52-130. Real estate improvement contract, defined.

(1) Except as provided in subsection (2) of this section, real estate improvement contract shall mean an agreement to perform services, including labor, or to furnish materials for the purpose of producing a change in the physical condition of land or of a structure including:

- (a) Alteration of the surface by excavation, fill, change in grade, or change in a shore, bank, or flood plain of a stream, swamp, or body of water;
 - (b) Construction or installation on, above, or below the surface of land;
 - (c) Demolition, repair, remodeling, or removal of a structure previously constructed or installed;
 - (d) Seeding, sodding, or other landscaping operation;
 - (e) Surface or subsurface testing, boring, or analyzing; and
 - (f) Preparation of plans, surveys, or architectural or engineering plans or drawings for any change in the physical condition of land or structures whether or not used incident to producing a change in physical condition of the real estate.
- (2) A contract for the mining or removal of timber, minerals, gravel, soil, sod, or things growing on land, or other similar contracts in which the activity is primarily for the purpose of realizing upon the disposal or removal of the objects removed, or a contract for the planting, cultivation, or harvesting of crops or for the preparation of the soil for planting of crops, is not a real estate improvement contract.

52-131. Construction lien; existence; amount; priority; enforcement.

- (1) A person who furnishes services or materials pursuant to a real estate improvement contract has a construction lien, only to the extent provided in the Nebraska Construction Lien Act, to secure the payment of his or her contract price.
- (2) A lien arises under the act only if the claimant records a lien within the time specified by section 52-137.
- (3) Real estate to which a construction lien attaches is specified by section 52-133, and limitations on the existence of a lien for materials are specified by section 52-134.
- (4) The amount of a claimant's lien is specified by section 52-136. The content of the notice of the right to assert a lien to be given to the owner under section 52-136 is specified by section 52-135.
- (5) The priority of a claimant's lien as against other construction-lien claimants is specified in section 52-138, and priority as against claimants other than construction-lien claimants is specified in section 52-139.
- (6) Foreclosure of a lien under the act is governed by section 52-155, and the time within which an action to foreclose must be brought by section 52-140.

52-132. Public property; exempt from lien.

Notwithstanding the provisions on existence of a construction lien of section 52-131, no lien attaches under sections 52-125 to 52-159 to real estate owned by the state, a county, a municipality, or other governmental agency or political subdivision.

52-133. Real estate subject to construction lien.

- (1) If at the time a construction lien is recorded there is a recorded notice of commencement covering the improvement pursuant to which the lien arises, the lien is on the contracting owner's real estate described in the notice of commencement.
- (2) Except as provided in subsection (3) of this section, if at the time a construction lien is recorded there is no recorded notice of commencement covering the improvement pursuant to which the lien arises, the lien is on the contracting owner's real estate being improved or directly benefited.
- (3) If a claimant who recorded a lien while there was no recorded notice of commencement covering the real estate later records a notice of commencement, his or her lien is on the contracting owner's real estate described in the notice of commencement.
- (4) If as a part of an improvement on his or her real estate or for the purpose of directly benefiting his or her real estate an owner contracts for improvements on real estate not owned by him or her, persons who furnish services or materials in connection with that improvement have a lien against the contracting owner's real estate being improved or directly benefited to the same extent as if the improvement had been on the contracting owner's real estate.
- (5) If a recorded notice of commencement covers more than one lot in a platted subdivision of record, a claimant may apportion his or her lien to the various lots covered by the notice of commencement in any proportion he or she chooses and states in his or her recorded lien, including assigning all his or her lien to a particular lot.

(6) If a recorded lien does not contain an apportionment as provided in subsection (5) of this section, the owner may make demand on the claimant to make an apportionment and, if the claimant does not, within thirty days after the demand, make an apportionment by recording an amendment of the recorded lien, the owner may make a good faith apportionment by recording an owner's statement of apportionment. Notwithstanding the fact that the owner did not in fact give the notice to apportion referred to in this subsection or for any other reason was not entitled to record a statement of apportionment, or did not make a good faith apportionment, the apportionment is conclusive in favor of persons acquiring interests in the real estate after the statement of apportionment is recorded.

52-134. Lien for materials; conditions; limitations.

(1) A lien for furnishing materials arises only if:

(a) They are supplied with the intent, shown by the contract of sale, the delivery order, delivery to the site by the claimant or at his or her direction, or by other evidence, that they be used in the course of construction of, or incorporated into, the improvement in connection with which the lien arises; and

(b) They are either:

(i) Incorporated in the improvement or consumed as normal wastage in construction operations;

(ii) Specially fabricated for incorporation in the improvements and not readily resalable in the ordinary course of the fabricator's business even though not actually incorporated in the improvement;

(iii) Used for the construction or for the operation of machinery or equipment used in the course of construction and not remaining in the improvement, subject to diminution by the salvage value of those materials; or

(iv) Tools, appliances, or machinery used on the particular improvement, but a lien for supplying tools, appliances, or machinery used on the improvement is limited as provided by subsection (3) of this section.

(2) The delivery of materials to the site of the improvement, whether or not by the claimant, creates a presumption that they were used in the course of construction or were incorporated into the improvement.

(3) A lien arising for the supplying of tools, appliances, or machinery under subdivision (1)(b)(iv) of this section is limited as follows:

(a) If they are rented, the lien is for the reasonable rental value for the period of actual use and any reasonable periods of nonuse taken into account in the rental contract; and

(b) If they are purchased, the lien is for the price but arises only if they were purchased for use in the course of the particular improvement and have no substantial value to the purchaser after the completion of the improvement on which they were used.

52-135. Notice of right to assert lien; contents; optional notice to contracting owner; notice, when effective; applicability of section.

(1) At any time after a claimant has entered into the contract under which he or she may claim a lien under the Nebraska Construction Lien Act, he or she may give notice of the right to assert a lien to the contracting owner. The notice of the right to assert a lien must be in writing, state that it is a notice of a right to assert a lien against real estate for services or materials furnished in connection with improvement of the real estate, and contain:

(a) The name of the claimant and the address to which the owner or others may send communications to the claimant;

(b) The name and address of the person with whom the claimant contracted;

(c) The name of the owner against whom a lien is or may be claimed;

(d) A general description of the services or materials provided or to be provided;

(e) A description sufficient to identify the real estate against which the lien is or may be claimed;

(f) A statement that the claimant is entitled to record a lien;

(g) The amount unpaid to the claimant for services or materials, whether or not due, or if no amount is fixed by the contract, a good faith estimate of the amount designated as an estimate; and

(h) The following statement in type no smaller than that used in providing the information required by subdivisions (1)(a) through (1)(g) of this subsection:

Warning. If you did not contract with the person giving this notice, any future payments you make in connection with this project may subject you to double liability.

(2) A claimant may notify the contracting owner, either in the notice of the right to assert a lien or separately, that the claimant must be notified of the recording of any termination of the notice of commencement. The notice to the owner must be in writing and, if not part of the notice of the right to assert a lien, shall contain the information specified in subdivisions (1)(a) through (1)(e) of this section. In addition, the notice shall state that a written notice of the recording of any notice of termination must be given to the claimant at least three weeks before the effective date of the notice of termination.

(3) The claimant shall send a copy of a recorded lien to the contracting owner within ten days after recording, and the recording shall be within the time specified for the filing of liens under section 52-137.

(4) If the contracting owner has held out another person as contracting owner, either by naming that person in the notice of commencement or otherwise, a notice directed to and received by that person is effective against the contracting owner.

(5) If the contracting owner has held out a fictitious or nonexisting person as contracting owner either by naming that person in the notice of commencement or otherwise, a notice to that fictitious or nonexisting person delivered at an address held out by the contracting owner as the address of the fictitious or nonexisting person is effective against the contracting owner.

(6) This section shall apply to a lien claimant only when the contracting owner is a protected party.

52-136. Amount of lien.

(1) Subject to subsection (3) of this section:

(a) The lien of a prime contractor is for the unpaid part of his or her contract price; and

(b) Except as against a protected party contracting owner, the lien of a claimant other than a prime contractor is for the amount unpaid under the claimant's contract.

(2) Except as modified by subsections (4) and (5) of this section, as against a protected party contracting owner, the lien of a claimant other than a prime contractor is for the lesser of:

(a) The amount unpaid under the claimant's contract; or

(b) The amount unpaid under the prime contract through which the claimant claims at the time the contracting owner receives the claimant's notice of the right to assert a lien.

(3) The lien of a claimant is reduced by the sum of the liens of claimants who claim through him or her.

(4) If a protected party contracting owner's lien liability under a particular prime contract as provided in subsection (5) of this section is less than the sum of claims of all claimants claiming through that particular prime contractor:

(a) Lien claimants whose liens attach at different times have liens in the order of attachment until the owner's lien liability is exhausted; and

(b) Among claimants whose liens attach, or may attach, at the same time, each claimant's lien is for his or her pro rata portion of the amount of the contracting owner's lien liability to claimants whose liens attach at that time.

(5) A protected party contracting owner's lien liability under a particular prime contract is the prime contract price less payments properly made thereon. A payment is properly made on a prime contract to the extent that the payment:

(a) Is made in good faith before the receipt by the contracting owner of a copy of a recorded lien or of a notice of the right to assert a lien; or

(b) If made after receipt by the contracting owner of a copy of a recorded lien or of a notice of the right to assert a lien, is made in good faith and leaves unpaid a part of the prime contract price sufficient to satisfy the unpaid claims of all claimants who have provided a copy of a recorded lien or who have given notice of the right to assert a lien and whose claims are not being satisfied by the payment.

52-137. Attachment and enforcement of lien; recording required; time limitation; attachment, when.

(1) A claimant's lien does not attach and may not be enforced unless, after entering into the contract under which the lien arises and not later than one hundred twenty days after his or her final furnishing of services or materials, he or she has recorded a lien.

(2) If a lien is recorded while a notice of commencement is effective as to the improvement in connection with which the lien arises, the lien attaches as of the time the notice is recorded, even though visible commencement

occurred before the notice is recorded. A notice of commencement is not effective until recording and, after recording, is effective until its lapse. A notice of commencement lapses at the earlier of its expiration as provided in subsection (2) of section 52-145 or the date it is terminated by a notice of termination as provided in section 52-146.

(3) If a lien is recorded while there is no recorded notice of commencement covering the improvement in connection with which the lien arises, the lien attaches at the earlier of visible commencement of the improvement or the recording of the lien, but if visible commencement has occurred before or within thirty days after the lapse of the last notice of commencement covering the improvement:

(a) The lien attaches at the time the lien is recorded if the lien is recorded within thirty days after lapse of the last effective notice of commencement; or

(b) The lien relates back to and attaches thirty-one days after the termination date if the lien is recorded more than thirty days after lapse of the last effective notice of commencement.

(4) If new construction is the principal improvement involved and the materials, excavation, preparation of an existing structure, or other preparation are readily visible on a reasonable inspection of the real estate, visible commencement occurs when:

(a) Materials are delivered to the real estate to which the lien attaches preparatory to construction;

(b) Excavation on the real estate to which the lien attaches is begun; or

(c) Preparation of an existing structure to receive the new construction, or other preparation of the real estate to which the lien attaches, is begun.

(5) In all cases not covered by subsection (4) of this section the time visible commencement occurs is to be determined by the circumstances of the case.

52-138. Priority among lien claimants.

(1) All liens attaching at the same time have equal priority and share the amount received upon foreclosure of the liens and available for distribution to construction lien claimants in the same ratio as the ratio of the particular lien bears to the total of all liens attaching at the same time.

(2) Except as provided by subsection (3) of this section, liens attaching at different times have priority in the order of attachment.

(3) A claimant who records a notice of commencement after he or she has recorded a lien has only equal priority with claimants who record a lien while the notice of commencement is effective. Any priority which the claimant gained over third parties by recording his or her notice of lien is preserved for the benefit of all claimants having equal priority under this subsection.

52-139. Priority of construction liens as against claims other than construction lien claims.

(1) Except as provided in this section, a construction lien has priority over adverse claims against the real estate as if the construction-lien claimant were a purchaser for value without knowledge who had recorded at the time his or her lien attached.

(2) Except as provided in subsection (3) of this section, a construction lien has priority over subsequent advances made under a prior recorded security interest if the subsequent advances are made with knowledge that the lien has attached.

(3) Notwithstanding knowledge that the construction lien has attached, or the advance exceeds the maximum amount stated in the recorded security agreement and whether or not the advance is made pursuant to a commitment, a subsequent advance made under a security agreement recorded before the construction lien attached has priority over the lien if:

(a) The subsequent advance is made under a construction security agreement and is made in payment of the price of the agreed improvements;

(b) The subsequent advance is made or incurred for the reasonable protection of the security interest in the real estate, such as payment for real property taxes, hazard insurance premiums, or maintenance charges imposed under a condominium declaration or other covenant; or

(c) The subsequent advance was applied to the payment of any lien or encumbrance which was prior to the construction lien.

(4) To the extent that a subsequent security interest is given to secure funds used to pay a debt secured by a security interest having priority over a construction lien under this section, the subsequent security interest is also prior to the construction lien.

(5) Even though notice of commencement has been recorded, a buyer who is a protected party takes free of all construction liens that are not of record at the time his or her title document is recorded.

52-140. Duration of lien; demand to institute judicial proceedings; continuation of lien during pendency of proceeding.

(1) Except as provided in subsections (2) and (3) of this section, a lien that has become enforceable as provided in sections 52-125 to 52-159 continues enforceable for two years after recording of the lien.

(2) Except as provided in subsection (3) of this section, if an owner, holder of a security interest, or other person having an interest in the real estate gives the claimant written demand to institute a judicial proceeding within thirty days, the lien lapses unless within thirty days after receipt of the written demand, the claimant institutes judicial proceedings or records an affidavit that the total contract price is not yet due under the contract for which he or she recorded the lien.

(3) If a judicial proceeding to enforce a lien is instituted while a lien is effective under subsection (1) or (2) of this section, the lien continues during the pendency of the proceeding.

52-141. Surety bond; notice recorded; no lien attaches to real estate; bond, requirements; copy to claimant; action against surety.

(1) A lien does not attach to the real estate on behalf of any claimant claiming through a particular prime contractor if the owner or the prime contractor has procured from a surety company authorized to do business in this state a bond meeting the requirements of this section and has recorded a notice of surety bond.

(2) The bond must obligate the surety company, to the extent of the penal sum of the bond, to pay all sums due to construction lien claimants other than the prime contractor for services and materials supplied pursuant to the contract under which the lien would otherwise arise.

(3) The penal sum of the bond shall be not less than:

(a) Fifty percent of the contract price, if the prime contract price is not more than one million dollars;

(b) Forty percent of the contract price, if the prime contract price is more than one million dollars and not more than five million dollars;

(c) Two million, five hundred thousand dollars, if the prime contract price is more than five million dollars.

(4) The person procuring the bond shall furnish on request a true copy at cost of reproduction to any claimant and is liable to the requesting claimant for any damages caused by failure, without justification, to furnish a copy.

(5) A claimant may not recover under the bond provided for in this section unless he or she:

(a) Institutes suit against the surety within one year after the completion of his or her performance or within any longer period of time permitted by the terms of the bond; and

(b) If he or she is a claimant not having a direct contract relationship with the prime contractor, within ninety days after completion of his or her performance gives the prime contractor written notice of the amount due.

(6) A claimant having a claim under the bond may proceed directly against the surety. A judicial proceeding on the bond may be maintained separately from and without bringing a judicial proceeding against the prime contractor and without complying with the notice and recording procedures of sections 52-125 to 52-159. In any judicial proceeding brought on the bond the court shall award to the prevailing party reasonable attorney's fees and court costs.

(7) The obligation of a surety under this section is not affected by any change or modification of the contract between the prime contractor and the contracting owner, but the total liability of the surety may not exceed the penal sum of the bond.

52-142. Substitution of collateral; release of lien; procedure.

(1) Any person having an interest in real estate may release the real estate from liens which have attached to it by:

(a) Depositing in the office of the clerk of the district court of the county in which the lien is recorded a sum of money in cash, certified check, or other bank obligation, or a surety bond issued by a surety company authorized to do business in this state, in an amount sufficient to pay the total of the amounts claimed in the liens being released plus fifteen percent of such total; and

(b) Recording, as provided in section 52-151, a certificate of the clerk of the district court showing that the deposit has been made.

(2) The clerk of the district court has an obligation to accept the deposit and issue the certificate.

(3) Upon release of the real estate from a lien under this section, the claimant's rights are transferred from the real estate to the deposit or surety bond and the claimant may establish his or her claim under sections 52-125 to 52-159, and upon determination of the claim the court shall order the clerk of the district court to pay the sums due or render judgment against the surety company on the bond, as the case may be.

52-143. Obligation of claimant to furnish information to other lien claimant; damages; applicability of section.

(1) A prime contractor, on request, is obligated to furnish the following information within a reasonable time, not exceeding ten days, to any person entitled to claim a lien through him or her:

(a) A description of the real estate being improved sufficient to identify it;

(b) The name and address of the contracting owner with whom the prime contractor contracted; and

(c) Whether there is a surety bond and, if so, the name of the surety.

(2) At the request of any person who may claim a lien through him or her, any claimant other than a prime contractor must furnish, within a reasonable time not exceeding five days, the name of the person who contracted for the furnishing by the claimant of the materials or services in connection with which the lien claim may arise.

(3) A person who fails to furnish information as required by this section is liable to the requesting party for actual damages or two hundred dollars as liquidated damages.

(4) This section shall apply only when the real estate improvement contract is with a protected party.

52-144. Waiver of construction lien rights; what constitutes; validity; effect.

(1) A written waiver of construction lien rights signed by a claimant requires no consideration and is valid and binding, whether signed before or after the materials or services were contracted for or furnished. Ambiguities in a written waiver are construed against the claimant.

(2) A written waiver waives all construction lien rights of the claimant as to the improvement to which the waiver relates unless the waiver is specifically limited to a particular lien right or a particular portion of the services or materials furnished.

(3) A waiver of lien rights does not affect any contract rights of the claimant otherwise existing.

(4) Acceptance of a promissory note or other evidence of debt is not a waiver of lien rights unless the note or other instrument expressly so declares.

52-145. Notice of commencement; by whom filed; contents; recording; duration; extension.

(1) A notice of commencement must be signed by the contracting owner, be denominated notice of commencement, and state:

(a) The real estate being or intended to be improved or directly benefited, with a description thereof sufficient for identification;

(b) The name and address of the contracting owner, his or her interest in the real estate, and the name and address of the fee simple title holder, if other than the contracting owner; and

(c) That if, after the notice of commencement is recorded, a lien is recorded as to an improvement covered by the notice of commencement, the lien has priority from the time the notice of commencement is recorded.

(2) The notice of commencement may state its duration, but if a duration is stated of less than six months from the time of recording, the duration of the notice is six months. If no duration is stated, the duration of the notice is one year after the recording.

(3) The notice of commencement may state that it is limited to a particular improvement project, or portion thereof, on the real estate. But the limitation is not effective unless the particular improvement, or portion

thereof, to which it applies is stated with sufficient specificity that a claimant, by reasonable inquiry, can determine whether his or her contract is covered by the notice of commencement.

(4) A contracting owner may extend the duration of a notice of commencement by recording before the lapse thereof a continuation statement signed by him or her which refers to the record location and date of recording of the notice of commencement and states the date to which the notice of commencement's duration is extended.

(5) If no notice of commencement applies to an improvement, any claimant who is entitled to record a lien may record a notice of commencement denominated notice of commencement, claimant recording, signed by him or her, stating:

- (a) In accordance with subsection (10) of this section, the real estate being or intended to be improved or directly benefited, with a description thereof sufficient for identification;
- (b) The name and address of the contracting owner against whom the notice of commencement is effective;
- (c) The name and address of the claimant recording the notice of commencement;
- (d) The name and address of the person with whom the claimant contracted with respect to the improvement;
- (e) A brief description of the services or materials provided, or to be provided, by the claimant for the improvement; and

(f) That if, after the notice of commencement is recorded, a lien is recorded as to an improvement covered by the notice of commencement, the lien has priority from the time the notice of commencement is recorded.

(6) A claimant recording a notice of commencement, not later than the day it is recorded, must send a copy thereof to the contracting owner. The claimant is liable to the contracting owner for any damages caused by failure to comply with this subsection.

(7) Sections 52-125 to 52-159 apply equally to all notices of commencement, but as to a notice of commencement recorded by a claimant:

- (a) Notwithstanding any stated duration, the duration is one year after the recording; and
- (b) The limitation under subsection (3) of this section is not effective.

(8) Unless a notice of commencement is limited to a particular improvement project, or portion thereof, it covers all improvements made on the real estate described therein whether or not they were contemplated at the time of the recording.

(9) Unless a notice of commencement provides otherwise, it covers improvements made on real estate not owned by the contracting owner if, under subsection (4) of section 52-133, a lien arises against the contracting owner's real estate described in the notice of commencement as a result of the improvements.

(10) A notice of commencement recorded by a claimant under subsection (5) of this section may describe all or any part of the contracting owner's real estate being improved or directly benefited.

52-146. Termination of notice of commencement; procedure.

(1) A contracting owner may terminate a notice of commencement as to all or any identified portion of the real estate subject to the notice of commencement by:

- (a) Recording a notice of termination denominated termination of notice of commencement and containing:
 - (i) The information required by subdivisions (1)(a) and (1)(b) of section 52-145 for a notice of commencement;
 - (ii) A reference to the recorded notice of commencement by its record location and a statement of its date of recording;
 - (iii) A statement of the date as of which the notice of commencement is terminated which date may not be earlier than thirty days after the notice of termination is recorded; and
 - (iv) If the notice of termination is to apply only to a portion of the real estate subject to the notice of commencement, a statement of that fact and a description of the portion of the real estate to which the notice of termination applies;

(b) Sending, at least three weeks before the effective date of the notice of termination, a copy of the notice of termination, showing the date it was recorded, to all claimants who have requested that the owner notify them of the recording of a notice of termination;

(c) Publishing a notice of the recording of the notice of termination, which notice must comply with the provisions of subsection (2) of this section and be published at least once a week for three consecutive weeks in a newspaper having general circulation in the county where the recording occurs, the last publication of which must be at least five days before the stated termination date; and

(d) Recording an affidavit stating that notice of the recorded notice of termination has been sent to all claimants who have requested notice and that publication has been made. The affidavit must state the newspaper and dates of publication and include a copy of the published notice.

(2) The published notice of the recording of the notice of termination must contain the information required for the notice of termination under subsection (1) of this section, a statement of the date on which the notice of termination was recorded, and a statement that all lien claims for which a notice of lien is not recorded by the termination date may be defeated by a transfer of the real estate.

(3) A purchaser, judgment creditor, or other person having a lien against the real estate may rely on the affidavit without obligation to inquire as to its accuracy, and is not prejudiced by its inaccuracy.

52-147. Lien recording; contents.

(1) A claimant may record a lien which shall be signed by the claimant and state:

(a) The real estate subject to the lien, with a description thereof sufficient for identification;

(b) The name of the person against whose interest in the real estate a lien is claimed;

(c) The name and address of the claimant;

(d) The name and address of the person with whom the claimant contracted;

(e) A general description of the services performed or to be performed or materials furnished or to be furnished for the improvement and the contract price thereof;

(f) The amount unpaid, whether or not due, to the claimant for the services or materials or if no amount is fixed by the contract a good faith estimate of the amount designated as an estimate; and

(g) The time the last services or materials were furnished or if that time has not yet occurred, an estimate of the time.

(2) The name given in the lien in accordance with the requirement of subdivision (1)(b) of this section may be the name of the contracting owner or the name of the record holder of the contracting owner's interest at the time of recording the lien.

52-148. Amendment of recorded lien.

(1) A recorded lien may be amended by an additional recording at any time during the period allowed for recording the original lien. An amendment adding real estate or increasing the amount of lien claimed is effective as to the additional real estate or increased amount only from the time the amendment is recorded.

(2) A recorded lien may be amended after the period allowed for recording the original lien for the purpose of:

(a) Reducing the amount of the lien;

(b) Reducing the real estate against which the lien is claimed; or

(c) Making an apportionment of the lien among lots of a platted subdivision of record.

(3) An amendment shall state the record location and date of recording of the notice of lien being amended and shall state the respects in which it is being amended.

52-149. Assignment of lien rights; recording; effect.

(1) A claimant having a recorded lien, or his or her assignee, may record an assignment signed by the claimant which sets forth the name of the claimant, the name and address of the assignee, the person against whom the lien is claimed, the real estate affected with a description thereof sufficient for identification, and the record location and date of the recording of the notice of lien.

(2) Even though an assignment has been recorded, an owner may continue to deal with the original claimant as to the claim until the owner receives notice of the assignment and a direction that no arrangements or payments may be made without the assignee's consent. If requested by the owner, the assignee must furnish reasonable proof that an assignment has been made and unless he or she does so, the owner may pay the assignor.

(3) Unless a statement of assignment is recorded, the assignee need not be a party to any judicial proceeding to foreclose a security interest, lien, or other encumbrance.

(4) The failure to record an assignment does not otherwise affect its validity.

52-150. Notice of surety bond; recording; contents.

(1) If a prime contractor or owner has secured a surety bond a notice of surety bond may be recorded.

(2) The notice shall be signed by the contractor or owner and by the surety company and state:

(a) The real estate being improved with a description thereof sufficient for identification;

(b) The names and addresses of the owner and the prime contractor;

(c) The name and address of the surety company and the name and address of a person on whom service of process may be made;

(d) The total sum of the bond and that the bond meets the requirements of section 52-141; and

(e) That the bond is for the purpose of relieving the real estate from construction liens arising under the contract between the named prime contractor and contracting owner.

52-151. Substitution of collateral; certificate; recording; contents.

(1) A person who has deposited money or a surety bond with the clerk of the district court in substitution of collateral as provided in section 52-142 may record a certificate of the clerk of the district court showing the deposit.

(2) The certificate, which shall be signed by the clerk of the district court, shall state the amount deposited, if money, or, if a surety bond, the amount of the bond and the name and address of the surety company.

(3) The certificate also shall state, on the basis of information supplied by the person making the deposit:

(a) The real estate being improved with a description thereof sufficient for identification;

(b) The name and address of the person in whose behalf the deposit was made;

(c) If a surety bond is deposited, the name and address of a person on whom service of process may be made; and

(d) The name of the claimants for whom the deposit is made, the amount of their claims, and the record location of their liens.

52-152. Demand to institute judicial proceedings; recording; claimant's statement; recording.

(1) A person giving a demand to institute judicial proceedings to enforce a lien, after giving the demand, may record a copy of the demand in the office in which the lien was recorded. The demand must refer by record location to the recorded lien under which it was given, and state the date demand was given to institute judicial proceedings and the names of the owner and the claimant.

(2) A claimant who has received demand to institute judicial proceedings may record, in the office in which the lien was recorded, a statement that the total contract price is not yet due under the contract for which the lien was recorded. The statement must refer to the recorded lien by its record location and give the names of the owner and the claimant.

52-153. Owner's statement of apportionment of lien; recording; contents.

An owner who is entitled to apportion a lien among lots of a platted subdivision of record may record a statement making the apportionment. The statement must refer to the record location of the lien being apportioned, state the name of the owner and the claimant, state the date on which the demand to apportion was made on the claimant and that he or she has not apportioned, and make the apportionment.

52-154. Discharge of lien; partial release; procedure.

(1) A lien provided by sections 52-125 to 52-159 may be discharged of record by:

(a) Recording a signed statement of the record claimant stating that the lien is released;

(b) Failing to record, within the time prescribed in the provisions on duration of lien under section 52-140, an affidavit that the total contract price is not yet due;

(c) Recording the original or certified copy of a final judgment or decree of a court of competent jurisdiction so providing; or

(d) Recording, as provided in section 52-151, a certificate of the clerk of the district court showing the deposit of substitute collateral.

(2) The lien claimant of record by partial release may reduce the amount of the lien claimed in the notice of lien or limit the notice of lien to a portion of the real estate described in the notice of commencement by recording an amendment to his or her lien showing the reduction in amount or limited portion of the real estate against which a lien is claimed.

(3) A statement under subdivision (1)(a) of this section or a judgment under subdivision (1)(c) of this section must refer by record location to the notice of lien to which it applies.

52-155. Proceeding to enforce lien.

(1) Except as otherwise provided in this section, the rules applicable to a civil action apply to a proceeding to foreclose liens under sections 52-125 to 52-159.

(2) In a proceeding to foreclose a lien, all claimants having recorded liens may join as plaintiffs and those who do not join as plaintiffs may be joined as defendants. Any person who records a lien or acquires an interest in real estate after the commencement of the foreclosure proceeding may be made a defendant before judgment.

(3) The court shall determine the amount due or owing to each claimant and direct foreclosure of the liens against the real estate. Foreclosure may be by any method available for foreclosure of security interests in real estate, or otherwise, as ordered by the court.

52-156. Recording of notice of termination before abandonment or completion; owner; liability.

(1) If a contracting owner records a notice of termination before abandonment or substantial completion of all the improvements covered by the notice of commencement being terminated, he or she is personally liable to any lien claimant to the extent that the claimant is unable to realize on a lien because the notice of termination was recorded before abandonment or substantial completion.

(2) A notice of termination is effective even though the owner, under subsection (1) of this section, may be personally liable to lien claimants by reason of his or her recording the notice of termination.

52-157. Remedies for wrongful conduct.

(1) If a person is wrongfully deprived of benefits to which he or she is entitled under sections 52-125 to 52-159 by conduct other than that described in section 52-156:

(a) He or she is entitled to damages; and

(b) The court may make orders restraining the owner or other person, or ordering them to proceed on appropriate terms and conditions.

(2) If in bad faith a claimant records a lien, overstates the amount for which he or she is entitled to a lien, or refuses to execute a release of a lien, the court may:

(a) Declare his or her lien void; and

(b) Award damages to the owner or any other person injured thereby.

(3) Damages awarded under this section may include the costs of correcting the record and reasonable attorney's fees.

52-158. Repealed. Laws 2011, LB 3, § 1.

52-159. Substitution of terms; Revisor of Statutes; duties.

Whenever in the statutes of Nebraska, unless the context otherwise requires, the term mechanic's lien or words referring to such term occur they shall be taken to mean and apply to construction lien as used in sections 52-125 to 52-159. The Revisor of Statutes shall substitute the appropriate term or words in the statutes necessitated by this section.

CHAPTER 57. MINERALS, OIL AND GAS.

Section 57-802. Leasehold interest; oil and gas operations; labor and material; lien.

Any person, who shall under contract with the owner of any leasehold interest held for oil or gas purposes or the owner of any pipeline perform any labor, furnish any material or services used or employed or furnished to be used or employed in the drilling or operating of any oil or gas well upon such leasehold interest or in the construction of any pipeline or in the constructing of any material so used, employed, or furnished to be used or employed, shall be entitled to a lien under sections 57-801 to 57-820. Any such person shall be entitled to such lien whether or not a producing well is obtained and whether or not such material is incorporated in or becomes a part of the completed oil well, gas well, or pipeline, for the amount due him for the performance of such labor or the furnishing of such material or services. This shall include, without limiting the generality of the foregoing, transportation and mileage charges connected therewith.

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