

New Hampshire

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Statutory Outline

TITLE XLI. LIENS.

CHAPTER 447. LIENS FOR LABOR AND MATERIALS.

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447:1. Vessels. – If a person shall perform labor, provide professional design services as defined in RSA 447:2, or furnish materials toward building, repairing, fitting or furnishing a vessel within this state, payment for which is due, he or she shall have a lien therefor on the vessel for the space of 4 days after it is completed.

447:2. Buildings, etc. –

I. If any person shall perform labor, provide professional design services, or furnish materials to the amount of \$15 or more for erecting or repairing a house or other building or appurtenances, or for building any dam, canal, sluiceway, well or bridge, or for consumption or use in the prosecution of such work, other than for a municipality, by virtue of a contract with the owner thereof, he or she shall have a lien on any material so furnished and on said structure, and on any right of the owner to the lot of land on which it stands.

II. In this section, "professional design services" means any services provided by a licensed architect, licensed landscape architect, licensed engineer, permitted septic designer, certified wetland scientist, certified soil scientist, or licensed land surveyor that is directly related to the improvement of real property.

447:3. Brick. – If a person shall perform labor or furnish materials or fuel to the amount of \$15 or more for the making of brick, by virtue of a contract with the owner thereof, he shall have a lien upon said materials and fuel

and upon the brick with the kiln containing said brick, for such labor, materials or fuel. Said lien shall continue for 90 days after said brick are burned, and may be secured by attachment as provided in RSA 447:10.

447:4. Lumber, etc. – If a person shall, by teams or machinery, perform labor or furnish supplies to the amount of \$15 or more toward rafting, driving, cutting, hauling, sawing or drawing wood, bark, lumber or logs, or toward cooking or hauling supplies in aid of such labor, by virtue of a contract with the owner of the wood, bark, lumber or logs, he or she shall have a lien thereon for such labor or supplies.

447:5. Subcontractors. – If a person shall perform labor, provide professional design services as defined in RSA 447:2, or furnish materials to the amount of \$15 or more for any of the purposes specified in RSA 447:2, 447:3 and 447:4 and in RSA 453, by virtue of a contract with an agent, contractor or subcontractor of the owner, the person shall have the same lien as provided in said sections, provided, that he or she gives notice in writing to the owner or to the person having charge of the property that he or she shall claim such lien before performing the labor or furnishing the material for which it is claimed.

447:6. Notice. – Such notice may be given after the labor is performed, the professional design services are provided, or the material is furnished, and said lien shall be valid to the extent of the amount then due or that may thereafter become due to the contractor, agent or subcontractor of the owner. The account required under RSA 447:8 may also be given at the time said notice is given.

447:7. Railroads. – If a person shall perform labor, provide professional design services, or furnish materials to the amount of \$15 or more, in the grading, masonry, bridging or track-laying of a railroad, under a contract with an agent, contractor or subcontractor of the proprietors thereof, the person shall have a lien upon the railroad and the land upon which it is constructed; provided, that he or she gave notice in writing to such proprietors, or to the person having charge of the railroad, that he or she should claim such lien before performing the labor, providing the services, or furnishing the materials for which it is claimed.

447:8. Account. – Any person giving notice as provided in RSA 447:5-7 shall, as often as once in 30 days, furnish to the owner, or person having charge of the property on which the lien is claimed, an account in writing of the labor performed, professional design services provided, or materials furnished during the 30 days; and the owner or person in charge shall retain a sufficient sum of money to pay such claim, and shall not be liable to the agent, contractor or subcontractor therefor, unless the agent, contractor or subcontractor shall first pay it.

447:9. Duration. – The lien created by RSA 447:2-7, inclusive, shall continue for 120 days after the services are performed, or the materials, supplies or other things are furnished, unless payment therefor is previously made, and shall take precedence of all prior claims except liens on account of taxes.

447:10. How Secured. – Any such lien may be secured by attachment of the property upon which it exists at any time while the lien continues, the writ and return thereon distinctly expressing that purpose.

447:11 Precedence. – Such attachment shall have precedence over all lien claims for labor, professional design services, materials, or other things done or furnished after the attachment was made, except the same were done or furnished in the performance of a contract existing when the attachment was made, or were necessary for the preservation of the property attached.

447:12. Share Pro Rata. – Except as provided in RSA 447:11, all such attaching lien creditors shall share pro rata in accordance with the amounts of their respective lien judgments in the property attached or in its proceeds.

447:12-a. Attachment Priority. – Such attachment shall have precedence and priority over any construction mortgage. For the purposes of this section, a construction mortgage shall mean any mortgage loan made for the purpose of financing the construction, repair or alteration of any structure on the mortgaged premises where the lien secured by such attachment arises from the same construction, repair or alteration work. However, such

attachment shall not be entitled to precedence as provided in this section to the extent that the mortgagee shows that the proceeds of the mortgage loan were disbursed either toward payment of invoices from or claims due subcontractors and suppliers of materials or labor for the work on the mortgaged premises, or upon receipt by the mortgagee from the mortgagor or his agent of an affidavit that the work on the mortgaged premises for which such disbursement is to be made has been completed and that the subcontractors and suppliers of materials or labor have been paid for their share of such work, or will be paid out of such disbursement. A mortgagee shall not knowingly accept a fraudulent affidavit, and shall encourage and promote the practices outlined in RSA 447:12-b. Any agreement waiving the precedence provided by this section shall be enforceable only upon like showing by the mortgagee. The precedence provided by this section shall not apply to wage claims of employees working for wages under an employer-employee relationship, as defined in RSA 275:42. A mortgagor or his agent making a willfully false affidavit under this section shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.

447:12-b. Additional Responsibilities; Construction Mortgages. –

I. Within 10 business days of the execution of a construction mortgage, including any refinancing thereof, the mortgagor or his agent shall post in a conspicuous place on the jobsite for which the construction funds were secured, the name, address and telephone number of the institution providing the construction funds.

II. Any person entitled to a lien pursuant to RSA 447:2-7 shall, within 15 business days of the posting required in paragraph I or of commencing to furnish services, materials, supplies or other things, whichever is later, provide written notice to the institution providing the construction funds that such person is furnishing services, materials, supplies or other things. The written notice provided under this paragraph shall include the name and address of the jobsite. Failure to provide the notice required by this paragraph shall not alone invalidate the lien created by RSA 447:2-7.

III. At least 48 hours prior to requesting any construction mortgage requisition, the mortgagor or his agent shall post in a conspicuous place on the jobsite for which the construction funds were secured, the anticipated funding date for said requisition. The mortgagee shall require a copy of said notice, which shall be certified as to its posting by the mortgagor or his agent prior to disbursing any funds.

IV. In the event that a written contract between the mortgagor or his agent and any person furnishing services, materials, supplies or other things shall provide that the disbursement of construction funds, a portion of which is intended to pay such person, shall be by a 2-party check, the mortgagor or his agent shall transmit a copy of such agreement to the mortgagee. Upon receipt of a copy of such written agreement, the mortgagee shall subsequently disburse funds intended in part to pay any such person only by a check made payable to the mortgagor or his agent and such person. Unless otherwise agreed by the mortgagor and mortgagee, disbursements shall be made only for actual work completed and materials consumed on the jobsite for which the construction funds were secured.

447:13. Boomage. – If logs are attached, the officer making the attachment may pay the boomage thereon, if any, and return the amount so paid on the writ, and it shall be included in the costs recovered.

447:14. Taking a Note. – No lien shall be defeated by taking a note, unless it was taken in discharge of the amount due and of the lien.

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