

## New Mexico

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### Statutory Outline

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## CHAPTER 48. LIENS AND MORTGAGES.

### ARTICLE 2. MECHANICS' AND MATERIALMEN'S LIENS.

#### **48-2-1. ["Lien" defined.]**

A lien is a charge imposed upon specific property, by which it is made security for the performance of an act.

#### **48-2-2. Mechanics and materialmen; lien; labor, equipment and materials furnished; definition of agent of owner.**

Every person performing labor upon, providing or hauling equipment, tools or machinery for or furnishing materials to be used in the construction, alteration or repair of any mine, building, wharf, bridge, ditch, flume, tunnel, fence, machinery, railroad, road or aqueduct to create hydraulic power or any other structure, who performs labor in any mine or is a registered surveyor or who surveys real property has a lien upon the same for the work or labor done, for the specific contract or agreed upon charge for the surveying or equipment, tools or machinery hauled or provided or materials furnished by each respectively, whether done, provided, hauled or furnished at the instance of the owner of the building or other improvement or his agent. Every contractor, subcontractor, architect, builder or other person having charge of any mining or of the construction, alteration or repair, either in whole or in part, of any building or other improvement shall be held to be the agent of the owner for the purposes of this section.

#### **48-2-2.1. Procedure for perfecting certain mechanics' and materialmen's liens.**

A. The provisions of Subsections B through D of this section do not apply to claims of liens made on residential property containing four or fewer dwelling units, to claims of liens made by an original contractor or to claims of liens made by mechanics or materialmen who contract directly with the original contractor. For purposes of this section, "original contractor" means a contractor that contracts directly with the owner.

B. No lien of a mechanic or a materialman claimed in an amount of more than five thousand dollars (\$5,000) may be enforced by action or otherwise unless the lien claimant has given notice in writing of the claimant's right to claim a lien in the event of nonpayment and that notice was given not more than sixty days after initially

furnishing work or materials, or both, by either certified mail, return receipt requested, facsimile with acknowledgement or personal delivery to:

(1) the owner or reputed owner of the property upon which the improvements are being constructed;

or

(2) the original contractor, if any.

C. If the owner or the original contractor claims lack of notice as a defense to the enforcement of a lien described in Subsection B of this section, the owner or contractor shall show that upon the request of the mechanic or materialman that the owner or contractor furnished to the lien claimant not more than five days after such request was made:

(1) the original contractor's name, address and license number, if there is an original contractor on the project;

(2) the owner's name and address;

(3) a description of the property or a description sufficiently specific for actual identification of the property; and

(4) the name and address of any bonding company or other surety that is providing either a payment or performance bond for the project.

D. The notice required to be given by the claimant pursuant to the provisions of Subsection B of this section shall contain:

(1) a description of the property or a description sufficiently specific for actual identification of the property;

(2) the name, address and phone number, if any, of the claimant; and

(3) the name and address of the person with whom the claimant contracted or to whom the claimant furnished labor or materials, or both.

E. A person required by the provisions of Subsection B of this section to give notice to enforce the person's claim of lien may elect not to give the notice, but may give the required notice at a later time. If the person elects to do so, the lien shall apply only to the work performed or materials furnished on or after the date thirty days prior to the date the notice was given. The provisions of Subsections C and D of this section apply to any notice given under this subsection.

#### **48-2-3. [Improvement of city or town lot or street; lien on lot.]**

Any person who, at the request of the owner of any lot in any incorporated city or town, grades, fills in or otherwise improves the same, or the street in front of, or adjoining the same, has a lien upon such lot for his work done and materials furnished.

#### **48-2-4. [Lien covers improvements and land.]**

The land upon which any building, improvement or structure is constructed, together with a convenient space about the same, or so much as may be required for the convenient use and occupation thereof, to be determined by the court on rendering judgment, is also subject to the lien, if at the commencement of the work, or of the furnishing the materials for the same, the land belonged to the person who caused said building, improvement or structure to be constructed, altered or repaired, but if such person owned less than a fee simple estate in such land, then only his interest therein is subject to such lien.

#### **48-2-5. Preference over other encumbrances.**

A. The liens provided for in Sections 48-2-1 through 48-2-17 NMSA 1978 are preferred to any lien, mortgage or other encumbrance which may have attached subsequent to the time when the building, improvement or structure was commenced, work done or materials were commenced to be furnished; also to any lien, mortgage or other encumbrance of which the lienholder had no notice and which was unrecorded at the time the building, improvement or structure was commenced, work done or the materials were commenced to be furnished.

B. Liens filed by registered surveyors shall have priority equal with other mechanics' and materialmen's liens, but work performed by registered surveyors shall not constitute the commencement of construction.

**48-2-6. Time for filing lien claim; contents.**

Every original contractor, within one hundred and twenty days after the completion of his contract, and every person, except the original contractor, desiring to claim a lien pursuant to Sections 48-2-1 through 48-2-19 NMSA 1978, must, within ninety days after the completion of any building, improvement or structure, or after the completion of the alteration or repair thereof, or the performance of any labor in a mining claim, file for record with the county clerk of the county in which such property or some part thereof is situated, a claim containing a statement of his demands, after deducting all just credits and offsets. The claim shall state the name of the owner or reputed owner, if known, and also the name of the person by whom he was employed, or to whom he furnished the materials, and shall include a statement of the terms, time given and the conditions of the contract, and also a description of the property to be charged with the lien, sufficient for identification. The claim must be verified by the oath of himself or of some other person.

**48-2-7. [Claims against two or more buildings or improvements; statement of amount due; loss of preference.]**

In every case in which one claim is filed against two or more buildings, mining claims or other improvements owned by the same person, the person filing such claim must at the same time designate the amount due to him on each of such buildings, mining claims or other improvements, otherwise the lien of such claim is postponed to other liens. The lien of such claimant does not extend beyond the amount designated as against other creditors having liens, by judgment, mortgage or otherwise, upon either of such buildings or other improvements, or upon the land upon which the same are situated.

**48-2-8. Recording of liens; indexing; fees.**

The county clerk shall make a record of a claim that shall be indexed as deeds and other conveyances are required by law to be indexed and for which the county clerk may receive the same fees as are allowed by law for recording deeds and other instruments. Any claim, the form of which complies with the requirements of Chapter 48, Article 2 NMSA 1978, shall be entitled to be filed of record.

**48-2-9. Petition to cancel lien; security.**

- A. The owner of any building, mining claim, improvement or structure subject to a lien under Sections 48-2-1 through 48-2-17 NMSA 1978 or an original contractor having a contract with that owner may petition the district court for the county in which the property or a part of it is located for an order canceling the lien.
- B. Upon the filing of the petition, the district court judge shall examine the lien claimant's recorded demands and determine an amount sufficient to satisfy the recorded demands and any other damages, court costs or attorney fees that may be recovered by the lien claimant. Security, in the amount set by the judge and of a type approved by the judge, shall be deposited by the owner of the property or original contractor with the district court conditioned on the payment of any sum found to be validly due to the lien claimant. An owner or original contractor may not provide a single security for the cancellation of the lien of more than one claimant.
- C. When the security is deposited under this section, the judge of the district court shall immediately issue an order canceling the lien and shall notify the county clerk with whom the lien was filed. Upon the recording of the order, the county clerk shall mark the filed lien as canceled. When an order is issued under this subsection, the claimant's lien attaches to the security and is enforceable as to the security in the district court in which it is deposited to the same extent as any other lien provided for in Sections 48-2-1 through 48-2-17 NMSA 1978.

**48-2-10. Limitation of action to enforce.**

No lien provided for in Sections 48-2-1 through 48-2-17 NMSA 1978 remains valid for a longer period than two years after the claim of lien has been filed unless proceedings have been commenced in a court of competent jurisdiction or in binding arbitration within that time to enforce the lien. A contingent payment clause in a contract shall not be construed as a waiver of the right to file and enforce a mechanic's or materialman's lien pursuant to Sections 48-2-1 through 48-2-17 NMSA 1978.

**48-2-10.1. Repealed.**

**48-2-11. [Construction with knowledge of owner subjects land to lien; notice by owner of nonresponsibility.]**

Every building or other improvement mentioned in the second section [48-2-2 NMSA 1978] of this article, constructed upon any lands with the knowledge of the owner or the person having or claiming any interest therein, shall be held to have been constructed at the instance of such owner or person having or claiming any interest therein, and the interest owned or claimed shall be subject to any lien filed in accordance with the provisions of this article, unless such owner or person having or claiming an interest therein shall, within three days after he shall have obtained knowledge of the construction, alteration or repair, or the intended construction, alteration or repair, give notice that he will not be responsible for the same, by posting a notice in writing to the effect, in some conspicuous place upon said land, or upon the building or other improvement situated thereon.

**48-2-12. Contractor liable for liens of subcontractors.**

The contractor shall be entitled to recover upon a lien filed by the contractor only such amount as may be due to the contractor according to the terms of the contract, after deducting all claims of subcontractors under the contractor who have filed liens for work done and materials furnished, and during the pendency of the action, the owner may withhold from the contractor the amount of money for which the lien is filed unless the lien was asserted as a result of the owner's failure to pay the contractor for work done and materials furnished, and in case of judgment against the owner or the owner's property upon the lien, the owner shall be entitled to deduct from any amount due or to become due by the owner to the contractor the amount of the judgment. If the amount of the judgment exceeds the amount due by the owner to the contractor, or if the owner settles with the contractor in full, the owner shall be entitled to recover back from the contractor any amount paid by the owner, in excess of the contract price, and for which the contractor was originally the party liable.

**48-2-13. [Rank of liens; order of payment.]**

In every case in which different liens are asserted against any property, the court in the judgment must declare the rank of each lien, or class of liens, which shall be in the following order, viz:

- A. all persons other than the original contractors and subcontractor;
- B. the subcontractors;
- C. the original contractors.

And the proceeds of the sale of the property must be applied to each lien, or class of liens, in the order of its rank, and whenever, on the sale of the property subject to the lien, there is a deficiency of proceeds, judgment may be docketed for the deficiency in like manner, and with like effect as in actions for the foreclosure of mortgages.

**48-2-14. Joinder of actions; attorney fees; costs.**

Any number of persons claiming liens may join in the same action, and when separate actions are commenced, the court may consolidate them. A prevailing party in a dispute arising out of or relating to a lien action is entitled to recover from the other party the reasonable attorney fees, costs and expenses incurred by the prevailing party.

**48-2-15. [Materials exempt from attachment or execution for purchaser's debts.]**

Whenever materials shall have been furnished for use in the construction, alteration or repair of any building or other improvement, such materials shall not be subject to attachment, execution or other legal process, to enforce any debt due by the purchaser of such materials, except a debt due for the purchase-money thereof, so long as in good faith the same are about to be applied to the construction, alteration or repair of such building, mining claim or other improvement.

**48-2-16. [Personal action for recovery of debt not affected.]**

Nothing contained in this article shall be construed to impair or affect the right of any person to whom any debt may be due for work done or materials furnished to maintain a personal action to recover such debt against the person liable therefor.

**48-2-17. Contractors; workmen's compensation insurance premiums; rights against performance bond.**

Unpaid premiums or charges for the furnishing of workmen's compensation insurance furnished to any contractor or subcontractor, who is required by the terms of his contract or by law to obtain and carry such insurance, shall be and is hereby defined to be material furnished to the contractor or subcontractor for use in the performance of the contract, and the person, firm or corporation so furnishing the same shall have the same rights and remedies against any performance bond given in connection with such contract as if the workmen's compensation insurance so furnished were physical property, and as though a lien had been filed against the improved premises, but shall have no lien against the improved premises.

**CHAPTER 48. LIENS AND MORTGAGES.**

**ARTICLE 2A. STOP NOTICE ACT.**

**Section 48-2A-1. Short title.**

This act [48-2A-1 to 48-2A-12 NMSA 1978] may be cited as the "Stop Notice Act".

**Section 48-2A-2. Purpose.**

The legislature finds there are practices within the industry of constructing residential properties containing not more than four dwelling units resulting in certain financial inequities and, therefore, declares that the purpose of the Stop Notice Act is to: provide for timely payment by an original contractor to persons contracted with to furnish labor or materials incorporated or to be incorporated in residential construction; define stop notices and their legal usage; encourage construction lenders to assert reasonable supervision, monitoring and control of funds disbursed to the original contractor for the timely payment of labor or materials; restrain and bar diversion of funds for purposes not directly involved with construction of the residential site improvement; and provide for criminal penalties.

**Section 48-2A-3. Definitions.**

As used in the Stop Notice Act:

- A. "bond" means good and sufficient sureties executed by a corporate surety entity or cash collateral;
- B. "claimant" means any person entitled under the Stop Notice Act to give a stop notice for labor or materials furnished in connection with site improvement;
- C. "claim satisfied notice" means a notice from the subcontractor or the materialman to the construction lender, if any, and the owner that the claim stated in the stop notice has been satisfied;
- D. "completion of construction" means the earlier of the dates when any of the following occur:
  - (1) issuance of a certificate of occupancy;
  - (2) acceptance by construction lender of the final appraisal of value of the improvement on the residential site; or
  - (3) approval of final inspection by the insuring abstract or title entity;
- E. "construction lender" means any financial institution lending funds for the purposes of contracting for construction or for materials to be incorporated for site improvements or any other person lending or holding funds to pay for construction costs or materials that were incorporated in site improvements;
- F. "labor" means the performance of work or furnishing of skills or other necessary services to a site improvement;
- G. "materialman" means any person who furnishes materials or supplies to a subcontractor or an original contractor, incorporated or to be incorporated into a site improvement;
- H. "original contractor" means any contractor who has an express contractual relationship with the owner or in the case when the owner is the contractor, the owner;
- I. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate or other association; "person" also means, to the extent permitted by law, any federal, state or other governmental unit or political subdivision;

- J. "preliminary notice" means a notice which notifies the owner or the construction lender that the labor furnished or material incorporated or to be incorporated may be subject to a stop notice if the subcontractor or materialman is not paid timely;
- K. "residential site" means the real property upon which the construction labor is furnished or the materials were incorporated or are to be incorporated for the site improvement;
- L. "site improvement" means the construction on a residential site of no more than four dwelling units;
- M. "stop notice" means a written instrument, signed and verified by the claimant or his agent that provides the claimant with a procedure to make and enforce a claim against the construction lender, or owner if there is no construction lender; and
- N. "subcontractor" means any person performing labor upon or providing or hauling equipment, tools or machinery to the site.

**Section 48-2A-4. Requirements for disclosure; owners and construction lenders.**

- A. In every instance where an original contractor proposes to contract with a subcontractor or materialman or both for any site improvement, the original contractor shall inform the subcontractor and materialman of:
  - (1) the name and address of the owner of the residential site;
  - (2) the name and address of the construction lender lending the funds, if any, and the loan officer who actually made the construction loan, if any, for the site improvement; and
  - (3) the accurate legal description of the residential site, if available, however in all cases a description of the residential site sufficient for identification.
- B. Where a subcontractor contracts with another subcontractor for labor or a materialman to provide materials for any site improvement, he shall, upon request, inform the contractor or materialman of:
  - (1) the name and address of the owner of the residential site;
  - (2) the name and address of the construction lender lending the funds, if any, and the loan officer who actually made the construction loan, if any, for the site improvement; and
  - (3) the accurate legal description of the residential site.

**Section 48-2A-5. Stop notices; contents.**

A stop notice shall not be effective unless:

- A. it is signed and verified by the claimant or his agent, accompanied with a bond as provided for in Section 7 [48-2A-7 NMSA 1978] of the Stop Notice Act, is served pursuant to Section 6 [48-2A-6 NMSA 1978] of the Stop Notice Act and states in general terms all of the following:
  - (1) the name of the claimant;
  - (2) the date the claimant files the preliminary notice;
  - (3) the date the claimant presented his request for payment to the original contractors;
  - (4) the name of the owner and original contractor of the residential site;
  - (5) a description of the kind of labor or materials furnished, or agreed to be furnished, for the residential site;
  - (6) the name of the person who ordered the labor or who accepted the materials;
  - (7) the total cost of all the labor or materials to be furnished to the residential site;
  - (8) the cost of the labor furnished or materials already furnished;
  - (9) the balance of the money due; and
  - (10) a demand that the construction lender, if any, or the owner, if there is no construction lender, withhold a sufficient amount of money from the construction loan funds to satisfy the demand of the claimant;
- B. a preliminary notice was given by the claimant, in accordance with Section 6 of the Stop Notice Act, within twenty days after the claimant first began to furnish work or materials to the residential site;
- C. if the claimant does not deliver the preliminary notice within twenty days after the claimant first began to furnish work or material to the site improvement, he may still deliver a preliminary notice but he shall lose his stop notice rights for all work performed or materials furnished more than twenty days before the preliminary notice actually is given; and

D. it is delivered, pursuant to Section 6 of the Stop Notice Act, no earlier than twenty days or later than thirty days from the date the subcontractor or materialman presented his request for payment to the original contractor.

**Section 48-2A-6. Notices.**

A. Any preliminary notice given under the Stop Notice Act shall be effective notice if the preliminary notice is:

(1) hand-delivered or mailed, return receipt requested, to the construction lender, if applicable for the purposes of the Stop Notice Act, or the manager or other responsible person at the address of the construction loan's origination or, if the address of origination has changed, then to the last known address of the construction lender; and

(2) hand-delivered to the owner or mailed, return receipt requested, to the owner's last known residential or business address.

B. The stop notice shall be effective notice if the stop notice was hand-delivered by a small package express carrier addressed to the manager of the real estate lending department of the construction lender if the construction lender is a financial institution. If the construction lender is not a financial institution, the stop notice shall be delivered to the manager or other responsible person at the address where the construction loan originated.

**Section 48-2A-7. Stop notices; bonds.**

A. A stop notice shall not be effective unless it is accompanied by a bond equal to one and one-quarter of the amount of the claim stated in the stop notice. The claimant shall be the principal on the bond, and the bond shall have good and sufficient sureties executed by a corporate surety entity.

B. Requirements of posting bond set forth in this section shall be satisfied when the claimant posts cash collateral with the recipient of the stop notice, one and one-quarter times the amount of the payment or payments claimed.

C. The bond shall protect the owner, the original contractor and the construction lender against any damages that may be incurred by them because of the delivery of the stop notice.

**Section 48- 2A-8. Distribution of construction funds; liability.**

A. Upon receipt of a claim stated in a stop notice, the construction lender, if any, or the owner, if applicable, shall withhold an amount of construction funds equal to the amount claimed in the stop notice from the original contractor until the claim has been satisfied or adjudicated by a court of competent jurisdiction, unless the remaining construction funds are insufficient to completely satisfy the claim due to the prior disbursement or prior amounts being withheld due to previously received stop notices. In these instances, only the remaining unclaimed portion of the construction loan shall be withheld.

B. All funds not disbursed or unclaimed by a stop notice may be disbursed by the construction lender to the original contractor without liability to the construction lender; provided, that if the construction lender disburses construction funds to the original contractor which are subject to an unsatisfied stop notice that is later adjudicated by a court of competent jurisdiction in favor of the claimant, the construction lender shall be liable for the amount of the claim stated in the stop notice. In any action adjudicating a claim stated in the stop notice or adjudicating a claim made pursuant to this section, the prevailing party may be awarded reasonable attorneys' fees.

**Section 48-2A-9. Limitations for filing suit by claimant.**

A. Suit for satisfaction of the stop notice shall be filed not earlier than thirty days after delivery of the stop notice and within sixty days after delivery of the stop notice, and written notice of such suit shall be mailed to the recipient of the stop notice within five days after the date the suit was filed.

B. While the stop notice suit for satisfaction is being litigated, the claimant shall not file a lien for payment of money claimed by the stop notice.

**Section 48-2A-10. Claim satisfied notice; procedure; contents; penalty.**

A. A stop notice shall be discharged when:



- (1) the claim has been satisfied and the claimant has notified the construction lender, if any, and the owner, if applicable, that the claim has been satisfied pursuant to Subsection C of this section; or
  - (2) time for filing pursuant to Subsection A of Section 9 [48-2A-9 NMSA 1978] of the Stop Notice Act has expired without suit being filed; or
  - (3) the original contractor gives the construction lender, if any, or the owner, if applicable, a bond one and one-quarter times the amount of the claim stated in the stop notice. The original contractor shall be the principal on the bond, and the bond shall have good and sufficient sureties executed by a corporate surety company. The bond shall protect the subcontractor or the materialman against damages that may be incurred by them by reason of nonpayment of a claim as adjudicated by a court of competent jurisdiction.
- B. If a claim has been satisfied pursuant to this section then the claimant shall give notice of the satisfaction to the construction lender, if any, and the owner, if applicable.
- C. A claim satisfied notice shall not be effective unless it contains at least the same information as required in the stop notice including a statement signed by the claimant stating that the claim has been satisfied and the claimant agrees to discharge the stop notice.
- D. A claimant is guilty of a misdemeanor and shall be sentenced in accordance with Section 31-19-1 NMSA 1978 if he fails to deliver a claim satisfied notice to all persons who received a bonded stop notice, in accordance with this section, within ten days from the date the claim was satisfied.

**Section 48-2A-11. Discharge; penalty.**

- A. Payment by the owner or his successor in interest to any person entitled to payment of all and any amounts due and owing for any labor or materials furnished or other actions the performance of which could give rise to a lien pursuant to Section 48-2-2 NMSA 1978 to be performed upon a residential site shall discharge all such liens unless prior to payment any person who is entitled to such lien has filed for record his lien pursuant to Section 48-2-6 NMSA 1978. For the purposes of this section, the original contractor shall not be the agent of the owner.
- B. Any contractor or subcontractor justly indebted to a supplier of material or labor who accepts payment for construction described in Subsection A of this section and knowingly and intentionally applies the proceeds to a use other than paying those persons with whom he contracted is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

**Section 48-2A-12. Purchase closing; penalty.**

- A. The original contractor, upon accomplishing completion of construction and upon acceptance of final payment from the owner, his successor in interest or his agent, shall sign an affidavit that all invoices of charges and costs received by the original contractor and related to the residential site have been paid. In lieu of such an affidavit, at the time of accomplishing completion of construction and upon acceptance of final payment from the owner, his successor in interest or his agent, the original contractor shall sign an affidavit stating:
- (1) the names and addresses of persons to whom he has paid in full those invoices of charges and costs arising from furnishing labor or materials incorporated in the residential site;
  - (2) the names and addresses of those subcontractors and materialmen who have presented to the contractor invoices of charges and costs of labor or materials incorporated or to be incorporated in the residential site which have not been paid, accompanied by a waiver of lien for the invoices properly signed by each subcontractor or materialman; and
  - (3) the names and addresses of those subcontractors and materialmen who have presented the contractor invoices of charges and costs of labor or materials incorporated or to be incorporated in the site improvement and which have not been paid and which have not been accompanied by a waiver of lien.
- B. The approximate amount of money represented by the total unpaid invoices of charges and costs, and not accompanied by a signed waiver of lien, as provided in this section, may be withheld at the discretion of the owner, his successor in interest or his agent. This money shall be placed in an escrow account pending disbursement of the money upon the signed approval of the contractor.
- C. Any contractor who knowingly and intentionally signs an affidavit stating that all charges and costs arising from the furnishing of labor or materials for incorporation in the residential site have been paid when in fact all charges and costs have not been paid, or knowingly and intentionally fails to provide the names of persons who

have presented invoices for costs and charges for labor or materials but who have not been paid for their labor or materials furnished as provided in this section, is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

## CHAPTER 70. OIL AND GAS.

### ARTICLE 4. LIENS ON WELLS AND PIPELINES.

#### **Section 70-4-1. Liens for labor and material furnished or hauled for use of oil and gas wells or pipelines.**

Every person who shall, by contract, express or implied, or partly expressed or implied, with the owner of any land, oil and gas permit, leasehold, lease for oil and gas purposes, or with the owner of any gas, oil, or gasoline pipeline, or with a purchaser under executory contract, or with the trustee or agent of the owner, or with one whom the owner has authorized or knowingly permitted to contract, or with a receiver appointed for any of the property of the owner, perform labor or furnish or haul material, equipment, tools, machinery or oil well or gas well supplies, used or employed, or to be used, or to be employed in the digging, drilling, torpedoing, completing, maintaining, equipping, operating or repairing any oil or gas well, or in the construction, operation, maintenance or repairing any gas, oil, or gasoline pipeline, or who shall furnish or haul any oil or gas well supplies, or perform any labor in constructing or putting together any of the equipment or machinery used or employed, or to be used or to be employed, in drilling, torpedoing, completing, maintaining, equipping, operating, or repairing any oil or gas well, shall have a lien upon the whole of that land, oil and gas permit, leasehold, lease for oil and gas purposes, oil pipeline, gas pipeline, or gasoline pipeline, and right-of-way therefor, the buildings and equipment thereon, and the appurtenances thereto, the proceeds from the sale of oil and gas produced therefrom inuring to the working interest, and upon the materials, tools, machinery, equipment and supplies so furnished or hauled, and upon the oil and gas well for which they were furnished or hauled, and upon all the other oil and gas wells, fixtures, machinery, tools, equipment and appliances, used or employed in operating or developing, for oil and gas purposes, upon the land, oil and gas permit, leasehold, or lease for oil and gas purposes, for which the material, tools, machinery, equipment or supplies were furnished or hauled, or labor performed, for the amount due to him for the materials, tools, machinery, equipment, oil and gas well supplies, hauling, or labor, and interest from the date the amount is due; provided, however, the lien herein created shall not extend to the underlying fee or royalty interest unless expressly provided by contract, nor shall it extend to the property, leasehold, or working interest of any owner who does not have a working interest in the well upon which the labor was performed or for which the materials were furnished or hauled. The lien shall be preferred to all other liens or incumbrances which may attach to or upon the land, oil and gas permit, leasehold, lease for oil and gas purposes, and the buildings, machinery, equipment and appurtenances, or upon any oil pipeline, gas pipeline, or gasoline pipeline, and the right-of-way therefor, or such oil or gas wells, the proceeds from the sale of oil and gas produced therefrom inuring to the working interest, and the material, tools, machinery, equipment and supplies so furnished or hauled and the fixtures and appliances thereon, subsequent to the commencement of the labor performed, or the furnishing, or hauling, or putting up of the material, tools, machinery, equipment or supplies; and the lien shall follow the property and each part thereof, and be enforceable against the property wherever it may be found. The taking of any note or additional security by the contractor or subcontractor, or the person having the lien shall not effect, or be a waiver of, any lien he may have by virtue of the Oil and Gas Lien Act [70-4-1 to 70-4-15 NMSA 1978], unless made a waiver by express agreement in writing of the parties; and the lien hereby given shall attach as of the date on which the first of the material, tools, machinery, equipment or supplies is furnished or hauled, or the first of the labor is performed. Any purchaser of oil or gas in the ordinary course of business without actual knowledge of the filing of a lien covering the proceeds from the sale of oil or gas shall take the oil or gas free of the lien.

#### **Section 70-4-2. Labor, hauling and materials considered under continuous contract.**

Any labor performed, or materials, machinery, tools, equipment or supplies so furnished or hauled by any person entitled to a lien under the provisions of the Oil and Gas Lien Act [70-4-1 to 70-4-15 NMSA 1978] for the land, oil and gas permit, leasehold, lease for oil and gas purposes, or oil pipeline, gas pipeline or gasoline pipeline, shall be considered as having been furnished under a single contract regardless of whether or not the

same was performed or furnished at different times or on separate orders, provided no more than one hundred twenty days shall have elapsed between the date of performance of the labor or the date of the furnishing or hauling of any part or parts of the material, tools, equipment, machinery or supplies and the date on which labor or materials, tools, equipment, machinery or supplies are next performed, hauled or finished [furnished].

**Section 70-4-3. Liens of subcontractors.**

Any person who furnishes or hauls the material, tools, equipment, machinery or supplies as, or to, a subcontractor, or any person who performs the labor for, or under, a subcontract with a contractor or subcontractor shall have a lien upon the whole of the land, oil and gas permit, leasehold, lease for oil and gas purposes, or oil pipeline, gas pipeline or gasoline pipeline, and the right-of-way therefor, buildings and equipment thereon, and the appurtenances thereto, and upon the materials, tools, machinery, equipment and supplies so furnished or hauled, and upon the oil and gas well for which they were furnished or hauled, and upon all the other oil and gas wells, fixtures, machinery, tools, equipment and appliances used in operating or developing for oil and gas purposes upon the land, oil and gas permit, leasehold, or lease for oil and gas purposes, for which the material, tools, machinery, equipment or supplies were furnished or hauled, or labor performed, to the same extent, with the same preferences and priorities, and on an equality with the lien of an original contractor as provided in Sections 70-4-1 and 70-4-2 NMSA 1978, for the amount due him for the labor, hauling or materials, tools, machinery, equipment or supplies.

**Section 70-4-4. Claim of lien; contents and filing.**

Every original contractor, within two hundred ten days after the performance of the last labor or the furnishing or hauling of the last item of material, tools, machinery, equipment or supplies, and every person, except the original contractor, claiming the benefits of the Oil and Gas Lien Act [70-4-1 to 70-4-15 NMSA 1978] within one hundred eighty days after the performance of the last labor or the furnishing or hauling of the last item or material, tools, machinery, equipment or supplies shall file for record with the county clerk of the county in which the property upon which the lien is claimed or situated, a claim setting forth the name and residence of the claimant, the amount and the items claimed, the name of the person to whom the materials, tools, machinery, equipment or supplies were furnished or hauled or for whom the labor was performed, the name of the owner and a description of the property upon which the lien is claimed, verified by affidavit.

**Section 70-4-5. Recording; index; fees.**

The county clerk shall record the claim in a book kept by him for that purpose, and shall index such record as deeds and other conveyances are required by law to be indexed, and for which he may receive the same fees as are allowed by law for recording deeds and other conveyances.

**Section 70-4-6. Liability of owner limited to contract price.**

Nothing in the Oil and Gas Lien Act [70-4-1 to 70-4-15 NMSA 1978] shall be deemed to fix a greater liability upon an owner than the amount contracted by the owner to be paid the original contractor; provided that the risk of all payments made to the original contractor shall be upon the owner until the expiration of the one hundred eighty days specified in Section 70-4-4 NMSA 1978 within which persons other than the original contractor may fix their liens by the filing of the claim as provided in that section, and no owner shall be liable to an action by the contractor until the expiration of the one hundred eighty day period. Owners may pay subcontractors the specific contract or agreed upon charge due them from the original contractor for work, labor, material, tools, machinery, equipment and supplies, and the amount so paid shall be held and deemed a payment of that amount to the original contractor.

**Section 70-4-7. Limitation of action to enforce.**

No lien provided for in this act [70-4-1 to 70-4-15 NMSA 1978] shall bind any property subject thereto for a longer period than one year after the date on which the same is filed, unless proceedings be commenced in the district court within that time to enforce the same, or, if a credit be given, then one year after the expiration of such credit, but no such lien shall continue in force for a longer time than two years from the time the lien is

filed by any agreement to give credit unless action to enforce the same shall have been commenced within that time.

**Section 70-4-8. Enforcement of lien.**

The liens herein created may be enforced by proper action in the district court in the county in which the property is situate to which the lien attaches, provided that if the property to which the lien attaches is situate in more than one county the action may be brought in any county where a part of the property is situate. If the lien is foreclosed there shall be no redemption, and the sheriff or other officer shall make a formal conveyance of the property sold under foreclosure to the purchaser as provided by law.

**Section 70-4-9. Joinder of actions; attorney's fees; costs.**

Any number of persons claiming liens may join in the same action, and when separate actions are commenced the court may consolidate them. The court may also allow as a part of the costs the moneys paid for filing and recording the lien, and reasonable attorney's fees in the trial and appellate courts.

**Section 70-4-10. Definition of words "person" and "subcontractor."**

The word "person" as used in this act [70-4-1 to 70-4-15 NMSA 1978] shall include one or more individuals and corporations and copartnerships.

The word "subcontractor" as used in this act shall include every person entitled to the benefits thereof other than an original contractor.

**Section 70-4-11. Preference to laborers; no preference to first contractors.**

Upon all questions arising between different persons having liens under the Oil and Gas Lien Act [70-4-1 to 70-4-15 NMSA 1978], no preference shall be given to him who first performed labor or furnished, or hauled, materials, tools, machinery, equipment or supplies, except that the claim of any person for labor by him personally performed is a preferred lien.

**Section 70-4-12. Materials exempt from attachment.**

Whenever materials, tools, machinery, equipment or oil and gas supplies shall have been furnished for use or employment in the digging, drilling, torpedoing, completing, operating or repairing of any oil or gas well, or in the construction, operation or repairing of any gas pipeline, oil pipeline or gasoline pipeline, such materials, machinery, equipment or oil and gas supplies shall not be subject to attachment, execution or other legal process to enforce any debt due by the purchaser of such materials, machinery, tools, equipment or supplies, except a debt due for the purchase price thereof so long as such purchase price, or any part thereof, remains unpaid, and such materials, tools, machinery, equipment or supplies are in good faith about to be used for the purposes for which they were so furnished, until after the expiration of the time for filing a lien for such purchase price under the provisions of this act [70-4-1 to 70-4-15 NMSA 1978].

**Section 70-4-13. Personal liability.**

Nothing in the Oil and Gas Lien Act [70-4-1 to 70-4-15 NMSA 1978] shall be construed to impair or affect the right of any person, to whom any debt may be due for work done or materials, tools, machinery, equipment or supplies furnished or hauled, to maintain a personal action to recover the debt against the person liable therefor.

**Section 70-4-14. Name of act.**

This act [70-4-1 to 70-4-15 NMSA 1978] shall be known as the Oil and Gas Lien Act.

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