

Mechanic's Liens

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GLOSSARY

The following terms may be helpful in understanding the lien process. Of course, the terminology and procedures will vary from state to state, with some required and others possibly not utilized at all.

Notice of Commencement. A notice of commencement or notice of contract is a document filed or recorded by the owner or general contractor to give notice that work has commenced. The proper filing or recording of this notice usually triggers a requirement that potential mechanic's lien claimants give a preliminary notice to the owner in order to preserve their rights under the mechanic's lien statute.

Preliminary Notice. A potential mechanic's lien claimant typically must give a preliminary notice to the property owner and others that work is beginning. The notice will inform the owner that the claimant is furnishing work or materials to the project and, if unpaid, reserves the right to record a claim of lien. The notice usually must disclose the name and address of the potential claimant, the type of work or materials being supplied, and sometimes includes an estimate of the value of the work or materials to be supplied. A claimant who fails to give the required preliminary notice within the time specified by statute may lose the right to claim a mechanic's lien, even if it is shown that the owner had actual knowledge that the claimant was supplying work or materials to the project, because the purpose of the notice is not to tell the owner that work is being performed, but to notify the owner that the claimant reserves the right to record a claim of lien.

Claim of Lien. The mechanic's lien claim is filed with the clerk or recorded in the county recorder's office. It usually includes the name of the claimant, the amount of the claim, and a description of the property where the project is located. The claim of lien must be filed or recorded promptly, usually 30 to 120 days after the completion of the work. Only rarely do statutes allow a longer period of time.

Notice of Completion. A notice of completion gives notice that the construction project has been completed and therefore potential lien claimants must act promptly to preserve their rights. The notice of completion usually must be recorded within a few days after the completion of the project and is used to reduce the time limit for recording a claim of lien.

Notice of Cessation. When a contractor walks off a job or is thrown off a job, the owner may be permitted to file a notice of cessation to limit exposure to lien claims even though the job is not complete.

Foreclosure Suit. The foreclosure suit is the mechanism for preserving and establishing the lien. Typically, the suit must be filed in a short time and the claimant must prove that it is entitled to assert a mechanic's lien claim. If the claimant fails to file suit or establish its claim, the court dissolves the lien.

Notice of Lis Pendens. A notice of *lis pendens* provides notice in the real estate records that the foreclosure has been commenced. It gives notice that anyone dealing with the property will take title subject to the outcome of the foreclosure suit.

Sheriff's Sale. The sheriff, under a court order, advertises the property for sale at public auction to the highest bidder to satisfy the lien. The highest bidder pays the sheriff, who distributes the purchase price to lien claimants, or as directed by the court.

SUMMARY OF STATE LAWS GOVERNING MECHANIC'S LIENS

The editors have attempted to verify that the synopsis of each state's statutes concerning mechanic's liens is up to date. Significant differences among the states regarding when the legislature is in session and when new laws are reported means that legislative changes may exist that are not listed here. It is emphasized again that the material contained herein is only a summary of state laws. The statutory framework in each state is continually supplemented by judicial decisions, which are outside the scope of this work. The editors urge all users of the *Manual* to use it only as a guide and to consult the latest state law for recent changes or consult with counsel to determine your rights.

ALABAMA

Who May Claim: Every mechanic, person, firm or corporation who does or performs any work or labor upon, or furnish any material, fixture, engine, boiler, waste disposal services and equipment or machinery for any building or

improvement on land, or for repairing, altering or beautifying the same, under or by virtue of any contract with the owner or proprietor thereof, or his agent, architect, trustee, contractor or subcontractor, upon complying with the provisions of this division, shall have a lien therefor on such building or improvements, and on the land on which the same is situated. A lien is also granted to persons, firms, or corporations who perform work on, or furnish material for paving, gutter or other improvements in or on any public street or other public way, etc., such land.

How Claimed: It shall be the under or by virtue of any contract with the abutting landowner or proprietor, and if the amount involved exceeds \$100. There is also a lien granted to persons, firms or corporations who rent or lease appliances, machinery or equipment to another for use in the construction of a building or improvement on land or in repairing, altering or beautifying the same or for use in clearing, excavating duty of every person entitled to such lien to file a statement in writing, verified by the oath of the person claiming the lien, or of some other person having knowledge of the facts.

Where Filed: Office of the Judge of Probate of the county in which the property upon which the lien is sought to be established is situated.

When to Be Filed: Every general contractor within six months, every journeyman and day laborer within 30 days and every other person entitled to such a lien within four months after the last item of work has been performed or the last item of material has been furnished.

Service of Prior Notice: Every person, except the original contractor, who may wish to avail himself of the provisions of this division, shall, before filing his statement in the Office of the Judge of Probate, give notice in writing to the owner or proprietor, or his agent, that he claims a lien on such building or improvement. But the provisions of this section shall not apply to the case of any material furnished for such building or improvement, of which the owner was notified in advance, as provided in paragraph 9 below. It is recommended that the notice be served as soon as possible to trap unpaid funds.

Duration of Lien: Generally, any action for the enforcement of the lien must be commenced within six months after the maturity of the entire indebtedness secured thereby in the circuit court having jurisdiction in the county in which the property is situated.

Filing Fee: Fifteen cents per 100 words.

Contents of Statement of Lien: The verified statement must contain the amount of the demand secured by the lien, after all just credits have been given, a description of the property on which the lien is claimed in such a manner that same may be located or identified, and the name of the owner or proprietor. No error in amount or name of the owner shall affect the lien. Anyone other than the original contractor must first give written notice to the owner or proprietor or his agent that he claims a lien and shall state the amount, for what, and from whom it is owing. *See* paragraph 5 above. There is a statutory form for this verified statement.

Extent of Lien: The contractor's lien extends to all the right, title and interest of the owner or proprietor and to the extent in area of the entire lot or parcel of land in a city or town; or if not in a city or town, of one acre in addition to the land upon which the building or improvement is situated; or if employees of the contractor or persons furnishing material to him, the lien shall extend only to the amount of any unpaid balance due the contractor by the owner or proprietor at the time the notice required by paragraph 5 above is given unless he notifies the owner or proprietor before furnishing any material that he will furnish the contractor with certain materials at certain specified prices. If the owner does not disclaim responsibility for the price before the materials are used, the subcontractor or materialman shall have a lien for the full price regardless of whether the amount of the claim exceeds the unpaid balance due the contractor.

Priority of Lien: Such lien as to the land and buildings or improvements thereon, shall have priority over all other liens, mortgages or encumbrances created subsequent to the commencement of work on the building or improvement; and as to liens, mortgages or encumbrances created prior to the commencement of the work, the lien for such work shall have priority only against the building, or improvement, the product of such work which is an entirety, separable from the land, building or improvement subject to the prior lien, mortgage or encumbrance, and which can be removed therefrom without impairing the value or security of any prior lien, mortgage or encumbrance; and the person entitled to such lien may have it enforced, at any time prior to the foreclosure of such prior lien, mortgage or encumbrance, by a sale of such buildings or improvement under the provisions of this division and the purchaser may, within a reasonable time thereafter, remove the same. The separability and non-impairment requirements may create severe obstacles to recovery of a lien.

A mechanic's lien will be terminated if it is not enforced prior to foreclosure of an encumbrance having priority over the mechanic's lien.

Leased Land: A claimant may obtain a lien under a contract with a lessee in possession for building or improvement when the work is done in accordance with the terms of the unexpired lease. The lienholder may avoid forfeiture upon the lessee's violation of the lease terms by paying rent to the lessor when due, or doing other acts which the lessee is bound to do. If the lien is enforced by sale, the claimant is entitled to reimbursement for any payments of rent or other pecuniary compensation to the lessor which should have been paid to the lessee.

Statutory Citation: Code of Alabama, Title 35, Chapter 11, Division 8, §§35-11-210 to 35-11-234.

ALASKA

Who May Claim: Any person who: (1) performs labor upon real property at the request of the owner or their agent for the construction, alteration or repair of a building or improvement; (2) is a trustee of an employee benefit trust for the

benefit of individuals performing labor on the building or improvement and has a direct contractual relationship with the owner or their agent for direct payments into the trust; (3) furnishes materials that are delivered to real property under a contract with the owner or their agent which are incorporated in the construction, alteration or repair of a building or improvement; (4) furnishes equipment that is delivered to real property under a contract with the owner or their agent that are incorporated in the construction, alteration or repair of a building or improvement; (5) performs services under a contract with the owner or their agent in connection with the preparation of plans, surveys or architectural or engineering plans or drawings for the construction, alteration or repair of a building or improvement, whether or not actually implemented on that property; or (6) is a general contractor.

Person Considered Agent of Owner: Every contractor, subcontractor, architect, builder, or other person having charge of the construction, alteration, or repair, in whole or in part, of a building or other improvement.

Statement: Upon request from an owner, lender, or prime contractor, a lien clamant must provide a property owner a written statement of the amount due, within five days of receiving a written statement.

How Claimed: A claimant may provide the owner or owner’s agent with a written notice of right to lien, *see* sample form below, before furnishing labor, material, service or equipment for a project, or the claimant will (1) bear the burden of proving that the owner knew of and consented to the furnishing of the labor, materials, service or equipment, and (2) bear the risk of not being notified of the completion date of the project and losing the ability to make a timely lien claim. The notice must be in writing, state that it is a notice of a right to assert a lien against real property for labor, materials, services or equipment furnished in connection with a project, and must contain a legal description sufficient for identification of the real property upon which the building or other improvement is located, the name of the owner, the name and address of the claimant, the name and address of the person with whom the claimant contracted, a general description of the labor, materials, services or equipment provided or to be provided, and a statement that the claimant may be entitled to record a claim of lien. In addition, the notice must contain the following statement in type no smaller than that used for the preceding information:

WARNING: Unless provision is made for payment of sums that may be due to the undersigned, your above property may be subject to foreclosure to satisfy those sums even though you may pay a prime contractor or other person for the labor, material, services, or equipment furnished by the undersigned.

NOTICE OF RIGHT TO LIEN

To: _____ (owner or agent of owner)

You are notified that _____
(claimant)

whose address is _____

asserts a right to lien and may be entitled to record a claim of lien against the following real property:
_____ (legal description of property)

The real property is owned by _____.

The lien is claimed in respect of labor/materials/services/ equipment of the following general description, furnished or to be furnished in connection with a project on the above property:

Such labor/materials/services/equipment has been or is to be provided by claimant under a contract with _____ (name of person with whom claimant contracted) whose address is _____.

WARNING: Unless provision is made for payment of sums that may be due to the undersigned, your above property may be subject to foreclosure to satisfy those sums even though you may pay a prime contractor or other person for the labor, material, service, or equipment furnished by the undersigned.

Dated at _____ on _____, 20____.

_____ (signature of claimant)

_____ (claimant’s address)

cc: claimant’s customer

It is recommended that the notice be sent to the claimant’s customer and the general contractor in addition to the property owner. It is further recommended the notice be sent registered mail return receipt requested.

Recording of Lien: In all cases, when filed, *see* sample form below, the claim of lien must be verified and contain the following information: (1) sufficient legal description of the real property concerned; (2) name of the owner; (3) name and address of the lien claimant; (4) name and address of the party with whom the claimant contracted; (5) general description of the labor, materials, services or equipment furnished for the construction, alteration or repair, and the contract price of the labor, materials, services or equipment; (6) amount due the claimant for the labor, materials, services or equipment; (7) date the last labor, materials, services or equipment was furnished; and (8) lien shall be verified by the oath of the claimant or another person having knowledge of the fact and state.

)
)
)
Claimant,

NOTICE OF CLAIM OF LIEN OF LABORER OR

Owner,) MATERIALMEN
)
)

NOTICE IS HEREBY GIVEN that on the ___ day of _____, 20__, at the request of _____, whose address is _____, the above-named claimant, whose address is _____, commenced to perform labor or furnish materials or supply equipment for that certain building consisting of a _____, situated upon the following described real property, to wit: _____ of which property _____ was and is the owner; the performance of which labor or furnishing of which materials ceased on the ___ day of _____, 20__, and that 120 days have not elapsed since that date.

The following is a general description of the labor, materials or equipment furnished: _____ The contract price for this labor, materials or equipment is \$_____, and for which labor, materials, or herein described and the buildings situated thereon for the amount due said claimant, to wit: \$_____.

[Claimant]

By:

STATE OF _____)
) ss.
DISTRICT OF _____)

_____, being sworn, says: I am the _____ of/for the above-named claimant; I have knowledge of the facts; I have read the foregoing claim, know the contents thereof, and believe the same to be true.

SIGNED AND SWORN to before me on _____, 20__.
NOTARY PUBLIC in and for the State of _____, residing at _____
My Commission expires: _____

Where Filed: Recorder of the recording district in which the land, building, or other improvement is located.

When to Be Filed: A notice of right to lien or a claim of lien may be recorded at any time after the claimant enters into a contract for or first furnishes labor, material, services or equipment in connection with the project. When no notice of completion, see below, a lien claim may be recorded no more than 120 days after the claimant completes the construction contract or ceases to furnish labor, material, services or equipment for the construction, alteration, or repair of the owner's property.

Property Description: A contractor must provide the description of the property to any potential lien clamant within five days of any request.

Notice of Completion: An owner may reduce the time period for lien claims by giving at least five days' notice of the intent to record a notice of completion, see sample form below, to persons who have given notice of right to lien or a stop-lending notice and the lender prior to 10 days before recording a notice of completion; the notice must include a copy of the notice of completion and a statement advising claimants that a notice of completion will be recorded not earlier than five days later. A claimant who has received the notice or who has not given notice of right to lien has 15 days from the recording of the notice of completion to record a claim of lien.

NOTICE OF COMPLETION

The undersigned _____ (owner's name) of _____ (owner's address), the owner of/holder of an interest in real property described as _____ (legal description of property sufficient for identification) situated in _____ (recording district) announces that the project relating to the construction/alteration/repair of _____ (describe the improvement) upon the above property was completed on _____ (date of completion).

The nature of the owner's interest in estate in the property is _____

The general contractor for the project is _____ .

All persons claiming mechanic's liens on the property are notified to file their claims of lien or notices of right to lien as required by AS §34.35.068.

Dated _____, 20__.

_____(signature)

(Owner)

State of Alaska, _____ judicial district ss.

I _____ being first duly sworn, depose and say that:

I am the owner of [*holder of interest in*] the property described in the above notice. I have read the above notice. I have knowledge of the facts stated therein, and I believe those facts to be true and correct, to the best of my knowledge, information and belief.

_____(signature)

Subscribed and sworn to before me this ____ day of _____, 20__.

Notary Public for Alaska

My commission expires _____

Duration of Lien: A lien is lost unless action is commenced in the superior court within six months after the claim has been filed. If an extension notice is recorded during the original six-month period, then suit must be brought within six months after the recording of the extension. A notice of extension must be recorded in the same recording office as the initial claim and contain the original recording date, book and page or instrument number of the initial claim of lien and the balance owing.

Filing Fee: Filing fees will be imposed and the claimant should verify the amount as the amount may vary from district to district and may change from time to time.

Extent of Lien: The building or improvement, along with the land upon which the building or other improvement is constructed, together with a convenient space about the building or other improvement or so much as is required for the convenient use and occupation of it if, at the time the work is started or the materials for the building or other improvements are first furnished, the land belongs to the person who causes the building or other improvement to be constructed, altered or repaired. If the owner owns less than a fee simple estate in the land, then only the interest of the owner in it is subject to the lien. No claimant may collect more than the amount due under their contract.

Priority of Lien: A lien in favor of an individual actually performing original construction labor or the trustee of an employee benefit trust for such individuals has priority over prior recorded encumbrances. All other liens are subject to prior recorded encumbrances. Lien claims are awarded a priority of payment by classification among themselves: (1) individuals who provide labor other than prime or subcontractors; (2) trustees for employee benefit trusts for such individuals; (3) material suppliers and subcontractors; (4) prime contractors other than general contractors and architects, engineers, surveyors and draftsman; and (5) persons who perform services under a contract with the owner or the agent of the owner in connection with the preparation of plans, surveys or architectural or engineering plans or drawings for the construction, alteration or repair of a building or improvement, whether or not actually implemented on that property and prime contractors other than the general contractor.

Bond: An owner, a prime contractor or a subcontractor who is affected by the claim of lien or who disputes the validity of a the claim may record a bond in the principal amount of 1½ times the amount of the lien.

Lien for Improvement of Oil or Gas Well: Work done at the instance of the owner gives rise to a lien upon a mine or mining claim, oil, gas or other well, so long as the property is in one mass and can be identified as being produced by the labor of the lienor.

Stop-Lending Notice: A claimant to whom payment is past due may give the construction lender a stop-lending notice, see sample form below. A copy must be given to the owner and to each contractor with or through whom the claimant or the claimant’s debtor contracted. The notice must be verified by the claimant; instruct the lender to stop lending; state the claimant’s name, address and telephone number; describe the labor, material, services or equipment furnished, and the name of the person to whom furnished; describe the real property improved and the name of the person believed to be the owner and the amount due and unpaid to the claimant. A stop-lending notice expires on the 91st day after it is received by the lender unless the claimant has commenced an action on the claim before that day, and the lender has received written notice of the action. In addition, a stop-lending notice may be revoked at any time in writing with the signature of the claimant. If the stop-lending notice expires or is revoked, there is no bank liability. The lender may make further disbursements by determining its statutory liability and setting aside the funds to cover that liability. A lender receiving a stop-lending notice or notice of right to lien for which it is not the lender must give written notice to the claimant within 10 days that it is not the lender.

NOTICE TO REAL PROPERTY LENDER

TO: _____ (Name of Lender) Certified mail, Return Receipt Requested
_____ (Administrative Office - Street Address)
_____ (City, State, Zip)

AND TO: _____ (Owner) Certified mail, Return Receipt Requested

AND TO: _____ (Prime Contractor) Certified mail, Return Receipt Requested

_____ (Name of Laborer, Professional, Materials or Equipment Supplier)

whose business address is: _____

did at the property located at, perform labor, furnish professional services, provided materials or supplied equipment as

follows:

which was ordered by _____ (Name of person)

whose address was stated to be _____.

The amount owing to the undersigned according to contract or purchase order for labor, supplies or equipment (as above mentioned) is the sum of _____ Dollars (\$_____). Said sums became due and owing as of _____.

You are hereby required to withhold from any future draws on existing construction financing which has been made on the subject property (to the extent there remain undisbursed funds) the sum of _____ Dollars (\$_____).

IMPORTANT

Failure to comply with the requirements of this notice may subject the lender to a whole or partial compromise of any priority lien interest it may have.

DATE: _____

By: _____

Its: _____

cc: Claimant’s Customer Certified mail #____ Return Receipt Requested

(repeat if other than owner or Prime Contractor)

Notice of Non-Responsibility: An owner can defeat a lienable interest if: within three days of becoming aware of construction, they post a notice, see sample form below, on the real property that they will not be responsible for construction alteration or repairs completed on the property; the notice is conspicuously posted; the notice is signed by two attesting witnesses or a notary; and the posting is witnessed and an attested or notarized copy is recorded.

NOTICE OF NON-RESPONSIBILITY

_____ (name of owner) of _____ (address), the owner [or if not owner of full legal title, describe the nature of the interest held in the property] of _____ (legal description of property) gives notice that any construction, alteration or repair performed on the above property is not being furnished at his/her/its instance. The above owner is not and will not be responsible for any labor, material, services or equipment provided or to be provided in connection with any such construction, alteration or repair on the property.

This notice was posted on the property on _____ (date) in the presence of the witness whose signature appears below, and it will be recorded in _____ (recording office) within 3 days of posting.

_____ (date)

_____ (signature)

Owner/holder of interest in property

I attest that this notice was posted in my presence

(Witness)

We attest that this notice was signed in our presence

1.

(Witnesses)

2.

Statutory Citation: Alaska Statutes, Title 34, Chapter 34.35, §§34.35.050 to 34.35.120.

ARIZONA

Who May Claim: Pursuant to the mechanic’s and materialmen’s lien rights set forth on Arizona Revised Statutes §33-981, *et seq.*, and except for an owner-occupied dwelling described in A.R.S. §33-1002 (residential structure designed for two families or fewer, with record title owner’s intention to reside in the structure for at least 30 days total during the 12 months immediately following completion) or when a “lien discharge” payment bond in lieu of lien is recorded as per statute (A.R.S. §33-1003), every person (Arizona statutes include corporations as “persons”) who labors or furnishes professional services and who holds a valid certificate of registration, or supplies materials, machinery, fixtures or tools to be used in the construction, alteration or repair of any building or other structure or improvement whatsoever affixed to real property (A.R.S. 3§3-981.A), and has a written contract with the owner of the property, the owner’s agent (prime contractor or subcontractor), or with an architect having a written agreement with the owner of the property (A.R.S. §33-981.F), shall have a lien thereon for the work or labor done or professional services, materials, machinery, fixture or tools furnished, whether said work was done, or articles were furnished, at the instance of (1) the owner of the building, structure or improvement, or (2) the owner’s agent (A.R.S. §33-981.A).

Every contractor, subcontractor, architect, builder, commercial tenant in possession and other person having charge or control of the construction, alteration or repair, either in whole or in part, of any building, structure or improvement, is the agent of the owner and shall have the capacity to enter into enforceable contracts on behalf of the owner (A.R.S. §33-

983.B), with the owner in turn liable for the reasonable value of labor or materials furnished to his agent (*Id.*). A person furnishing professional services, material or labor on a lot in an incorporated city or town (A.R.S. §33-991.A and B), or on any parcel of land not exceeding 160 acres in the aggregate (A.R.S. §33-983.A), or fills in or otherwise improves the lot or such parcel of land or an alley or street or proposed alley or street, within, in front of or adjoining such lot or parcel of land, at the direction of the owner of the lot or parcel of land, shall have a lien for the professional services or material furnished and labor performed. Right of lien is also given for labor or materials used in construction or repair of canals, ditches, aqueducts, bridges, fences, roads, excavations, railroads, etc., and in connection with mines and mining claims (A.R.S. §§33-984 to 33-989), as long as each of the foregoing is owned by private, non-governmental agencies. Persons rendering professional services, defined as agricultural practice, engineering practice, or land survey practice, shall have mechanic's lien rights so long as such person holds a valid certificate of registration and has an agreement with the owner of the property. (A.R.S. §33-981.E and F). Also, a person whose business is required to maintain a contractor's license with the Arizona Registrar of Contractors, but instead does not hold a valid license as required by law, shall not have lien rights. (A.R.S. §33-981.D).

How Claimed: Every person entitled to claim a lien on real property shall serve the owner or reputed owner, the original contractor or reputed original contractor, the reputed current contractor, and the construction lender or reputed construction lender, if any, and the person with whom claimant has contracted for the purchase of those items, with a written preliminary notice within 20 days after the claimant has first furnished labor, professional services, materials, machinery, fixtures or tools for the job site. (A.R.S. §33-992.01). Notice may be served by first-class mail with certificate of mailing, registered or certified mail, addressed to the person or business to whom notice is required to be given at the appropriate residence or business address. (A.R.S. §33-992.01.F). Within 10 days after receipt of a written request from any person or his agent intending to file a preliminary 20-day notice, which request shall identify the person, his address, the job site and the general nature of the person's labor, professional services, materials, machinery or tools to which the preliminary 20-day notice shall apply, or within 10 days of the receipt of a preliminary 20-day notice, the owner or other interested party shall furnish such person a written statement of: (1) legal description, subdivision plat, street address, location with respect to commonly known roads or other landmarks in the area, or any other description of the job site sufficient for identification; (2) name and address of the owner or reputed owner; (3) name and address of the original contractor or reputed contractor; (4) name and address of the construction lender, if any, or reputed construction lender; and (5) if any payment bond in lieu of lien right has been recorded, a copy of the bond and the name and address of the surety company and bonding agent, if any, providing the payment bond. (A.R.S. §33-992.01.I).

Failure of the owner or other interested party to furnish the information required by this section does not excuse any claimant from timely giving a preliminary 20-day notice, but it does prevent the owner or that other interested and non-responding party from successfully raising as a defense any inaccuracy of such information in a preliminary 20-day notice, provided the claimant's notice of lien otherwise complies with the provisions of this chapter. (A.R.S. §33-992.01.J). Similarly, within 10 days of the receipt of the preliminary 20-day notice, the owner or other interested parties, who are presumed to be the other recipients required to receive the preliminary 20-day notice, are required to furnish all information necessary to correct any inaccuracies in the notice contained within statutorily-required information or lose as a defense to a lien claim any inaccuracies in the preliminary notice. (A.R.S. §33-992.01.J). This does not excuse inaccurate information in the lien claim itself.

If the information is received by the claimant after the claimant has given a preliminary 20-day notice and the information contained in the 20-day notice is inaccurate, the claimant shall, within 30 days of the receipt of this information, serve an amended notice in the same manner provided by statute. (A.R.S. §33-992.01.J). Such amended notice shall be considered as having been given at the same time as the original preliminary notice, except that the amended preliminary notice shall be effective only as to work performed, materials supplied or professional services rendered at any time during the 20 days immediately prior to the date the original preliminary notice was served on the owner (date of deposit into the mails). (A.R.S. §33-992.01.J).

Any contractor, subcontractor or other person who is obligated by statute, contract or agreement to defend, remove, compromise or pay any claim of lien or action and who undertakes such activity has the rights of the owner and/or beneficial title holder against all persons concerning such activity. A.R.S. §33-995, and as also specified in Sections 33-420 and 33-994.

If a "lien discharge" payment bond in lieu of lien right has been recorded, and the owner or other interested party fails to furnish a copy of the bond or other information required by statute to a party serving a preliminary notice, the claimant shall retain lien rights to the extent the claimant is precluded or prejudiced from asserting an enforceable claim against the bond, and retains those rights as a direct result of not timely receiving a copy of the bond or the other information from the owner or other interested party. (A.R.S. §33-992.01.J).

Senate Bill 1375, amending A.R.S. §§32-1129, 32.1129.01, 32-1129.02, and 32-1129.05, and signed by Arizona Governor Jan Brewer on May 11, 2010, added requirements for timely payment of retainage and final payments to the state's prompt payment statute for construction. The law establishes a payment cycle according to which non-residential project owners, prime contractors and subcontractors normally will have to pay retainage and final payments for properly-completed construction services and materials, or else pay a penalty of 1.5 percent interest per month.

The law, by amending Article 32 of the Arizona Revised Statutes, applies to projects for which contracts, plans or

specifications were distributed on or after January 1, 2011, requires prime contractors to submit timely applications for payment according to the project's billing cycle (normally 30 days). Unless stated otherwise in the construction plans, project owners have to approve within 14 days, and pay within seven days after that, all proper invoices for retainage that subcontractors submit at the time of substantial completion of their work. The law also establishes a 21-day cycle for project owners to pay prime contractors' proper invoices for final payment and limits owners' withholding of such payments to 150 percent of the reasonable costs to complete any work subject to dispute.

Under the recent amendments to existing law, prime contractors and subcontractors have seven days from receipt of retainage and final payment to pay their subcontractors and material suppliers, unless they provided detailed reasons for withholding in a written notice. (A.R.S. §32-1129.01.A). The law entitles subcontractors to written notifications of retainage releases by owners once subcontractors request such notifications. (A.R.S. §32-1129.01.B and H). It specifically protects subcontractors and suppliers from owners or general contractors wrongfully withholding money for defective work or materials that are not the fault of the subcontractor or materials supplier. Where subcontractors are not at fault, the law provides: "[t]he Contractor shall nevertheless pay any subcontractor or material supplier...within 21 days after payment would otherwise have been made by the owner."

Where Filed: With the county recorder of the county in which the improved property or some part thereof is located. (A.R.S. §33-993.A).

When Filed: Claimants must file a lien claim for recording within 120 days after completion, alteration or repair of building, structure or improvement. (A.R.S. §33-993.A). If the owner or owner's representative, such as the general contractor, has recorded a Notice of Completion, claimants have 60 days to record their lien. Completion for lien purposes, depending on whether improvement is residential or commercial, is the earliest of: (a) 30 days after final inspection and acceptance by government body issuing building permit (certificate of occupancy), or (b) cessation of labor for 60 consecutive days, except due to strike, shortage of materials or act of God, or (c) if no certificate of occupancy issues where one should have, "completion" is the date of last supply of non-defective materials or labor. (A.R.S. §33-993.C).

Service of Copy of Notice: Upon the owner or owners of said building, structure or improvement, if such or a designated representative can be found within the county in which the improvement is situated, within a reasonable time after recording. (A.R.S. §33-993.I).

Duration of Lien: Six months (as opposed to 180 days) after the recording thereof in the county recorder's office, unless suit is brought within such period to enforce the lien and a Notice of *Lis Pendens* (claim pending) is recorded with that county's office of the recorder. (A.R.S. §33-998.A).

Filing Fee: \$9 for the first five pages; \$1 for each additional page; not to exceed \$250. <http://recorder.maricopa.gov/web/fees.aspx>.

Contents of Notice of Lien: (1) legal description of the lands and improvements to be charged with the lien; (2) name of the owner or reputed owner of the property, if known, along with the name of the person by whom the lienor was employed or to whom he furnished materials; (3) statement of the terms, time given and conditions of the subcontract or materials supply contract, if the contract is oral, or a copy of the contract, if written (note: written contracts may *not* be summarized in lieu of attaching a copy of the contract; if the actual contract cannot be located, attach a copy of the same form of contract containing the same operative terms); (4) statement of the lienor's demand, after deducting all just credits and offsets; (5) statement of date of completion of the building, structure, or improvement or any alteration or repair of the building, structure or improvement, with completion defined as the earlier of: (a) 30 days after final inspection and written final acceptance by government body issuing the building permit, (b) cessation of labor for 60 consecutive days except due to strike, act of God or shortage of materials, or (c) if no certificate of occupancy issues, the last date non-defective materials or labor were supplied is the completion date; and (6) date preliminary notice was served, with copy of notice and required proof of mailing both attached (affidavit of mailing with proof of date of postal mailing). (A.R.S. §33-993.A and C).

On multi-unit residential projects, i.e., condominiums, each separate building or condominium unit is considered a separate work, with lien rights commencing and terminating only with respect to the time of work on that separate property. (A.R.S. §33-993.B). Apartments are considered one building, with the completion date of any individual apartment unit serving as the completion date for the entire apartment building. (*Id.*).

Claim of lien must be made under oath by the claimant or by someone on the claimant's behalf with possession of knowledge of the facts. (A.R.S. §33-993.A).

Pursuant to A.R.S. §33-992.01, the general contractor, supplier or subcontractor's 20-day preliminary notice must contain: (1) a general description of the labor, professional services, materials, machinery, fixtures or tools furnished or to be furnished, and an estimate of the total price thereof (if total price of materials actually supplied exceeds estimate by 20 percent, new preliminary notice is required); (2) name and address of the person furnishing such labor, professional services, materials, machinery, fixtures or tools; (3) name of the person who contracted for purchase of such labor, professional services, materials, machinery, fixtures or tools; (4) legal description, subdivision plat, street address, location with respect to commonly known roads or other landmarks in the area or any other description of the job site sufficient for identification; and (5) the following statement in boldface type:

In accordance with Arizona Revised Statutes Section 33-992.01, this is not a lien, and this is not a reflection on the integrity of any contractor or subcontractor.

NOTICE TO PROPERTY OWNER

If bills are not paid in full for the labor, professional services, materials, machinery, fixtures or tools furnished or to be furnished, a mechanic's lien leading to the loss, through court foreclosure proceedings, of all or part of your property being improved may be placed against the property.

You may wish to protect yourself against the consequence by either:

- 1. Requiring your contractor to furnish a conditional waiver and release pursuant to ARS Section 33-1008, subsection D, paragraphs 1 and 3 signed by the person or firm giving you this notice before you make payment to your contractor.**
- 2. Requiring your contractor to furnish an unconditional waiver and release pursuant to ARS Section 33-1008, subsection D, paragraphs 2 and 4 signed by the person or firm giving you this notice after you make payment to your contractor.**
- 3. Using any other method or device which is appropriate under the circumstances.**

Within 10 days of the receipt of this preliminary 20-day notice, the owner or other interested party is required to furnish all information necessary to correct any inaccuracies in the notice pursuant to Arizona Revised Statutes Section 33-992.01, subsection I or lose as a defense any inaccuracy of that information.

Within 10 days of the receipt of this preliminary 20-day notice, if any payment bond has been recorded in compliance with Arizona Revised Statutes Section 33-1003, the owner must provide a copy of the payment bond, including the name and address of the surety company and bonding agent providing the payment bond to the person who has given the preliminary 20-day notice. In the event that the owner or other interested party fails to provide the bond information within that 10-day period, the claimant shall retain lien rights to the extent precluded or prejudiced from asserting a claim against the bond as a result of not timely receiving the bond information.

Dated: _____
(Company name)

By: _____
(Signature) (Title)

If the notice is given later than 20 days following initial supply of materials or labor, any lien cannot apply to labor, materials, machinery, fixtures or tools furnished sooner/earlier than 20 days prior to the service of the preliminary notice. (A.R.S. §33-992.01.C and E). The notice may be served by delivering it personally, by leaving it at the residence or place of business of the person to be served with some person of suitable age and discretion residing or working there, or by first-class, registered or certified mail, postage prepaid, addressed to the person to whom notice is given at his residence or business address. Certified mail, return receipt requested, is not required. (A.R.S. §33-992.01.F).

Extent of Lien: If the improved land lies outside the limits of the recorded map or plat of a town site, an incorporated city or town, or a subdivision, the lien extends to and includes that property not exceeding 10 acres of land upon which the improvement is made and the labor performed. (A.R.S. §33-993.A). If the improved land lies within said limits, the lien extends to and includes only the particular lot or lots upon which the improvement is made and the labor performed. (A.R.S. §33-993.B). The lien upon a mining claim extends to the whole of the real property subjected to the mining claim and to the group of mines which said claim is a part, if the group is operated as one property (A.R.S. §33-991.C).

Priority of Lien: These mechanic's and materialmen's liens are preferred to all liens, mortgages or other encumbrances which shall have attached upon the property subsequent to the time the labor was commenced or the materials commenced to be furnished, except for any mortgage or deed of trust that is given as security for a loan made by a construction lender as defined in Section 33-992.01(A)(1), if the mortgage or deed of trust is recorded within 10 days after labor was commenced or the materials commenced to be furnished (the first turn of a spadeful of dirt). (A.R.S. §33-992.A). These liens are also preferred to all liens, mortgages or other encumbrances of which the lienholder has no actual or constructive notice at the time he commenced the labor or the furnishing of materials, except any mortgage or deed of trust that is given as security for a loan made by a construction lender as defined in Section 33-992.01(A)(1), if the mortgage or deed of trust is recorded within 10 days after labor was commenced or the materials commenced to be furnished. All liens of this character shall attach upon an equal footing, without reference to date of recording the notice and claim of lien and without reference to time or performance of such work and labor or furnishing the professional service or material. (A.R.S. §33-992.A). If a lien is foreclosed and the proceeds are insufficient to discharge all liens against the property without reference to the date of recording, the proceeds shall be prorated over the respective liens that have equal footing with the foreclosing lien. (A.R.S. §33-1000.B).

Separate and Different Provisions: Different provisions exist for dwelling units of single one family or single two family for residential purposes, if qualified as owner occupied. (A.R.S. §33-981.A). Liens only allowed for claimants having written, executed contracts with owner. (A.R.S. §33-1002.B).

Statutory Citation: Arizona Revised Statutes, Chapter 7, Article 6, §§33-981 to 33-1008.

STOP NOTICES (A.R.S. §§33-1051 to 33-1067)

What do they do? A stop notice is a mailed or personally-served device to “freeze” the flow of money from an owner to the contractor, or from a construction lender to an owner, until the stop notice claimant has been paid. The owner or construction lender must withhold an amount that is sufficient to cover the stop notice claim.

Where are they available? Stop notice remedies are only available on a private project. (A.R.S. §33-1053). Stop notices *are* not available against *public projects* or *dwellings of owner-occupants* as defined in Section A.R.S. 33-1002.

Who can use them? “Any person entitled to record a claim of lien under article 6 of this chapter, other than the original contractor,” may issue a stop notice against the owner. (A.R.S. §33-1054). Even the general contractor may issue a stop notice against the construction lender. (A.R.S. §33-1055).

Are they effective against lenders? Stop notices are not effective against construction lenders unless bonded. (A.R.S. §§33-1055, 1058). Lenders may ignore non-bonded stop notices.

What if there are defects in form? Unlike lien claims, a stop notice is *not invalid by reason of any defect in form* if it is sufficient to substantially inform the owner of the information required by this article. (A.R.S. §33-1052).

What information is included? (A.R.S. §33-1052).

- A signed verified statement by the claimant
- A description of the labor, professional services, materials, machinery, fixtures or tools furnished or agreed to be furnished by the claimant
- The name of the person to or for whom the labor, professional services, materials, machinery, fixtures or tools were furnished
- The amount in value of the labor, professional services, materials, machinery, fixtures or tools already furnished *and* the total amount agreed to be furnished
- The amount, if any, of payment received by the claimant for the labor, professional services, materials, machinery, fixtures or tools furnished or agreed to be furnished
- The name and address of claimant

What if someone demands that I serve a stop notice? You must serve within 30 days or forfeit right to serve. (A.R.S. §33-1054).

RELEASES OF MECHANIC’S AND MATERIALMEN’S LIENS

Arizona Revised Statute §33-1008 provides for four releases of lien, bond and stop notices for issuance upon payment for materials or labor supplied to a project. The releases are for progress payments during the course of a project, both conditional (A.R.S. §33-1008.D.1) and unconditional (A.R.S. §33-1008.D.2) and for final payment at the end of a project, both conditional (A.R.S. §33-1008.D.3) and unconditional (A.R.S. §33-1008.D.4). If the lien claimant receives less than full payment from the owner or general contractor for materials or labor delivered to the site, then the claimant must modify the release to reflect that the claimant retains rights against the contractor to whom it delivered the materials or supplies, in order to avoid waiving that claim as part of the release.

The parties may modify the lien release form and retain rights to its automatic enforcement as long as it substantially follows one of the forms of A.R.S. §33-1008. (A.R.S. §33-1008.A). Examples of modifications that likely do not reflect substantial changes to the statutory release forms are the substitution of invoice numbers for “through” dates on conditional and unconditional releases on progress payments, or the specific retention of rights against the subcontractor or primer contractor to whom the claimant supplied materials and/or materials. Substantial deviations from the statutorily-specified form of release, however, do not void the modified release if payment has actually been received by the lien claimant.

ARKANSAS

Who May Claim: Every contractor, subcontractor or material supplier as defined in the statute who supplies labor, services, material, fixtures, engines, boilers or machinery in the construction or repair of an improvement to real estate (including churches, religious organizations and charitable institutions, but under a different statute; Ark. Code Ann. §18-44-504), or any boat or vessel of any kind (*see* liens on personal property), by virtue of a contract with the owner, proprietor, contractor or subcontractor, or agent thereof, upon complying with the provisions of the code, shall have a lien upon the improvement and up to one acre of land upon which the improvement is located in order to secure payment, or to the extent of any number of acres of land upon which work has been done or improvements erected or repairs (§18-44-101); (*Bryant v. Jim Atkinson Title*, 100 Ark. App. 408, 269 S.W.3d 383 (2007)). The code defines contractor as one who deals directly with the person holding an interest in real estate. A subcontractor is defined as any person who supplies labor or services pursuant to a contract with contractor or to a first tier subcontractor. A material supplier is one who supplies materials, goods, or fixtures to a person in direct privity of contract with such person (§18-44-107). The statute specifically requires a contractor or subcontractor to provide information sufficient to permit the lien to be filed (§18-44-117). Every

architect, engineer, surveyor, appraiser, abstractor, or title insurance agent who is under written contract with the owner's agent may also claim a lien. (§18-44-105(a)).

How Claimed: By filing a verified statement of account and claim of lien, showing balance due after allowing for all credits, describing the property (legal description) upon which the lien is claimed, and naming the person authorized to release the lien. An affidavit of notice must also be attached to the verified statement of account and claim of lien, containing a statement under oath that the claimant complied with the notice provisions of Ark. Code Ann. §§18-44-114 through 18-44-116 (even though all of those statutes may not necessarily be applicable) and a copy of each notice the claimant provided under Ark. Code Ann. §§18-44-114 through 18-44-116. By statute, the circuit clerk is supposed to refuse to file any verified statement of account and claim of lien that does not contain the affidavit of notice (§18-44-117).

Where Filed: Office of Clerk of the Circuit Court of county where property is situated (§18-44-117(a)(1)).

When to Be Filed: Serve owner "10-days' notice" 10 days prior to the filing of the lien. (§18-44-114). File lien within 120 days after labor was performed or material furnished. (§18-44-117). The lien of an architect, engineer, surveyor, appraiser, abstractor, title insurance agent, or landscaper attaches only after the lien is filed (§18-44-105(b)).

Service of Copy of Notice: Two types of notice are required on residential projects: the Pre-Construction Notice outlined in Ark. Code Ann. §18-44-115(a), which says that no lien can be acquired unless the owner or his or her authorized agent has received a copy of the notice set out in §18-44-115(a)(7), and the 10-day Notice to the Owner, which is in Ark. Code Ann. §18-44-114(a), before filing the lien (*Bryant v. Jim Atkinson Title*, 100 Ark. App. 408, 269 S.W.3d 383 (2007)). The Arkansas courts hold that the Pre-Construction Notice to the owner must be provided to the owner before materials or supplies are furnished (*Bryant v. Cadena Contracting Inc.*, 100 Ark. App. 377, 269 S.W.3d 378 (2007)). It is the general contractor's obligation to provide the Pre-Construction Notice to the owner before materials or supplies are furnished (Ark. Code Ann. §18-44-115(a)(3)). As a matter of precaution, all subcontractors and material suppliers should provide the Pre-Construction Notice before any materials or supplies are furnished on the project. The notice may be served by personal delivery, certified mail or a third-party delivery service. If the notice is given by personal delivery, there must be a signature of the owner or the owner's authorized agent. The general contractor has a legal duty to serve the notice before the work is commenced, but any potential lien claimant may also give the notice in order to ensure that it is given (§18-44-115). It is absolutely clear under Arkansas law that no lien may be asserted on residential property unless the owner has received this Pre-Construction Notice before the material is provided (*Bryant v. Jim Atkinson Title*, 100 Ark. App. 408, 269 S.W.3d 383 (2007)). However, there are some limited exceptions. For example, if the contractor supplies a performance and payment bond or if the transaction is a direct sale to the property owner, the Pre-Construction Notice shall not apply, and the lien rights arising shall not be conditioned on the delivery and execution of the notice. (§18-44-115(a)(8)(A)). Also, a sale shall be a direct sale only if the owner orders the materials or services from the lien claimant or authorizes another person to do so. The notice may be incorporated into the contract, affixed thereto, and shall be conspicuous and worded exactly as stated, in capital letters (§18-44-115(a)(7-8)).

On a commercial project, in order to obtain and perfect a lien, the lien claimant must strictly comply with statutorily required steps. In order to assert the lien, within 75 days of the last date that labor was performed or materials were supplied to the project, a Notice to Owner and Contractor must be served on the property owner and the general contractor either by an officer authorized by law to serve process in civil actions or by registered mail, return receipt requested and restricted to addressee or an agent of the addressee, or means that provides written third-party verification of delivery at any place the owner maintains an office, conducts business or resides. The notice must contain a general description of the labor or materials furnished, the amount due, the name and address of the person claiming the lien, the name and address of the person who has failed to pay the lien claimant, and a description of the job site sufficient to identify it, and an exact copy of the notice contained in Ark. Code Ann. §18-44-115(b)(6). The Notice to Owner and Contractor must duplicate statutory notice language that includes the following statement set out in boldface type and in all capital letters, as in Ark. Code Ann. §18-44-115(b)(6)(E):

NOTICE TO PROPERTY OWNER: IF BILLS FOR LABOR, SERVICES, OR MATERIALS USED TO CONSTRUCT OR PROVIDE SERVICES FOR AN IMPROVEMENT TO REAL ESTATE ARE NOT PAID IN FULL, A CONSTRUCTION LIEN MAY BE PLACED AGAINST THE PROPERTY. THIS COULD RESULT IN THE LOSS, THROUGH FORECLOSURE PROCEEDINGS, OF ALL OR PART OF YOUR REAL ESTATE BEING IMPROVED. THIS MAY OCCUR EVEN THOUGH YOU HAVE PAID YOUR CONTRACTOR IN FULL. YOU MAY WISH TO PROTECT YOURSELF AGAINST THIS CONSEQUENCE BY PAYING THE ABOVE NAMED PROVIDER OF LABOR, SERVICES, OR MATERIALS DIRECTLY, OR MAKING YOUR CHECK PAYABLE TO THE ABOVE NAMED PROVIDER AND CONTRACTOR JOINTLY.

Next, in order to assert the lien, 10-days' notice must also be given to the owner or agent, and the notice must state the amount and the basis for the claim. (§18-44-114(a)). The notice may be served by any officer authorized by law to serve process in civil actions, or by any person who would be a competent witness by any form of mail addressed to the person served with the return receipt and delivery restricted to the addressee or the agent for the addressee, or means that provide written third-party verification of the delivery at any place where the owner of the building or improvement maintains an office, conducts business, or resides. (§18-44-114(b)). If delivery of a mailed notice is refused, the person holding the claim

shall immediately mail to the owner of the building or improvement a copy of the notice by first-class mail and may proceed to file a lien. (§18-44-114(b)(2)(B)(ii)). Notice should be filed with a recorder of deeds of the county where the property is situated in cases where the owner is a nonresident of the county or state, where the owner has no agent in the county where the property is situated, or where the owner conceals or absents himself (§18-44-116(a)).

After at least 10 days from furnishing the notice, a lien claimant must file a Verified Statement of Account and Claim of Lien, with the clerk of the county where the project is located, within 120 days of the last date that labor was performed or materials were supplied. An Affidavit of Notice must be attached to the Verified Statement of Account and Claim of Lien (§18-44-117(a)(1)(B)). The Verified Statement of Account and Claim of Lien must be notarized and must contain a description of the property, the amount due, the identity of the property owner and the identity of the lien claimant. Copies of invoices of statements should be attached to the Verified Statement. This is the actual lien document. The Affidavit of Notice must contain a statement under oath stating that the claimant complied with the notice provisions of Ark. Code Ann. §§18-44-114 through 18-44-116 (even though all of those statutes may not necessarily be applicable) and a copy of each notice the claimant provided under Ark. Code Ann. §§18-44-114 through 18-44-116. The circuit clerk is supposed to refuse to file a Verified Statement of Account and Claim of Lien that does not contain the Affidavit of Notice and required attachments (§18-44-117).

Finally, after filing the Verified Statement of Account and Claim of Lien, notice of the lien should be mailed to the owner of the property or the party failing to pay the lien claimant, by registered mail. If the lien claimant has not been fully paid within 20 days of the date of mailing of this notice and then successfully brings suit to enforce the lien, the lien claimant may have his attorneys' fees awarded by the court. (§18-44-128). Conversely, the owner may recover attorneys' fees if the owner prevails. (Ark. Code Ann. §18-44-128(b)).

Duration of Lien: Suit must be filed within 15 months from filing of lien (§18-44-119(a)).

Filing Fee: \$3. (§18-44-117(b)(2)).

Contents of Pre-Construction Notice of Lien: As set forth above, on residential projects, the following Pre-Construction Notice must be provided to the owner in order to assert a claim. No materialman's lien arises unless notice under this section is given before any materials or fixtures have been supplied (*Bryant v. Jim Atkinson Title*, 100 Ark. App. 408, 269 S.W.3d 383 (2007)). The notice must be exactly as prescribed below, in Ark. Code Ann. §18-44-115(a)(7):

NOTICE TO PROPERTY OWNER: I UNDERSTAND THAT EACH CONTRACTOR, SUBCONTRACTOR, LABORER, SUPPLIER, ARCHITECT, ENGINEER, SUREVEYOR, APPRAISER, LANDSCAPER, ABSTRACTOR, OR TITLE INSURANCE AGENT SUPPLYING LABOR, SERVICES, MATERIALS OR FIXTURES USED TO IMPROVE, CONSTRUCT, OR INSURE OR EXAMINE TITLE TO THE PROPERTY EVEN THOUGH THE FULL CONTRACT PRICE MAY HAVE BEEN PAID TO THE CONTRACTOR. I REALIZE THAT THIS LIEN CAN BE ENFORCED BY THE SALE OF THE PROPERTY IF NECESSARY. I AM ALSO AWARE THAT PAYMENT MAY BE WITHHELD TO THE CONTRACTOR IN THE AMOUNT OF THE COST OF ANY SERVICES, FIXTURES, MATERIALS OR LABOR NOT PAID FOR. I KNOW THAT IT IS ADVISABLE TO, AND I MAY, REQUIRE THE CONTRACTOR TO FURNISH TO ME A TRUE AND CORRECT FULL LIST OF ALL SUPPLIERS AND SERVICE PROVIDERS UNDER THE CONTRACT, AND I MAY CHECK WITH THEM TO DETERMINE IF ALL MATERIALS, LABOR, FIXTURES, AND SERVICES FURNISHED FOR THE PROPERTY HAVE BEEN PAID FOR. I MAY ALSO REQUIRE THE CONTRACTOR TO PRESENT LIEN WAIVERS BY ALL SUPPLIERS AND SERVICE PROVIDERS, STATING THAT THEY HAVE BEEN PAID IN FULL FOR SUPPLIES AND SERVICES PROVIDED UNDER THE CONTRACT, BEFORE I PAY THE CONTRACTOR IN FULL. IF A SUPPLIER OF OTHER SERVICE PROVIDER HAS NOT BEEN PAID, I MAY PAY THE SUPPLIER OR OTHER SERVICE PROVIDER AND CONTRACTOR WITH A CHECK MADE PAYABLE TO THEM JOINTLY.

SIGNED: _____

Address of Property

DATE: _____

I HEREBY CERTIFY THAT THE SIGNATURE ABOVE IS THAT OF THE OWNER, REGISTERED AGENT OF THE OWNER, OR AUTHORIZED AGENT OF THE OWNER OF THE PROPERTY AT THE ADDRESS SET OUT ABOVE.

Contractor

On a residential project, if a contractor supplies a performance and payment bond or if the transaction is a direct sale to the owner, the Pre-Construction Notice is not applicable (§18-44-115(a)(8)(A)).

Extent of Lien: As stated above, the lien extends to all the right, title and interest of the owner for whose benefit the work was done. (§18-44-102). The lien extends not only to the improvement itself but also to a maximum of one acre of land upon which the improvement is situated. If the improvements were made to more than one acre, the lien may extend to

any number of acres of land upon which work has actually been done. (§18-44-101(a)). However, when prior liens exist, the property subject to the lien may include only the improvement. (§18-44-110(b)). Where the improvement is on leased premises, the lien attaches to the improvement and to the leasehold term (§18-44-103). Liens attach to the boats or vessels upon which work was done or material furnished (§18-44-101(b)).

Priority of Lien: The lien shall be preferred to all other encumbrances which may be attached to or upon such buildings, erections, improvements or boats, or the land, or either of them prior or subsequent to the commencement of such buildings or improvements, except where such prior lien, mortgage or other encumbrance was given to raise money for such buildings, erections or improvements. (§18-44-110(b)(1)(B)). The liens shall be enforced by foreclosure, and the property ordered sold subject to the lien of the prior encumbrance. (§18-4-110). Lien for work performed or materials furnished to improve oil, gas and water wells, mines or quarries, or oil or gas pipelines is superior and paramount to any and all other subsequent liens or claims of any kind (§18-44-206).

The liens for labor performed, or material or fixtures furnished shall have equal priority toward each other without regard to the date of filing the account or lien, or the date when the particular labor or material was performed or furnished. All such liens shall date from the time that the construction or repair first commenced (§18-44-110).

Lien for Improvement of Oil or Gas Well: Lien arises for performing labor or furnishing materials, machinery, or supplies for the construction; maintenance and repair of any oil, gas or water well; mine or quarry; or pipeline. Lien extends to the land, plant, building and appurtenances and is established in the same manner and the same time as a mechanic's lien. If labor or material is supplied to a leaseholder, the lien does not attach to the underlying fee title to the land. However, any lien, encumbrance or mortgage upon the land, or any leasehold interest, existing at the time of the inception of the lien for work or materials for oil, gas and water wells; mines or quarries; or oil or gas pipe lines shall not be affected by the oil, gas, water, mine or quarry lien (§18-44-206(b)).

Statutory Citation: Arkansas Code Annotated, Title 18, Subtitle 4, Chapter 44, §§18-44-101 to 18-44-206.

CALIFORNIA

Who May Claim: A person that provides work authorized for a work of improvement including but not limited to: (a) direct contractor; (b) subcontractor; (c) material supplier; (d) equipment lessor; (e) laborers; (f) design professional.

Preliminary Notice Prerequisite to Claim: Every person, except one under direct contract with the owner or one performing actual labor for wages, must, as a necessary prerequisite to the validity of any claim of lien subsequently filed, cause to be given not later than 20 days after the claimant has first furnished labor, etc., a written preliminary notice to the owner or reputed owner and to the direct contractor or reputed direct contractor and to the construction lender or reputed construction lender, if any. A claimant with a direct contractual relationship with an owner or reputed owner is required to give preliminary notice only to the construction lender or reputed construction lender, if any, to be entitled to file stop payment notice. Failure to give the preliminary notice as specified will not preclude a claimant from giving notice later. Such later notice, however, will mean that a lien will be limited to labor, service, equipment or material furnished within 20 days prior to service of the late notice, and any time thereafter.

Contracts between an owner and contractor and subcontractors must identify the construction lender, however, failure to provide that information does not relieve the potential claimant from obligation to identify any lender. Where a construction loan is obtained after commencement of work of improvement, the owner must provide each person who has provided a preliminary notice the identity of the construction lender.

Contents of Preliminary Notice: The preliminary notice shall contain the following: (1) The name and address of the owner or reputed owner, direct contractor, or reputed direct contractor, and construction lender or reputed construction lender, if any; (2) a general description of the work to be provided; (3) a description of the site sufficient for identification, including the street address of the site (if any); (4) an estimate of the total price of the work provided and to be provided; (5) the name of the person to or for whom the work is provided; (6) the name, address and relationship to the parties of the person giving the notice and the following statement in boldface type:

NOTICE TO PROPERTY OWNER

EVEN THOUGH YOU HAVE PAID YOUR CONTRACTOR IN FULL, if the person or firm that has given you this notice is not paid in full for labor, service, equipment, or material provided or to be provided to your construction project, a lien may be placed on your property. Foreclosure of the lien may lead to loss of all or part of your property. You may wish to protect yourself against this by (1) requiring your contractor to provide a signed release by the person or firm that has given you this notice before making payment to your contractor, or (2) any other method that is appropriate under the circumstances.

This notice is required by law to be served by the undersigned as a statement of your legal rights. This notice is not intended to reflect upon the financial condition of the contractor or the person employed by you on the construction project.

If you record a notice of cessation or completion of your construction project, you must within 10 days after recording, send a copy of the notice of completion to your contractor and the person or firm that has given you this notice. The notice must be sent by registered or certified mail. Failure to send the notice will extend the deadline to record a claim of lien. You are not required to send the notice if you are a residential homeowner of a dwelling

containing four or fewer units.

and (7) if preliminary notice is given by a subcontractor that has not paid all compensation due to a laborer, the notice shall include the name and address of the laborer and any person or entity described in subdivision (b) of Section 8024 to which payments are due.

Service of Copy of Preliminary Notice: Service of the preliminary notice shall be by personal delivery, registered mail, or certified mail (request for return receipt highly recommended), express mail, or overnight delivery by an express service carrier, or in the manner for serving summons and complaint.

Contents of Claim: Statement signed and verified by claimant or agent containing the following: (1) statement of demand after deducting credits and offsets; (2) name and address of owner(s) or reputed owner(s); (3) a general statement of kind of labor, service equipment or materials furnished by the claimant; (4) name of person by whom claimant employed or to whom claimant furnished labor, service, equipment or materials; (5) description of land by street address and/or legal description; (6) the claimant's name and address; (7) verification; and (8) the following statement, printed in at least 10-point boldface type. The letters of the last sentence shall be printed in uppercase type, excepting the Internet website address, of the Contractors' State License Board, which shall be printed in lowercase type:

**NOTICE OF MECHANIC'S LIEN
ATTENTION!**

Upon the recording of the MECHANIC'S LIEN with the county recorder's office of the county where the property is located, your property is subject to the filing of a legal action seeking a court-ordered foreclosure sale of the real property on which the lien has been recorded. That legal action must be filed with the court no later than 90 days after the date the mechanic's lien is recorded.

The party identified in the enclosed mechanic's lien may have provided labor or materials for the improvement of your property and may not have been paid for these items. You are receiving this notice because it is a required step in filing a mechanic's lien foreclosure action against your property. The foreclosure action will seek a sale of your property in order to pay for unpaid labor, materials, or improvements provided to your property. This may affect your ability to borrow against, refinance, or sell the property until the mechanic's lien is released.

BECAUSE THE LIEN AFFECTS YOUR PROPERTY, YOU MAY WISH TO SPEAK WITH YOUR CONTRACTOR IMMEDIATELY, OR CONTACT AN ATTORNEY, OR FOR MORE INFORMATION ON MECHANIC'S LIENS GO TO THE CONTRACTORS' STATE LICENSE BOARD WEB SITE AT www.cslb.ca.gov.

When to Be Recorded: (a) Every direct contractor must file after completion of his contract and within 60 days after date owner files for record a notice of completion, or, if notice of completion is not filed by owner within 15 days after completion, the direct contractor must file within 90 days after completion of work or improvement. (1) Every person other than a direct contractor must file his claim after claimant ceases to provide work no later than 30 days after the date of filing of the owner's notice of completion or notice of cessation, or, if such notice of completion or cessation is not filed within 15 days after completion, the notice of claim must be filed within 90 days after the completion of such work of improvement. If owner or reputed owner cannot be served then service must be accomplished by serving construction lender or original contractor in the same manner. (2) If, after the commencement of a work of improvement, there shall be a cessation of labor for a continuous period of 60 days, all persons claiming lien rights shall within 90 days from the expiration of such 60-day period file their claims of lien, provided that if, after there shall be a cessation of labor thereon for a continuous period of 30 days or more, the owner files for record a notice of cessation; every direct contractor must file within 60 days and every other person within 30 days after the date of filing of such notice of cessation.

(b) Every lien claimant causing a claim of lien to be recorded shall prepare and serve a copy of the Mechanic's lien, Notice of Mechanic's lien and Proof of Service Affidavit on the owner or reputed owner by registered mail, or first-class mail, evidenced by a certificate of mailing, postage prepaid, prior to causing said claim of lien to be recorded.

Where Recorded: County Recorder of county in which the property or some part is situated.

Duration of Lien: No lien binds any property for a period of time longer than 90 days after the recording of the claim of lien, unless within that time, an action to foreclose the lien is commenced in a proper court; exception for extension of credit timely and properly executed. The action must be brought to trial within two years of commencement or the court may dismiss the lien.

Recording Fee: Varies from county to county.

Extent of Lien: The building, improvement or structure upon which labor is bestowed or materials furnished is subject to the lien, as is also the land upon which such building, etc., stands and as much ground around the same as is required for its use and occupation. Lien attaches to land improved by filling, grading or adding sidewalks, sewers and other improvements. The liens of subcontractors are direct liens and are not limited as to amount by contract price agreed upon between contractor and owner, but shall not exceed a reasonable value of the labor or materials furnished or the price agreed upon between the claimant and the person by whom employed. Filing of the contract with the County Recorder is equivalent to actual notice. The owner may limit his liability to subcontractors, etc., by filing the original contract and recording a payment bond for not less than 50 percent of the contract price. The owner's liability shall then be limited to the amount found to be due from the owner to the contractor, and the subcontractors shall look to the contractor and the sureties on his bond for any deficiency.

The property of a non-participating owner who posts and records a Notice of Non-Responsibility within 10 days after knowledge of the work of improvement is not subject to the mechanic's lien.

Forfeiture of Lien: Any claimant who willfully overstates its claim of lien shall forfeit the right to a mechanic's lien.

Any person who fails to file a stop payment notice after written demand from the owner shall forfeit the right to a mechanic's lien.

Priority of Lien: Liens take priority over any lien, mortgage, deed of trust or other encumbrance which attached subsequent to time when the building, improvement or structure was commenced, work done or materials were furnished to the job site; also to any lien, mortgage, deed of trust or other encumbrance of which the lienholder had no notice and which was unrecorded at the time building, improvement or structure was commenced, work done or the materials were furnished.

If the holder of the mortgage or deed of trust which is subordinate to any such lien procures and causes to be recorded in the county where the site is located, a payment bond in an amount not less than 75 percent of the principal amount of such mortgage or deed of trust, which bond refers to such mortgage or deed of trust, then the mortgage or deed of trust shall be preferred to all liens for labor, services, equipment or materials furnished after such recording.

Priority of Site Improvement Liens: Site Improvement Liens take priority over (a) any mortgage, deed of trust, or other encumbrance which attaches subsequent to the commencement of the site improvement; and (b) any mortgage, deed of trust, or other encumbrance of which the claimant had no notice and which was unrecorded at the time of commencement of such site improvement; and (c) any mortgage, deed of trust, or other encumbrance recorded before the commencement of the site improvement work which was given for the sole or primary purpose of financing such site improvements, unless the loan proceeds are, in good faith, placed in the control of the lender under a binding agreement with the borrower to the effect that such proceeds are to be applied to the payment of claims of claimants and that no portion of such proceeds will be paid to the borrower in the absence of satisfactory evidence that all such claims have been paid or that the time for recording claims of liens have expired and no such claims have been recorded.

If the owner of the land or the holder of any mortgage or deed of trust shall procure a payment bond in an amount not less than 50 percent of the principal amount of such mortgage or deed of trust and shall record such payment bond in the office of the county recorder in the county where the site is located before completion of the work of improvement, then such mortgage or deed of trust shall be preferred to all such liens.

Waiver of Lien Rights: Any provision in a subcontractor's or material supplier's contract to the effect that the subcontractor or material supplier waives its future lien or other collateral rights is void by statute (Civil Code 8122); and all subsequent lien releases must substantially conform to the forms set forth in the statute to be enforceable. The statute sets forth four distinct forms of release, each to be used in a different situation. They are: (i) a form for a conditional release to be given in return for a partial or progress payment, (ii) form for an unconditional release given in return for a partial or progress payment, (iii) a form for a conditional release to be effective when the final payment is received, and (iv) an unconditional release to be given after final payment has been received.

Notice Requirements of Owner Filing Notice of Completion or Notice of Cessation: The owner of a private work of improvement shall notify the direct contractor, and any claimant other than the original contractor who has provided a Preliminary 20-Day Notice in accordance with Section 8200, that a notice of completion or notice of cessation has been recorded. The notice shall be sent within 15 days after recording of the notice of completion or notice of cessation. Notification shall be by personal delivery, sent by registered or certified mail, evidenced by a certificate of mailing, or by express mail, or overnight delivery by an express service carrier. Failure to give notice to a contractor or claimant within 15 days of recording the notice of completion or notice of cessation deems the notice to be ineffective to shorten the time period within which that person may record a claim of lien. The ineffectiveness of the notice is the sole liability of the owner for failure to give the notice. "Owner" means a person who has an interest in real property, or the person's successor in interest on the date a notice of completion or notice of cessation from labor is filed for record, who causes a building, improvement or structure, to be constructed, altered or repaired on the property. If the property is owned by two or more persons as joint tenants or tenants in common, any one or more of the co-tenants may be deemed to be the "owner" within the meaning of this section. However, "owner" does not include a person who occupies the real property as a personal residence and the dwelling contains not more than four residential units, nor does it include a person who has a security interest in the property or obtains an interest pursuant to a transfer described in subdivision (b), (c) or (d) of Section 1102.2 of the California Civil Code.

Stop Payment Notices, Public Improvements: While the right to a mechanic's lien is unavailable to subcontractors and material suppliers on public projects, those seeking to enforce payment for performance rendered have an alternate remedy in the form of a stop payment notice. As in private projects, a stop payment notice claim on public projects affords subcontractors and material suppliers the right to a security interest in undisbursed construction funds. In essence, the stop payment notice acts as a lien on any payments owed to the contractor by the public entity.

In order to maintain this right, a Preliminary Notice must be served on the public entity and the direct contractor by those who do not have a direct, contractual relationship with the contractor. The Preliminary Notice is only effective for labor, services, equipment or materials furnished within 20 days before giving the Preliminary Notice. It should set forth a general description of the labor, services, equipment or materials furnished or to be furnished to the job site, along with the name of the party to whom such materials were furnished, and an estimate of the total price of the work provided and to be provided. Service of the notice is proper when served via personal service, first-class mail, registered mail or certified mail (request

for return receipt highly recommended) with postage prepaid, express mail, or overnight delivery by an express service carrier.

In the event a claimant fails to serve the Preliminary Notice in a timely fashion, the claimant will not be entirely precluded from seeking a stop payment notice. A Preliminary Notice may be served at any time throughout the performance of the public project. However, a late notice will restrict a claimant's recovery to the 20-day period prior to service of the late notice. Consequently, any labor, services, equipment, or materials furnished before this time will not be recoverable.

Next, the claimant must serve the stop payment notice itself. Anyone who furnishes or supplies labor, service, equipment, or materials to the job site, except for the direct contractor, may serve a stop payment notice on the public entity at any time only for the unpaid balance at the time of filing. Service of the stop payment notice is proper when served via personal service, registered mail, or certified mail (request for return receipt highly recommended), express mail, or overnight delivery by an express service carrier. In order for service to be timely made, a stop payment notice must be filed no later than 30 days of the recordation of the notice of completion or notice of cessation. If a notice of completion or cessation is not recorded, service of the stop payment notice must be filed within 90 days of completion of the work of improvement.

See also Appendix 44 "Construction Bonds on Public Projects."

Stop Payment Notices, Private Works of Improvement: In addition to recording a mechanic's lien on a private work of improvement, a claimant may be entitled to file a stop payment notice against the holder of the construction funds which may be either the owner or the construction lender and mandates that owner or construction lender withhold sufficient funds from the construction funds for the benefit of the claimant. To be entitled to a stop payment notice, the potential claimant must file a preliminary notice in the same manner and within the same time period as mechanic's liens.

Stop Payment Notice on the owner may be filed by anyone entitled to a lien other than the direct contractor; anyone entitled to a claim of lien including the direct contractor may serve a stop payment notice on the construction lender. A stop payment notice served on the construction lender must be accompanied by a corporate surety bond, or an undertaking signed by two individual sureties, in 125 percent times the amount sought to be withheld. Claimant can make written request of construction lender for election to withhold funds pursuant to a bonded stop notice by virtue of a Payment Bond having been recorded. Stop Payment Notice and mechanic's lien rights are separate and distinct. Any person who shall fail to serve a Stop Payment Notice after a written demand from the owner shall forfeit the right to a mechanic's lien.

The time periods and manner of serving the Stop Payment Notice whether on private or public works are the same as the mechanic's lien.

Time to Enforce Stop Payment Notice. The time period for filing suit to enforce a stop payment notice is 90 days from the last day to record the mechanic's lien, or it ceases to be effective.

Forfeiture of Stop Payment Notice. Any person who willfully overstates a stop payment notice or bonded stop notice forfeits all right to participate in the *pro rata* distribution of such money.

Lien for Improvement of Oil or Gas Well: Labor or materials for the drilling or operating of oil or gas wells give rise to liens on the leasehold and appurtenances, all materials and fixtures owned by the lessee, all oil and gas produced, and the proceeds thereof. Lien is claimed by filing verified statement in the office of the County Recorder for the county where property is located within six months after the date on which labor was performed or material furnished and extends for six months after recording.

Statutory Citation: California Civil Code, §§3081.1 to 3267.

COLORADO

Who May Claim: All persons supplying labor, laborers, machinery, tools, or equipment, to be used in the construction, alteration or repair of any structure, or to make an improvement upon the land itself is eligible to claim a mechanic's lien. Second tier suppliers (suppliers to first tier suppliers) are not entitled to a lien. Architects, engineers, draftsman and artisans who have furnished designs, plans, plats, maps, specifications, drawings, estimates of cost, surveys or superintendence, or who have rendered other professional or skilled service, or bestowed labor in whole or in part, describing or illustrating or superintending such structure or work done, shall have a mechanic's lien. (§38-22-101, C.R.S.).

An affirmative defense is available to owners of existing or new single-family dwellings occupied as a primary residence. The defense is available if the owner either pays the full purchase price or pays the prime contractor the full contract amount plus change orders for work performed on the residence. (§38-22-102(3.5), C.R.S.).

Colorado does not have a mandatory preliminary lien notice requirement; however, a lien claimant may send a preliminary notice under §38-22-102, C.R.S. The preliminary notice is sent to the owner, superintendent of construction, agent, architect or financing institution or other person disbursing funds. Upon giving the notice, it is the duty of the person who contracted with the principal contractor to "withhold from such principal contractor...sufficient money due or that may become due to said principal contractor...to satisfy such claim and any lien that may be filed..."

Before work commences, a principal contractor can provide a labor and material payment bond to avoid mechanic's liens. If the principal contractor does so, no one is entitled to a mechanic's lien if a performance and a labor and material payment bond, each equal to 150 percent of the contract price, have been executed by the principal contractor and one or

more corporate sureties authorized and qualified to do business in the state. A notice of such bond must be recorded with the County Clerk and Recorder of the county where the project is located prior to the commencement of any work on the project. The principal contractor must also post a notice on the property stating the bond has been filed and must make copies of the bond available to any subcontractors, materialmen or laborers upon request. (§38-22-129, C.R.S.).

No lien, except those claimed by laborers or mechanics filed more than two months after completion, will encumber the interests of any *bona fide* purchaser of real property, the principal improvement on which is a single- or double-family dwelling, “unless said purchaser at the time of conveyance has actual knowledge that the amounts due and secured by such lien have not been paid, or unless such lien statement has been recorded prior to conveyance or unless a [notice extending lien time] has been filed within one month subsequent to completion or prior to conveyance, whichever is later.” (§38-22-125, C.R.S.).

How Claimed: Before “the expiration of four months after the day on which the last labor is performed or the last laborers or materials are furnished,” a mechanic’s lien is claimed by timely personally serving, or sending by registered or certified mail, a notice of intent to file a lien statement to the owner and principal contractor 10 days before then recording the verified Statement of Lien along with the affidavits of service. The mechanic’s lien is recorded with the Clerk and Recorder in the county where the property is located after the 10-day notice period, but on or before the four-month deadline. An action on a timely recorded mechanic’s lien must be commenced no later than six months after the last labor is performed, materials furnished, or completion of the construction project—either date can be used. At the time suit is filed, a notice of commencement of action (*lis pendens*) must also be timely recorded with the Clerk and Recorder in the county where the property is located. (§38-22-109, C.R.S.).

A contract with a contractor which exceeds \$500 must be in writing and a copy or memorandum thereof containing the names of all parties to the contract, a description of the property and of the character of the work to be done, the amount to be paid, and a schedule of payments shall be filed by the owner or reputed owner in the office of the County Recorder where the property is located before the work is commenced. If not so filed, the labor and materials furnished by all persons shall be deemed to have been done and furnished at the instance of the owner and such persons shall have a lien for their value. (§38-22-101(3), C.R.S.).

Notice of Intent to Lien: A Notice of Intent to File a Lien Statement must be served by personal service or by registered mail or certified mail, return receipt requested, upon the owner or reputed owner of the property or an agent and the principal or prime contractor or an agent at least 10 days before recording the Statement of Lien and affidavits of service with the County Clerk and Recorder. An affidavit of such service or mailing shall be filed for record with the Statement of Lien and shall constitute proof of service. (§38-22-109, C.R.S.).

The building permit authority shall send the following written notice which shall be in at least 10-point bold-faced type, if printed, or in capital letters, if typewritten, shall identify the contractor by name and address, and shall state substantially as follows:

IMPORTANT NOTICE TO OWNERS: UNDER COLORADO LAW, SUPPLIERS, SUBCONTRACTORS OR OTHER PERSONS PROVIDING LABOR OR MATERIALS FOR WORK ON YOUR RESIDENTIAL PROPERTY MAY HAVE A RIGHT TO COLLECT THEIR MONEY FROM YOU BY FILING A LIEN AGAINST YOUR PROPERTY. A LIEN CAN BE FILED AGAINST YOUR RESIDENCE WHEN A SUPPLIER, SUBCONTRACTOR, OR OTHER PERSON IS NOT PAID BY YOUR CONTRACTOR FOR HIS LABOR OR MATERIALS. HOWEVER, IN ACCORDANCE WITH THE COLORADO GENERAL MECHANIC’S LIEN LAW, SECTIONS 38-22-102(3.5) AND 38-22-113(4), COLORADO REVISED STATUTES, YOU HAVE AN AFFIRMATIVE DEFENSE IN ANY ACTION TO ENFORCE A LIEN IF YOU OR SOME PERSON ACTING ON YOUR BEHALF HAS PAID YOUR CONTRACTOR AND SATISFIED YOUR LEGAL OBLIGATIONS.

YOU MAY ALSO WANT TO DISCUSS WITH YOUR CONTRACTOR, YOUR ATTORNEY, OR YOUR LENDER POSSIBLE PRECAUTIONS, INCLUDING THE USE OF LIEN WAIVERS OR REQUIRING THAT EVERY CHECK ISSUED BY YOU OR ON YOUR BEHALF IS MADE PAYABLE TO THE CONTRACTOR, THE SUBCONTRACTOR, AND THE SUPPLIER FOR AVOIDING DOUBLE PAYMENTS IF YOUR PROPERTY DOES NOT SATISFY THE REQUIREMENTS OF SECTIONS 38-22-102(3.5) AND 38-22-113(4), COLORADO REVISED STATUTES.

YOU SHOULD TAKE WHATEVER STEPS NECESSARY TO PROTECT YOUR PROPERTY.

This provision does not apply when a building permit is issued for new residential construction or for residential property containing more than four living units. (§38-22-105.5, C.R.S.).

Recording Lien Statement/Time Limits for Recording a Lien Statement: (a) Labor and work by the day or piece, “but without furnishing laborers or materials”—no later than two months after completion of the building, structure, or other improvements. (b) All others (including general contractors, subcontractors and suppliers)—no later than four months after the day on which the last labor is performed or the last laborers or materials are furnished by such lien claimant. (§38-22-109, C.R.S.).

To encumber the interest of *bona fide* purchasers of single or double family residences with a mechanic’s lien: (1)

notice of extending the lien time must be filed within one month of the conveyance of the property; or (2) a lien statement must be filed within two months of the conveyance of the property. (§38-22-125, C.R.S.).

Notice Extending Time: A lien claimant *may* extend the time allowed for filing a lien. The Notice Extending Lien time must be recorded within the time allowed for filing a lien (four months from last labor or materials), with the Office of the County Clerk and Recorder in the county where the property is located. The Notice Extending Lien Time contains the following information: (1) address or legal description of the property or other description that will identify the property; (2) name of the person with whom contracted; and (3) name of the claimant, plus his address and telephone number.

Timely recording the Notice Extending Lien Time will extend the time for filing a lien claim to four months after completion of the structure or other improvement, or six months after filing a Notice of Intent, whichever comes first. *Practice pointers: (1) If last work and completion occur on the same day, recording a notice extending lien time may not extend the time to record the lien. (2) Always timely record a notice extending lien time. You may need to rely on it to timely amend a mechanic's lien or to provide notice to an owner prior to conveyance of a single- or double-family residence.*

Discontinuance of all labor, work, services or furnishing of materials on a structure for a three-month period constitutes abandonment. Once there has been abandonment, the building will be considered completed and the time limits for recording a lien and foreclosure of a lien will start to run. (§38-22-109, C.R.S.).

"No trivial imperfection in or omission from" the work or in the construction shall be deemed a lack of completion "nor postpone the running of any time limit within which any lien statement shall be filed for record or served upon the owner" or owner's agent and the principal contractor or the contractor's agent. (§38-22-109, C.R.S.).

Where Lien is Recorded: Office of the County Clerk and Recorder in the county where the property, or the principal part thereof, to be affected by the lien is situated. (§38-22-109, C.R.S.).

Duration of Lien: Unless, within six months following project completion or last work, an action is commenced to enforce the lien and a notice stating that such action has been commenced is filed at the office of the county clerk and recorder of the county in which the property is located, the lien is void. If construction continues more than a year after recording a Statement of Lien, a lien claimant must file an affidavit that the construction has not yet been completed with the Clerk and Recorder within 30 days after the first anniversary date of the recording of the Lien Statement and each year thereafter until the construction is concluded or unless foreclosure has been previously commenced. (§§38-22-109 and 38-22-110, C.R.S.).

Recording Fee: \$10 for the first page and then \$5 per each standard size page (8½ x 11) thereafter, plus a \$1 surcharge per document. Many counties also charge to index each name on the lien. *Practice pointer: Check with the county as to the cost of recording before mailing the lien for recording to ensure you have included the correct fee.*

Contents of Lien: (1) Name of owner or reputed owner or, if not known, a statement to that effect; (2) name of person claiming lien; (3) name of principal contractor; (4) description of property to be charged; (5) statement of the amount due or owing such claimant; (6) statement must be signed and sworn to by claimant or his agent; and (7) affidavits of service of notice of intent to file lien statement to owner or reputed owner and principal contractor at least 10 days prior to recording Statement of Lien. (§38-22-109, C.R.S.).

Extent of Lien: The right or interest of the owner or person claiming an interest in the land, including landlord or vendor, is subject to mechanic's liens for labor and material. The mechanic's lien extends to the interests of the owner for the entire contract price and attaches to the benefited property, structure or improvement including all machinery and other fixtures used in connection with any such lands, buildings, mills, structures, or improvements. (§38-22-103, C.R.S.).

If the labor and materials are provided for two or more buildings, structures or other improvements, "it is lawful for the person so furnishing such laborers or materials or performing such labor to divide and apportion the same among the buildings, structures, or other improvements in proportion to the value of the laborers or materials furnished for and the labor performed upon or for each of said buildings, structures, or other improvements." If the labor and materials cannot be "readily and definitely divided and apportioned," then the lien claim may be enforced as a blanket lien against all of the benefited property. (§38-22-103, C.R.S.).

Mechanic's liens attach to water rights and rights-of-way that pertain to the property. In the case of corporations, the liens attach to all franchises and charter privileges that may pertain to the property. (§38-22-107, C.R.S.).

Mechanic's liens attach to mining property and apply to all persons who do work or furnish laborers or materials, or mining, milling, or other machinery or other fixtures for the working, preservation, prospecting, or development of any mine, lode, or mining claim or deposit including work in "searching" for any metals or minerals. (§38-22-104, C.R.S.).

In the case of improvements to leased premises, the owner or agent can avoid mechanic's liens if, within five days after obtaining notice of erection, repair or other improvement, the owner or owner's agent personally gives written notice to all persons performing labor or furnishing skills, that the interest shall not be subject to any lien or within five days of the aforementioned notice, gives notice by posting and keeping posted a written notice to the effect mentioned above in some conspicuous place on the land or building or other improvement which is subject to the work. (§38-22-105, C.R.S.). *Practice pointer: The following language can be used by and owner/landlord to provide notice of non-liability:*

YOU ARE HEREBY NOTIFIED THAT PURSUANT TO SECTION 38-22-105, C.R.S., THE UNDERSIGNED, [Insert name of owner], (OWNER) IS THE OWNER IN FEE OF THE REAL PROPERTY UPON WHICH THE

CONSTRUCTION BY [Insert name of tenant] IS CONSTRUCTING IMPROVEMENTS. [Insert name of tenant] IS IN POSSESSION OF A PORTION OF THE PROPERTY AS A TENANT UNDER A LEASE, BUT HAS NO OTHER RIGHT OR CLAIM TO THE PROPERTY. THEREFORE, OWNER WILL NOT BE RESPONSIBLE FOR ANY LABOR PERFORMED, LABORERS FURNISHED OR SKILL, MATERIALS OR MACHINERY FURNISHED, OR OTHER FIXTURES THEREFOR, USED IN THE ERECTION, CONSTRUCTION, ALTERATION, REMOVAL, ADDITION, REPAIR, OR OTHER IMPROVEMENT TO THE PROPERTY, OR ANY PART THEREOF, WHICH HAS BEEN PERFORMED AT THE REQUEST OF [Insert name of tenant] OR ITS AGENTS; AND THE PROPERTY SHALL NOT BE SUBJECT TO ANY LIEN FOR SUCH LABOR PERFORMED, LABORERS FURNISHED OR SKILL, MATERIALS OR MACHINERY FURNISHED OR OTHER FIXTURES THEREFOR.

Priority of Lien: All mechanic's liens "relate back to the time of the commencement of work under the contract between the owner and the first contractor, or, if said contract is not in writing, then such liens shall relate back to and take effect as of the time of the commencement of the work upon the structure or improvement..." Mechanic's liens have first priority over any encumbrances thereafter recorded, and unrecorded encumbrances of which claimant had no actual notice. (§38-22-106, C.R.S.). The case law interpreting the priority section of the mechanic's lien statute holds such work includes design work by architects and engineers (*Bankers Trust Co. v. El Paso Pre-Cast Co.*, 560 P.2d 457 (1977); and *Weather Engineering & Manufacturing, Inc. v. Pinon Springs Condominiums, Inc.*, 563 P.2d 346 (1977)). A lien relates back to the commencement of the first work on a project and is not limited to the time of commencement of actual work on the project by the lien claimant (*Sontag v. Abbott*, 344 P.2d 961 (1959)).

As between lien claimants, there is a ranking of the mechanic's liens. Liens are ranked in the following order for the benefit of (1) laborers by the day or piece; (2) subcontractors and materialmen; and (3) other principal contractors. (§38-22-108, C.R.S.).

However, mechanic's liens may not have priority as to the improvements over a construction deed of trust. The recorded construction deed of trust may have priority over the mechanic's lien only to the extent that: (1) the deed of trust was recorded before the attachment of the mechanic's lien (before the commencement of the work); (2) the construction deed of trust correctly recites its purpose as a construction loan; and (3) the loan proceeds are actually used for construction purposes. The construction lender has the burden of proof with respect to the asserted priority of its deed of trust. (*1st Choice Bank v. Fisher Mechanical Constructors, Inc.*, 15 P.3d 1100 (Colo. App. 2000)).

Disburser's Notices: A "disburser" is any lender or "any person who receives funds from any lender, contractor, or owner to be disbursed from time to time as work upon a structure or other improvement progresses, or any part of which is to be withheld until all or any part of such work is completed; or, any owner who has agreed to pay any sum to any contractor from time to time as work upon a structure or other improvement progresses, or any part of which is to be withheld until all or any part of such work is completed." Anyone who is entitled to a lien under the statute may serve a notice on the disburser. The notice must contain: (1) property description; (2) claimant's name, address, and telephone number; (3) the person with whom the lien claimant has contracted; and (4) a general statement of the contract. The notice must be in writing and served on the disburser either personally or by certified mail. After service of the notice, "[i]t is the duty of the disburser, before disbursing any funds to the person designated in said notice with whom said claimant has contracted, to ascertain the amount due to the claimant on any disbursement date, and to pay such amount directly to the claimant out of any undisbursed funds available..." (§38-22-126, C.R.S.).

Trust Funds: All funds disbursed to any contractor or subcontractor under any building, construction, remodeling contract or construction project, shall be held in trust for payment of subcontractors, material suppliers or laborers who have a lien or may claim a lien. Contractors and subcontractors are required to maintain separate records for each project, but not separate bank accounts. Any person who violates the provisions of the trust fund statute commits theft. (§§38-22-127 and 18-4-401, C.R.S.).

Violation of the trust fund statute may result in a treble damages award against the party violating the statute under §18-4-405, C.R.S.

Under Colorado case law, the principals of a company who have violated the trust fund statute may be found to be personally liable for the violation, including treble damages. (*Alexander Company v. Packard*, 754 P.2d 780 (Colo. App. 1988)).

Lien Waivers: No agreement to waive, abandon, or refrain from enforcing any lien shall be binding except as between the parties to the contract. An agreement to waive lien rights shall contain a statement, by the person waiving lien rights, providing in substance that all debts owed to any third party by the person waiving the lien rights and relating to the goods or services covered by the waiver of lien rights have been paid or will be timely paid. By use of the words "providing in substance" the statute does not dictate the exact wording required in a lien waiver, but does clearly state that words to that effect must be contained in lien waiver documents. Thus, construction lien waivers must include language that essentially says that, "all debts owed to any third party by the person waiving the lien rights and relating to the goods or services covered by the waiver of lien rights have been paid or will be timely paid." (§38-22-119, C.R.S.).

Excessive Amounts Claimed: Any person who files a mechanic's lien for an amount greater than the amount due without a reasonable possibility that the amount claimed is due and with the knowledge that the amount claimed is greater than the amount due, and that fact is demonstrated in a proceeding under the statute, shall forfeit all rights to the amount claimed and shall be liable for all costs and attorneys' fees reasonably incurred by the one contesting the lien. (§§38-22-123

and 38-22-128, C.R.S.).

Statutory Citation: Colorado Revised Statutes, §§38-22-101 to 38-22-133; 18-4-401, 18-4-405.

CONNECTICUT

Who May Claim: Any person having a claim for more than \$10 for materials furnished or services rendered in the construction, raising, removal or repair of any building, or any of its appurtenances or improvement of any lot or plot of land, by virtue of an agreement with or by consent of the owner of the land upon which the building is erected or has been moved, or his agent. Any person having a claim for more than \$10 for materials furnished or services rendered in the construction, raising, removal or repair of any real property, and the claim is by virtue of an agreement with or by consent of the lessee of the real property or of some person having authority from or rightfully acting for such lessee in procuring the materials or labor, then the leasehold interest in such real property is subject to the payment of the claim.

How Claimed: (a) *Contractor.* Person performing services or furnishing materials within 90 days after he has ceased to do so must lodge with the Town Clerk of the town in which the building, lot or plot of land is situated, a certificate in writing, subscribed and sworn to by the claimant, describing the premises, the amount claimed, the name of the person against whom the lien is being filed, the date of commencement of the work or furnishing of the materials and stating that the amount claimed is justly due. Within the same time, or prior to the lodging of the certificate, but no later than 30 days after the lodging of the certificate, the contractor must also serve a true and attested copy of the certificate on the owner of the building, lot or plot as provided in section (b).

(b) *Subcontractor.* All persons, except the original contractor and a subcontractor, whose contract with the original contractor is in writing, must within 90 days after ceasing to furnish materials or render services, give written notice to the owner of the building and to the original (principal) contractor that they have furnished materials or rendered services or commenced to do so and that they intend to claim a lien therefor on the building, lot or plot of land. This notice must be served on the owner by leaving at his residence a copy thereof. Where the owner does not reside in the town where the lien property is located, the notice may be served on his agent or may be mailed by registered or certified mail to the owner. If the copy is returned unclaimed, notice must be given by publication. When there are two or more owners, such notice must be served upon each owner. No lien is valid, unless within 90 days after he has ceased to furnish materials or render services, the person claiming the lien lodges with the Town Clerk of the town in which the building, lot or plot of land is situated a certificate in writing, subscribed and sworn to by the claimant, describing the premises, the amount claimed, the name of the person against whom the lien is being filed and the date of the commencement of the performance of services or furnishing materials, and stating that the amount claimed is justly due. A copy of the lien must be served in accordance with the same procedure as a notice of lien. Contractor shall be entitled to copy of notice provided that within 15 days after commencing the construction, contractor files with the Town Clerk an affidavit which contains the name under which he conducts business, his business address and a description of the property. The statute contains specific provisions for service of notice on owner depending on whether or not he resides in the same town as the property is located.

Where Recorded: Town Clerk of town in which property is situated.

When to Be Recorded: Within 90 days after the contractor shall have ceased to perform services or furnish materials, he shall lodge with the Town Clerk of the town in which the building, lot or plot of land was situated, a certificate in writing in accordance with the statute, which certificate shall be recorded by the Town Clerk with deeds of land and within the same time or prior to the lodging of such certificate but not later than 30 days after lodging such certificate, serve a true and attested copy of such certificate upon the owner of such building, lot or plot of land.

Duration of Lien: No lien shall continue in force for longer than one year after such lien has been perfected, unless the party claiming such lien commences an action to foreclose the same by complaint, crossclaim or counterclaim, and records a notice of *lis pendens* on the land records of the town in which the lien is recorded within one year from date such lien was filed or within 60 days of any final disposition of an appeal.

Recording Fee: \$10 for the first page. \$5 for each subsequent page or fractional part thereof.

Contents of Lien Certificate: (1) Description of premises; (2) amount claimed as a lien thereon; (3) date of commencement of services or furnishing of materials; (4) statement that amount claimed is justly due, as nearly as the same can be ascertained; and (5) name of the person against whom the lien is being filed, and subscribed and sworn to by the claimant.

Extent of Lien: The lien attaches to the building or the appurtenances to the extent of the amount which the owner agreed to pay. It includes and attaches to the land upon which such building or appurtenances or any lot or plot of land are located.

Priority of Lien: Mechanic's liens take precedence over any other encumbrance originating after the commencement of the services or the furnishing of any materials. If a lien exists in favor of two or more persons on the same building for the same work, no one person has precedence over the other except as described below. Where the united claims of several claimants exceed the price agreed upon to be paid by the owner, then the claimants other than the original contractor are paid in full first, if the price is sufficient, or if not, the amount is apportioned between them in proportion to the amount due them respectively. If an encumbrance other than a mechanic's lien be filed for record during the time of construction and

existing inchoate mechanic's liens do not waive priority to it, all mechanic's liens originating prior to the filing of such encumbrance for record shall take precedence over such encumbrance, but mechanic's liens for materials or services originating after the filing of said other encumbrance shall be subject thereto.

Statutory Citation: Connecticut General Statutes, Title 49, Chapter 847, §§49-32a to 49-92f.

DELAWARE

Who May Claim: Any person having performed work or labor or furnished material to an amount exceeding \$25 in or for the erection, alteration, or repair of any structure, in pursuance of any contract, express or implied, with the owner of such house, building, or structure, or with his agent. Where work or labor is performed on a house, building, bridge, or structure in any amount less than \$100, the person performing labor may obtain a lien. Liens cover work and materials performed and furnished in gas fitting, plumbing, paving, paperhanging, placing iron works, and machinery of every kind in mills and factories. Liens also extend to architects and corporations. Work or materials for a building, house, or structure may be furnished under oral contract, but for improvement to land alone must be written contract. No lien can be obtained on residential property if the owner has made full payment to the contractor with whom he contracted and received a verified and notarized statement from contractor that all claims have been paid, or received a waiver of mechanic's lien; if owner has not made full payment, lien can only be obtained for balance due to be paid *pro rata* on any claimants who perfect lien. The statute prohibits as a matter of public policy an owner, developer, general contractor, or construction manager from requiring that mechanic's liens be waived as a condition of submitting a bid or entering into a contract to perform labor or supply materials to a structure. Labor or materials performed or furnished in the construction, alteration, furnishing, rigging, launching, or repairing of any ship or vessel may be subject to a lien.

How Claimed: By filing statement of claim in writing.

Where Filed: An amount exceeding \$25 must be filed in the office of the Prothonotary in the county where such structure is located. Statement of claim for labor in any amount less than \$100 may be filed with the Justice of the Peace of the county where the property is situated.

When to Be Filed: (a) *Contractor.* A contractor who (1) has made his contract directly with the owner or reputed owner of any structure and (2) has furnished both labor and material in and for such structure, or has provided construction management services in connection with the furnishing of such labor and material, in order to enforce the lien, shall file a statement of claim within 180 days after the completion of the structure. A statement of claim is deemed timely if it is filed within 180 days of any of the following: (a) date of purported completion of all the work called for by the contract as provided by the contract if such date has been agreed to in the contract itself; (b) date when the statute of limitation commences to run in relation to the particular phase or segment of work performed pursuant to the contract, to which phase or segment of the work the statement of claim relates, where such date for such phase or segment has been specifically provided for in the contract itself; (c) date when the statute of limitations commences to run in relation to the contract itself where such date has been specifically provided for in the contract itself; (d) date when payment of 90 percent of the contract price, including the value of any work done pursuant to contract modifications or change orders, have been received by the contractor; (e) date when the contractor submits his final invoice to the owner or reputed owner of such structure; (f) with respect to a structure for which a certificate of occupancy must be issued, date when such certificate is issued; (g) date when the structure has been accepted, as provided in the contract, by the owner or reputed owner, or such other representative designated by the owner or reputed owner for this purpose, and issues a certificate of completion; or (h) date when permanent financing for the structure is completed.

(b) *Subcontractor and Others.* All other claimants shall file their claim within 120 days of the last delivery or completion of work, defined as (1) date final payment is due or (2) date final payment is made to the contractor with whom the claimant contracted who is in privity with the owner.

Duration of Lien: The proceedings to recover the amount of any claim shall be by *writ of scire facias* (an order for the owner to appear before the court). Any final judgment obtained under a lien claim continues for the term of 10 years subject to renewal.

Fees: \$175 filing fee; \$30 sheriff service fee per defendant; \$15 sheriff mechanic's lien posting fee per property.

Contents of Lien Certificate: (1) Name of the claimant; (2) name of the owner, or reputed owner; (3) name of the contractor, and the party with whom claimant dealt; (4) amount or sum claimed to be due, the nature and kind of labor or material with bill of particulars annexed; (5) time when the work and labor or furnishing of materials was commenced; (6) time when the work was finished, with the contractor identifying the completion date and the event which is relied upon as completion and the subcontractor identifying what event is relied upon as the completion of the work; (7) location of the structure with description sufficient to identify it; (8) that the labor was done and materials furnished on the credit of the property; (9) amount claimed and that the amount has not been paid; (10) amount claimant claims to be due on each structure; and (11) time of recording of a first mortgage, or a conveyance in the nature of a first mortgage, upon such structure which is granted to secure an existing indebtedness or future advances provided at least 50 percent of the loan proceeds are used for the payment of labor or materials, or both.

Extent of Lien: The lien attaches to the building and the land upon which the work was rendered or material furnished.

Priority of Lien: Any judgment obtained upon such claims becomes a lien on such property and upon the ground upon

which same is situated and relates back to the day when such work and labor was begun or furnishing of material was commenced or the time immediately following the time of recording of a first mortgage, or conveyance in the nature of a first mortgage, upon such structure which is granted to secure an existing indebtedness or future advances provided at least 50 percent of the loan proceeds are used for the payment of labor or materials, or both, for such structure, whichever shall last occur. If proceeds of estate are not sufficient to pay all liens in full, proceeds are divided ratably without priority to preference.

Statutory Citation: Delaware Code Annotated, Title 25, Chapter 27, §§2701 to 2737.

DISTRICT OF COLUMBIA

Who May Claim: Contractor, subcontractor, materialman or laborer directly employed by the owner or original contractor. Claimant must have a contract with the owner or general contractor to have lien rights.

How Claimed: By filing notice of mechanic's lien on property and stating the amount due or to become due.

Where Filed and Fee: Recorder of Deeds, 515 D Street NW, Washington, DC 20001. Filing fee is \$25. The Recorder of Deeds also requires a surcharge fee of \$6.50.

When to Be Filed: During construction of the project or no later than within 90 days after the earlier of the completion or termination of the project (by the general contractor).

Service of Copy of Notice: Any contractor or supplier who files a notice of intent to lien, besides filing a notice with the Recorder of Deeds of the District of Columbia must serve the owner of the property upon which the lien is claimed, within five business days of the filing by certified mail to the owner's current address and if not available in the local public records to the last known address. If the certified mail is returned unclaimed or undelivered, then by posting a copy of the recorded notice of lien on the premises in a visible location.

Contents of Notice of Lien:

The Recorder of Deeds of the District of Columbia provides a form that was revised in 2012 and must be used, and it is available at http://otr.cfo.dc.gov/otr/frames.asp?doc=/otr/lib/otr/january_2012/2011_notice_of_mechanics_lien_form.pdf. The Notice of Mechanic's Lien must state whether the project is ongoing, completed or terminated and provide a date if it was completed or terminated and include: (1) name and address of the contractor or its registered agent (and specify whose address); (2) name and address of party against whose interest a lien is claimed (the owner or tenant) or its registered agent (and specify whose address); (3) legal description of property (lot and square) and to the extent available a street address of the real property; (4) the amount claimed, less any credit for payments received up to and including the date of the notice of intent and whether the claimant's contract is with the owner or with a contractor; (5) description of the work done, including the dates that work was commenced and completed or description of the material furnished, including the dates that material was first and last delivered; (6) a certification that claimant is an individual or an entity existing under the laws of DC or an entity existing under the laws of another jurisdiction and doing business in DC or an entity existing under the laws of another jurisdiction and not doing business in DC; (7) a sworn, notarized verification affirming under penalty of perjury and upon personal knowledge that contents of the notice are true and correct to the best of the claimant's information and belief, and that the contractor has right to recover the amount claimed; and (8) if the notice is executed by an authorized representative or counsel of the contractor, a Letter of Authorization from the claimant evidencing the representative's authority to execute the notice of mechanic's lien on behalf of the claimant.

In addition, the claimant must provide certain documents to the Recorder of Deeds in order to get the Notice filed: (1) if claimant is a DC corporation or is doing business in DC, need to provide copy of current license to do business in DC issued by DCRA; and certificate of good standing from DCRA issued within 180 days prior to the date of filing of the lien notice or if claimant is organized under the laws of another jurisdiction other than DC or is not doing business in DC, a copy of current license to do business in the other jurisdiction and a certificate of good standing issued within 180 days prior to the date of filing of the lien notice from the other jurisdiction (place of business or incorporation); (2) if the project is a home improvement contract, a copy of the home improvement contract; and (3) if an authorized representative of claimant is filing the lien notice, a Letter of Authorization from the claimant.

Extent of Lien: Lien attaches to building erected, improved, added to or repaired, and the lot of ground used in connection therewith to the extent of the right, title and interest at the time existing of the owner.

Duration of Lien: Any person entitled to a lien must commence suit within 180 days after filing of the notice and in addition must file a notice of pendency of lawsuit in the land records, (i.e., a *lis pendens*) within 10 days after filing of the lawsuit. If the suit or the *lis pendens* is not filed, the lien terminates automatically.

Subcontractors, Materialmen, etc: The owner has a defense of payment. All subcontractor liens are limited to the amount to become due to the general contractor and are subject to the terms and conditions of the general contract except any waiver of liens in the general contract. If the general contractor is entitled to recover nothing, the liens are not enforceable at all. Subcontractors are entitled to request information from the owner concerning the contract and status of accounts between the owner and general contractor. If the owner fails or refuses to provide this information, the owner can lose the defense of payment to the subcontractor lien.

Priorities: Lien preferred to all judgments, mortgages, deeds of trusts, liens and conveyances recorded after commencement of work, except mortgages or deeds of trust given to purchase land recorded within 10 days from date of

acknowledgment. Lien has priority over all loan advances made after the lien is filed and has priority over contracts to purchase the land after the lien is filed. The lien of subcontractor who has given notice to the owner is preferred to the lien of the general contractor.

Statutory Citation: District of Columbia Code, Division VII, Property, Title 40 Liens, Chapter 3, §§40-301.01 to 40-303.20.

FLORIDA

Who May Claim: (a) *Persons in Privity with Owner.* A general contractor, subcontractors, sub-subcontractors, materialmen or laborer (Lienor) or professional lienors have a lien on the real property improved for any money that is owed to him for labor, services, materials or other items required by, or furnished and incorporated and for specially fabricated material, whether or not they are incorporated, in accordance with the direct contract and for unpaid finance charge due under the lienor's contract. Effective July 1, 2007, the statute amends the definition of "furnish materials" to include the delivery of rental equipment to a project. The furnishing period includes the actual use of the rental equipment from the delivery through the time the equipment was last available for use, or two business days after the lessor of the rental equipment receives a written notice from the owner or the lessee picks up the equipment, whichever occurs first.

(b) *Persons Not in Privity with Owner.* A lienor who, as a subcontractor, sub-subcontractor, laborer, materialman or professional lienor not in privity with the owner, commences to furnish labor, services or materials to an improvement shall have a lien for any money that is owed to him for the labor, services or materials furnished and incorporated into the property. A laborer, either of whom is not in privity with the owner, or a laborer, subcontractor or a sub-subcontractor who complies with provisions of the law and is subject to its limitations, has a lien on the real property improved for any money that is owed to him for labor, services or materials furnished in accordance with this contract and with the direct contract and for any unpaid finance charges due under the lienor's contract. A laborer or materialman or subcontractor or sub-subcontractor who complies with the provisions of this part and is subject to the limitations thereof, also has a lien on the owner's real property for labor, services or materials furnished to improve public property if the improvement of the public property is furnished in accordance with this contract and with the direct contract. The total amount of all liens allowed under this part for furnishing labor, services or material conveyed by any certain direct contract must not exceed the amount of the contract price fixed by the direct contract if the owner has made proper payments by obtaining lien releases from all lienors giving notice as the owner makes progress and final payments.

Any persons who perform services as architects, engineers, geotechnical engineers, landscape architects, interior designers, or surveyors and mappers (professional lienors), subject to compliance with limits imposed by the law, has a lien on the real property improved for any money that is owed for services used in connection with improving the real property or for services used in supervising any portion for the work of improving the real property. A professional lienor's lien attaches at of the time of recording. Nobody can claim a lien as a contractor, subcontractor or sub-subcontractor unless they are appropriately licensed in the jurisdiction in which the work is performed.

How Claimed: As a prerequisite to perfecting and recording a claim of lien, all claimants not in privity with the owner, except professional lienors, must serve a notice on the owner in the form described below. A sub-subcontractor or a materialman to a subcontractor must serve a copy of the notice on the contractor as a prerequisite to perfecting or recording a claim of lien. A materialman to a sub-subcontractor must serve a copy of the notice to owner on the contractor as a prerequisite for perfecting a lien and recording a claim of lien. A materialman to a sub-subcontractor shall serve the notice to owner on the subcontractor if the materialman knows the name and address of the subcontractor. The notice must be received by the owner, or not later than 45 days after commencing, to furnish labor services or materials, but, in any event, before the date of the owner's disbursement of the final payment after the contractor has furnished the affidavit required by law. The notice must be served regardless of the method of payments by the owner, whether proper or improper, and does not give the lienor serving the notice any priority over other lienors in the same category. The serving of the notice does not dispense with the requirement of recording of the claim of lien. The notice is not a lien, cloud or encumbrance on the real property nor actual or constructive notice of it.

In addition to the requirements above, for the purpose of perfecting a lien, every lienor, including laborers, professional lienors and persons in privity, shall record a claim of lien which is substantially in the following form:

WARNING: THIS LEGAL DOCUMENT REFLECTS THAT A CONSTRUCTION LIEN HAS BEEN PLACED ON THE REAL PROPERTY LISTED HEREIN. UNLESS THE OWNER OF SUCH PROPERTY TAKES ACTION TO SHORTEN THE TIME PERIOD, THIS LIEN MAY REMAIN VALID FOR ONE YEAR FROM THE DATE OF RECORDING, AND SHALL EXPIRE AND BECOME NULL AND VOID THEREAFTER UNLESS LEGAL PROCEEDINGS HAVE BEEN COMMENCED TO FORECLOSE OR DISCHARGE THIS LIEN.

CLAIM OF LIEN

State of _____

County of _____

Before me, the undersigned notary public, personally appeared _____, who was duly sworn and says that she or he is (the lienor herein) (the agent of the lienor herein _____), whose address is _____; and that in accordance

with a contract with _____, lienor furnished labor, services, or materials consisting of _____ on the following described real property in _____ County, Florida:

(Legal description of real property) owned by _____ of a total value of \$_____, of which there remains unpaid \$_____, and furnished the first of the items on (month day, year), and the last of the items on (month day, year); and (if the lien is claimed by one not in privity with the owner) that the lienor served her or his notice to owner on (month day, year), by _____; and (if required) that the lienor served copies of the notice on the contractor on (month day, year), by _____ and on the subcontractor, _____, on (month day, year), by _____.

(Signature)

Sworn to (or affirmed) and subscribed before me this _____ day of (month year), by (name of person making statement)

(Signature of Notary Public — State of Florida)

(Print, Type or Stamp Commissioned Name of Notary Public)

Personally Known OR Produced Identification: _____

Type of Identification Produced: _____

Notice to Owner: One not in privity with owner must provide a notice to owner substantially in the following form, including all of the warnings included herein:

WARNING: FLORIDA'S CONSTRUCTION LIEN LAW ALLOWS SOME UNPAID CONTRACTORS, SUBCONTRACTORS AND MATERIAL SUPPLIERS TO FILE LIENS AGAINST YOUR PROPERTY EVEN IF YOU HAVE MADE PAYMENT IN FULL.

UNDER FLORIDA LAW, YOUR FAILURE TO MAKE SURE THAT WE ARE PAID MAY RESULT IN A LIEN AGAINST YOUR PROPERTY AND YOUR PAYING TWICE.

TO AVOID A LIEN AND PAYING TWICE, YOU MUST OBTAIN A WRITTEN RELEASE FROM US EVERY TIME YOU PAY YOUR CONTRACTOR.

NOTICE TO OWNER

To: (Owner's name and address)

The undersigned hereby informs you that he has furnished or is furnishing services or materials as follows:

(General description or services or materials) for the improvement of the real property identified as (property description) under an order given by _____.

Florida law prescribes the serving of this notice and restricts your right to make payments under your contract in accordance with Section 713.06, Florida Statutes.

IMPORTANT INFORMATION FOR YOUR PROTECTION

Under Florida's laws, those who work on your property or provide materials and are not paid have a right to enforce their claim for payment against your property. This claim is known as a construction lien.

If your contractor fails to pay subcontractors or material suppliers or neglects to make other legally required payments, the people who are owed money may look to your property for payment, **EVEN IF YOU HAVE PAID YOUR CONTRACTOR IN FULL.**

PROTECT YOURSELF:

—RECOGNIZE that this Notice to Owner may result in a lien against your property unless all those supplying a Notice to Owner have been paid.

—LEARN more about the Construction Lien Law, Chapter 713, Part I, Florida Statutes, and the meaning of this notice by contacting an attorney or the Florida Department of Business and Professional Regulation.

(Lienor's Signature)

(Lienor's Name)

(Lienor's Address)

Copies to: (Those persons listed in Section 713.06(2)(a) and (b), Florida Statutes)

If a copy of such notice is served on lender to owner and lender pays contractor after receipt of notice, lender shall make proper payments as specified. Failure to do so renders the lender liable to owner for all damages suffered.

The notice to owner may be combined with a notice to contractor under §713.23 or §255.05 for private or public bonded jobs and thus titled "Notice to Owner/Notice to Contractor."

The notice to owner must be served on the Owner, and must be delivered to the Owner by certified mail, return receipt requested, overnight or second-day delivery with proof of delivery, and delivery by hand delivery to the persons designated, if any, and to the place and address designated in the Notice of Commencement and if none of these methods are available, by posting on the job. It must also be served on the General Contractor if the lienor is not in privity with the General Contractor.

In each claim of lien, the owner under the direct contract must be the same person for all lots, parcels or tracts of land against which a single claim of lien is recorded.

Notice of Commencement: Commencement: Except for an improvement that is exempt because the work consists solely of subdivision improvements, or the total contract is less than \$2,500, an owner or authorized agent before actually commencing to improve any real property, or recommencing completion of any improvement after default or abandonment, whether or not a project has a payment bond, shall record a notice of commencement with the clerk’s office and forthwith post on the job either a certified copy thereof of a notarized statement that the notice of the commencement has been filed for recording along with a copy. On July 1, 2007, the required statutory form of Notice of Commencement was amended to include the tax folio number, mandatory warnings and a verification pursuant to Section 92.525, Florida Statutes. It is important that the new Notice of Commencement form be utilized after July 1, 2007.

The notice of commencement must be in substantially the following form:

Permit No. _____
Tax Folio No. _____

NOTICE OF COMMENCEMENT

State of _____
County of _____

The undersigned hereby gives notice that improvement will be made to certain real property, and in accordance with Chapter 713, Florida Statutes, the following information is provided in this Notice of Commencement.

1. Description of property: (legal description of property, and street address, if available).
2. General description of improvement:
3. Owner information:
 - a. Name and address:
 - b. Interest in property:
 - c. Name and address of fee simple title holder (if other than Owner):
4. Contractor (name and address):
 - a. Contractor’s phone number:
5. Surety:
 - a. Name and address:
 - b. Phone number:
 - c. Amount of bond: \$ _____
6. Lender:
 - a. Name and address:
 - b. Phone number:
7. Persons within the State of Florida designated by Owner upon whom notices or other documents may be served provided by Section 713.13(1)(a)(7), Florida Statutes.
 - a. Name and address:
 - b. Phone number:
8. In addition to himself, Owner designates _____ of _____ to receive a copy of the lienor’s notice as provided by Section 713.13(1)(b), Florida Statutes.
 - a. Phone number:
9. Expiration date of notice of commencement (the expiration date is one year from the date of recording unless a different date is specified):

WARNING TO OWNER: ANY PAYMENTS MADE BY THE OWNER AFTER THE EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED IMPROPER PAYMENTS UNDER CHAPTER 713, PART I, SECTION 713.13, FLORIDA STATUTES, AND CAN RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF COMMENCEMENT.

(Signature of Owner or Owner’s Authorized Officer/Director/Partner/Manager)
(Signatory’s Title/Office)

The foregoing instrument was acknowledged before me this ____ day of _____ (month, year), by (name of person) as (type of authority/e.g., officer, trustee, attorney in fact) for (name of party on behalf of whom instrument was executed).

(Signature of Notary Public, State of Florida)
(Print, type or stamp commissioned name of Notary Public)

Personally known ____ OR produced identification ____

Type of identification produced: _____

Verification pursuant to Section 92.525, Florida Statutes.

Under penalties of perjury, I declare that I have read the foregoing and that the facts stated in it are true to the best of my

knowledge and belief.

(Signature of Natural Person Signing Above)

A copy of any statutory bond must be attached to the Notice of Commencement at the time of recordation. The failure to attach a copy of the bond to the Notice of Commencement when the notice is recorded negates the exemption provided in Section 713.02(6) and liens will attach to the real property. However, if such a bond exists but is not recorded, the bond may be used as a transfer bond.

The Notice of Commencement is effective upon recording. The owner must sign the Notice of Commencement and no one else may be permitted to sign in his stead. If the improvement described in the Notice of Commencement is not actually commenced within 90 days after the recording thereof, such notice is void and of no further effect.

The recording of a Notice of Commencement does not constitute a lien, cloud or encumbrance on real property, but gives constructive notice that claims of lien under this part may be recorded and may take priority. This does not apply to an owner who is constructing only subdivision improvements.

Unless otherwise provided in the Notice of Commencement, a Notice of Commencement is not effectual in law or equity against a conveyance, transfer to mortgage of, or lien on the real property described in the notice, or against creditors or subsequent purchasers for a valuable consideration, after one year after the date of recording and notice of commencement.

The certified copy of the Notice of Commencement must contain the name and address of the owner, the name and address of the contractor, and the location or address of the property being improved. The issuing shall verify this information is consistent with the building permit application. The issuing authority shall provide the recording information on the certified copy of the recorded Notice of Commencement upon request.

An owner may request from the contractor a list of all subcontractors and suppliers who have any contract with the contractor to furnish materials or perform any services to improve the real property. The contractor must furnish the information within 30 days of the owner's request or forfeits the right to file a lien. The list furnished does not qualify as a notice to owner.

Where Filed: Public records of the county in which the real property is situated. If property is situated in two or more counties, record in each county.

When to Be Filed: During the progress of the work, but not later than 90 days after the final furnishing of the labor or services or materials by the lienor, provided, if the original contractor defaults or contract is terminated before completion of construction, no claim for a lien attaching prior to such default shall be recorded after 90 days from the date of such default or 90 days after the final performance of labor or services or furnishing of materials, whichever occurs first. Copies of claim of lien must be served upon owner, no later than 15 days after recording. The time for recording a claim of lien is measured from the last day of furnishing labor, services, or material by the lienor and shall not be measured by any other standard.

Duration of Lien: No lien shall continue for a longer period than one year after the claim of lien has been recorded, unless a foreclosure action to enforce the lien is commenced within that time. The continuation of the lien effected by the commencement of the action shall be good against creditors or subsequent purchasers for a valuable consideration and without notice unless a notice of *lis pendens* is recorded. Owner can shorten to 60 days by filing notice of contest of lien, or to 20 days by serving an Order to Show Cause Why the Lien Should Not be Discharged.

Fee for Recording: The fee for recording, indexing and filing any instrument varies from county to county. You should consult the Clerk of the Court for applicable recording fees.

Extent of Lien: Liens shall extend to, and only to, the right, title and interest of the person who contracts for the improvement, as such right, title and interest exist at the commencement of the improvement is thereafter acquired in the real property. The lien may attach to the fee even if the "owner" is a tenant if the landlord required the improvements in the Lease. See below.

Priority of Lien: All liens shall have priority over any conveyance, encumbrance or demand not recorded against the real property prior to the time lien attached or the Notice of Commencement, if one is recorded. Liens shall have preference in the following order: (1) laborers, (2) all persons other than the contractor, and (3) contractor. All liens relate back to the date of recording of the Notice of Commencement. Should total contract amount be less than all claims, all liens in a class must be allowed their full amounts before any liens of a subsequent class are allowed; if amount is insufficient for class, *pro rata* share will be paid, if the owner has made proper payments. Proper payments require the owner to obtain a release of lien from all lienors giving notice as the time of payment. Professional lienors, such as architects and engineers have priority of a lien as of the dates of the recording of the lien.

Remarks: If a husband and wife, who are not separate and not living apart from each other, own priority individually or together, the husband or wife who contracts shall be deemed to be the agent of the other to the extent of subjecting the right, title or interest of the other in said property to liens, unless such other shall within 10 days after learning of such contract notify the contractor and file, with the Circuit Court of the county in which the property is situated, written notice of his or her objection thereof. Any lienor may release his property from a lien thereon by filing a bond in the amount of the final bill with the clerk of the Circuit Court.

Limitations on Lessors: A lessor can effectively prohibit liens for improvements by a lessee where (a) the terms of the lease specifically prohibit such liability and (b) a short form of the lease containing the prohibition or a notice advising that

the lease prohibits such liability is recorded in the county records prior to any notice of commencement for improvements.

Lien for Improvement of Oil or Gas Well: Extends to the leasehold interest held for oil or gas purposes or for any oil or gas pipeline except that neither the land itself, apart from the rights granted under an oil and gas lease, nor any material interest, nor any royalty interest is subject to such liens. Lien also extends to materials and fixtures owned by the interest holder and any oil or gas produced. Lien is perfected in the same manner as a construction lien and exists for one year.

Statutory Citation: Florida Statutes, Title XVIII, Chapter 255, §255.05; Title XL, Chapter 713, §§713.001 to 713.37.

GEORGIA

Who May Claim: The following persons shall each have a special lien on the real estate, factories, railroads and other property for which they furnish labor, service or materials at the instance of the owner, contractor or some person acting for the owner or contractor: (1) all mechanics of every sort who have taken no personal security for work done and material furnished in building, repairing or improving any real estate of their employers; (2) all contractors, all subcontractors and all materialmen furnishing material to subcontractors, and all laborers furnishing labor to subcontractors, materialmen and persons furnishing material for the improvement of real estate; (3) all registered architects furnishing plans, drawings, designs or other architectural services on or with respect to any real estate; (4) all registered foresters performing or furnishing services on or with respect to any real estate; (5) all registered land surveyors and registered professional engineers performing or furnishing services on or with respect to any real estate; (6) all contractors, all subcontractors and materialmen furnishing material to subcontractors, and all laborers furnishing labor for subcontractors for building factories, furnishing material for factories or furnishing machinery for factories; (7) all machinists and manufacturers of machinery, including corporations engaged in such business, who may furnish or put up any mill or other machinery in any county or who may repair the same; (8) all contractors to build railroads; and (9) suppliers who rent tools, appliances, machinery or equipment for the improvement of real estate.

How Claimed: Substantial compliance by the claimant of the lien with the contract is necessary. Claimant must file a claim of lien within 90 days after the completion of the work or furnishing of architectural services, or furnishing or performance of surveying or engineering services, or within 90 days after such material or machinery is furnished. Copy of claim must be served by certified or registered mail on owner or contractor as agent for owner within two business days.

If the owner files a Notice of Commencement for the project, a lien claimant who is not in privity of contract with the general contractor is barred unless the claimant serves a Notice to Contractor (*see* paragraph 8) within 30 days of the claimant beginning work on the project.

Where Recorded: In Office of Clerk of Superior Court of the county where property is located.

When to Be Recorded: Within 90 days, after completion of work or furnishing machinery or materials. An optional preliminary notice may be filed within 30 days of delivery of any material or labor.

Service of Copy of Notice: Must send copy of preliminary notice to contractor on the property named in the notice or to the owner of the property, if filed, within seven days. Notice of lien required to be sent to owner or contractor, as agent of the owner, by registered or certified mail.

Duration of Lien: Lien lost unless an action is commenced within 365 days from the date of filing the lien; an owner or contractor may shorten the time for filing of a lien action by recording a notice in the superior court clerk's office, in which case the action must be commenced within 60 days from the time of receiving notice to commence a lien action. Within 30 days after filing the action, the party claiming the lien shall also file under oath with the Clerk of the Superior Court of the county wherein the subject lien was filed, a notice identifying the court wherein the action is brought, the style and number of the action, including the names of all parties thereto, the date of the filing of the action and the book and page number of the records of the county wherein the subject lien is recorded. Failure to bring action and to file such notice within the time required shall extinguish the subject claim of lien and render the same unenforceable.

Recording Fee: \$5 for the filing of each preliminary notice. \$5 for the filing of the lien for the first page; \$2 for each additional page.

Contents of Notice of Lien: Statute provides for claim to be in substance as follows:

"A.B., a mechanic, contractor, subcontractor, materialman, machinist, manufacturer, registered architect, registered forester, registered land surveyor, registered professional engineer, or other person (*as the case may be*) claims a lien in the amount of (*specify the amount claimed*) on the house, factory, mill, machinery, or railroad (*as the case may be*) and the premises or real estate on which it is erected or built, of C.D. (*describing the houses, premises, real estate, or railroad*), for satisfaction of a claim which became due on (*specify the date the claim was due, which is the same as the last date the labor, services, or materials were supplied to the premises*) for building, repairing, improving, or furnishing material (*or whatever the claim may be*).

This claim of lien expires and is void 395 days from the date of filing of the claim of lien if no notice of commencement of lien action is filed in that time period. As owner of the property on which this claim of lien is filed, you have the right to contest the lien."

Notice of Contractor: shall set forth the name, address and telephone number of the person providing labor, services or materials; the name and address of each person at whose instance the labor, services or materials are being furnished; the

name of the project and location of the project set forth in the Notice of Commencement; and a description of the labor, services or materials being provided and, if known, the contract price or anticipated value of the labor, services or materials to be provided or the amount claimed to be due, if any. The Notice must be served on the Contractor and Owner.

Extent of Lien: Liens attach to the real estate, factories, buildings, etc., erected, improved or repaired, for the amount of work done or material furnished or value of services performed but in no event shall the aggregate amount of liens exceed the contract price for the improvements made or services performed.

Preliminary Notice of Right to File a Lien: Within 30 days of providing any materials or labor a claimant may file a preliminary notice of right to file a lien with the Clerk of the Superior Court in the county where the property is located. The notice should provide the name, address and telephone number of the potential lien claimant, state name and address of contractor or other person at whose instance the labor, services or materials were furnished, state name of owner of the real estate and a description of the property against which the lien may be claimed and a general description of the labor, services or materials furnished or to be furnished. Within two business days of filing the notice, a copy of the notice must be sent to the owner of the property by registered or certified mail. A copy of the notice must also be sent to the contractor at the address shown on the Notice of Commencement if a Notice of Commencement was filed on the project. The filing of the preliminary notice is not a prerequisite or substitute to filing a claim of lien. Filing the preliminary notice protects the claimant from losing lien rights by a contractor's filing affidavit indicating claimant's waiver of lien rights.

Priority of Lien: As among themselves, mechanic's liens rank according to date of filing (but are of the same date when declared and filed for record within three months after the work is done or before that time), but are inferior to liens for taxes, to the general and special liens of laborers, to the general lien of landlords for rent when a distress warrant is issued out and levied and to other general liens, when actual notice of the general lien of landlords and others has been communicated before the work was done or materials or services furnished; but the lien shall be superior to other liens not here excepted.

Waiver: Lien rights cannot be waived prior to providing the labor and materials. Waivers can be interim for partial payment or unconditional for final payment and must follow the forms contained in the statute.

Statutory Citation: Official Code of Georgia, Title 44, Chapter 14, Article 8, Part 3, §§44-14-360 to 44-14-369.

HAWAII

Who May Claim: Any person or association furnishing labor or material to be used in the improvement of real property, including persons rendering professional services of planning or supervision. In most instances, the statute protects the general contractor, subcontractors, lower tier subcontractors, suppliers, laborers, architects, engineers and design consultants.

How Claimed: Any person claiming a lien shall apply in a special proceeding to the Circuit Court of the circuit where the property is situated. The Application and Notice shall be filed not later than 45 days after the date of completion of the improvement against which it is filed. Such application shall be accompanied by a written notice of lien setting forth: (1) the name of the party contracting for the improvement; (2) the general contractor; (3) the property owner; (4) the amount of the claim; (5) description of the labor/materials furnished; (6) real property description; and (7) any additional information that would help establish the claim. In addition the name of mortgage holders and the surety of the general contractor may be provided.

The application and notice shall be returnable not less than three nor more than 10 days after service. On the return day, a hearing shall be held by the court to determine if probable cause exists to attach a lien to the property. Any person to whom notice is required to be given shall be permitted to offer testimony and documentary evidence on the issue of whether probable cause exists to permit the lien to attach. If the person who contracted for the improvement from which the requested lien arises claims a setoff against the lienor or if any person to whom notice is required to be given otherwise disputes the amount of the requested lien, the court shall hear and receive all admissible evidence offered and shall only permit the attachment of a lien in the net amount which the court determines is the reasonable probable outcome of any such dispute. The return day hearing may be continued at the order of the court so that the entire controversy need not be determined on the originally scheduled return day. The lien shall not attach to the property until the court finds probable cause exists and so orders. No such order shall be entered before the application and notice have been served on the party contracting for the improvement, the general contractor and the owner of the property, and they were given an opportunity to appear at the hearing.

Where Filed: With the Clerk of the Circuit Court where the property is located.

When to Be Filed: The application and notice shall be filed not later than 45 days after the date of filing of the affidavit of publication of notice of completion of the improvement against which it is filed. The affidavit is filed in the Office of the Clerk of the Circuit Court of the county in which the improvement is located and a record is there available for public inspection. Where title to the property involved, or any portion thereof, is registered in the land court and the lien is not claimed solely against the lessees' interest in one or more leasehold time share interests as described in Hawaii Revised Statutes, it shall be incumbent upon the lienor to file a certified copy of the Order Directing Lien to Attach in the office of the Assistant Registrar of the land court within seven days after the entry thereof in order to preserve his rights against

subsequent encumbrances and purchasers of the property. If no notice of completion is filed, the date of completion is deemed to be one year after the work was performed.

Service of Copy of Application and Notice: Must be served upon owner of property and any person with an interest therein and persons who contracted for the improvements. If any such person cannot be served, notice may be given such person by posting same on the improvement. If the fee title to the land is held in joint or common ownership or as an estate by the entirety, service upon one of the owners of the application and notice shall be deemed service upon all of the owners.

Duration of Lien: Lien continues for three months after the entry of order directing the lien to attach. Unless suit is commenced within that time to enforce it, it expires at the end of such three-month period.

Filing Fee: Filing fees will be imposed and the claimant should verify the amount as they may change from time to time.

Contents of Application for Lien: The amount of the claim, the labor or material furnished, a description of the property and any other matter necessary to a clear understanding of the claim, names of the parties who contracted for the improvement, the name of the general contractor, the names of the owners of the property and the name of any person with an interest therein. It may, but need not, specify the name of the mortgagee and the surety for the general contractor. If the claim has been assigned, the name of the assignor must be included.

Extent of the Lien: Lien is for the price agreed to be paid (if the price does not exceed the value of the labor and materials) or if the price exceeds the value thereof or if no price is agreed upon by the contracting parties, for the fair and reasonable value thereof, upon the improvement as well as upon the interest of the owner of the improvement in the real property on which the same is situated.

Priority of Lien: Mechanic's and materialmen's liens have priority over all other liens except liens in favor of the government and mortgages, liens or judgments recorded or filed prior to the time of the visible commencement of operation. Mortgages recorded subsequent to the visible commencement of operations and before the date of completion have priority over mechanic's liens provided such mortgages secure advances made for the purpose of paying for the improvement and recite that the purpose of the mortgage is to secure moneys advanced for the purpose of paying for the improvement in whole or in part. Mechanic's and materialmen's liens rank equally in priority with each other, irrespective of the date of filing or date of attachment, except laborers' wage liens which have priority up to \$300 over other liens.

Bond: An owner, a prime contractor or a subcontractor who disputes the validity of a claim of lien may record a bond in the principal amount of twice the amount of the lien.

Exceptions: (a) In connection with the repair or improvements on property which prior to such repair and improvements was used primarily for dwelling purposes, no lien shall exist either for the furnishing of materials to a general contractor or his subcontractor either of whom is required to be licensed but is not or if an unreasonable advancement of credit was provided for the materials to the general contractor or subcontractor. Whether there is reasonable advancement of credit is to be determined by a Circuit Judge. If the furnisher of materials has secured a credit application form from the general contractor or subcontractor to whom the materials were furnished or has reasonably inquired into the credit status of the general contractor or subcontractor, the advancement of credit by the furnisher of materials shall be *prima facie* reasonable. The credit application shall be current and shall include at least the following information: name, address, type of business, date business started, contractor's license number, bonding companies generally used, banks used, list of current creditors, balance sheet, total of outstanding construction contracts, uncompleted portion of all contracts and names of partners and co-ventures. Corporate applications should also include names of officers, authorized capital and paid-in capital.

(b) No general contractor or his subcontractor or the subcontractor's subcontractor shall have lien rights unless such contractor or subcontractor was licensed pursuant to Hawaii Revised statutes when the improvements to the real property were made or performed.

(c) All real property owned or held by the Hawaii Housing Authority is exempt from mechanic's liens.

(d) No lien may attach to the common elements of a condominium for work performance after substantial completion of the project and the recordation of the first conveyance or lease of an apartment therein or to an individual apartment therein unless contracted for or consented to by the owner of such apartment.

Satisfaction of Lien: When a claim of lien is satisfied a written notice of satisfaction must be recorded.

Statutory Citation: Hawaii Revised Statutes, Division 3, Title 28, Chapter 507, §§507-41 to 507-49.

IDAHO

Who May Claim: Every person, performing labor upon, or furnishing materials to be used in the construction, alteration, or repair of any mining claim, building, wharf, bridge, ditch, dike, flume, tunnel, fence, machinery, railroad, wagon road, aqueduct to create hydraulic power, or any other structure, or who grades in, fills in, levels, surfaces, or otherwise improves any land, or who performs labor in any mine or mining claim, and every professional engineer or licensed surveyor under contract who prepares or furnishes designs, plans, plats, maps, specifications, drawings, surveys, estimates of cost, on-site observation or supervision, or who renders any other professional service whatsoever for which he is legally authorized to perform in connection with any land or building development or improvement, or to establish boundaries, has a lien upon the same for the work or labor done or professional services or materials, whether done or furnished at the instance of the owner of the building or other improvement or his agent. The materialmen's lien does not

however, extend to a supplier of a supplier (*L & W Supply Corp. v. Chartrand Family Trust*, 136 Idaho 738, 744 (Idaho 2002)). For the purposes of a mechanic’s lien, every contractor, subcontractor, architect, builder, or any other person having charge of any mining claim (except the lessee or lessees of any mining claim) or of the construction, alteration, or repair, in whole or in part, of any building or other improvement, shall be held to be the agent of the owner (Idaho Code §45-501; §45-504).

Idaho Contractor Registration Act: January 1, 2006, all contractors must register with the Idaho Contractors Board. The term “contractor” is broadly defined and includes anyone engaged in construction and anyone who hires those engaged in construction, though it does not include suppliers (Idaho Code §54-5203). It is unlawful for a person to engage in business as a contractor in Idaho without holding a current registration. Under Section §54-5208, an unlicensed contractor is not entitled to file a mechanic’s lien. Even more importantly, other contractors, subcontractors, suppliers, etc., will lose their lien rights if they knowingly work with a contractor who is unregistered (Idaho Code §§54-5201 to 54-5219). Also, if not exempt, an unregistered contractor is precluded from bringing or maintaining any action for the collection of compensation. (Idaho Code §54-5217(2); *ParkWest Homes LLC v. Barnson*, 149 Idaho 603, 608 (Idaho 2010)). A contract for work subject to the Act is illegal and cannot be enforced if the contractor is unregistered when the contract is executed. (*AED, Inc. v. KDC Invs., LLC*, 2013 Ida. Lexis 247 (Idaho 2013)).

Waiver: The general rule is that an express waiver of a mechanic’s lien must be supported by consideration in order to be effective and binding (*Pierson v. Sewell*, 97 Idaho 38, 42-43 (Idaho 1975)).

How Claimed: Any person claiming a lien must, within 90 days after the completion of the labor or services or furnishing of materials or the cessation of the labor or services or furnishing of materials, for any cause, record the claim of lien. (Idaho Code §45-507).

Where Recorded: The lien must be recorded in the office of the County Recorder of the county where the property or some part thereof is located. (Idaho Code §45-507).

When to Be Recorded: The lien must be recorded within 90 days after the completion of the labor or services or furnishing of materials or the cessation of labor or services or furnishing of materials for any cause. (Idaho Code §45-507).

Service of Copy of Notice: A true and correct copy of the claim of lien shall be served on the owner or reputed owner of the property either by delivering a copy thereof to the owner or reputed owner personally or by mailing a copy thereof by certified mail to the owner or reputed owner at his last known address. Such delivery of mailing shall be made no later than five business days following filing of the claim of lien. (Idaho Code §45-507).

CERTIFICATE OF DELIVERY

I, hereby certify that I have delivered this day a true and correct copy of the Claim of Mechanic’s Lien to _____ (owner of purchaser of property) at his last known place of address by:

- personal delivery
- mailed a true and correct copy of the Claim of Mechanic’s Lien by certified mail

To: _____

So certified this ____ day of _____, 20__.

 Signature

Duration of Lien: The lien survives for six months after the claim has been filed, unless proceedings are commenced within such time to enforce the lien, and a *lis pendens* has been recorded. If a payment on account is made or an extension of credit is given with an expiration date, and endorsed on the record of the lien, the six-month period runs after the date of such payment or expiration of the extension. The lien on a final judgment obtained in the action shall cease five years after the judgment becomes final. (Idaho Code §45-510).

Attorneys’ Fees: “[U]pon the successful entry of a judgment of foreclosure of a lien claimed under I.C. §45-507, an award of attorneys’ fees and costs is mandatory. The amount of the award, however, is still a matter of discretion for the district court.” (*Olsen v. Rowe*, 125 Idaho 686, 689 (Idaho Ct. App. 1994)).

Recording Fee: \$10 for initial page; \$3 for each additional page. (Idaho Code §31-3205).

Contents of Lien Certificate: It must state the amount of demand after deducting all just credits and offsets, with 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 also a description of the property to be charged with the lien, sufficient for identification, which claim must be verified by the oath of the claimant, his agent, or attorney, to the effect that the affiant believes the same to be just. (Idaho Code §45-507).

It is important to note that language in the oath of the claimant must substantially follow outlined forms of notarial acts as described in Title 51, Notaries Public and Commissioners of Deeds, Chapter 1, Idaho Notary Public Act, Section 51-109, Forms for Notarial Acts. The oath of the claimant is a separate statement apart from the body of the mechanic’s lien itself. Below is an example of recommended text (Idaho Code §45-507(4)).

VERIFICATION

On this ____ day of _____, 20__, being first duly sworn, I, _____, state that I am the (authorized capacity title) _____ for _____, the Claimant in the foregoing Claim of Lien, that I have read this Claim of Lien and know the contents thereof, and I declare the same to be true and just.

Signature

CERTIFICATE OF VERIFICATION AND ACKNOWLEDGMENT

STATE OF _____

ss.

COUNTY OF _____

I, _____, a notary public, do hereby certify that on this ____ day of _____, _____, personally appeared before me _____, who, being by me first duly sworn, declared that he is the _____ of _____, that he signed the foregoing document as _____ of the corporation, and that the statements therein contained are true.

Official Signature and Seal

My Commission Expires _____

Extent of Lien: If at the commencement of the work the land belonged to the person causing the construction of the building, improvement or structure, the lien attaches to building, improvement, or structure, together with land on which the building, improvement, or structure is situated or so much land as may be required for the convenient use and occupation thereof. If such person owns less than a fee simple, only his lesser interest in the land is subject to a mechanic's lien. (Idaho Code §45-505).

Limitations on Ability to Lien: General contractors on residential property projects worth more than \$2000 must make certain disclosures about rights to lien to the owner prior to entering into a contract. This includes the right of the owner, at the owner's expense: to require the general contractor to acquire lien waivers from all subcontractors; to require the contractor to show proof of insurance; and to require the contractor to purchase a surety bond. (Idaho Code §45-525).

In an action to defend foreclosure of a lien, one indebted to a contractor may withhold from such contractor the amount of money for which claim is filed. (Idaho Code §45-511). Moreover, if the owner's counterclaims exceed the amount of the claim, the lien is extinguished.

Priority of Lien: Mechanic's liens are on equal footing with those liens within the same class of liens, without reference to the date of filing of the lien claim or claims and 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; equipment, materials or fixtures were rented or leased; or, materials or professional services were commenced to be furnished. Rank of mechanic's liens is as follows: (1) all laborers, other than contractors or subcontractors; (2) all materialmen, other than contractors or subcontractors; (3) subcontractors; (4) original contractor; and (5) all professional engineers and licensed surveyors. (Idaho Code §45-512).

The claim of lien relates back to the date on which materials were first furnished by claimant, and not to the date when the first work was performed on the project. (*Ultrawall, Inc. v. Wash. Mut. Bank*, 135 Idaho 832, 835-836 (Idaho 2001) (quoting *Beall Pipe & Tank Corp. v. Tumac Intermountain, Inc.*, 108 Idaho 487, 492, 700 P.2d 109, 114 (Ct. App. 1985)).

Also, a valid mechanic's lien will also have priority over any lien, mortgage, or other encumbrance of which the mechanic's lien holder had no notice, and which was unrecorded at the time the building, improvement, or structure was commenced, work done, equipment or fixtures were rented or leased, or materials or professional service were commenced to be furnished. (Idaho Code §45-506).

The importance of naming all interests in a foreclosure action was recently emphasized by the Idaho Supreme Court. If the property subject to a mechanic's lien is encumbered by a deed of trust, it is necessary to name the trustee who holds legal title to the property. Otherwise, a subsequent holder of such legal title can take the property free and clear of the mechanic's lien. (*ParkWest Homes LLC v. Barnson*, 2013 Ida. Lexis 123 (Idaho 2013)).

Statutory Citation: Idaho Statutes, Title 45, §§45-501 to 45-525; Title 51, §51-109; Title 54, §§54-5201 to 54-5219.

ILLINOIS

Who May Claim: Any person who contracts with the owner of a lot or tract of land, his agent, or with whom the owner has authorized to contract for the improving, altering, repairing or ornamenting of any house, building, walk, fence or improvement, or filling, sodding, excavating or landscaping, raising, lowering or removing house, or to manage a structure under construction or to perform services as architect, professional or structural engineer or land surveyor, or to drill a water

well or to furnish labor or services as superintendent, timekeeper, realty management services, mechanic, laborer or otherwise, or furnish material, fixtures, apparatus or machinery, is entitled to a lien for the same. Every mechanic, workman or other person who furnishes materials, apparatus, machinery or fixtures or performs labor for the contractor is also entitled to a lien for the value thereof including the rental of materials or equipment used in that construction or improvement. Laborers and miners working and developing coal mines also may be lien holders. Any agreement to waive any right to enforce or claim any lien where the agreement is in anticipation of and in consideration for the awarding of a contract or subcontract is against public policy and is unenforceable. Subordination agreements are permissible, and as to subcontractors only enforceable if the clause is set forth entirely in writing in the contract between the subcontractor and contractor.

Any person furnishing services, labor or material for the erection of a building or structure, or improvement by mistake upon land owned by anyone other than the party contracting as owner, shall have a lien for such services.

Any architect, contractor, subcontractor, materialman or other person furnishing services, labor or material for the purpose of in constructing, building, altering, repairing or ornamenting a boat, barge or other watercraft or mobile home, shall have a lien on such property, enforced in the same manner as a lien on real property.

How Claimed: (a) *Contractor.* The contractor must give to the owner and owner must require, before any money is paid to the contractor, a statement in writing, under oath or verified by affidavit, of the names and addresses of all parties furnishing materials and labor and the amount due to each. Failure of contractor to furnish statement has been held not to preclude him from enforcing his lien by suit. Each contractor shall provide each owner, either as part of the contract or as part of the printed statement, the following:

THE LAW REQUIRES THAT THE CONTRACTOR SHALL SUBMIT A SWORN STATEMENT OF PERSONS FURNISHING MATERIALS AND LABOR, SERVICES, MATERIAL, FIXTURES, APPARATUS OR MACHINERY, FORMS OR FORM WORK BEFORE ANY PAYMENTS ARE REQUIRED TO BE MADE TO THE CONTRACTOR.

If printed in the contract, the statement shall be set in type at least the same size as the largest type used in the body of the contract and must be boldfaced.

(b) *Subcontractor.* Subcontractor (including mechanics, laborers, materialmen, etc.) must within 90 days after completion of work or final delivery of materials serve a written notice of his claim and the amount due on the owner, his agent, architect or superintendent having charge of the building and to the lending agency. Where Torrens system of registration is in use, notice must be filed in the office of the Registrar of Titles in the county in which the land or lot is situated. (The Torrens system is repealed as of January 1, 2014.) The subcontractor notice is not required where a contractor has given the sworn statement to the owner as set forth in (a) above and the subcontractor is included in the sworn statement. However, the subcontractor's claim will be limited to the amount in the sworn statement if the subcontractor does not service its own notice. If owner, architect, superintendent, or agent cannot be found in the county where improvement is located, or does not reside therein, the subcontractor may file notice with the office of the recorder.

Subcontractors who furnish materials or labor for existing owner-occupied single-family residence must notify the occupant or his agent at the residence within 60 days from first furnishing labor or materials, that the subcontractor is supplying labor or materials. The notice must contain: (1) the name and address of the subcontractor or materialman; (2) the date work was started or the delivery of materials, the type of work done and to be done, or the type of materials delivered and to be delivered; and (3) the name of the contractor requesting the work. Notice given after 60 days will preserve the lien only to the extent that the owner has not been prejudiced by payments made prior to receipt of the notice. Notice must also contain the following warning in 10-point boldface type:

NOTICE TO OWNER

THE SUBCONTRACTOR PROVIDING THIS NOTICE HAS PERFORMED WORK FOR OR DELIVERED MATERIAL TO YOUR HOME IMPROVEMENT CONTRACTOR. THESE SERVICES OR MATERIALS ARE BEING USED IN THE IMPROVEMENTS TO YOUR RESIDENCE AND ENTITLE THE SUBCONTRACTOR TO FILE A LIEN AGAINST YOUR RESIDENCE, IF LABOR, SERVICES, FIXTURES, APPARATUS OR MACHINERY, FORMS OR FORM WORK MATERIALS ARE NOT PAID FOR BY YOUR HOME IMPROVEMENT CONTRACTOR. A LIEN WAIVER WILL BE PROVIDED TO YOUR CONTRACTOR WHEN THE SUBCONTRACTOR IS PAID, AND YOU ARE URGED TO REQUEST THIS WAIVER FROM YOUR CONTRACTOR WHEN PAYING FOR YOUR HOME IMPROVEMENTS.

Where Filed: A claim of lien must be filed with the Office of the Recorder in the county in which the property is situated. Where the land is registered under the Torrens system, the notice of the subcontractor must be filed in the office of the Registrar of Titles of the county in which the property is situated.

When to Be Filed: As against third persons, the contractor must within four months after completion of his contract including extra or additional work either file suit to enforce lien or file with the office of the recorder a claim of lien. A contractor's lien as against the owner is valid if filed at any time after the contract is made and within two years after the

completion of the contract or extra work or furnishing extra materials. Subcontractors must serve notice upon the owner within 90 days after completion of extra work, and if filing of notice is necessary, filing must be effected within the same period. Subcontractors must within four months after their last work either file suit to enforce lien or file with the office of the recorder a claim for lien. If the lien is filed with the office of the recorder, suit shall be commenced within two years of the last work. Upon written demand of the owner, a person claiming a lien must, within 30 days after such demand is served, commence suit to enforce lien or the lien is forfeited. Before recording a lien against the owner of single-family residence, the contractor must provide notice within 10 days.

Service of Copy of Notice: Subcontractor must give written notice by registered or certified mail, return receipt requested, with delivery limited to addressee only or by personally delivering the written notice to the legal owner of record, with a copy to lender.

Duration of Lien: Suit to enforce a private lien must be commenced within two years of the last work of the claimant or within 30 days of receiving Notice to Commence Suit. For residential property to enforce the lien the work must be completed within three years, for commercial property within five years after.

Filing Fee: Varies by county and is determined by the county recorder. For example Cook County: \$36 first two pages, plus \$2 for each additional page.

Contents of Notice of Lien: If by a contractor the suit or notice shall show the following: (1) name of owner; (2) brief statement of contract; (3) balance due after deducting credits; (4) description of property subject to lien; and (5) verification of claimant by himself or herself or his agent or employee.

Where notice is served by a subcontractor on owner, it shall show the following: (1) name of owner; (2) name of contractor; (3) brief statement of subcontract; (4) description of property subject to lien; and (5) amount due or to become due. If service cannot be made upon owner, then notice must be filed with Clerk of the Circuit Court, and it must be verified.

Extent of Lien: The lien attaches to the whole of the lot or tract of land upon which the property is situated and to the adjoining lots used in connection with the same together with interest at 10 percent per annum on amount due from due date. It extends to an estate in fee for life, for years, or any other estate, right of redemption or other interests which the owner may have at the time of contract or subsequently arise. Subcontractor's liens are limited to the value of service rendered and materials fixtures, apparatus, machinery furnished on the same property, as contractor, and on money due or to become due from the owner under the original contract. The owner can be compelled to pay an amount greater than the price fixed in the contract plus extras if the owner does not follow the Act and obtain a sworn statement or if the owner fails to ensure that the subcontractors identified in the sworn statements receive their funds.

Priority of Lien: No encumbrance upon land created before or after the making of the contract under the Mechanic's Lien Act shall operate upon the building erected or materials furnished until a lien in favor of persons having done work or furnished material is satisfied. All previous encumbrances are preferred to the extent of the value of the land at the time of making of the contract, and the lien creditor is preferred to the value of all of the subsequent improvements. As between different contractors, no preference is given to the one whose contract was made first, except the claim of any person for wages by him personally performed is a preferred lien. The contractor's lien is superior to any right of dower if the owner of the dower interest had knowledge of the improvement and gave no written notice of his or her objection.

Lien for Improvement of Oil or Gas Well: Liens exist for any persons who perform labor or furnishes material under contract with owner of land. Liens also exist for any persons who perform for a subcontractor. Lien extends to the whole of the land or leasehold, appurtenances, materials furnished, all oil and gas wells and oil and gas produced and their proceeds; it does not extend to underlying fee or royalty interest. If the claim is under contract with owner, one must file a lien within four months; if claim is under subcontract, then within three months. Such lien is created, perfected and enforced in the same manner as mechanic's liens. Any lien which extends to oil or gas or the proceeds of the sale of oil or gas is ineffective against any purchaser or pipeline carrier until written notice of the claim is given.

Waiver: An agreement to waive any right to enforce or claim any lien in anticipation of or in consideration for the awarding of a contract or subcontract for real estate improvements is against public policy and unenforceable. Subordination agreements are enforceable if in writing, and as to subcontractors in writing in the agreement between the subcontractor and contractor.

Construction Trust Funds: Any owner, contractor, subcontractor or supplier of any tier who requests or requires the execution and delivery of waiver of mechanic's lien by any person who furnishes labor, services or materials for the improvement of a lot or tract of land in exchange for payment of the promise of payment, shall hold in trust the unpaid sums subject to the waiver of mechanic's lien, as trustee for the person who furnished the labor, services or materials.

Statutory Citation: Illinois Compiled Statutes, Chapter 770, §§60/0.01 to 60/39, cited as 770 ILCS 60/0.01 *et seq.*

INDIANA

Who May Claim: Contractors, subcontractors, mechanics, journeymen, laborers, materialmen, lessors of construction and other equipment and tools, and all persons performing labor or furnishing materials or machinery for certain improvements to real property. Indiana-registered engineers, land surveyors and architects may also secure and enforce lien rights. Material suppliers to material suppliers are generally considered too remote to file mechanic's liens. Those

performing strictly supervisory services, with no onsite labor, generally do not have lien rights.

How Claimed: By filing a sworn statement in duplicate of intention to hold a lien upon the property for the amount claimed within 90 days after performing labor or furnishing materials or machinery, unless the work was for a single- or double-family dwelling (Class 2 Structures). For single- or double-family dwellings, the sworn statement and notice of intention to hold a lien must be recorded within 60 days after last performing labor or furnishing materials or machinery. The sworn statement and notice of intention to hold a lien must specifically set forth: (a) the amount claimed; (b) the name and address of the claimant; (c) the name and latest address of the owner as shown on the property tax records of the county; and (d) the legal description with street and number, if any. The name and address of the owner and legal description are sufficient if they are substantially as set forth in the latest entry of the county auditor's transfer books at the time of filing the notice of intention to hold a lien. The Recorder charges \$2 for mailing each copy of such statement and notice to the owner(s). The statement and notice of intention to hold a lien can be verified and filed on behalf of the claimant by a licensed Indiana attorney in good standing.

Where Filed: In the office of the Recorder of the county where the land is located.

When to Be Filed: Within 90 days after last performing the labor or furnishing the material for commercial projects and utilities; within 60 days after last performing the labor or furnishing the material for Class 2 Structures.

Service of Copy of Notice: A duplicate copy of the sworn statement and notice of intention to hold a mechanic's lien is forwarded to each owner by the county Recorder.

Duration of Lien: One year from the date the sworn statement and notice of intention to hold a lien is recorded by the county Recorder's office or, if credit was given by written agreement, one year from the expiration of such credit. The mechanic's lien becomes null and void unless suit is filed within one year from the time the statement and notice was recorded. The owner can shorten the time to foreclose the mechanic's lien to 30 days by making written demand that the lienholder commence suit within 30 days after receipt of the demand.

Filing Fee: Generally, \$13 for the first page and one mailing; \$2 for each additional page and each additional mailing to owner(s).

Contents of Notice: The sworn statement and notice of intention to hold a lien must set forth the amount claimed, the name and address of the claimant, the name and address of the owner, and a legal description of the lot of land, including street and number, if any, where the improvement is located.

Extent of Lien: The lien extends to the entire land where the building, erection or improvement is situated, including the part of the land not occupied by the building, erection or improvement, to the extent of all the right, title and interest of the owner. The lien extends to and includes leasehold interest and mortgaged lands.

Priority of Lien: Mechanic's liens generally take precedence over all other subsequently recorded encumbrances, except other mechanic's liens. All mechanic's liens are on a parity with each other, regardless of recording date. Lien claimants are paid in proportion to the amount due each, where proceeds are insufficient to pay all mechanic's liens. Mechanic's liens relate back to the date the claimant first performed labor or furnished materials or machinery for purposes of establishing priority. However, the construction mortgage of a lender has priority over liens recorded after the mortgage for any funds actually utilized on the liened project; this does not apply to liens on Class 2 Structures or utilities.

Remarks: A lien cannot be acquired for labor, machinery or materials supplied to a contractor, subcontractor or mechanic for the *alteration or repair of an owner-occupied single- or double-family dwelling* unless written notice of such delivery or work and of the existence of lien rights is provided to the owner within 30 days of the first delivery to, or labor performed, for the owner of the land. Similarly, a person intending to claim a lien for material, labor and machinery sold to a contractor, subcontractor and mechanic for the *original construction of a single- or double-family dwelling* for intended occupancy by the owner of the real estate must furnish to the owner a written notice of such delivery or labor and of the existence of lien rights within 60 days after the date of the first delivery or labor performed, and file a copy of the written notice in the Recorder's office within the same 60-day period. The furnishing of such "pre-lien" notice is a condition precedent to the right to later acquire a lien upon such property through the filing of a sworn statement and notice of intention to hold a lien. "Pre-lien" notice is not required, however, where the claimant contracts directly with the owner. A lien for material or labor in original construction shall not be valid against an innocent purchaser for value of a single- or double-family dwelling for occupancy by the purchaser, who is without notice of the claimant's lien rights, unless notice of intention to hold the lien is recorded prior to the recording of the deed by which the purchaser takes title.

No-Lien Contracts: Indiana has eliminated much of the statute which once permitted the owner and general contractor to cut off the lien rights of subcontractors and materialmen for commercial projects by entering into no-lien contracts. The enforceability of such contracts is now limited to residential home construction, Class 2 Structures and utilities. To be valid, such provisions must (a) be in writing, (b) reference the legal description of the real estate, (c) be acknowledged as provided in the case of deeds, and (d) be filed and recorded within five days of execution of the contract.

Statutory Citation: Indiana Code, Title 32, Article 28, §§32-28-3-1 to 32-28-3-18.

IOWA

Who May Claim: Every person who furnishes any material or labor for, or performs any labor upon, any building or land for improvement, alteration, or repair thereof, including those engaged in the construction or repair of any work of

internal or external improvement, and those engaged in improving any land by virtue of any contract with the owner, owner-builder, general contractor, or subcontractor. If materials are rented by a person to the owner, general contractor, or subcontractor, the person shall have a lien upon such building, improvement or land to secure payment for the material rental. The lien is for the reasonable rental value during the period of actual use of the material and any reasonable periods of nonuse of the material taken into account in the rental agreement. Delivery of material to the job site creates a presumption that the material was used in the course of improvements; this presumption does not exist for claims against payment bonds. An owner-builder is not entitled to a lien as to work the owner-builder performs, or is contractually obligated to perform, prior to transferring title to the buyer.

How Claimed: By posting to the mechanics' notice and lien registry internet site a verified statement of account showing the date when material was first furnished or labor performed, and the date on which the last of the material was furnished or the last of the labor was performed, with a legal description that adequately describes the property charged with the lien, the name and last known address of the owner of the property, the address of the property or a description of the location of the property if the property cannot be reasonably identified by an address and the tax parcel identification number.

Where Posted: The online registry administered by the Office of the Iowa Secretary of State, called the Mechanics' Notice and Lien Registry (www.sos.iowa.gov/mnlr). The State Construction Registry (the Registry) is an electronic, internet-based database, maintained by the Iowa Secretary of State, where all filings and notices related to mechanic's liens must be filed. Mechanic's liens and related notices are not required to be electronically filed in the Registry.

When to Be Posted: By principal contractor or by subcontractor within two years and 90 days after the date the last labor was performed or the last material furnished. (Counsel should note that Mechanic's liens filed within 90 days of completion shall be preferred to all others which may attach to or upon any building or improvement and to the land upon which it is situated.) A contractor or a subcontractor may perfect a mechanic's lien beyond 90 days by posting a lien to the mechanics' notice and lien registry internet site and giving written notice thereof to the owner by personal service. If the party to be served is out of the county, a return of that fact by the person charged with making such service shall constitute sufficient service from and after the time it was posted to the mechanics' notice and lien registry internet site. Liens perfected after the lapse of the 90-day period may be enforced against the property or upon the bond, if given, by the owner or by the owner-builder's buyer, only to the extent of the balance due from the owner to the general contractor or from the owner-builder's buyer to the owner-builder at time of service of notice of claim. The lien of a subcontractor is not enforceable against an owner-occupied dwelling, except to the extent of the balance owed to the principal contractor at the time the subcontractor serves a written notice of the claim on the owner.

A person furnishing labor or materials to a subcontractor on a commercial job must: (1) send notice to the principal contractor in writing containing the name, mailing address and telephone number of the person furnishing the labor or materials, and the name of the subcontractor to whom the labor or material were furnished, within 30 days of first furnishing labor or materials for which a lien claim may be made; and (2) provide a certified statement that this notice was provided.

Duration of Lien: Suit must be filed within two years from the expiration of 90 days after the date on which the last of the material was furnished or the last of the labor was performed. The owner may serve a demand that suit be filed within 30 days.

Filing Fee: \$40.

Contents of Notice of Lien: Name of claimant, name of party charged with lien, the amount, the description of property charged, itemized statement of account showing dates furnished and when completed. Must be verified.

Extent of Lien: Lien attaches to the building or improvement and includes entire land upon which any building or improvement is situated to the extent of the interest of the person for whose benefit such work was performed or material furnished. Liens also attach to leasehold interests. Where the lien is for work or material furnished in the construction, repair or equipment of any railroad, canal, viaduct or other similar improvement, it attaches to the erections, excavations, embankments, bridges, road beds, rolling stock and other equipment and to all land upon which such improvements may be situated, except an easement or right-of-way. However, the Iowa Supreme Court has clarified that the judgment arising out of a mechanic's lien foreclosure is not a personal judgment against the owner such that a garnishment could be placed against the owner.

Requirement of Notification:

General Contractor's Notice of Commencement of Work for Residential Construction

"Notice of Commencement of Work:" This notice must be posted to the Registry by a general contractor or owner-builder in order to be able to subsequently assert mechanic's lien rights on a residential construction project (or in the case of the owner-builder for its subcontractors). The notice must be posted to the Registry within 10 days of commencement of the project. Additionally, a copy of the notice must also be sent to the owner's address and to the property itself (addressed to the owner) if the owner's address is different than the property address.

The notice must contain a variety of information, including the owner's name and address; the name, address and telephone number of the general contractor or owner-builder; the address and legal description of the property, or a description of the location of the property if the property cannot be reasonably identified by an address; the tax parcel identification number; and the date work started or is anticipated to start. Upon posting of the notice, the Iowa Secretary of

State will assign it a registry number for tracking purposes.

If a general contractor or owner-builder fails to provide the notice, it will be barred from asserting a mechanic's lien. Further, a general contractor or owner-builder can only claim a mechanic's lien for materials supplied or labor performed after the notice is posted to the Registry. For these reasons, in order to maximize lien rights, it is important that the notice of commencement of work be posted as early as possible, preferably prior to commencement of any work. Note that if a general contractor or owner-builder does not timely post and send the notice, a subcontractor may do so. **HOWEVER, LITIGATION IS PENDING ON WHETHER THE REGULATIONS CORRECTLY INTERPRETED THE STATUTE TO APPLY TO A GENERAL CONTRACTOR ON RESIDENTIAL CONSTRUCTION WHICH DOES NOT EMPLOY SUBCONTRACTORS.**

All projects other than 1-2 family dwellings:

1. The notification requirements in this section only apply to commercial construction.
 2. A person furnishing labor or materials to a subcontractor shall not be entitled to a lien under this chapter unless the person furnishing labor or materials does all of the following:

(a) Notifies the general contractor or owner-builder in writing with a one-time notice containing the name, mailing address, and telephone number of the person furnishing the labor or materials, and the name of the subcontractor to whom the labor or materials were furnished, within 30 days of first furnishing labor or materials for which a lien claim may be made. Additional labor or materials furnished by the same person to the same subcontractor for use in the same construction project shall be covered by this notice.

(b) Supports the lien claim with a certified statement that the general contractor or owner-builder was notified in writing with a one-time notice containing the name, mailing address and telephone number of the person furnishing the labor or materials, and the name of the subcontractor to whom the labor or materials were furnished, within 30 days after the labor or materials were first furnished, pursuant to paragraph (a).

3. Notwithstanding other provisions of this chapter, a general contractor or owner-builder shall not be prohibited from requesting information from a subcontractor or a person furnishing labor or materials to a subcontractor regarding payments made or payments to be made to a person furnishing labor or materials to a subcontractor.

Notices on Owner-Occupied Works: (a) *Contractor.* A general contractor who has contracted or will contract with a subcontractor to provide labor or furnish material for the property, shall provide the owner notice in writing in boldface type of a minimum size of 10 points:

"Persons or companies furnishing labor or materials for the improvement of real property may enforce a lien upon the improved property if they are not paid for their contributions, even if the parties have no direct contractual relationship with the owner. The mechanics' notice and lien registry provides a listing of all persons or companies furnishing labor or materials who have posted a lien or who may post a lien upon the improved property."

The above notice must also contain the internet site address and toll-free telephone number of the mechanics' notice and lien registry.

If there is no written contract between the original contractor and the owner, the original contractor must within 10 days of commencing work on a residential property provide written notice to the dwelling owner stating the name and address of all subcontractors the contractor intends to use for construction and that the subcontractors or suppliers may have lien rights in the event they are not paid for their labor or material. The notice of subcontractors used in the construction of a residential property must be updated. The original contractor who fails to provide notice under this section is not entitled to lien remedies. Supplier to subcontractor on a commercial job must give notice to prime contractor within 30 days of delivery to protect the lien rights.

(b) *Subcontractor.* A subcontractor shall post a Preliminary Notice to the mechanics' notice and lien registry internet site.

The information that must be set forth in the Preliminary Notice is similar to the information that must be set forth in the general contractor's Notice of Commencement of Work.

Although there is no specific requirement as to when the Preliminary Notice must be posted, a subcontractor can claim a mechanic's lien for only labor or material provided after the Preliminary Notice is posted. Therefore, subcontractor should post the Preliminary Notice as early as possible in order to maximize mechanic's lien rights on a project.

At the time the Preliminary Notice is posted to the mechanics' notice and lien registry, the administrator shall send notification to the owner and shall post the mailing of the notice on the mechanics' notice and lien registry as prescribed by the administrator pursuant to the rule. Notices shall not be sent to owner-builders. Upon request, the administrator shall provide proof of service at no cost for the notice required under this section.

If a subcontractor does not post the Preliminary Notice to the Registry or deliver the Preliminary Notice to the owner, it will be barred from asserting a mechanic's lien. Further, a subcontractor can only claim a mechanic's lien for materials supplied or labor performed after the Preliminary Notice is posted to the Registry and delivered to the owner.

Note also that the Notice of Commencement of Work must be posted to the Registry before a subcontractor Preliminary Notice can be posted. Therefore, if the general contractor or owner-builder has not posted Notice of Commencement of Work, then the subcontractor must do so.

If a subcontractor brings an action to enforce a mechanic's lien perfected against the owner, the subcontractor bears the burden of proving that the owner received preliminary notice. A subcontractor can meet this burden by providing separate

notice to an owner by including but not limited to any of the following means: (a) certified mail with return receipt; (b) personal service; or (3) actual notice with a signed receipt from the owner acknowledging notice.

Priority of Lien: Mechanic's liens have priority over each other in the order of the posting of the statements of accounts. They take priority over garnishments of the owner without regard to date of filing of lien claim. Mechanic's liens posted by a general contractor or subcontractor within 90 days after the date on which the last of the material was furnished or the last of the claimant's labor was performed and for which notices were properly posted to the mechanics' notice and lien registry internet site shall be superior to all other liens which may attach to or upon any building or improvement and to the land upon which it is situated, except liens of record prior to the time of original commencement of the claimant's work or improvements. However, construction mortgage liens shall be preferred to all mechanic's liens of claimants who commenced their particular work or improvement subsequent to the date of the recording of the construction mortgage lien.

Lien for Improvement of Oil or Gas Well: The mechanic's lien statute is applicable to labor and materials furnished in connection with gas and oil wells or pipelines. Liens do not attach to realty, but only to lease, wells, buildings, appurtenances and pipelines.

Statutory Citation: Iowa Code, Title XI, Chapter 458A; Title XIV, Chapter 572.

KANSAS

Who May Claim: Any person furnishing labor, equipment, material or supplies used or consumed in the improvement of real property under a contract with the owner or trustee, agent or spouse of the owner.

How Claimed: (a) *Contractor.* Contractor shall file a verified statement showing the name of the owner, the name and address sufficient for service of process of the claimant, a description of the real property, a reasonably itemized statement and the amount of the claim.

(b) *Subcontractor.* Subcontractors shall file a verified statement setting forth the same information as the contractor must include, plus the name of the contractor, the supplier's affidavit that the warning statement was properly given (if required) and a notice of intent to perform (if required).

(c) *Residential Subcontractor.* On pre-existing residential property, claimant, except if claim is for less than \$250, must give a written warning statement to any one of the owners of residential property (residential property is defined as owner-occupied preexisting structure of two-family units or less) containing substantially the following:

"Notice to owner: (name of supplier or subcontractor) is a supplier or subcontractor providing materials or labor on Job No. ____ at (residence address) under an agreement with (name of contractor). Kansas law will allow this supplier or subcontractor to file a lien against your property for materials or labor not paid for by your contractor unless you have a waiver of lien signed by this supplier or subcontractor. If you receive a notice of filing of a lien statement by this supplier or subcontractor, you may withhold from your contractor the amount claimed until the dispute is settled."

Or the subcontractor can obtain a signed and dated statement from one owner that the general contractor or subcontractor gave the warning statement to the owner.

(d) *Notice of Intent to Perform.* A lien for the furnishing of labor, equipment, materials or supplies for the construction of new residential property may be claimed after the passage of title to such new residential property to a good faith purchaser for value only if the claimant has filed a notice of intent to perform prior to the recording of the deed effecting passage of title to such new residential property. Such notice shall be filed in the office of the Clerk of the District Court of the county where the property is located. This notice is effective for 18 months. The notice must be released when claimant has been paid in full.

The notice of intent to perform shall contain substantially the following statement:

NOTICE OF INTENT TO PERFORM

I (name of supplier, subcontractor or contractor) of (address of supplier, subcontractor or contractor) do hereby give public notice that I am a supplier, subcontractor or contractor or other person providing materials or labor on property owned by (name of property owner) and having legal description as follows:

Where Filed: Office of Clerk of District Court of the county in which the land is located.

When to Be Filed: Contractor's statement shall be filed within four months after the last date that material was furnished or labor was performed. Subcontractor's statement must be filed within three months after the last date that material was furnished or labor was performed.

Extension: Contractor may file a lien within five months if the contractor filed a notice of extension within four months after the last material furnished or labor performed. Subcontractor may file a lien within five months if the subcontractor filed a notice of extension within three months from last material furnished or last labor performed. (The notice of extension must be filed before the time to file the lien expires.) The notice of extension must be mailed by certified and regular mail to the general contractor or construction manager and by regular mail to the owner, if known.

Service of Copy of Notice: Only a subcontractor (furnishing labor or material) needs to serve written notice of intent to perform on the owner. Upon filing, the clerk of the district court shall enter the filing in the general index. The claimant

shall: (1) serve a copy of the lien statement personally upon any one owner and any party obligated to pay the lien, for service within the state; or (2) outside the state, mail a copy of the lien to any one owner of the property and to any party obligated to pay; or (3) if the address of any one owner of such party is unknown and cannot be ascertained with reasonable diligence, post a copy of the lien statement in a conspicuous place on the premises. Service is deemed made if proven that the person received notice.

Duration of Lien: One year from filing lien, but where promissory note was given, one year from maturity.

Filing Fee: \$5 for filing lien or notice of intent to perform.

Contents of Notice of Lien: See subsection (d) of “How Claimed,” set out above.

Extent of Lien: A mechanic’s lien attaches to the property improved for labor, equipment, material or supplies furnished, and for the cost of transporting the same.

The owner of any land affected by such lien shall not become liable to any subcontractor for any greater amount than he contracted to pay the original contractor; except for payments to the contractor made prior to the expiration of the three-month period for filing lien claims provided no warning statement is required. If a warning is required, owner’s liability extends to any payment made subsequent to the receipt of the warning statement.

Priority of Lien: Liens (for labor and material under contract) shall be preferred to all other encumbrances attaching to such property subsequent to the commencement of the furnishing of labor, equipment, material or supplies at the site of the property. When two or more liens attach to the same improvement, priority is accorded to the earliest unsatisfied lien.

Lien for Improvement of Oil or Gas Well: Lien claimed must be filed with the Clerk of the District Court of the county where the land is located within 120 days after the material or labor was furnished or performed. Such liens are preferred to all other liens and suit shall be brought within six months from filing.

Assignments: All claims for mechanic’s liens and rights of action to recover are assignable.

Statutory Citation: Kansas Statutes, Chapter 60, §§60-1101 to 60-1109.

KENTUCKY

Who May Claim: Any person performing labor or furnishing material for erecting, altering or repairing any house, building or other structure, or for any fixture or machinery therein or for excavating or in any manner for improving real estate, by contract with or the written consent of owner, contractor, subcontractor, architect or authorized agent. A person who performs labor or furnishes materials to a lessee relating to oil, gas or other minerals shall have a lien on the leasehold for the entire interest of the lessee.

How Claimed: (a) *Contractor.* The claimant must file a statement of lien in the office of the County Clerk of the county in which the building is situated, within six months after he ceases to perform labor or furnish materials. The statement shall require the name and address of the claimant, the amount due, a description of the property sufficiently accurate to identify it, the name of the owner, if known, and whether the materials were furnished or the labor performed by the contract with the owner or with a contractor or subcontractor. If claimant is a corporation, name and address of process server must be included. This information must be included in claim of subcontractor.

(b) *Subcontractor.* Such person must notify the owner, or his authorized agent, in writing within 75 days for claims less than \$1,000 and 120 days for claims more than \$1,000 after the last item of the material or labor is furnished, of his intention to hold his property liable and the amount for which he will claim a lien. For owner-occupied single- or double-family dwellings, such written notice must be given to the owner-occupant or his authorized agent within 75 days after the last item of labor or material is furnished. No lien can be obtained if such owner occupant has, prior to receipt of the notice, paid contractor, subcontractor or architect. In order that such lien shall take precedence over a mortgage, lease or *bona fide* conveyance for value with notice duly recorded, the person claiming the lien must, before the recording of such other instruments, have filed in the Clerk’s office of the County Court of the county wherein he shall have performed or furnished, or expects to perform or furnish, labor and materials, a statement that he furnished the same or expects to do so and the amount thereof in full. Such notice may be mailed to the last known address of the owner or his agent. Unless the claimant files a statement in the office of the Clerk of the County Court of the county in which the property is situated within six months after he ceases to perform labor or furnish materials, the lien is deemed dissolved.

Where Filed: In County Clerk’s office.

When to Be Filed: Within six months after the claimant ceases to perform labor or furnish materials.

Service of Copy of Notice: Copy of mechanic’s lien statement must be sent to the owner within seven days of filing.

Duration of Lien: Expires in one year from the filing date if no suit brought to enforce lien; where debtor dies within year, period extended another six months after qualification of personal representative.

Filing Fee: \$13 with the County Clerk’s office for the first three pages; \$3 per page for additional pages.

Contents of Notice of Lien: The name and address of the claimant (or, if claimant is a corporation, name and address of the corporation’s process agent), statement of amount due, with all just credits and setoffs known to him, description of property sufficiently accurate to identify, name of owner, if known, and whether the labor was performed or materials were furnished by contract with owner, contractor or subcontractor and subscribed and sworn to by person claiming or someone on his behalf.

Extent of Lien: The lien of a principal contractor attaches to the extent of the interest of the owner in the house,

building or other structure and the land upon which the same is situated; the lien of a subcontractor, materialman or laborer attaches to the same extent, but in no case may the liens be for a greater amount in the aggregate than the contract price under the original contract. Lienor entitled to interest at legal rate.

Priority of Lien: The liens are superior to any mortgage or encumbrance created subsequent to the beginning of the labor or the furnishing of materials and relate back and take effect from the time of the commencement of the labor or the furnishing of materials. The lien shall not take precedence over mortgages or other contract liens or *bona fide* conveyances or value without notice.

Statutory Citation: Kentucky Revised Statutes, Title XXXI, Chapter 376, §§376.010 to 376.260.

LOUISIANA

Who May Claim: On private projects, the following persons have a privilege (lien) on an immovable (real property) to secure the following obligations of the owner arising out of work on the immovable: (1) contractors for the price of their work; (2) laborers or employees of the owner for the price of work performed at the site of the immovable; (3) sellers for the price of movables sold to the owner that become component parts of the immovable or are consumed at the site of the immovable or are consumed in machinery or equipment used at the site of the immovable; (4) lessors for the rent of movables used at the site of the immovable and leased to the owner by written contract; and (5) registered or certified surveyors or engineers or licensed architects employed by the owner for the price of professional services rendered in connection with a work that is undertaken by the owner.

The following persons have a claim against the owner and a claim against the contractor to secure payment: (1) subcontractors, for the price of their work; (2) laborers or employees of the contractor or a subcontractor for the price of work performed at the site of the immovable; (3) sellers for the price of movables sold to the contractor or a subcontractor that become component parts of the immovable or are consumed at the site of the immovable or are consumed in machinery or equipment used at the site of the immovable; (4) lessors for the rent of movables used at the site of the immovable and leased to the contractor or a subcontractor by written contract; and (5) registered or certified surveyors or engineers or licensed architects or their professional subconsultants for the price of professional services rendered in connection with the work that is undertaken by the contractor or subcontractor.

For a general contractor to enjoy the privilege against the immovable property (for all projects over \$25,000), the contract or notice of the contract must be signed by the parties and recorded in the office of the Clerk of Court or the Recorder of Mortgages of the parish where the work is to be executed before the date on which the work commences. The contract or notice must contain a legal property description and the name of the project, identification of the parties and their mailing addresses, the price of the work or method for calculating it, when payment is to be made and a general description of the work to be done.

Notwithstanding the foregoing, the owner may relieve himself of the claims and privileges described above if he requires the contractor to give a bond with good and sufficient surety. The amount of the bond must be the amount of the contract, if the contract does not exceed \$10,000; between \$10,000 and \$100,000 the amount of the bond must be 50 percent of the contract, but in no event less than \$10,000. For contracts over \$100,000, but not in excess of \$1,000,000, the bond must be 33⅓ percent of the contract, but in no event less than \$50,000, and for contracts exceeding \$1,000,000 the bond must be 25 percent of the amount of the contract but not less than \$333,333. The bond must be attached to and recorded with the contract (or notice of contract).

A supplier to a supplier has no claim against the owner, the general contractor or the surety underwriting the bond. (*Thurman v. Star Elec. Supply, Inc.*, 294 So.2d 255 (La. App. 1st Cir. 1974), *aff'd* 307 So.2d 283 (La. 1/20/75)).

How Claimed: (a) *General Contractor.* The contract or notice of contract must be recorded before the date on which the work commences, unless the general contract is for less than \$25,000. The general contractor must file his statement of claim or privilege within 60 days following the filing of the notice of termination (which notice signifies abandonment, contractor default or substantial completion).

(b) *Subcontractor, Materialman and Laborer.* Subcontractors, materialmen and laborers must deliver to the owner a copy of the statement of claim and must file same for record in Office of the Recorder of Mortgages in the parish in which the work was done, all within 30 days after the filing in the public records of the notice of termination. However, if no contract has been recorded, the claimant must record his claim within 60 days after the filing of the notice of termination, or, if the notice of termination is not filed, within 60 days (70 days for residential construction) after the actual substantial completion or abandonment of the work. Additionally, if an unpaid seller of movables to a subcontractor (i.e., the seller is not in privity with the general contractor) has not sent notice of nonpayment to the general contractor and the owner, then the seller loses the right to file a lien. The notice must be sent by certified mail no later than 75 days from the end the calendar month during which the last of the movables were delivered to the subcontractor. On residential construction, an additional requirement is added whereby sellers of movables must provide by certified mail 10 days' advanced written notice of nonpayment (including, essentially, a copy of the proposed statement of claim or lien) to the owner before filing a lien.

(c) *Design Professionals and their Subconsultants.* Architects, engineers and surveyors must record lien no later than 60 days after the filing of the notice of termination. Professional subconsultants lose their lien rights if they fail to

provide the owner with notice of their involvement within 30 days of their employment for the project.

(d) *Lessors of Movables.* The rules for filing mirror those for subcontractors, except that lessors of movables (to persons other than the owner) lose their lien rights if they fail to provide the owner and the contractor with notice of the lease within 10 days after the movables are first placed at the site of the project. The statutorily required notice must contain the following information: the address of the lessor, the address of the lessee, a description “sufficient to identify the movable property placed at the site of the immovable” for use in the work, the “term of rental” (presumably, this means the duration of the rental), the “terms of payment,” and shall be signed by both the lessor and lessee.

(e) *What the “Lien” Document Contains.* A statement of claim or lien shall be in writing, signed by the person asserting the claim or his representative, identify the property by legal description, set forth the amount and nature of the claim, and “reasonably itemize the elements comprising it including the person for whom or to whom the contract was performed, material supplied, or services rendered.” According to a revision to the law effective August, 2013, the reasonable itemization requirement does not “require a claimant to attach copies of unpaid invoices unless the statement of claim or privilege specifically states that the invoices are attached.”

(f) *Truth in Residential Construction Act.* (La. R.S. 9:4852 for the form “Notice of Lien Rights” for residential home improvements). This form is to be provided by the general contractor to the owner no later than the time that a contract is entered, although failure to provide affects only possible civil liability of the general contractor (and, by statute, does not affect the lien rights of any party entitled to those).

(g) *Public Projects.* Since public property cannot be subject to lien claims, the Public Works Act is not, strictly speaking, “lien and privilege” statutes. Nevertheless, contractors frequently refer to the filing of a claim under the Public Works Act as “filing a lien” on a public project. By properly filing a claim on a public work, claimants may freeze the further distribution of general contract funds. If the governing authority distributes the funds in violation of the freeze, then it may be liable for the claim out of its regular budget. Most of the claimants listed above, except general contractors, have claim rights under the Public Works Act, with a requirement that any claim be filed within 45 days after the filing of the notice of termination (or, as the statute puts it, the “notice of acceptance by the owner of the work or notice by the owner of default”).

On public works, additional notice by the claimant is prescribed as follows: any claimant having a direct contractual relationship with a subcontractor but no contractual relationship with the contractor shall also give written notice to the contractor within 45 days from the recordation of the notice of acceptance by the owner of the work or notice by the owner of default, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor or service was done or performed. Such notice shall be served by mailing the same by registered or certified mail, postage prepaid, in an envelope addressed to the contractor at any place he maintains an office in the State of Louisiana.

Where Recorded: In the Office of the Clerk of Court or Recorder of Mortgages of the parish in which the property is located.

Recording Fee: Varies substantially parish to parish.

Extent of Lien: The lien attaches to the land and improvements in the amount of the claim and interest and the cost of recording the lien.

Duration of Lien: On private works, one year following the date upon which the lien was filed, unless a suit to enforce is filed. On public works, one year following the date upon which the notice of termination was filed, unless a suit to enforce is filed.

Priority of Lien: On private works, the privileges rank among themselves and as to other mortgages and privileges in the following order of priority: (1) privileges for *ad valorem* taxes or local assessments for public improvements against the property are first in rank; (2) privileges granted to laborers and employees rank next and equally with each other; (3) *bona fide* mortgages or vendor’s privileges that are effective as to third persons before the privileges granted by the Private Works Act are effective rank next and in accordance with their respective rank as to each other; (4) privileges granted to sellers, lessors and subcontractors rank next and equally with each other; (5) privileges granted to contractors, surveyors, engineers and architects rank next and equally with each other; and (6) other mortgages or privileges rank next and in accordance with their respective rank as to each other.

Lien for Improvement of Oil or Gas Well: Persons performing labor or services in connection with the drilling or operation of any oil, gas or water well acquire liens on the oil or gas produced from the well, proceeds, the wells, lease, rigs, machinery and other structures on the property by filing a notice of claim in the mortgage records of the parish where the property is located within 180 days from the last day of performance. The lien is for the amounts due for work performed plus costs of recording and 10 percent of attorneys’ fees if necessary to enforce collection.

Lien Bonds: Any interested party may file a bond or other security in the amount of 125 percent of the principal amount of the claim asserted. If the recorder of mortgage finds the bond adequate, he may then cancel the statement of claim or privilege. Any party who files a bond or other security to guarantee payment shall give notice by certified mail of the posting of such bond to the owner of the immovable, the holder of the lien and the contractor.

Statutory Citation: Louisiana. Revised Statutes, §§9:4801 to 9:4861, generally; §§38:2242, 38:2247.

MAINE

Who May Claim: Whoever performs labor or furnishes labor or materials or performs services as an architect, surveyor or engineer, or as a real estate licensee (Maine is unusual in that licensed real estate appraisers are covered), or as an owner-renter, owner-lessor or owner-supplier of equipment used in erecting, altering, moving or repairing a house or building or appurtenances including any public building erected or owned by any city, town, county, school district or other municipal corporations, or in constructing, altering, repairing a wharf or pier or any building thereon, by contract with or by consent of owner, has a lien thereon and on the land on which it stands. Because lien waivers in contracts are effective in Maine, a party to such a contract cannot thereafter assert a mechanic's lien. However, sub-subcontractors or material suppliers not parties to the contract with the lien waiver provision may assert mechanic's liens.

How Claimed: Maine law requires all contractors or suppliers, even those with a direct contract with the owner, to file a Notice of Lien in the registry of deeds in the county where the project is located within 90 days after the date of last work or materials supplied. Maine's mechanic's lien law does not distinguish between the various tiers of contractors, subcontractors and suppliers. The Notice of Lien must provide the amount due, sufficiently describe the property and its owner(s), and be under oath. A copy of the Notice of Lien must be provided to the owner(s) by ordinary mail; a post office certificate of mailing is conclusive proof of receipt. A real estate licensee must additionally send by certified mail, return receipt requested, a copy of the Notice of Lien to the *bona fide* purchaser for value. To perfect the claim of lien, a lienor must file within 120 days of the date of the last labor, services or materials being provided, a complaint in the county or district court division in which the construction project is located. The complaint must list as defendants the debtor (if different from the owner) and the owner of the property, and as well, should list all other parties having an interest in the property (such as mortgagees). Within 60 days of filing the complaint, in order to be effective against *bona fide* purchasers for value, either: (1) a certificate from the clerk of court must be filed in the registry of deeds for the county where the real estate is located (Aroostook County has two registries of deeds); or (2) an affidavit from the claimant/claimant's attorney must be filed in the registry of deeds for the county where the real estate is located; or (3) an attested copy of the lien complaint must be filed in the registry of deeds for the county where the real estate is located. Failure to file any one of these three alternatives will not invalidate the lien but will render the lien ineffective against a *bona fide* purchaser for value. A *bona fide* purchaser takes the property free of any mechanic's lien unless the lienor has filed a notice of lien in the registry of deeds; this notice must be renewed every 120 days if work is ongoing. An owner can prevent a mechanic's lien by giving written notice to the person providing the materials or labor that the owner will not be responsible for the labor, materials or services. Residential property owners cannot be required to pay twice for a subcontractor's services unless the subcontractor has first provided the residential property owner with written notice of the work performed or served a lien complaint on the owner. The lien may also be enforced by attachment in actions commenced within 180 days in any court having jurisdiction where the property on which is lien is claimed is situated.

Where Filed: The notice of lien is filed in the registry of deeds in the county in which the project is located. The lien complaint is filed in the county or district court division in which the construction project is located.

When to Be Filed: All Notices of Liens must be filed within 90 days after the date of last work or materials supplied. All complaints to foreclose liens must be filed no later than 30 days thereafter or no later than 120 days after the date of last work or materials supplied.

Claimant and Owner Defenses and Remedies: If labor, material or service was not performed or furnished by contract with the owner, this lien is enforceable against the property only to the extent of the balance due from the owner to the person with whom he contracted; however, this defense is available only with respect to sums paid by a residential property owner (living on the premises) prior to commencement of action to enforce the lien or written Notice to Owner a warning that if owner fails to assure that claimant is paid before further payment to the contractor, the owner may be required to pay twice. An owner can prevent a mechanic's lien by giving written notice to the person providing the materials or labor that the owner will not be responsible for the labor, materials or services. This notice should be provided before labor, materials or services are furnished. In all cases, the owner's liability for payment on non-business property does not exceed the total balance due to the person with whom he has directly contracted. For that reason, the subcontractor or supplier's recovery is limited to the remaining balance to be paid under the contract.

Case of Note: *Thayer Corp. v. Maine School Administrative District 61*, 2012 ME 37, 38 A.3d 1263, materials and labor are lienable only if the parties intended the product of that material and labor to become a permanent part of the real estate upon which the lien is asserted. Here, a subcontractor which installed a boiler on school property recorded a lien against the school. However, the subcontractor had been hired by an energy company whose agreement with the school provided that the energy company—and not the school—would own and operate the boiler and that the energy company would remove the equipment and restore the premises to its former condition when the agreement terminated. Based on that agreement, the Court concluded that the parties had not intended the boiler to become a permanent part of the real estate, and therefore the subcontractor's materials and work related to the boiler were not lienable.

Duration of Lien: Action to enforce the lien must be brought within 120 days after the last of the labor is performed or materials furnished. Where owner dies or is adjudicated bankrupt within said 120 days, action may be commenced within 90 days after adjudication or after notice is given of appointment of an executor or administrator. A notice of lien must be filed in the registry of deeds every 120 days while work is ongoing to validate the lien against a *bona fide* purchaser.

Contents of Notice of Lien: A true statement of amount due lienor (which in Maine can include items such as profit, overhead, taxes and insurance) with all just credits with description of property sufficiently accurate to identify both the property and the names of the owners, if known. The Notice of Lien must be under oath. Inaccuracy in the description of the property will not invalidate the lien if the property can be reasonably recognized. In addition, the inaccuracy in the amount claimed as due for labor, services or materials does not invalidate the lien unless the person willfully claims more than is due.

Extent of Lien: Owner’s right, title and interest in building or improvement covered and the land upon which it stands. Where owner has no legal interest in the land, then lien attaches to the building or other structure. Liens “attach” to the property when the services are first provided. Lower tier trades not having a contract with the owner of the building or real property must show the owner had knowledge of and consented to the work in question. If knowledge and consent cannot be shown (by establishing the owner knew the nature and extent of the work performed and that the owner’s conduct justified the lienor’s expectation and belief that the owner consented to the work), then the lien attaches only to the interest on the property held by the party which actually contracted for the construction work, typically only the leasehold interest. A *bona fide* purchaser for value of the property takes free and clear of any liens which have not yet been filed.

Case of Note: In this 2014 Supreme Judicial Court case, if a judgment is entered pursuant to a mechanic’s lien, the property will be sold to satisfy that judgment, even if the amount of the judgment is substantially less than the value of the property. See *The Cote Corp. v. Kelley Earthworks, Inc.*

Priority of Lien: If labor or materials is provided under contract with or with consent of owner, the lien has priority over the property interest of the owner. Under Maine law, practically, a mortgage holder is an “owner” of the property because it holds legal, but not equitable title to the property. If the lienor can show that the mortgage holder had knowledge of the nature and the extent of work being performed on the mortgaged premises, then the lien has priority over that mortgage in a foreclosure action. In the event the property is sold and the aggregate amount of the mechanic’s liens exceeds the proceeds from the sale, the proceeds are shared on a *pro rata* basis among the successful lienors. A federal or municipal tax lien has priority over mechanic’s liens.

Statutory Citation: Maine Revised Statutes, Title 10, Part 7, §§3251 to 3269.

MARYLAND

Who May Claim: Any person may claim a lien for work done and material furnished without regard to the amount of the claim. If a project is not new construction, the building must be repaired, rebuilt or improved to the extent of 15 percent of its value if the owner ordered the work or 25 percent of its value if a tenant ordered the work. The statute includes wells, swimming pools, fencing, sod or seeding, landscaping, grading, filling, paving or the leasing of equipment, with or without an operator. If the owner contracts for the installation of waterlines, sanitary sewers, storm drains or streets to service all lots in a development, each lot is subject to a *pro rata* lien.

How Claimed: All claimants must file a petition (lawsuit) to establish a lien. If claimant’s contract is with any person other than owner, the claimant must also give notice to the owner.

Service of Notice: If claimant’s contract is with any person other than owner, notice must be served upon owner within 120 days after doing the work or furnishing the materials. The following notice is sufficient:

NOTICE TO OWNER OR OWNER’S AGENT OF INTENTION TO CLAIM A LIEN

_____ (subcontractor) did work or furnish material for or about the building generally designated or briefly described as _____. The total amount earned under the subcontractor’s undertaking to the date hereof is \$_____ of which \$_____ is due and unpaid as of the date hereof. The work done or the materials provided under the subcontract were as follows: (Insert brief description of the work done and materials furnished, the time when the work was done or the materials furnished and the name of the person for whom the work was done or to whom the materials were furnished.) I do solemnly declare and affirm under the penalties of perjury that the contents of the foregoing notice are true to the best of the affiant’s knowledge, information and belief.

[Signature line needed]

The notice must be given by registered or certified mail, return receipt requested, or personally delivered to the owner by the claimant or his agent. If there is more than one owner, then the notice is sufficient if received by any owner. If the notice cannot be given on account of the absence of the owner or other causes, the subcontractor or his agent, in the presence of a competent witness and within the 120 days, may place the notice on the door or other front part of the building. Notice by posting is sufficient in all cases where the owner of the property has died and the successors in title do not appear on the public records of the county.

Filing Fee: There is no fee for service of notice, except postage. There is a fee for filing petition to establish lien.

When Petition to Be Filed: Within 180 days of completion of work or delivery of material by the claimant.

Where Petition Filed: The Clerk of Circuit Court of the county in which the building is situated.

Contents of Petition to Establish Lien: Name and address of claimant, name and address of owner, nature or kind of

work done or the kind and amount of materials furnished, name of person for whom work was done or materials furnished, amount or sum claimed to be due less any credit recognized by the claimant, a description of the land including a statement whether part of the land is located in another county, a description adequate to identify the building, the amounts claimed on each building if a lien is sought against several buildings or separate parcels and an affidavit setting forth facts establishing the lien. The petition must state that the project was new construction or that the improvement increased the value of the property 15 percent in the case of owner-ordered improvements or 25 percent in the case of tenant-ordered improvements. The petition must attach copies of all documents that constitute the basis of the lien claim. If the claimant's contract is with any person other than owner, the petition must also include facts showing that timely notice has been given to the owner.

Extent of Lien: The lien extends to the land covered by the building and so much adjacent thereto as may be necessary for the ordinary and useful purposes of the building. Where a building is commenced and not finished, the lien attaches to the extent of the work done or materials furnished. A lien may attach to a leasehold to the extent of the interest of the lessee. "Building" includes any unit of a nonresidential building that is leased or separately sold as a unit.

Subcontractors, Materialmen, etc.: The owner has no defense of payment, except an owner erecting a single-family dwelling on his own land for his own residence. Otherwise, the owner has the burden of seeing that all subcontractors and suppliers are paid.

Duration of Lien: Once a lien has been established, a Petition to Enforce must be filed within one year after the date on which the Petition to Establish a Mechanic's Lien was filed. It is possible to file a petition to establish and enforce the mechanic's lien in the same pleading using a form titled "Petition to Establish and Enforce Mechanic's Lien."

Priorities: Lien preferred to all judgments, mortgages, deeds of trusts, liens and conveyances recorded after establishment of lien by the court. The claimant has no lien rights, however, until establishment of lien by the court. Lien proceedings are subject to a bankruptcy stay or preference proceeding.

No lien can be established if the property has been conveyed or the owner has entered into a contract of sale with a *bona fide* purchaser for value, prior to the establishment of a lien.

Waiver: An executory contract may not waive mechanic's lien rights. A "pay when paid" provision in an executory contract does not waive mechanic's lien rights.

Statutory Citation: Maryland Code Annotated, Real Property, Title 9, §§9-101 to 9-304.

MASSACHUSETTS

Who May Claim: (a) *Contractor.* A person entering into a written contract with the owner of land for the whole or any part of the erection, alteration, repair or removal of a building or structure upon land or other improvement to real property, or for furnishing material or rental equipment, appliances or tools thereof, shall have a lien upon said building or structure and upon the interest of the owner in said lot of land as appears of record at the date when notice of said contract is filed or recorded in the Registry of Deeds for the county or district where such land lies, to secure the payment of all labor and materials which shall be furnished by virtue of said contract.

(b) *Subcontractor.* A person who, subsequent to the date of the original contract, furnishes labor or material, or both labor and material, or performs labor under a written contract with a contractor or furnishes subcontractor construction management services, rental equipment, appliances or tools, or with a subcontractor of such contractor, shall have a lien to secure the payment of all labor and material which he is to furnish or has furnished upon the building or structure and upon the interest of the owner, as appears of record at the time of such filing in the lot of land on which said building or structure is situated upon filing a notice of contract and giving actual notice to the owner of such filing. Such lien shall in no event exceed the amount due or to become due under the original contract when notice of the filing of the subcontract is given by the subcontractor to the owner.

(c) *Personal Labor.* A person to whom a debt is due for personal labor performed in the erection, alteration, repair or removal of a building or structure upon land or an improvement or alteration to real property, by virtue of an agreement with, or by consent of, the owner of such building or structure, or of a person having authority from or rightfully acting for such owner in procuring or furnishing such labor, shall have a lien upon such building or structure and upon the interest of the owner thereof in the lot of land upon which it is situated, for not more than 30 days of work actually performed during the 90 days next, prior to his filing a statement as described in Section 8 below. A person shall include an assignee, agent, authorized representative or third-party beneficiary to whom amounts are due or for whose benefit amounts are computed or due for.

(d) *Design Professional.* Architects, landscape architects, professional engineers, licensed site professionals and land surveyors who are licensed or registered in Massachusetts may claim a lien for the value of the professional services rendered.

How Claimed: (a) *Contractor.* The contractor must sign and file in the Registry of Deeds for the county or district where the land lies a notice of contract in substantially the following form:

Notice is hereby given that by virtue of a written contract, dated _____, between _____, owner, and _____, contractor, said contractor is to furnish or has furnished labor and material or rental equipment, appliances or tools for the erection, alteration, repair or removal of a building structure or other improvement on a lot of land or other

interest in real property described as follows: (insert description).

(b) *Subcontractor*. The subcontractor must sign and file in the Registry of Deeds for the county or district where the land lies a notice of his contract substantially in the following form:

Notice is hereby given that by virtue of a written contract dated _____, between _____, contractor, (or subcontractor), and _____ said _____ is to furnish or has furnished labor or material, or both labor and material, or is to furnish or has furnished rental equipment, appliances or tools in the erection, alteration, repair or removal of a building, structure or other improvement of real property by _____ contractor, or _____, owner on a lot of land or other interest in real property described as follows: (insert description)

As of the date of this notice, an account of said contract is as follows:

- 1. Contract price \$ _____
- 2. Agreed change orders \$ _____
(indicate whether addition or subtraction)
- 3. Pending change orders \$ _____
(indicate whether addition or subtraction)
- 4. Disputed claims \$ _____
(indicate whether addition or subtraction)
- 5. Payments received \$ _____

The regular mailing address of the party recording or filing this notice is as follows: _____.

(c) *Second Tier Subcontractor*. A lien by a second tier subcontractor shall not exceed the amount due or to become due under the subcontract between the original contractor and the subcontractor whose work includes the work of the person claiming the lien as of the date such person files his notice of contract, unless the person claiming the lien has, within 30 days of commencement of his performance, given written notice of identification by certified mail, return receipt requested, to the original contractor in substantially the following form:

NOTICE OF IDENTIFICATION

Notice is hereby given to _____, as contractor, that _____, as subcontractor/vendor, has entered into a written contract with _____ to furnish labor or materials, or labor and materials, or rental equipment, appliances or tools to a certain construction project located at (Street Address), (Town or City), Massachusetts. The amount or estimated amount of said contract is \$ _____. (No amount need be stated for contracts for the rental of equipment, appliances or tools.)

(d) *Design Professional*. Design professionals must follow the same steps as listed above to perfect a lien. There are special requirements for second tier design professionals working for first tier design professionals, including owner written approval of the design professional's subcontract; a different statutory form for the Notice of Contract (Mass. General Laws Chapter 254, Section 2D); and the requirement of giving actual notice of the filing to the owner. Second tier design professionals working for a first tier design professional, if possessing a written contract, may file their own lien if the owner approves the lower tier design professional in writing.

(e) *Second Tier Design Professional*. Second tier design professionals must serve a Notice of Identification in the statutory form within 30 days after commencing work, or the amount of the lien will be limited.

Where Recorded: Registry of Deeds for the County and District where the land is located. If registered land is included with unregistered land in any such notice or other instrument, an attested copy thereof shall be filed with an assistant recorder and registered.

When Notice Must Be Recorded: *Applicable to Both Contractors and Subcontractors*. At any time after execution of the written contract whether or not the date for performance stated in such written contract has passed and whether or not the work under such contract has been performed, but not later than the earliest of: (i) 60 days after filing or recording the notice of substantial completion under section two A; or (ii) 90 days after filing or recording of the notice of termination under section two B; or (iii) 90 days after the last day a person entitled to enforce a lien under section two or anyone claiming by, through or under him performed or furnished labor or materials or both labor and materials to the project or furnished rental equipment, appliances or tools.

Applicable to Design Professionals. Design professionals must file or record the M.G.L. Section 254, Section 2D Notice of Contract no later than the earliest of 60 days after filing or recording the Notice of Substantial Completion or 90 days after the first tier design professionals or anyone performing professional services under them last performed such services.

Statement of Account: (a) *Contractor, Subcontractor and Design Professional*. Liens under sections two (general contractors) and four (subcontractors) shall be dissolved unless the contractor, subcontractor, or some person claiming by, through or under them, shall, not later than the *earliest* of: (i) 90 days after the filing or recording of the notice of substantial completion under section two A; (ii) 120 days after the filing or recording of the notice of termination under

section two B; or (iii) 120 days after the last day a person, entitled to enforce a lien under section two or anyone claiming by, through or under him, performed or furnished labor or material or both labor and materials or furnished rental equipment, appliances or tools, file or record in the registry of deeds in the county or district where the land lies a statement, giving a just and true account of the amount due or to become due him, with all just credits, a brief description of the property, and the names of the owners set forth in the notice of contract. Design professionals must file or record a Statement of Account within 30 days after the last day that a Notice of Contract may be filed or recorded.

(b) *Personal Labor*. A lien shall be dissolved unless a like statement, giving the names of the owners of record at the time the work was performed or at the time of filing the statement, is filed within the 90 days provided in Section 1(c) above.

Enforcement Action; Errors: The lien shall be dissolved unless a civil action to enforce it is commenced within 90 days after the filing of the statement of account. See “Cases of Note” below as to a recent interpretation of enforcement actions as they apply to lien dissolution bonds. The validity of the lien shall not be affected by an inaccuracy in the description of the property to which it attaches if the description is sufficient to identify the property, or by an inaccuracy in stating the amount due for labor or material unless it is shown that the person filing the statement has willfully and knowingly claimed more than is due him.

Extent of Lien: Liens are limited to the amount owed by the owner to the contractor, subcontractor and design professional as of the time those parties record their Notice of Contract. The lien extends to the building or structure and upon the interest of the owner in said lot of land as appears of record at the date when notice of said contract is filed or recorded. If the person for whom the labor has been performed or with whom the original contract has been entered into for the whole or any part of the erection, alteration, repair or removal of a building or structure upon land, or for furnishing material therefor, has an estate less than a fee simple in the land or if the property is subject to a mortgage or other encumbrance, the lien shall bind such person’s whole estate and interest in the property.

Priority of Lien: (a) *Mortgages*. No lien for personal labor shall avail against such a mortgage unless the work or labor performed is in the erection, alteration, repair or removal of a building or structure which erection, alteration, repair or removal was actually begun prior to the recording of the mortgage. No liens filed by subcontractors or contractors shall avail as against a mortgage actually existing and duly registered or recorded to the extent of the amount actually advanced or unconditionally committed prior to the filing or recording in the registry of deeds of the notice of contract. No liens filed by subcontractors or contractors shall avail as against a purchaser other than the owner who entered into the written contract on which the lien is based, whose deed was duly registered or recorded prior to the filing of such notice of contract.

(b) *Attachments*. The rights of an attaching creditor shall not prevail as against a lien for personal labor nor against the claim of a subcontractor or contractor where notice or notices of contract have been filed or recorded in the registry of deeds prior to the recording of the attachment. An attachment recorded prior to the filing or recording of the notice of contract shall prevail against a lien, other than for personal labor, to the extent of the value of the buildings and land as they were at the time when the labor was commenced or the material furnished for which the lien is claimed.

(c) The design professional’s lien is afforded a lower priority than contractor, subcontractor, supplier and labor liens. That restriction does not apply to liens of design professionals hired by contractors or subcontractors.

Public Property: No lien shall attach to any land, building or structure thereon owned by the Commonwealth or by a county, city, town, water or fire district.

Void Agreements: A covenant, promise, agreement of understanding in, or in connection with or collateral to, a contract or agreement relative to the construction, alteration, repair or maintenance of a building, structure, appurtenance and appliance or other improvement to real property, including moving, demolition and excavating connected therewith, purporting to bar the filing of a notice of contract or the taking of any steps to enforce a lien as set forth in this chapter is against public policy and is void and unenforceable. Partial lien waivers by contractors are permitted if the form provided in the statute is followed.

Cases of Special Note: *Bloomsouth Flooring Corporation v. Boys and Girls Club of Taunton Incorporated* is of special note in that before this case, the MGL c. 254, §4 language “amount due or to become due” was typically taken to mean the contract balance at the time the notice of contract was filed, notwithstanding the value of claims/backcharges the owner had against the general contractor at that time. *Bloomsouth* indicates that now a strong argument can be made (in defense of owners) that the remaining contract balance is only significant to the extent that any of that amount is actually due or will become due to the general contractor, taking into account claims the owner has against the general contractor. In *Golden v. General Builders Supply, LLC*, the Massachusetts Supreme Judicial court answered two questions: a mechanic’s lien can be properly perfected by the filing of a counterclaim and that counterclaim must be filed and recorded within the deadline set by MGL c. 254. In 2013, in *NES Rentals v. Maine Drilling & Blasting, Inc.*, the Supreme Judicial Court liberally interpreted MGL Section 14 by holding that the relation back provisions of Massachusetts Rules of Civil Procedure Rule 15(c) apply to G.L. c. 254, Section 14 bond enforcement actions and that a claimant may amend a complaint to add a claim to enforce a lien dissolution bond against the bond holder after the 90-day period set forth in Section 14.

New Legislation of Special Note: As of November 6, 2014, Massachusetts has passed “An Act Relative to Fair Retainage Payments in Private Construction.” This Act applies to any commercial (on which a mechanic’s lien may be established under Chapter 254, §2 and §4) project where the prime contract value is \$3,000,000 or more. Of special note,

among many other points, is that retainage will be limited to no more than 5 percent of each progress payment.

Statutory Citation: Massachusetts General Laws, Chapter 149, §29F (An Act Relative to Fair Retainage Payments in Private Construction); Chapter 254, §§1 to 33.

MICHIGAN

Who May Claim: Each contractor, subcontractor, supplier or laborer who provides an improvement to real property has a right to a construction lien upon the interest of the owner or lessee who contracted for the improvement to the real property.

How Claimed: By recording a claim of lien in the Office of the Register of Deeds for each county where the real property to which the improvement was made is located within 90 days after the lien claimant’s last furnishing of labor or material for the improvement. A claim of lien shall be valid only as to the real property described in the claim of lien and located within the county where the claim of lien has been recorded.

Notice of Commencement: (a) *Actual Physical Improvements to Real Property.* Before the commencement of any actual physical improvement to real property, the owner or lessee contracting for the improvements shall record a notice of commencement along with a notice of furnishing (below) with the Register of Deeds for the county in which the property is located, a copy of which is as follows:

NOTICE OF COMMENCEMENT

STATE OF MICHIGAN

ss.

County of _____

(Name of owner, lessee, or agent) being duly sworn verifies the truth and accuracy of the contents of this notice and says that he or she is authorized by the contracting (owner) (lessee) to execute this Notice of Commencement and that the person contracting for improvement to the following described real property is (description of property) whose address is (address) and whose interest in said real property is that of (interest) and that the DESIGNEE of said contracting party is (contracting party) whose address is (address) and that the real property to be improved is situated in the (location) of (name) County, State of Michigan and described as follows: (insert description) and that the fee owner of said real property is (name of fee owner) of (address of fee owner) and that the general contractor, if any is (name of person with whom you have contracted) of (address of general contractor to provide substantially all the improvements to the property) and deponent further says and gives notice as follows:

TO LIEN CLAIMANTS AND SUBSEQUENT PURCHASERS

Take notice that work is about to commence on an improvement to the real property described in this instrument. A person having a construction lien may preserve the lien by providing a notice of furnishing to the above-named designee and the general contractor, if any, and by timely recording a claim of lien, in accordance with law.

A person having a construction lien arising by virtue of work performed on this improvement should refer to the name of the owner or lessee and the legal description appearing in this notice. A person subsequently acquiring an interest in the land described is not required to be named in a claim of lien.

A copy of this notice with an attached form for notice of furnishing may be obtained upon making a written request by certified mail to the above named owner or lessee, the designee or the person with whom you have contracted.

Subscribed and sworn to before me, this ____ day of (month), 20__.

(Owner, Lessee or Agent)

Name and business address of the person who drafted this instrument:

_____ County, Michigan

(Notary Public)

My Commission Expires: _____, 20__.

A copy of the notice of commencement must be posted and kept posted in a conspicuous place on the real property described in the notice and must be furnished to each subcontractor, supplier or laborer upon demand.

The owner, lessee or signee shall provide a copy of the notice of commencement to the general contractor, if any. Failure to do so shall render the owner or lessee liable to the general contractor for all actual expenses sustained by the general contractor in obtaining the information otherwise provided by the notice of commencement. In addition, a contractor or subcontractor who has been provided with a notice of commencement from the owner, lessee, contractor or subcontractor must furnish a copy of the notice in addition to a blank notice of furnishing form within 10 days of a written request by a subcontractor, supplier or laborer who has a direct contact with the contractor or subcontractor. When an owner or lessee fails to record a Notice of Commencement, this failure serves to extend the time within which a subcontractor or supplier must serve a Notice of Furnishing, until 20 days after the Notice of Commencement is actually provided; 30 days for

laborers. Thus, where no Notice of Commencement is ever recorded, a Notice of Furnishing may properly be served up to the day a lien is recorded. Part (a) does not apply to improvements to residential structures.

(b) *Improvements to Residential Structures.* An owner or lessee contracting for an improvement to a residential structure shall prepare and provide a notice of commencement to a contractor, subcontractor, supplier or laborer. The notice shall contain the following: (1) the legal description of the real property on which the improvement is to be made; (2) the name, address and capacity of the owner or lessee of the real property contracting for the improvement; (3) the name and address of the fee owner of the real property, if the person contracting for the improvement is a land contract vendee or lessee; (4) the name and address of the owner's or lessee's designee; (5) the name and address of the general contractor, if any; (6) the following caption below the line for the general contractor's name and address "(the name of the person with whom you have contracted to provide substantially all of the improvements to the property)"; (7) the name and address of the person preparing the notice; (8) an affidavit of the owner or lessee or the agent of the owner or lessee which verifies the notice; and (9) the following statement in boldface type on the front of the form:

WARNING THE HOMEOWNER

Michigan law requires you to do the following: (1) complete and return this form to the person who asked for it within 10 days after the date of the postmark on the request; (2) if you do not complete and return this form within 10 days, you may have to pay the expenses incurred in getting the information; and (3) if you do not live at the site of the improvement, you must post a copy of this form in a conspicuous place at that site.

You are not required to but should do the following: (1) complete and post a copy of this form at a place where the improvement is being made, even if you live there; and (2) make and keep a copy of this form for your own records. In addition, the notice of commencement must contain the following statement:

Take notice that the work is about to commence on an improvement to the real property described in this instrument. A person having a construction lien may preserve the lien by providing a notice of furnishing to the above-named designee and the general contractor, if any, and by timely recording a claim of lien, in accordance with law.

A person having a construction lien arising by virtue of work performed on this improvement should refer to the name of the owner or lessee and the legal description appearing in this notice. A person subsequently acquiring an interest in the land described is not required to be named in a claim of lien.

A copy of this notice with an attached form for notice of furnishing may be obtained upon making a written request by certified mail to the above-named owner or lessee, the designee, or the person with whom you have contracted.

Each copy of the notice of commencement shall have a blank notice of furnishing (see below) form attached to it. The blank form shall be easily detachable from the copy of the notice and need not be recorded.

A contractor or subcontractor is not entitled to any payment and may not file any action to enforce the lien unless he provides the owner with a sworn statement as to those with whom he/she has contracted relative to the improvement.

A claim of lien shall be in the following form. Also, an owner must, and a contractor may be required to provide a notice of commencement and, or, for contractors, subcontractors and laborers, a notice of furnishing. See Sections 3 and 4 below.

CLAIM OF LIEN

Notice is hereby given that on the ____ day of (month), (year), (name) (address) first provided labor or material for an improvement to: (legal description from Notice of Commencement), the (owner) (lessee) of which property is: (name of owner or lessee from Notice of Commencement).

The last day of providing the labor or material was the ____ day of (month), (year).

TO BE COMPLETED BY A LIEN CLAIMANT WHO IS A CONTRACTOR, SUBCONTRACTOR OR SUPPLIER

The lien claimant's contract amount, including extras, is \$____. The lien claimant has received payment thereon in the total amount of \$____, and therefore claims a construction lien upon the above-described real property in the amount of \$____.

TO BE COMPLETED BY A LIEN CLAIMANT WHO IS A LABORER

The lien claimant's hourly rate, including fringe benefits and withholdings, is \$____. There is due and owing to or on behalf of the laborer the sum of \$____ for which the laborer claims a construction lien upon the above-described real property.

TO BE COMPLETED IF CLAIM OF LIEN HAS BEEN ASSIGNED

The claim of lien having been assigned, this claim of lien is made by (name of assignee), as assignee thereof.

(Lien claimant)

By _____
(Signature of lien claimant, agent or attorney)

(Address of party signing claim of lien)

Date _____

STATE OF MICHIGAN

ss.

County of _____

Subscribed and sworn to before me this _____ day of _____, 20__.

(Owner, Lessee or Agent)

Name and business address of the person who drafted this instrument:

_____ County, Michigan

(Notary Public)

My Commission Expires: _____, 20__

Notice of Furnishing: During performance, a subcontractor or materialman must serve notice of furnishing by certified mail (return receipt requested) to the owner and general contractor, if any, within 20 days after first furnishing labor or materials. Failure of a lien claimant to provide the notice of furnishing within the specified time will not defeat the right to the lien but it may reduce the value of the lien by the amount that the owner or lessee paid for the work prior to receipt of notice, if such payments have been made in reliance on a contractor's sworn statement or waiver of lien. A notice of furnishing is as follows:

NOTICE OF FURNISHING

To: (name of designee [or owner or lessee] from notice of commencement)
(address from notice of commencement)

Please take notice that the undersigned is furnishing to (name of owner and general contractor) certain labor or (name and address of other contracting party) material for (describe type of work) in connection with the improvement to the real property described in the Notice of Commencement recorded in liber _____, on page _____, (name of county) records, or _____ (a copy of which is attached hereto).

WARNING TO OWNER: THIS NOTICE IS REQUIRED BY THE MICHIGAN CONSTRUCTION LIEN ACT. IF YOU HAVE QUESTIONS ABOUT YOUR RIGHTS AND DUTIES UNDER THIS ACT, YOU SHOULD CONTACT AN ATTORNEY TO PROTECT YOU FROM THE POSSIBILITY OF PAYING TWICE FOR THE IMPROVEMENTS TO YOUR PROPERTY.

(name and address of lien claimant)

Date: _____ by: (name and capacity of party signing for lien claimant)
(address of party signing)

A contractor or subcontractor is not entitled to any payment and may not file any action to enforce the lien unless he provides the owner with a sworn statement as to those with whom he/she has contracted relative to the improvement.

A laborer who contracts to provide an improvement to real property shall provide a notice of furnishing to the designee and the general contractor, if any, as named in the notice of commencement, either personally or by mail, within 30 days after wages were contractually due but were unpaid. In addition, such laborer shall provide such notice at the address shown on the notice of commencement, either personally or by certified mail, by the fifth day of the second month following the month in which fringe benefits or withholdings from wages were contractually due but were unpaid. Failure of a laborer to provide the notice within the specified time will defeat the lien for the wages or benefits or withholdings for which the notice was due but will not defeat the right to a construction lien.

Sworn Statement: A sworn statement lists each subcontractor and supplier who has furnished labor or materials on the project. A sworn statement is similar to a sworn affidavit and must be provided to the owner or lessee when payment is requested from the owner or lessee, or when payment is due, and when the owner or lessee requests a sworn statement. A sworn statement must also be provided to an owner or lessee when a lien foreclosure action is commenced. Effective July 10, 2007, the Michigan Legislature has enacted PA 28 of 2007, which amends the Construction Lien Act to require that an owner or lessee shall not rely on the sworn statement to avoid the claim of a subcontractor, supplier or laborer who had provided a notice of furnishing to the designee or to the owner or lessee if the designee was not named or had died; restrict to a construction project involving an improvement to a residential structure the requirement that an owner or lessee provide notice of receipt of a sworn statement to each subcontractor, supplier and laborer providing a notice of furnishing or named in the sworn statement and upon request to give a copy of the sworn statement to each subcontractor, supplier or laborer entitled to notice; and to restrict to an improvement provided to a residential structure the requirement than an owner, lessee, or designee not rely on a full or partial unconditional or conditional waiver of lien provided by a person other than the lien claimant named in the waiver if the lien claimant had filed, or was excused from filing, a notice of furnishing unless the owner, lessee or designee had first verified the authenticity of the lien waiver with the lien claimant.

Foreclosing the Lien: An action to enforce a construction lien through foreclosure shall be brought in the circuit court for the county where the real property described in the claim of lien is located. Arbitrators may also have the authority to

decide the validity of a construction lien but do not have the legal authority to order that the property be sold to satisfy the construction lien.

Recent Legislation: In February 2006, the Michigan Supreme Court issued its ruling in *Ostroth v. Warren Regency*, 474 Mich 36; 709 NW2d 589 (2006). The effect of *Ostroth* was to segregate the industry from general limitations law and lengthen all limitations periods specific to the design and construction industry in Michigan. In September 2011, SB 77 was passed by the Michigan House of Representatives. SB 77 solves the problems created by *Ostroth*, restores the applicable limitation periods to their previous durations and restores the long-established rules that govern them. The new law will take effect January 1, 2012.

Notice of *Lis Pendens*: At the time of commencing an action for the enforcement of a construction lien through foreclosure, the plaintiff shall record a Notice of *Lis Pendens* with respect to the action in the office of the register of deeds for the county in which the real property involved in the action is located. The Notice of *Lis Pendens*, once filed, is effective for three years from the date of filing and may be extended for a maximum of three additional years. Upon the completion of a lien foreclosure lawsuit, a Release of *Lis Pendens* must be recorded with the Register of Deeds.

Discharging the Lien: A claim of lien may be discharged upon payment of the lien amount, the filing of a cash or surety bond in an amount of twice the lien amount, with the county clerk where the property is located. The claimant is required to provide a Discharge of Construction Lien and if a Notice of *Lis Pendens* was filed, a Release of *Lis Pendens*. Within 10 days of receiving the bond, the county clerk must notify all lien claimants who then have an additional 10 days within which to file any objections as to the adequacy or sufficiency of the bond. An administrative process may also be followed to obtain a discharge of lien. If a foreclosure action is not commenced within one year of the date of recording the lien, any interested person may provide an affidavit to the county clerk stating when the lien was recorded and the identity of the lien claimant; whereupon the clerk must provide a certification as to whether or not a foreclosure action had been commenced and if not, provide a certification to that effect, after the recording of which the claim of lien has no effect.

Michigan Builder's Trust Fund Act: Building contract funds paid by any person to a contractor or by such a person or contractor to a subcontractor, is considered to be a trust fund for the benefit of the person making the payment, contractors, laborers, subcontractors or materialmen, and the contractor or subcontractor is considered the trustee of all funds so paid to him for building construction purposes. There may be criminal, civil and personal liability for any contractor which misuses funds intended for subcontractors or suppliers.

Where Recorded: Office of the Register of Deeds for each county where the real property to which the improvement was made is located. Within 15 days after recording, a copy of the recorded claim of lien must be served upon the owner and/or designee personally or by certified mail, returned receipt requested.

When to Be Filed: Contractor must file claim of lien within 90 days after last furnishing of labor or material, must serve on owner within 15 days thereafter. Subcontractor must also file claim of lien within 90 days and must serve lien on owner within 15 days of recording.

Duration of Lien: One year after recording unless action to foreclose is begun within that period of time.

Extent of Lien: The lien attaches to the entire interest of the owner or lessee who contracted for the improvement, including any subsequently acquired legal or equitable interest. The lien applies only to private property; public property is not subject to construction liens. The sum of the construction liens cannot exceed the amount which the owner or lessee agreed to pay the person with whom he or she contracted for the improvement, as modified by any and all additions, deletions and any other amendments, and less payments made by or on behalf of the owner or lessee, pursuant to either sworn statement or waiver of lien in accordance with the act.

Priority of Lien: As between lien claimants themselves, valid liens shall have equal priority. The liens take priority over all garnishments made after commencement of the first actual physical improvement. They take priority over all other liens or encumbrances given or recorded subsequent to the first actual physical improvement. Because Michigan courts have liberally construed what constitutes an actual "physical improvement," mortgage lenders should ensure that no physical improvements have been made to the mortgaged real estate prior to the recordation of the lender's mortgage.

Lien for Improvement of Oil or Gas Well: Lien extends to the oil and gas leasehold, oil or gas well, lease, pipeline, buildings, fixtures and any things of value furnished. Lien must be recorded in the office of Register of Deeds in the county where the property is located within six months from the date on which the last material was furnished or labor performed. Must be enforced within one year or lien will expire.

Statutory Citation: Michigan Compiled Laws, §§570.1101 to 570.1305.

MINNESOTA

Who May Claim: Anyone contributing to the improvement of real estate by performing labor or furnishing skill, material or machinery, including the erection, alteration, repair or removal of any building, fixture, bridge, wharf, fence or other structure thereon or for grading, filling in or excavating, clearing, grubbing, first breaking, furnishing and placing soil or sod, or for furnishing and planting of trees, shrubs or plant materials, or for labor performed in placing soil or sod, or for labor performed in planting trees, shrubs or plant materials, or digging or repairing any mine, ditch, drain, etc., or performing engineering, architectural or land surveying services; whether under a contract with the owner thereof, or agent, trustee, contractor or subcontractor of the owner. Separate provisions for liens on logs and agricultural production input and

timber.

How Claimed: By recording lien statement and serving on or mailing by certified mail to the owner a copy of the lien statement.

Where Filed: County Recorder or, if registered land, with the Register of Titles, of county where real estate is situated or if made upon railway, telephone, telegraph, or electric line, with the Secretary of State.

When to Be Filed: Within 120 days from furnishing of last item of work, labor or materials.

General Contractor's Notice (Pre-Lien Notice): Every person who enters into a contract with the owner for the improvement of real property and who has contracted or will contract with subcontractors or materialmen to provide labor, skill or materials for the improvement shall include in any written contract with the owner the notice required in this subdivision and shall provide the owner with a copy of the written contract. If no written contract for the improvement is entered into, the notice must be prepared separately and delivered personally or by certified mail to the owner or the owner's authorized agent within 10 days after the work of improvement is agreed upon. The notice, whether included in a written contract or separately given, must be in at least 10-point bold type, if printed, or in capital letters, if typewritten and must state as follows:

Any person or company supplying labor or materials for this improvement to your property may file a lien against your property if that person or company is not paid for the contributions.

Under Minnesota law you have the right to pay persons who supplied labor or materials for improvement directly and deduct this amount from our contract price, or withhold the amounts due them from us until 120 days after completion of the improvement unless we give you a waiver signed by persons who supplied any labor or material for the improvement and who gave you timely notice. A person who fails to provide the notice shall not have the lien and remedy provided by these statutes.

However, there are numerous exceptions to the requirement of this notice. The notice required in sections 5, 6 and 7 is not required in connection with an improvement to real property which is not in agricultural use and which is wholly or partially nonresidential in use if the work or improvement:

- (a) is to provide or add more than 5,000 total usable square feet of floor space;
- (b) is an improvement to real property where the existing property contains more than 5,000 total usable total square feet of floor space;
- (c) is an improvement to real property which contains more than 5,000 square feet and does not involve the construction of a new building or an addition to or the improvement of an existing building;
- (d) there will not be any contract with other subcontractors or suppliers;
- (e) the property is wholly residential and provides more than four family units;
- (f) the contractor is managed or controlled by substantially the same persons who manage or control the property owner;
- (g) the contractor is the property owner;
- (h) the contractor is a corporation and the property owner is an officer or controlling shareholder of that corporation;
- (i) the property owner is a corporation and the contractor is an officer or controlling shareholder of that corporation;
- (j) the contractor and the property owner are both corporations managed or controlled by essentially the same persons.

Lien Claimant's Notice (Pre-Lien Notice Requirements for Subcontractors, Suppliers and Other Lien Claimants): Every subcontractor must, as a prerequisite to the validity of any claim or lien, give the owner or his authorized agent, by personal delivery or by certified mail not later than 45 days after the lien claimant has first furnished labor, skills, or materials for the improvement, a written notice in at least 10-point bold type which shall state:

This notice is to advise you of your rights under Minnesota law in connection with the improvement to your property.

Any person or company supplying labor or materials for this improvement may file a lien against your property if that person or company is not paid for the contributions.

We (insert name and address of subcontractor) have been hired by your contractor (insert name of your contractor) to provide (insert type of service) or (insert material) for this improvement. To the best of our knowledge, our estimated charges will be (insert value of service or material).

If we are not paid by your contractor, we can file a claim against your property for the price of our services.

You have the right to pay us directly and deduct this amount from the contract price, or withhold the amount due us from your contractor until 120 days after completion of the improvement unless your contractor gives you a lien waiver signed by me (us).

We may not file a lien if you paid your contractor in full before receiving this notice.

A person entitled to a lien does not lose the right to the lien for failure to strictly comply with this subdivision if a good faith effort is made to comply, unless the owner or another lien claimant proves damage as a direct result of the failure to comply. Also, this notice requirement may additionally apply to a general contractor who has entered into a construction contract with one, but not all, of the owners of a particular parcel of real estate. If there is any doubt about the owner's

identity, Minnesota law defines “owner” as meaning the owner of any legal or equitable interest in real property whose interest in the property: (1) is known to one who contributes to the improvement of the real property, or (2) has been recorded or filed of record, if registered land, and who enters into a contract for the improvement of the real property.

However, there are numerous exceptions to the requirement of this notice if the work or improvement:

- (a) is to provide or add more than 5,000 total usable square feet of floor space;
- (b) is an improvement to real property where the existing property contains more than 5,000 total usable square feet of floor space;
- (c) is an improvement to real property which contains more than 5,000 square feet and does not involve the construction of a new building or an addition to or the improvement of an existing building;
- (d) the property is not agricultural and is wholly or partially nonresidential;
- (e) the property is wholly residential and provides more than four family units;
- (f) the lien claimant is managed or controlled by substantially the same persons who manage or control the property owner.

Please note that it is important that the Lien Claimant’s Notice should be provided as soon as possible after commencing work (but not later than 45 days after the claimant’s first item of labor, skill or material is furnished to the improvement). Minnesota law provides that the total amount of all liens on an owner’s property will be reduced by payments made by the owner to the contractor prior to receipt of the lien claimants’ notices. This implies that a lien claimant will be barred from asserting all or a portion of its lien claim if the owner pays the general contractor before it receives a Lien Claimant’s Notice.

Perfecting the Lien. Mechanic’s Lien Statements: Minnesota prescribes by statute that lien claimants serve either a Mechanic’s Lien Statement—Individual Claimant or a Mechanic’s Lien Statement—Corporation or Partnership on the owner, the owner’s authorized agent, if any, and the person with whom the lien claimant entered into a contract for the improvement within 120 days after doing the last work or furnishing the last item of such skill material or machinery to the project. The properly completed, signed and notarized lien statement must be served either by personal service or by certified mail. Service by first-class mail is not sufficient service. It must then be filed with the County Recorder (if abstract property) or the Registrar of Titles (if registered property) for the county in which the improvement is located no later than 120 days after the lien claimant’s last contribution of labor or materials to the project.

Foreclosing the Lien: A mechanic’s lien foreclosure action along with a Notice of *Lis Pendens* (filed with the County Recorder or, if registered land, with the Registrar of Titles of the county in which it is brought) must be filed within one year of the last item of labor, skill or material furnished to improve the property. This is done by filing an action in the district court in the county in which the improved property is located and by filing a Notice of *Lis Pendens* with the county recorder or the Registrar of Titles depending on whether the improved property is abstract or torrens. The successful lien foreclosure action is culminated by the initiation of a sheriff’s sale of the property. The priority of the lien compared to other interests will be determined in the foreclosure sale.

Discharge of Lien: An owner of property against which a lien has been filed may start an action to quiet title in district court or apply to have the property released from the lien, by giving 10-days’ notice to the lien claimant of its intention to apply in court for a release of the lien. The judge will require the owner to deposit an appropriate sum of money or bond, against which the lien claimant shall have the same right of lien as it would have had against the property.

Attorneys’ Fees and Interest: Attorneys’ fees and interest may be awarded to a successful lien claimant.

Trust Funds: Payments received by a person contributing to the improvement of real property shall be held in trust by that person for the benefit of those who have furnished the labor, materials, skill or machinery contributing to the improvements and are not subject to garnishment, execution, levy or attachment. There may be civil or criminal penalties imposed on those contractors who fail to pass on the owner’s payments to subcontractors and suppliers.

Request for Information: A subcontractor or materialman may ask a contractor for the name and address of the owner of real estate for which it has provided labor, skill and materials, and the contractor shall provide the same within 10 days.

Duration of Lien: The lien shall cease at the end of 120 days after the doing of the last of the work or furnishing of materials unless the lien statement is filed and statutory Notice of *Lis Pendens* given within that time. No lien shall be enforced unless the holder shall assert it within one year after the date of the last item of his claim as set forth in the recorded lien statement.

Contents of Notice of Lien: (1) Notice of intention to claim a lien and amount thereof; (2) nature of claim; (3) name of claimant and person for whom work, labor or materials were performed or furnished; (4) dates of first and last items of furnishing or performing work, labor, etc.; (5) description of premises to be charged; (6) name of owner of property to best of lien claimant’s information and belief at time of making statement; (7) post office address of claimant; (8) that copy of statement of notice was mailed; and (9) that the subcontractor notice, if required, was given.

Extent of Lien: The lien shall extend to all the interest and title of the owner in and to the premises improved not exceeding 80 acres, or in the case of homestead agricultural land, 40 acres.

With respect to any contract or improvement for which notice is not required to be given the amount of the lien shall be as follows: (a) if the contribution is made under a contract with the owner and for an agreed price, the lien as against him shall be for the sum so agreed upon; (b) in all other cases it shall be for the reasonable value of the work done and of the

skill, material, and machinery furnished.

With respect to any contract or improvement as to which notice is required, the amount of the lien shall be as follows: if the contribution is made under a contract with the owner and for an agreed price, the lien against him shall be for the agreed upon sum. In all other cases it shall be for the reasonable value of the work done and of the skill, material and machinery furnished. Provided, however, the total sum of all items shall not exceed the total of the contract price plus the contract price or reasonable value of any additional contract or contracts between the owner and the contractor less the total of the following: (a) payments made by the owner or his agent to the contractor prior to receiving any notice; (b) payment authorized by law made by the owner or his agent to discharge any liens or claims; (c) payments made by the owner or his agent pursuant to presentation of valid lien waivers from persons or companies contributing to the improvement where previously given the required notice.

Owner May Withhold Payment: Owner may withhold from his contractor so much of the contract price as may be necessary to meet the demands of all persons other than the contractor having a lien upon the premises for labor, skill or material furnished for the improvement and in which the contractor is liable and he may pay and discharge all such liens and deduct the cost thereof from the contract price. No owner is required to pay his contractor until the expiration of 120 days from the completion of the improvement except to the extent that the contractor shall furnish to the owner waivers of claims for mechanic's liens signed by persons who furnished labor, skill or material for the improvement and given the notice required by statute. As against a *bona fide* purchaser, mortgagee or encumbrer without actual or record notice, no lien shall attach prior to the actual and visible beginning of the improvement on the ground.

Priority of Lien: All liens attach and take effect from the time the first item of material or labor is furnished upon the premises for the beginning of the improvement and shall be preferred to any mortgage or other encumbrance not then of record unless the lien holder had actual notice thereof. As against a *bona fide* mortgagee, no lien shall attach prior to the actual and visible beginning of the improvement on the ground.

Cases of Note: Engineers, architects and other providers of “non-visible” work on construction projects should consider written notice to the lender that lien rights are claimed and/or seek legal advice in that regard. *See Riverview Muir Doran, LLC v. Jadt Development Group, LLC*, (Case No. A08-312) 790 N.W.2d 167 (Minn. 2010). Work performed subsequent to the recording of a mortgage can relate back to improvements performed prior to such recording where the early improvements were done in contemplation of and as part and parcel of the entire project. To determine whether the work in question is “part and parcel” of the ultimate improvement, a fact-specific analysis is required. *See Big Lake Lumber, Inc. v. Sec. Prop. Invs., Inc.*, 836 N.W.2d 359 (2013).

In the event of a foreclosure of two or more liens, the lien claimants will recover on a *pro rata* basis regardless of when their liens were filed.

In *Mavco, Inc. v. Eggink, et al.* (filed August 29, 2006), the Court concluded that the lien of a mortgage that was issued before, but not recorded until after, the commencement of a mechanic's lien foreclosure action was prior to the mechanic's lien. Mechanic's lien claimants will need to take extra precautions to maintain priority over mortgage liens and other claims that are not of record at the time the mechanic's lien foreclosure lawsuit is commenced, until possible legislative action is taken.

MISSISSIPPI

As of 2014, Mississippi has completely revised its Mechanic's Lien Law, known as “S.B. 2622 REVISED MISSISSIPPI LIEN LAW.”

Who May Claim: Prime contractors, first tier subcontractors, first tier suppliers, second tier subcontractors, second tier suppliers, design professionals (registered architects, professional engineers and registered land surveyors) as long as their services are performed on or with respect to any real estate. Third tier subcontractors and suppliers do not have lien rights.

Prerequisites for Filing Lien: There are seven prerequisites for filing a lien. (1) Substantial compliance with provisions of contract, subcontract or purchase order. (2) Lien must be filed within 90 days of providing last labor, material or services. (3) Lien claimant must provide notice on face of lien that the lien automatically expires within 180 days of its filing if no payment action is filed pursuant to Section 85-7-405(1)(C)(i) and that the owner has the right to contest the lien and shorten the time to file the payment action pursuant to Section 85-7-423. (4) No later than two days after the filing of the lien, the owner must be provided with a copy of the lien by registered or certified mail or statutory overnight delivery. If the lien claimant is a subcontractor or materialman, a copy of the lien must be sent to the owner and the contractor. If the owner cannot be found, then the notice must be sent to the contractor. If the lien claimant is a design professional and there is a contractor employed, a copy of the lien must be sent to the owner and the contractor. If there is no contractor employed, then the notice must be sent to the owner. (5) Lien claimant must file a payment action either in civil court or in arbitration within 180 days of filing the lien. A *lis pendens* notice must be filed simultaneously with a copy to the owner and the contractor. This payment action must be filed first against the one who owes the debt to the lien claimant before the lien claimant can seek perfection of his lien and foreclosure against the property. (6) Lien claimant must state the amount of the lien and the date that it became due. (7) Lien claimant must hold a valid license with the Mississippi Board of Contractors, if one is required by law. If lien claimant does not have this license, lien rights are lost. Any contractor or subcontractor entering into a contract or agreement with the unlicensed contractor or subcontractor also loses lien rights. This limitation

does not apply to materialmen or design professionals.

Notice and Time Deadlines: There are 12 separate notice and time deadlines for filing a lien. (1) *Notice of Commencement*. No more than 30 days after first supplying labor, services or materials, all second tier subcontractors and materialmen and all design professionals not in privity of contract with the owner must file a Notice of Commencement. This requirement applies only to multi-family residential construction (not to single family residential construction) and commercial construction. (2) *Pre-Lien Notice*. All second tier subcontractors and materialmen and all design professionals not in privity of contract with the owner must file the Pre-Lien Notice no fewer than 10 days prior to filing the claim of lien. Only applies to single family residential construction. (3) *Claim of Lien*. All lien claimants on all types of projects must file a claim of lien no later than 90 days after last working or providing materials or services or furnishing design services. (4) *Notice of Filing of Claim of Lien*. All lien claimants on all types of projects must file this notice no later than two business days after filing the claim of lien, to the owner and/or contractor by registered or certified mail, return receipt requested or statutory overnight delivery. (5) *Filing of Payment Action*. All lien claimants on all types of projects must file a payment action no later than 180 days after the date of filing for record of the claim of lien, along with a *lis pendens* notice with copy to the owner and contractor. For certain exceptions, see Section 85-7-405(1)(d). (6) *Right to Remove Detachable Leasehold Property*. After foreclosure and sale by the lien claimant (applies to all lien claimants on all types of leasehold property) of the lien over the leasehold estate, the lien claimant will have 60 days to remove the detachable leasehold property, subject to a perfected claim of lien. (7) *Notice of Filing Bond to Cover Lien*. All lien claimants on all types of projects need to send notice of the filing of the bond and a copy of the bond to the lien claimant by registered or certified mail or by statutory overnight delivery. However, the failure to do this will not invalidate the discharge of the lien from the property. (8) *Interim and Final Provisional Lien Waiver and Release*. Sixty days after the date of execution of a written lien waiver and release (on any type of project where a claimant is requested, as part of a payment procedure, to provide same prior to payment) there will be an irrebutable presumption of satisfaction of the lien waiver and release, unless before the expiration of this period, an affidavit of non-payment is filed. (9) *Affidavit of Non-Payment*. No later than two business days after filing an affidavit of non-payment, the lien claimant must provide notice to the owner and/or contractor by registered or certified mail (return receipt requested), or by statutory overnight delivery. (10) *Cancellation of Claim of Lien*. All lien claimants, on all types of projects, must file this notice no more than 15 days after receipt of a written request (after lien amount has been paid). The penalty for not removing a satisfied lien is \$500 per day, after 15 days, plus reasonable attorneys' fees and costs. (11) *Notice of Contest of Lien*. This notice must be filed of record and a copy provided to the lien claimant (applies to all lien claimants on all types of projects), within seven days of the filing, by registered or certified mail or statutory overnight delivery. Lien shall be extinguished upon the earlier of 90 days after the filing of the notice of contest of lien or 180 days of the date of the filing of the claim of lien. (12) *Expungement Action*. Any person adversely affected by the wrongful filing of a claim of lien may file this action no later than 180 days from the filing of the claim of lien.

Priority of Lien: Construction liens are inferior to tax liens and all deeds of trust, mortgages and other encumbrances filed prior to the filing of the construction lien. After the construction lien is filed, with the exception of tax liens, priority is determined on a strict "first to file" basis. Construction liens are inferior to construction mortgages if the construction mortgage is filed prior to the construction lien and the lender either obtains an affidavit from the owner that no work has been performed on or no materials have been delivered (not necessarily purchased) to the property; or obtains a sworn written statement from the contractor (or if no contractor, the owner) that all labor, materials or services has been paid for or the claims waived. Between themselves, construction liens have equal priority, no matter when filed. Where there are insufficient funds to satisfy all of the existing liens, lien claimants will be paid on either a *pro rata* basis or in any manner ordered by a court.

Statutory Citation: Mississippi Code Annotated §85-7-401, *et seq.* (Rev. 2014)

MISSOURI

Mechanic's and Materialmen's Lien, Who May Assert; Extent of Lien: Any person who shall do or perform any work or labor upon, or furnish any material, fixtures, engine, boiler or machinery for any building, erection or improvements upon land, or for repairing the same, or furnish and plant trees, shrubs, bushes or other plants or provides any type of landscaping goods or services or who installs outdoor irrigation systems under or by virtue of any contract with the owner or proprietor thereof, or his agent, trustee, contractor or subcontractor, or without a contract if ordered by a city, town, village or county having a charter form of government to abate the conditions that caused a structure on that property to be deemed a dangerous building under local ordinances pursuant to Section 67.410, R.S.Mo, upon complying with the provisions of Sections 429.010 to 429.340, shall have for his work or labor done, or materials, fixtures, engine, boiler, machinery, trees, shrubs, bushes or other plants furnished, or any type of landscaping goods or services provided, a lien upon such building, erection or improvements, and upon the land belonging to such owner or proprietor on which the same are situated, to the extent of three acres; or if such building, erection or improvements be upon any lot of land in any town, city or village, or if such building, erection or improvements be for manufacturing, industrial or commercial purposes and not within any city, town or village, then such lien shall be upon such building, erection or improvements, and the lot, tract

or parcel of land upon which the same are situated, and not limited to the extent of three acres, to secure the payment of such work or labor done, or materials, fixtures, engine, boiler, machinery, trees, shrubs, bushes or other plants or any type of landscaping goods or services furnished, or outdoor irrigation systems installed; except that if such building, erection or improvements be not within the limits of any city, town or village, then such lien shall be also upon the land to the extent necessary to provide a roadway for ingress to and egress from the lot, tract or parcel of land upon which said building, erection or improvements are situated, not to exceed 40 feet in width, to the nearest public road or highway. Such lien shall be enforceable only against the property of the original purchaser of such plants unless the lien is filed against the property prior to the conveyance of such property to a third person.

For claims involving the rental of machinery or equipment, the lien shall be for the reasonable rental value of the machinery or equipment during the period of actual use and any periods of nonuse taken into account in the rental contract while the equipment is on the property in question. There shall be no lien involving the rental of machinery or equipment unless: (1) the improvements are made on commercial property; (2) the amount of the claim exceeds \$5,000; and (3) the party claiming the lien provides written notice within fifteen business days of the commencement of the use of the rental property to the property owner that rental machinery or equipment is being used upon their property. Such notice shall identify the name of the entity that rented the machinery or equipment, the machinery or equipment being rented. However, if an equipment lessor's only connection to a project is to lease equipment and not provide labor, no lien rights arise.

The requirements to assert a mechanic's lien against residential property in Missouri changed under a new law signed by Governor Jay Nixon (D) on July 12, 2010. The law places additional responsibilities on property owners to notify contractors and other potential lien holders of the owner's intent to sell the property, and requires potential claimants to follow certain procedures to preserve their right to file a mechanic's lien in connection with work performed on new residential construction projects. The law will affect closings that occurred on or after November 1, 2010.

Mandatory Notice Requirements: The timing of the required notice depends upon whether a claimant is the prime contractor or subcontractor and whether the property in question is residential or commercial in character. Missouri law requires the prime contractor to give notice to the owner prior to the first application for payment, delivery of material or execution of the contract. The best practice is to give the notice to the owner at the execution of the contract, hence, before performance begins, followed by a repeat of the notice on each invoice for payment. Subcontractors intending to perform work or supply material on a residential unit who wish to preserve their lien rights must require the general contractor obtain the written consent of the owner to a possible lien, prior to the start of work. A subcontractor/supplier must give the owner written notice of the subcontractor's/supplier's intention to file a lien 10 days before filing the lien, in addition to requiring the general contractor obtain the written consent of the owner to a possible lien, prior to the start of work. The general contractor, on residential property, as a condition precedent to a valid mechanic's lien, must give notice to the owner prior to the receiving payment from the owner in any form: (a) either at the time of execution of the contract; (b) when the materials are delivered; (c) when the work is commenced; or (d) delivered with the first invoice:

NOTICE TO OWNER

FAILURE OF THIS CONTRACTOR TO PAY THOSE PERSONS SUPPLYING MATERIAL CAN RESULT IN THE FILING OF A MECHANIC'S LIEN ON THE PROPERTY WHICH IS THE SUBJECT OF THIS CONTRACT PURSUANT TO CHAPTER 429, R.S.MO. TO AVOID THIS RESULT YOU MAY ASK THIS CONTRACTOR FOR "LIEN WAIVERS" FROM ALL PERSONS SUPPLYING MATERIAL OR SERVICES FOR THE WORK DESCRIBED IN THIS CONTRACT. FAILURE TO SECURE LIEN WAIVERS MAY RESULT IN YOUR PAYING FOR LABOR AND MATERIAL TWICE. 429.012 R.S.Mo.

Owner and Contractor Responsibilities on Residential Projects: If a residential property owner contracts to improve their property with the intent to sell it after the improvements are complete, Missouri law requires the owner to record a notice of intended sale in the office of the Recorder of Deeds for the county in which the property is located. The notice must be recorded at least 45 calendar days before the earliest date that the owner plans to close on the sale and must include the calendar date of the intended sale. The owner is also required to post a copy of the notice at the property or any jobsite office. After the owner files the notice of intended sale, a contractor or other individual or entity seeking to retain the right to assert a mechanic's lien against the property in connection with the work is required to record a notice of rights. This notice must be filed according to existing recording requirements of this chapter and must identify the claimant, the property, the property owner, the person or entity with whom the claimant contracted to perform services, and may include other potential claimants such as suppliers and subcontractors. The notice of rights must be recorded in the Recorder of Deeds office at least five calendar days before the intended date of closing identified in the owner's notice of intended sale. A contractor or other potential claimant who fails to record a notice of rights will forfeit any right to assert a lien against the property.

Consent of Owner: With regard to the improvement, repair or remodeling of owner-occupied residential property of four units or less, no person, other than an original contractor, shall have a lien for work performed unless the owner of the property has signed a written consent to be liable in the event the subcontractor's or supplier's charges are not paid. The consent must appear in 10-point bold print and be signed separately from any other notice and agreement and must provide as follows:

CONSENT OF OWNER**CONSENT IS HEREBY GIVEN FOR FILING OF MECHANIC’S LIENS BY ANY PERSON WHO SUPPLIES MATERIALS OR SERVICES FOR THE WORK DESCRIBED IN THIS CONTRACT ON THE PROPERTY ON WHICH IT IS LOCATED IF HE IS NOT PAID.**

Every original contractor shall retain a copy of the Notice to Owner described below and any consent signed by an owner and shall furnish a copy to any person performing work or labor or furnishing material, fixtures, engines, boilers or machinery upon their request for such copy of the notice or consent. It shall be a condition precedent to the creation, existence or validity of any lien by anyone other than an original contractor that a copy of the consent, signed by an owner, be attached to the recording of a claim of lien. The signature of one or more of the owners shall be binding upon all owners. In the absence of a consent, full payment of the amount due under a contract to the contractor shall be a complete defense to all liens filed by any person performing work or labor or furnishing material, fixtures, engines, boilers or machinery. Partial payment to the contractor shall only act as an offset to the extent of such payment.

How Claimed: By filing a just and true account of demand. Every person except original contractor must give 10-days’ notice before filing lien to the owner, owners or agent, or either of them, that he holds a claim against such building or improvement, setting forth the amount and from whom the same is due. Such notice may be served by any officer authorized by law to serve process in civil actions, or by any person who would be a competent witness. When served by an officer, his official return endorsed thereon shall be proof thereof, and when served by any other person, the fact of such service shall be verified by affidavit of the person so serving.

Where Filed: Office of Clerk of Circuit Court in County where property is situated.

When to Be Filed: Within six months after indebtedness shall have accrued. Missouri courts have interpreted “accrual” to be the date of the claimant’s last furnishing labor and/or material to the project. Work performed merely for the purpose of extending the deadline by which a mechanic’s lien must be filed will not serve that purpose.

Service of Copy of Notice: All persons, other than original contractor, shall give 10-days’ notice in the form of a Notice of Intent to File Mechanic’s Lien Statement before filing lien to owner, owners or agents. Service must be verified by affidavit of the person so serving. Service of this 10-day notice must be filed no less than 10 days prior to the expiration of the six-month period, or the lien will be untimely. All parties with a recorded interest in the property should be served and the notice should be filed with the county recorder’s office. Notice to be served by an officer or person who would be a competent witness.

Duration of Lien: For six months after filing of lien. Lien lapses unless suit is filed within that time.

Contents of Lien: Just and true account of demand, description of the property upon which lien is intended to apply, name of owner and contractor, verified under oath. A claimant other than an original contractor must set forth an itemized statement of the labor and materials. All mechanic’s liens must be notarized. The “Consent of Owner” referred to in paragraph 2 above, if applicable, must be filed with lien.

Priority of Lien: A mechanic’s lien takes priority over a bank’s purchase money deed of trust where the deed of trust was not recorded until after work pursuant to the mechanic’s lien had already begun. Missouri law applies the “First Spade Rule” wherein a mechanic’s lien relates back in priority to the date when the work first commenced. Also, a mechanic’s lien on land is given relation-back priority (Section 429.060), whereas a mechanic’s lien for a building, erection or improvement is given complete priority under Section 429.050. *See Bob DeGeorge Associates, Inc. v. Hawthorn Bank*, 2012 WL 4054143

Lien for Improvement of Oil or Gas Well: Person to whom another is indebted for expenses incurred in drilling and operating a well or a drilling unit with pooled interests may place a lien to secure payment of amount due by recording an affidavit setting forth amount due and interest of debtor in production in office of Recorder of Deeds in county where property is located.

Notice to Owner: Every original contractor shall provide to the person with whom the contract is made prior to receiving payment in any form of any kind from such person either (a) at the time of the execution of the contract, (b) when the materials are delivered, (c) when the work is commenced, or (d) delivered with the first invoice, a written notice which shall include the following disclosure language in 10-point bold type:

NOTICE TO OWNER

Failure of this contractor to pay those persons supplying material or services to complete this contract can result in the filing of a mechanic’s lien on the property which is the subject of this contract pursuant to Chapter 429, R.S.Mo. To avoid this result you may ask this contractor for “lien waivers” from all persons supplying material or services for the work described in this contract. Failure to secure lien waivers may result in your paying for labor and material twice.

Service of notice is a condition precedent to the creation and valid existence of a mechanic’s lien in favor of an original contractor. The notice is not required when performing work for a builder-developer of new residences if the buyer has title insurance protecting him from mechanic’s liens issued by a title insurance company registered in Missouri. Any original contractor who fails to provide the notice is guilty of a misdemeanor and can be fined.

Design Professionals, Commercial Real Estate Brokers, Certified Appraisers and Title Companies: Architects and engineers licensed in Missouri, providing services on a project where there has been actual physical improvements made to the property, and where those services are directly related to those actual physical improvements, are entitled to a mechanic's lien under a separate Missouri statute, Section 429.015.1. There are some differences in how to perfect the lien. Real estate brokers, certified appraisers and title companies may also assert liens against property being sold under certain circumstances, but only after satisfying various and detailed statutory provisions.

Agreements to Waive Right to Lien Unenforceable: An agreement by an original contractor, subcontractor, supplier or laborer to waive any right to enforce or claim any lien, where the agreement is in anticipation of and in consideration for the awarding of a contract or subcontract to perform work or supply materials for an improvement upon real property, whether expressly stated or implied, is against public policy and shall be unenforceable. This shall not be implied to prohibit subordination or release of a lien authorized under this chapter.

Statutory Citation: Missouri Revised Statutes, Title XXVII, Chapter 429, §§429.005 to 429.360.

MONTANA

Who May Claim: Any person who furnishes services or materials pursuant to a real estate improvement contract for the purpose of producing a change in the physical condition of the real estate, including alteration of the surface by excavation; construction or installation on, above or below the surface of land; demolition, repair, remodeling or removal of a structure previously constructed or installed; seeding, sodding or other landscape operations; surface of subsurface testing, boring or analysis; and preparation of plans, surveys or architectural or engineering plans or drawings, regardless of whether they are used to produce a change in the physical condition of the real estate; may claim a construction lien to secure the payment of his contract price. Real estate improvement contract does not include a contract for the mining or removal of timber, minerals, gravel, soil, sod or things growing on the land or a similar contract on which the activity is primarily for the purpose of making the materials available for sale or use; or a contract for the planting, cultivation or harvesting of crops or for the preparation of the soil for planting of crops.

A lien for furnishing materials arises only if the materials are supplied with the intent that they be used in the course of construction of or incorporated into the improvement in connection with which the lien arises; and that intent can be shown by a contract of sale, a delivery order, delivery to the site by the lien claimant or at his direction, or by other evidence; and the materials are: (1) incorporated in the improvement or consumed as normal wastage in construction operations; (2) specifically fabricated for incorporation into the improvement and not readily resalable in the ordinary course of the fabricator's business, even though the materials are not actually incorporated into the improvement; (3) used for the construction or 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 (4) tools, appliances or machinery used on the particular improvement.

A mechanic's lien has been renamed a construction lien.

Not all property improvement projects give rise to construction lien rights. Contracts for mining, the planting, cultivation or harvesting of crops, the preparation of the soil for the planting of crops, or for the removal of timber, materials, gravel, soil, sod or things growing on the land, or if the contract involves an activity which is primarily for the purpose of making materials obtained from the site available for sale or use are excepted from construction lien rights.

How Claimed: *By filing claim in writing.* Subcontractor must provide an owner with notice of rights and advise owner of possibility that a construction lien may be filed; statutory form is provided. Under the Federal Truth in Lending Act, a lien claimant may also be required, in some circumstances, to provide a Notice of Right to Rescind to the contracting owner.

Where Filed: County Clerk of county where property is situated.

Notice of Completion: Montana law allows an owner to file and publish a Notice of Completion, which starts the running of the timeframe for filing a Claim of Lien. The timeframe for filing a Claim of Lien is not later than 90 days after the lien claimant's final provision of materials or services for the project, or after the owner files a Notice of Completion.

When to Be Filed: Within 90 days from the date of lien claimant's last work performed or material furnished or owner files a notice of completion. With respect to real estate improvement contracts, notice of right to claim a lien must be filed within five days after the date on which the notice of right to claim a lien is given to the contracting owner. Notice of right to claim must be given to the contracting owner within 20 days after the date that services or materials are furnished. The period is 45 days if construction is financed by a regulated lender. This does not apply to owner-occupied residences. This copy must be filed five business days after the date on which the notice of the right to claim a lien is given to contracting owner. The notice of completion and affidavit must set forth the date when the work or improvement was completed or the date on which cessation from labor occurred first and the period of its duration; the name and address of the owner; a description of the property sufficient for identification; the nature of the title, if any, of the person signing the notice, and the name of the contractor, if any. The notice must be verified by the owner or his agent and a copy published once each week for three successive weeks in a newspaper of general circulation in the county where the land on which the work or improvement was performed is situated. A lien must then be filed within 90 days immediately following the first publication of the notice of completion. For the purpose of filing a notice of completion, "completion of any work or

improvement” constitutes the following: (1) the written acceptance by the owner, his agent or his representative of the building, improvement or structure; (2) the cessation from labor for 30 days upon any building, improvement or structure, or the alteration, addition to or repair thereof. In the event of untimely notice, the claimant is entitled only to a lien for the services or materials furnished within the 20-day or 45-day period, whichever is applicable, preceding the date on which the notice is provided.

Discharging the Lien: At any time before a lien foreclosure action is filed, the owner may file a bond in an amount equal to one and one-half times the amount of the lien with the Clerk of the District Court in the county where the liened property is located. Once a lien foreclosure action has been started, the lien may not be transferred to a bond.

Exemptions to Preliminary Statutory Notice Requirements: (a) a person furnishing services or materials directly to the owner at the owner’s request; (b) a wage earner or laborer performing personal labor for a person furnishing any service or material pursuant to a real estate improvement contract; (c) a person furnishing services or materials pursuant to a real estate improvement contract that relates to a dwelling for five or more families; and (d) a person furnishing services or materials pursuant to a real estate improvement contract that relates to an improvement that is partly or wholly commercial in character.

Service of Copy of Notice: Service shall be made by personal service on each owner or by mailing a copy of the lien by certified or registered mail with return receipt requested to each owner’s last known address. A copy of the notice must be filed with the Clerk and Recorder of the county in which the improved real property is located. The notice must be filed not later than five business days after the date on which the Notice of the Right to Claim a Lien is given to the contracting owner. In filing the lien, the lien claimant must certify to the County Clerk and Recorder that a copy of the lien has been served upon each owner of record and attach this certification to the lien document. The certification shall identify whether service of the lien on the property owner of record has been made personally by delivery of certified or registered mail.

Duration of Lien: All actions under this part must be commenced within two years from the date of the filing of the lien.

Contents of Preliminary Notice of Right to Claim a Lien/Notice of Lien: (a) *Notice of a Right to Claim a Lien.* The preliminary notice must contain the following information: (1) the notice of the right to claim a lien must be in writing and state that it is a notice of a right to claim a lien against real estate for services or materials furnished in connection with improvement of the real estate; (2) the notice must contain a description sufficient to identify the real estate against which the lien may be claimed; (3) the notice must contain the following information: (a) date of mailing; (b) owner’s name; (c) owner’s address; (d) name of person filing notice; (e) address of person filing notice; (f) a description sufficient to identify the property that is being improved; and (g) the following notice; and be in substantially the following form (refer to M.C.A.S. 71-3-532 for exact content):

NOTICE OF THE RIGHT TO CLAIM A LIEN

WARNING: READ THIS NOTICE. PROTECT YOURSELF FROM PAYING ANY CONTRACTOR OR SUPPLIER TWICE FOR THE SAME SERVICE.

To: (Owner)

Date of mailing: _____

(Owner’s address)

This is to inform you that (name of subcontractor or material supplier) has begun to provide (description of services or materials) ordered by (contractor) for improvements to property you own. The property is located at (property address).

A lien may be claimed for all services and materials furnished to you if this notice is given to you within 20 days after the date on which the services or materials described are first furnished to you. If the notice is not given within that time, a lien is enforceable for only the services or materials furnished within the 20-day period before the date on which the notice is given. However, if a regulated lender has provided the funds for the services or materials described in this notice, the notice may be given 45 days after the date the service or materials are first furnished to you. If the notice is not given within that time, a lien is enforceable for only the services or materials furnished within the 45-day period before the date the notice is given.

Even if you or your mortgage lender have made full payment to the contractor who ordered these services or materials, your property may still be subject to a lien unless the subcontractor or material supplier providing this notice is paid. **THIS IS NOT A LIEN.** It is a notice sent to you for your protection in compliance with the construction lien laws of the State of Montana.

This notice has been sent to you by:

(Name)

(Address)

(Telephone)

IF YOU HAVE ANY QUESTIONS ABOUT THIS NOTICE, FEEL FREE TO CALL US.

IMPORTANT INFORMATION ON REVERSE SIDE

IMPORTANT INFORMATION FOR YOUR PROTECTION

Under Montana’s laws, those who work on your property or provide materials and are not paid have a right to enforce

their claim for payment against your property. This claim is known as a construction lien.

If your contractor fails to pay subcontractors or material suppliers or neglects to make other legally required payments, the people who are owed money may look to your property for payment, even if you have paid your contractor in full.

The law states that all people hired by a contractor to provide you with services or materials are required to give you a notice of the right to lien to let you know what they have provided.

WAYS TO PROTECT YOURSELF ARE:

—RECOGNIZE that this notice of delivery of services or materials may result in a lien against your property unless all those supplying a notice of the right to lien have been paid.

—LEARN more about the construction lien laws and the meaning of this notice by contacting an attorney or the firm sending this notice.

—WHEN PAYING YOUR CONTRACTOR for services or materials, you may make checks payable jointly to the contractor and the firm furnishing services or materials for which you have received a notice of the right to lien.

—OBTAIN EVIDENCE that all firms from whom you have received a notice of the right to lien have been paid or have waived the right to claim a lien against your property.

—CONSULT AN ATTORNEY, a professional escrow company or your mortgage lender. Lien is effective for one year from filing. Thereafter it lapses unless prior to expiration of one-year period claimant files a one-year continuation of notice. Such continuation must contain clerk and recorder file number; date of original filing, name of person to whom notice originally given.

(b) *Contents of Lien Notice.* The form for the lien is as follows:

CONSTRUCTION LIEN

I, (name and address of person claiming the construction lien), claim a construction lien pursuant to Title 71, Chapter 3, of the Montana Code Annotated.

I claim this lien against (give sufficient description of the real property against which the lien is claimed to identify it). The contracting owner is (name of the person who owns the real estate and name of the person who entered into the contract to improve it).

At the request of (name and address of party with whom person claiming the lien contracted to furnish services or materials), I provided the following: (description of the services or materials provided). The amount remaining unpaid is (amount unpaid; if no amount was fixed by the contract, give your good faith estimate of the amount and identify it as an estimate).

I first furnished these services or materials on (date) and last furnished services or materials on (date; if the date has not yet arrived, insert an estimate of the date on which services or materials will be last furnished and identify the date as an estimate).

I gave notice of the right to claim a lien as required by §71-3-531 on (date) to (name of contracting owner). [If it is not required to give a notice of the right to claim a lien, state the reason it is not required.]

The Notice of the Right to Claim a Lien, when properly filed, is valid for a period of one year from the date of the filing. The notice lapses upon the expiration of that one-year period, unless the lien claimant files with the Clerk and Recorder a one-year Continuation of the Notice of the Right to Claim a Lien prior to the date on which the first notice will lapse. If a Notice of the Right to Claim a Lien is required, a construction lien claim may not be asserted unless there is an unexpired Notice of the Right to Claim a Lien or an unexpired Continuation Notice, properly filed with the Clerk and Recorder at the time the lien claimant files the construction lien. The Continuation Notice must contain certain required information: (a) the Clerk and Recorder's file number of the notice; (b) the date on which the notice originally was filed; and (c) the name of the person to whom the original notice was given.

Extent of Lien: A construction lien extends to the interest of the contracting owner in the real estate, as the interest exists at the commencement of work or is thereafter acquired in the real estate, subject to the following provisions: (1) if an improvement is located wholly on one or more platted lots belonging to the contracting owner, the lien applies to the improvement and to the lots on which the improvement is located; (2) if an improvement is not located wholly on one or more platted lots, the lien applies to the improvement and to the smallest identifiable tract or parcel of land on which the improvement is located; (3) if the improvement is to leased premises, the lien attaches to the improvement and to the leasehold term; except as provided in the following, it does not attach to the lessor's interest unless he contracted for or agreed to the improvement before it was begun; (4) (a) a construction lien is not impaired to the extent of the value of the work or improvement that is severable from the real estate if the improvement is to premises held by: (i) a contracting owner who owns less than a fee simple interest; or (ii) a lessee and the lease is forfeited by the lessee; (b) if the work or improvement may be removed without harm to the rest of the real estate, the lienholder may have the value determined, the work or improvement sold separately, and the proceeds delivered to him to satisfy the construction lien. The purchaser shall remove the work or improvement within 45 days of the sale; (5) if a contracting owner contracts for improvements on real

estate not owned by him as part of an improvement on his real estate or for the purpose of directly benefiting his real estate, there is a lien against the contracting owner's real estate being improved or directly benefited in favor of persons furnishing services or materials to the same extent as if the improvement had been on the contracting owner's real estate.

Priority of Lien: A construction lien has priority over any other interest, lien, mortgage or encumbrance that may attach to the building, structure or improvement or on the real property on which the building, structure or improvement is located and which is filed after the construction lien attaches. An interest, lien, mortgage or encumbrance that is filed before the construction lien attaches has priority over a construction lien, provided that the value of the work or improvement is not severable, or provided that prior interest was not taken to secure advances for the purpose of paying for the particular real estate improvement being liened. There is equal priority between or among construction lien claimants who contribute to the same real estate improvement project, regardless of the date on which each lien claimant first contributed services or materials and regardless of the date on which he filed his notice of lien. When the proceeds of a foreclosure sale are not sufficient to pay all construction lien claimants in full, each claimant will receive a *pro rata* share of the proceeds based on the amount of his respective lien. Construction liens attaching at different times have priority in the order of attachment.

Case of Note: In *Signal Perfection, LTD v. Rocky Mountain Bank-Buildings*, 2009 WL 3628027 (Mont. Nov. 3, 2009), a developer had taken out a construction loan to fund the construction of a \$55 million casino and restaurant. The bank had recorded a trust indenture on the property. During construction, the entire loan was exhausted. Five months later, an audio and video systems contractor filed a mechanic's lien on the property for non-payment. The Court ruled that the mechanic's lien could take priority over the construction loan security, noting that the bank could have protected itself by providing lien waivers or by not making the loan. The principal distinction was whether the deed of trust was created in order to purchase the property or to remodel the property.

Lien Foreclosure Action: A legal action must be filed within two years from the date of the filing of the construction lien. If successful, the lien claimant may recover lien recording and filing fees, as well as a reasonable attorney's fee.

Lien for Improvement of Oil or Gas Well: Liens are created and perfected in the same manner as mechanic's liens except that filing statement must be within six months of completion of work.

Statutory Citation: Montana Code Annotated, Title 71, Chapter 3, §§71-3-521 to 71-3-563.

NEBRASKA

Who May Claim: Any person who furnishes services, labor, or materials pursuant to a real estate improvement contract. A real estate improvement contract is a contract that is made for the purpose of producing a change in the physical condition of land or of a structure. This includes: (1) altering the surface by excavating, filling, grading or changing a bank or flood plain of a stream, swamp, or body of water; (2) construction or installation on, above or below the surface of the land; (3) demolition, renovation, repair or removal of an existing structure or installation; (4) seeding, sodding or other landscaping operation; (5) surface or subsurface testing, boring or analyzing; and (6) 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.

How Claimed: A claimant may record a lien which shall be signed by the claimant and state: (a) real estate subject to the lien, with a description thereof sufficient for identification; (b) name of the person against whose interest in the real estate a lien is claimed; (c) name and address of the claimant; (d) name and address of the person with whom the claimant contracted; (e) 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) 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) time the last services or materials were furnished or if that time has not yet occurred, an estimate of the time.

Where Recorded: Register of Deeds of county where land is situated.

When to Be Recorded: 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 120 days after his or her final furnishing of services or materials, he or she has recorded a lien. The claimant must send a copy of a recorded lien to the contracting owner within 10 days of recording.

Notices: (a) *Notice of Commencement.* Must be signed by contracting owner and denominated notice of commencement. It must state the real estate being or intended to be improved or directly benefited, with a description sufficient for identification; 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 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. 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 is one year after recording. 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. 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.

(b) *Notice to Protected Owner.* 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: the name of the claimant and the address to which the owner or others may send communications to the claimant; the name and address of the person with whom the claimant contracted; the name of the owner against whom a lien is or may be claimed; a general description of the services or materials provided or to be provided; a description sufficient to identify the real estate against which the lien is or may be claimed; a statement that the claimant is entitled to record a lien; 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 the following statement in type no smaller than that used in providing the other information included in this notice:

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.

Duration of Lien: An enforceable lien continues to be enforceable for two years after recording of the lien. 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.

Filing Fee: \$10 for the first page and \$6 for each additional page.

Extent of Lien: 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.

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.

A lien for furnishing materials only arises if the materials are used with the intent that they be used in the course of construction or incorporated into the real estate improvement contract that is the basis of the lien. This intent must be shown by the contract of sale, the delivery order, delivery to the site by the claimant or at the claimant's direction, or by other evidence. The claimant must also prove either: (1) the materials furnished are incorporated into the improvement or consumed as normal wastage in construction operations; (2) the materials furnished were specially fabricated for incorporation into the improvements and are not resalable in the ordinary course of business, even if they weren't incorporated into the improvements; (3) the materials furnished were used in the construction of the improvement and are not remaining in the improvement; or (4) the materials furnished are tools, appliances or machinery used on the particular improvement. 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.

For a prime contractor, the lien is for the unpaid part of his or her contract price. Except as against a protected party contracting owner, the lien of a party other than the prime contractor is for the amount unpaid under that party's contract. For a party other than the prime contractor as against a protected party contracting owner, a lien is for the lesser of two amounts: (1) the amount unpaid under claimant's contract; or (2) 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.

Priority of Lien: Liens attaching at the same time have equal priority, and share the amount received at foreclosure in the same ratio as the ratio that the particular lien bears to the total of all liens attaching at the same time. Liens attaching at different times have priority in order of attachment. 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.

Lien for Improvement of Oil or Gas Well: 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 Nebraska Code Sections 57-801 and 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.

Statutory Citation: Nebraska Revised Statutes, Chapter 33, §§33-109; Chapter 52, §§52-125 to 52-159; Chapter 57, §§57-802.

NEVADA

Who May Claim: Every person who performs labor upon or furnishes material of the value of \$500 or more to be used in the construction, alteration or repair of any building or other structure is entitled to assert a claim of lien upon the property and buildings. In addition to those lien rights, all miners, laborers and others who work or perform labor in the amount of \$500 or more upon any mine or upon any shaft or tunnel or other excavation have a lien upon the mine. If a license is required to do the work, however, only a contractor licensed pursuant to Nevada Statute, an employee of such contractor or a person who furnishes material to be used in the project may have a lien as described above.

In any case where a mechanic's lien attaches to any of the foregoing buildings or structures it also attaches to the land on which the building or structure stands provided that, at the commencement of the work or the furnishing of the materials for the same, the land belonged to the person who caused the building or structure to be constructed, altered or repaired. If the owner's interest is less than a fee simple, the lien attaches to whatever interest the owner has.

Any person, who at the request of the owner of any lot in any incorporated town, grades, fills or improves it, or the street in front of or adjoining it, has a lien on the lot for the value of his labor and materials.

Notice of Right to Lien: The first notice required to perfect a lien is the Notice of Right to Lien. All lien claimants, except those who perform only labor or who contract directly with the owner, must deliver a Notice of Right to Lien. A lien claimant who is required to give a Notice of Right to Lien and who gives such notice has a right to lien for materials or equipment furnished or for work or services performed in the 31 days before the date of the Notice of Right to Lien. A subcontractor or equipment or material supplier must also deliver, in person or by certified mail, a copy of the Notice of Right to Lien to the prime contractor. The Notice of Right to Lien does not create a lien. Prior to execution of a construction contract, a contractor must inform the owner that he may receive notices of materials supplied or services performed.

Contents of Notice of Right to Lien: A Notice of Right to Lien must be substantially the following form:

NOTICE OF RIGHT TO LIEN

To:
(Owner's name and address)

The undersigned notifies you that he or she has supplied materials or equipment or performed work or services as follows:

(General description of materials, equipment, work or services) for improvement of property identified as (property description or street address) under contract with (general contractor or subcontractor). This is not a notice that the undersigned has not been or does not expect to be paid, but a notice required by law that the undersigned may, at a future date, record a notice of lien as provided by law against the property if the undersigned is not paid.

(Claimant)

15-Day Notice (Residential Project Only). On projects involving the construction, alteration or repair of multifamily or single-family residence, a claimant must deliver, in person or by certified mail, to the owner and the reputable prime contractor, if any, a 15-day Notice of Intent to Lien before recording a Notice of Lien. (NRS §108.226(6)). The 15-day Notice of Intent to Lien must incorporate substantially the same information required in a Notice of Lien and is a statutory prerequisite to filing a Notice of Lien on residential project. (*Id.*). The 15-day Notice of Intent to Lien must be served 15 days before the recording a Notice of Lien.

How Claimed: To perfect a lien, a lien claimant must record a Notice of Lien.

Where Filed: County Recorder of the county where the property or some part of it is situated.

When to Be Filed: Every person claiming a lien shall record his Notice of Lien not later than 90 days after the completion of the work or improvement; or 90 days after the last delivery of material; or 90 days after last performance of labor, whichever is last to expire. However, if owner files a notice of completion, the Notice of Lien must be recorded within 40 days after the owner's recording.

Service of Notice: In addition to the recording, a copy of the Notice of Lien must be served upon the owner within 30 days after recording by personal delivery, certified mail, or if there is no address for the owner by additional means set out in NRS §108.227. Subcontractors must also deliver a copy of the Notice of Lien to the prime contractor.

Duration of Lien: Foreclosure proceedings must be commenced within six months after filing; this requirement may be extended by an agreement to extend such time filed within six months.

Recording Fee: First page \$7; each additional page \$1.

Contents of Lien Claim: The Notice of Lien must be in substantially the following form:

Assessors Parcel Numbers

NOTICE OF LIEN

The undersigned claims a lien upon property described in this notice for work, materials, or equipment furnished for the

improvement of the property:

- (1) The total amount of the original contract is: \$ _____
- (2) The total amount of all charges and additions if any is: \$ _____
- (3) The total amount of all payments received to date is: \$ _____
- (4) The amount of the lien, after deducting all just credits and offsets is: \$ _____
- (5) The name of the owner, if known, of the property is: _____
- (6) The name of the person by whom the lien claimant was employed or to whom the lien claimant furnished work, materials or equipment is: _____
- (7) A brief statement of the terms of payment of the lien claimant's contract is: _____
- (8) A description of the property to be charged with the lien is: _____

(Print name of Lien Claimant)

By: _____

(Authorized Signature)

State of _____

ss.

County of _____

_____ (print name), being first duly sworn on oath according to law, deposes and says:

I have read the foregoing Notice of Lien, know the contents thereof and state that the same is true of my own knowledge, except those matters stated upon information and belief, and as to those matters, I believe them to be true.

(Authorized Signature of Lien Claimant)

[Notary Seal]

Priority of Lien: *Liens Against Property Rank in Priority As Between Themselves As Follows:* (1) labor; (2) material suppliers; (3) the subcontractors, architects, land surveyors, geologists and engineers if they have performed their services under contract with the general contractor; (4) the original contractors, architects, land surveyors, geologists and engineers if they have not performed their services under contract with a general contractor, and all other persons other than original contractors, subcontractors, architects, land surveyors, geologists and engineers;

Priorities As Between Mechanic's and Other Liens. Mechanic's liens are preferred to any lien, mortgage or other encumbrance which may have attached after the time the building, improvement or structure was commenced, or of which the lienholder had no notice and the notice was not recorded at the time when the building, improvement, or structure was commenced.

Notice of Completion: The owner may record a notice of completion and must deliver a copy in person or by certified mail to the general contractor.

Statutory Citation: Nevada Revised Statutes, Title 9, Chapter 108, §§108.221 to 108.246.

NEW HAMPSHIRE

Who May Claim: Any person performing labor, providing professional design services, or furnishing materials, to the amount of \$15 or more for erecting or repairing a house or other building or appurtenance, or for building any dam, canal, bridge, sluiceway or well, other than for a municipality. "Professional design services" is defined in the statute with the services being from licensed, certified or permitted persons. There is a special statute covering building, logging and work on railroad properties and brick work, by virtue of a contract with the owner. To be entitled to a lien you must either have a contract with the owner or an agent, contractor or subcontractor of the owner. Generally, this entitles general contractors, subcontractors, professional designers and material suppliers to lien rights and will thus limit liens by sub-sub-subcontractor liens (or third/lower tier subcontractors).

How Claimed: The person must give written notice to owner that they are claiming a lien on the property. This can be accomplished at two points in time: (1) before providing the labor, professional design services, or materials; and (2) after providing the labor/materials (note: providing notice after providing the labor, professional design services, or materials may reduce or eliminate the subcontractors lien right depending on the amount the owner has paid at the time of notice). The subcontractor or material supplier must also furnish the owner an accounting in writing of the labor, professional design services or materials provided every 30 days after the notice.

Notice of Lien: No notice of lien is required to the principal contractor, but is recommended. Subcontractor notices must be given to owner as addressed above and it is recommended that the notice be sent by certified mail, return receipt requested.

Duration of Lien: 120 days after services are performed, or materials furnished. The 120 days will start to run at the time the work required by the contract is complete (warranty work, punchlist items and items outside the scope of the contract will likely not enlarge the 120-day time period).

Filing Fee: No statutory provision.

Contents of Notice of Lien: Notice in writing that subcontractor shall claim a lien for labor and materials to be provided or for labor and materials that have been provided. While not required, it is recommended that subcontractors include the value and category of the materials furnished or services provided, or to be furnished and/or provided.

Extent of Lien: Covers land and buildings. Subcontractor's liens are limited to the sum due the contractor by the owner at the time notice of the lien is given to the owner. Equipment suppliers (i.e., equipment that is leased for use in the construction of the project, but not incorporated into the project or consumed during the project) may have difficulty enforcing liens in NH. Trial Courts in NH have treated equipment supplier liens differently, some dissolving the liens and others allowing them to remain when challenged.

Perfecting Lien Rights: The lien shall continue for 120 days after services are performed/materials supplied. A lawsuit and request for Judicial attachment must be filed to perfect the lien against owner. Once the Court allows the attachment, it must be recorded in the registry and served by sheriff. These steps must be completed all within the 120-day window, or the lien will be lost.

Priority of Lien: A perfected lien has priority over all claims except liens on account of taxes. Among lienholders, liens take precedence in the order of their perfecting except for liens acquired in performance of a contract existing when the attachment was made, or was necessary to preserve the property, in which case they share *pro rata*. A *bona fide* purchaser who records prior to attachment has priority; no priority over construction mortgage where funds have been properly disbursed.

Statutory Citation: New Hampshire Revised Statutes, Title XLI, Chapter 447, §§447:1 to 447:14.

NEW JERSEY

Who May Claim: Any contractor (including any licensed architect, engineer or land surveyor who is not a salaried employee of the contractor or the owner), subcontractor or supplier who provides work, services, material or equipment pursuant to a written contract, shall be entitled to a lien. No lien shall attach for materials that have been furnished or delivered subject to a security agreement which has been entered into pursuant to Chapter 9 of Title 12A of the New Jersey Statutes.

How Claimed: A lien claim shall be signed, acknowledged and verified by oath of the claimant or, in the case of a partnership or corporation, a partner or duly authorized officer thereof.

Where Filed: County Clerk of the county in which real property to be improved is situated.

When to Be Filed: No later than 90 days following the date the last work, services, material or equipment was provided for which payment is claimed except that on residential construction contracts where a Notice of Unpaid Balance is filed or lodged for record (delivered to Clerk but not yet recorded) within 60 days following the date of the last furnishing of work, services, material or equipment a lien may be filed or lodged for record pursuant to an arbitration award within 120 days of the last furnishing of work, services, material or equipment. Warranty or other service calls or work, materials or equipment provided after completion or termination of a claimant's contract shall not be used to determine the last day that work, services, material or equipment was provided. Additional statutory requirements are required for residential construction contracts.

Contents of Lien Claim: There is a statutory form provided.

Service of Copy of Lien Claim: Within 10 days following the lodging for record or filing of a lien claim, the claimant shall, by personal service or registered or certified mail, return receipt requested, postage prepaid, serve or mail a copy of the lien claim as prescribed in the Construction Lien Law to the last known business address or place of residence of the owner and, if any, of the contractor and the subcontractor, against whom the claim is asserted. An additional service must be made by regular mail at the same time.

Duration of Lien: Action to enforce the lien must be brought within one year of the date of the last provision of work, services, material or equipment, payment for which the lien claim was filed; or within 30 days following receipt of written notice, by personal service or certified mail, return receipt requested, from the owner, community association, contractor or subcontractor requiring the claimant to commence an action to establish the lien claim.

Filing Fee: Check with relevant county clerk. The statutory fee is now \$4.50 for each lien claim and notice of unpaid balance, but fees vary county to county nonetheless.

Extent of Lien: The lien extends to the value of the work or services performed, or materials or equipment furnished in accordance with the contract price. The lien shall attach to the interest of the owner in the real property. Liens for the following improvements shall attach to real property only in the manner described: (a) for improvements involving a dock, wharf, pier, bulkhead, return, jetty, piling, groin, boardwalk or pipeline above, on or below lands under waters within the state's jurisdiction, the lien shall be on the improvements together with the contracting owner's interest in the lots of land in front of or upon which the improvements are constructed and any interest of the contracting owner of the land in the land or waters in front of the land; (b) for improvements involving removal of a building or structure or part of a building or structure from its *situs* and its relocation on other land, the lien shall be on the contracting owner's interest in the improved real property on which the building or structure has been relocated; (c) for improvements involving excavation, drainage, dredging, landfill, irrigation work, construction of banks, making of channels, grading, filling, landscaping or the planting of any shrubs, trees or other nursery products, the lien shall be on the land to which the improvements are made, and shall

not be upon the adjoining lands directly or indirectly benefited from the improvements. The owner's liability is reduced by all payments made on the prime contract prior to the receipt of the construction lien.

Priority of Lien: In the event of the creation, conveyance, lease or mortgage of an estate or interest in real property to which improvements have been made that are subject to the lien provision of the Construction Lien Law, a lien claim validly filed shall have priority over any prior creation, conveyance, lease or mortgage of an estate or interest in real property, only if the claimant has filed with the county clerk prior to that creation, conveyance, lease or mortgage, a Notice of Unpaid Balance and Right to File Lien (statutory form provided). No lien claim shall attach to the estate or interest acquired by a *bona fide* purchaser first recorded or lodged for record; nor shall a lien claim enjoy priority over any mortgage, judgment or other lien first recorded, lodged for record, filed or docketed. All claims established by judgment shall be ordered *pro rata*.

Residential Construction Contracts: The lodging for record or filing of a lien for work, services, materials or equipment furnished pursuant to a residential construction contract (defined as any written contract between a buyer and a seller for the purchase of a one- or two-family dwelling or any portion of the dwelling, which shall include residential units in condominiums, any residential unit in a housing cooperative, any residential unit contained in a fee simple townhouse development, any residential unit contained in a horizontal property regime and any residential unit contained in a planned unit development) is subject to additional statutory requirements.

Statutory Citation: New Jersey Permanent Statutes, Title 2A, §§44A-1 to 45-5.

NEW MEXICO

Who May Claim: Pursuant to NMSA §48-2-2, every person (a company is considered a person) performing labor (including services of a surveyor) upon, providing or hauling equipment, tools or machinery, or furnishing materials for 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, or who performs labor in any mining claim, for the specific contract or agreed upon charge for the foregoing, has a lien upon the same for the work or labor done or materials furnished by each respectively, whether done or furnished at the instance of the owner of the building or improvement or his agent, (every contractor, subcontractor, architect, builder or other person having charge in whole or in part shall be held to be the agent of the owner). If the contract for supply of labor or materials is equal to or greater than \$5,000, then a lien claimant must also serve a preliminary notice. See New Mexico Statutes Annotated (NMSA) §§48-2-2.1, 48-2A-5. A contractor may not file a mechanic's lien or file suit for unpaid construction contract claims unless licensed under the construction industries licensing law.

How Claimed: By filing verified lien claim.

Where Recorded: County clerk of the county where the improved property or some part of the improved property is situated. Liens filed in a county where no portion of the improved property is situated, are of no legal effect, nor do they "toll" or meet the time requirements for recording the lien claim. Depending on the identity of the lien claimant, the claim of lien should be mailed promptly by certified mail or personally served on the improved property's owner, agent or trustee, along with the general/prime contractor, lender/surety, and customer of materials supplier. (NMSA §48-2-8).

When to Be Filed: *For private commercial projects:* An original (prime) contractor is given 120 consecutive days after the substantial completion of the entire contract to file a notarized claim of lien. (NMSA §48-2-6). Subcontractors, suppliers and every other person must file his notice of lien within 90 consecutive days after the completion or "substantial completion" of any building or the completion or "substantial completion" of any alteration or repair thereof, or the performance of any labor in a mining claim. (NMSA §48-2-6). *For existing residential projects:* An original (prime) contractor is given 120 consecutive days after the "substantial completion" of the entire contract to file a notarized claim of lien. (NMSA §48-2-6). Subcontractors, suppliers and every other person must file his notice of lien within 90 consecutive days after the completion or "substantial completion" of the residence or "substantial completion" of any alteration or repair thereof. (NMSA §48-2-6). *For new residential projects:* An original (prime) contractor is given 120 consecutive days after the "substantial completion" of the entire contract to file a notarized claim of lien. (NMSA §48-2-6). Subcontractors, suppliers and every other person must file his notice of lien within 90 consecutive days after the completion or "substantial completion" of any residence or the "substantial completion" of any alteration or repair thereof. (NMSA §48-2-6).

Payment by the owner or his successor-in-interest to any person entitled to payment of any and all amounts due and owing for any labor and/or materials furnished, or other actions, the performance of which could give rise to a lien to be performed *upon a residential site*, shall extinguish all such lien rights unless *prior to payment* any person who is entitled to such lien has filed with the county recorder his lien as stated above. Pursuant to NMSA §§48-2-2.1 and 48-2A-5, persons (subcontractors or materials suppliers) intending to claim a mechanic's lien on private commercial projects must provide service of notice of right to lien to the owner or to the original contractor by certified mail, return receipt, or fax with acknowledgement, or personal delivery (NMSA §48-2-2.1(B)), within 60 days of first furnishing equipment, labor or materials; notice of right to lien is not required for claims of \$5,000 or less or for residences of four units or less (NMSA §48-2-2.1(A) and (B)). Persons claiming a right to lien can elect to give the notice later, but the effective date of the lien is changed to 30 days prior to the date notice is given (NMSA §48-2-2.1(E)). For existing residential projects or new residential projects, both types of more than four units, persons (subcontractors or materials suppliers) must provide service

of notice of right to lien to the owner or to the original contractor by certified mail, return receipt, or fax with acknowledgement, or personal delivery (NMSA §48-2-1(B)), within 20 days of first furnishing equipment, labor or materials. Notice must contain the description of the property, name, address and phone number of the claimant and name and address of the person with whom the lien claimant contracted.

Duration of Lien: No lien remains valid for more than two years following the date of recording of the claim of lien unless proceedings to foreclose and enforce the claim of lien have been commenced in a court of competent jurisdiction within that time. (NMSA §48-2-10).

Filing Fee: \$1.75. Where instrument contains more than 700 words in description of property, an additional charge of 25 cents is made for each 100 words. If instrument is photocopied, fee is \$5 for first page and \$2 for each additional page.

Contents of Notice: (1) Statement of monetary demand after deducting all just credits and offsets; (2) name of owner or reputed owner, if known; (3) names of persons by whom claimant was employed or to whom he furnished materials; (4) statement of terms, time given for performance and condition of contract; (5) description of property to be charged with the lien sufficient for identification; and (6) claim must be verified by oath of claimant or of some other person on his behalf. (NMSA §48-2-6).

Extent of Lien: Lien extends to building, structure or improvement and the land on which it is situated, together with a convenient vertical air space about the same or so much as may be required for the convenient use and occupation of the same, and to the extent of the right, title and interest of the person who caused such building, structure or improvement to be erected, repaired, etc. Liability is limited to the amount contracted to be paid to the original contractor. (NMSA §48-2-1).

Contractor Liable for Liens of Subcontractor: The contractor shall be entitled to recover upon a lien filed by him only such amount as is due pursuant to the terms of the contract, less the amount of claims of subcontractors who have filed liens. (NMSA §48-2-12).

Upon notice of the pendency of any action on the lien of a subcontractor, the owner may withhold the amount currently due the prime contractor. If a judgment is obtained against the owner, including costs, such total sum may be charged against the amount due the prime contractor, or the prime contractor may be sued for difference, if he has already been paid. (NMSA §48-2-12).

Priority of Lien: All timely-recorded mechanic's liens are considered filed at the same time, i.e., the first day of commencement of construction. A mechanic's lien takes preference (priority) over any non-mechanic's lien, mortgage or other encumbrance which attaches subsequent to the time when the building, improvement or structure was commenced, work done or materials were commenced to be furnished. A timely-recorded mechanic's lien also takes priority over any lien, mortgage or other encumbrance of which the lien holder has no notice, and in the case of mortgages and other non-mechanic's lien encumbrances, such as non-tax judgment liens, which was unrecorded at the time the building, improvement or structure was commenced, work done or materials were commenced to be furnished. (NMSA §§48-2-5.A, 48-2-11).

Where different liens are asserted against the same property, the rank of preference is as follows: (1) all persons other than contractor or subcontractor; (2) subcontractor; and (3) original contractors. (NMSA §48-2-13).

Lien for Improvement of Oil or Gas Well: Every person who performs labor or furnishes or hauls material, equipment, tools, etc., in digging, drilling, completing, maintaining, operating and repairing oil or gas well, or pipeline, or equipment in connection therewith, shall have a lien upon the land, leasehold, pipeline, buildings and equipment thereon, and the materials, tools, etc., so furnished, and the oil and gas well. Lien does not extend to the underlying fee or royalty interest unless expressly provided by contract. Verified claim must be filed by original contractor within 210 days, and by other lien claimant within 180 days after furnishing last material or last labor with the Clerk of the county in which property is located. Proceedings to enforce lien must be instituted within one year from date of filing.

Statutory Citation: New Mexico Territorial Laws, Chapter 48, §§48-2-1 to 48-2-17; 48-2A-1 to 48-2A-12.

Note: For New Mexico Stop Notices *see* Appendix 44 "Construction Bonds on Public Projects."

NEW YORK

Who May Claim: Contractor, subcontractor, laborer, trust fund to which benefits and wage supplements are due or payable for the benefit of such laborers, materialman, landscape gardener, nurseryman or person or corporation selling fruit or ornamental trees, roses, shrubbery, vines and small fruit, who performs labor or furnishes materials for the improvement of real property, with the consent, or at the request, of the owner thereof, or of his agent, contractor or subcontractor. Where the contract for an improvement is made with a husband or wife and the property belongs to the other or both, the husband or wife contracting shall also be presumed to be the agent of the other, unless such other having knowledge of the improvement shall, within 10 days after learning of the contract, give the contractor written notice of his or her refusal to consent to the improvement. Materials actually manufactured for but not delivered to the real property shall also be deemed to be materials furnished. Lien also for person who performs labor for a railroad corporation for value of such labor upon the railroad track, rolling stock and appurtenances and upon the land upon which they are situated.

The term "improvement" includes the demolition, erection, alteration or repair of any structure upon, connected with, or beneath the surface of any real property and any work done upon such property or materials furnished for its permanent improvement, including work done or materials furnished in equipping any such structure with chandeliers, brackets or

other fixtures or apparatus for supplying gas or electric light; the drawing by an architect or engineer or surveyor of plans or specifications or survey which are prepared for or used in connection with such improvement; the value of materials actually manufactured for but not delivered to the real property; the reasonable rental value for the period of actual use of machinery, tools and equipment and the value of compressed gases furnished for welding or cutting; the value of fuel and lubricants consumed by machinery operating on the improvement, or by motor vehicles owned, operated or controlled by the owner, or a contractor or subcontractor while engaged exclusively in the transportation of materials to or from the improvement for the purposes thereof; and the performance of real estate brokerage services in obtaining a lessee for a term of more than three years where property not to be used for residential purposes.

How Claimed: By filing notice of lien.

Where Filed: County Clerk of county where property is situated. Where property is situated in more than one county, file in each county where part of property is situated. If the Clerk maintains a block index, the notice filed shall contain the number of every block on the land map of the county which is affected. Notice of lien on railroad property filed in any county where railroad is situated.

When to Be Filed: At any time during progress of work and furnishing of materials, or within eight months after completion of contract, or final performance of work, or final furnishing of materials, dating from last item of work or materials furnished (four months for single-family dwelling) except where lien by real estate broker, notice may be filed only after performance of brokerage services. Pursuant to the newly enacted "Lien Retainage Amendment" where the Notice of Lien is for retainage monies due, a subcontractor may file a Notice of Lien within 90 days after the retainage was due to be released, even if said period is after the eight-month limitation period.

Service of Copy of Notice: A copy of the notice must be served or left at last known place of residence in city or town where property is situated or sent by certified mail either simultaneously or within 30 days after filing the notice of lien to the owner, contractor or subcontractor. Affidavit of service of the notice of lien must be filed in the County Clerk's Office in which the property is situated within 35 days after the notice of lien is filed. Failure to do so shall terminate the notice as a lien. Any lienor who fails to serve such copy is liable for the attorneys' fees, costs and expenses incurred in obtaining the copy.

Duration of Lien: One year after notice has been filed, unless within that time an action is commenced to foreclose the lien and notice of the pendency of the action is filed in the county in which the lien was filed. Before a mechanic's lien expires in New York for non-prosecution, a one-year extension may be obtained by a filing with the County Clerk. Additional extensions may then be obtained by means of a court order, and, if the property is a single-family dwelling, a court order is required in all instances.

Filing Fee: \$35 for filing or recording a notice of pendency of action or a notice of attachment within the City of New York. Fee varies in all counties outside the City of New York; must confirm with county clerk in designated county.

Contents of Notice of Lien: (1) Name and residence of lienor; and if lienor is a partnership or corporation, business address of such firm or corporation, names of partners and principal place of business, and if a foreign corporation, its principal place of business within the state; (2) name and address of lienor's attorney, if any; (3) name of owner of property and owner's interest therein; (4) name of person by whom lienor was employed, or to whom he furnished or is to furnish materials, or if lienor is a contractor or subcontractor, person with whom contract was made; (5) labor performed or materials furnished and agreed price or value thereof, or materials actually manufactured for but not delivered to the real property and the agreed price or value thereof; (6) amount unpaid to lienor for such labor or materials; (7) time when first and last items of work were performed and materials were furnished; (8) property subject to the lien, with a description and, if in a city or village, its location by street and number, if known; and (9) verification by lienor or his agent to effect that statements therein contained are true to his knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters on which he believes them to be true.

Extent of Lien: Owner's right, title or interest in the real property and improvements existing at or after the time of filing notice of lien. Extends to an interest assigned for the benefit of creditors where the assignment was within 30 days prior to the filing. Lien cannot exceed amount earned and unpaid on contract at time of filing notice or any sum subsequently earned thereon. Owner's liability may not exceed, by reason of all liens filed, a sum greater than the value or agreed price of the labor and materials remaining unpaid at the time of filing notices.

Insurance Proceeds Liable for Demands: In the event that an improvement on which a lien is claimed is destroyed by fire or other casualty and insurance proceeds paid to the owner for such loss or casualty, the owner is entitled to reimbursement for premiums paid, after which the balance is subject to the lien as realty would have been. If insurance is payable to contractor after he reimburses himself for premiums paid, contractor must pay balance to laborers and materialmen to whom he is liable as if payments made to him under the contract.

Priority of Lien: (1) A lien for material furnished or labor performed in the improvement of real property has priority over a conveyance, mortgage, judgment or other claim against such property not recorded, docketed or filed at the time of the filing of the notice of lien; over advances made upon any mortgage or other encumbrance thereon after such filing; and over the claim of a creditor who has not furnished materials or performed labor upon such property, if such property has been assigned by the owner by a general assignment for the benefit of creditors, within 30 days before the filing of either of such notices; and also over an attachment issued or a money judgment recovered upon a claim, which, in whole or in part, was not for material furnished, labor performed or monies advanced for the improvement of such real property; and over

any claim or lien acquired in any proceedings upon such judgment. Such liens also have priority over advances made upon a contract by an owner for an improvement of real property which contains an option of purchase to the contractor, his successor or assigns to purchase the property, if such advances were made after the time when the labor began or the first item of material was furnished, as stated in the notice of lien. If several buildings are erected, demolished, altered or repaired, or several pieces or parcels of real property are improved, under one contract, and there are conflicting liens thereon, each lienor has priority upon the particular building or premises where his labor is performed or his materials are used. Persons have no priority on account of the time of filing their respective notices of liens, but all liens are on a parity except that laborers, subcontractors and materialmen are preferred over contractors.

(2) When a building loan mortgage is delivered and recorded, the lien has priority over advances made on the building loan mortgage after the filing of the notice of lien; but such building loan mortgage, whenever recorded, to the extent of advances made before the filing of such notice of lien, has priority over the lien, provided it or the building loan contract contains a covenant by the mortgagee to receive and hold advances thereunder as trust funds for payment of the costs of the improvement, and provided the building loan contract is filed. No mortgage recorded subsequent to the commencement of the improvement and before the expiration of four months after the completion thereof shall have priority over liens thereafter filed unless it contains such covenant.

(3) Every such building loan mortgage and every mortgage recorded subsequent to the commencement of the improvement and before the expiration of four months after the completion of the improvement shall contain a similar covenant by the mortgagor that he will receive the advances secured thereby as a trust fund to be applied first for the purpose of paying the cost of improvement, and that he will apply the same first to the payment of the cost of improvement before using any part of the total of the same for any other purpose, provided, however, that if the party executing the building loan contract is not the owner of the fee but is the party to whom such advances are to be made, a building loan contract executed and filed pursuant to this chapter shall contain the said covenant by such party executing such building loan contract, in place of the covenant by the mortgagor in the building loan mortgage. Nothing in the statute is to be considered as imposing upon the lender any obligation to see to the proper application of such advances by the owner.

(4) No instrument of conveyance recorded subsequent to the commencement of the improvement, and before the expiration of four months after the completion thereof, is valid as against liens filed within four months from the recording of such conveyance, unless the instrument contains a covenant by the grantor that he will receive the consideration for such conveyance as a trust fund to be applied first for the purpose of paying the cost of the improvement and that he will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose. Nothing in the statute is to be construed as imposing upon the grantee any obligation to see to the proper application of such consideration by the grantor. Does not apply to a deed given by a referee or other person appointed by the court for the sole purpose of selling real property, or to the consideration received by a grantor who, pursuant to a written agreement entered into and duly recorded prior to the commencement of the improvement, conveys to the person making such improvement, the land upon which such improvement is made. However, such a conveyance is subject to liens filed prior thereto. Section does not apply to mortgages taken by Home Owners Loan Corp.

Waiver of Lien: Notwithstanding the provisions of any other law, any contract, agreement, or understanding whereby the right to file or enforce any lien is waived, shall be void as against public policy and wholly unenforceable. This shall not preclude a requirement for a written waiver of the right to file a mechanic's lien executed and delivered by a contractor, subcontractor, material supplier or laborer simultaneously with or after payment for the labor performed or the materials furnished has been made to such contractor, subcontractor, materialman or laborer. Nor shall this section be applicable to a written agreement to subordinate, release or satisfy all or part of such a lien made after a notice of lien has been filed.

Assignments of Contracts and Orders to Be Filed: Assignments of contracts for the improvement of real property; orders drawn by contractors upon owners of real property for the payment of money; orders drawn by subcontractors upon contractors or subcontractors for such payments; orders drawn by an owner upon the maker of a building loan; and assignments of money due and to grow due on a building loan contract, must be filed within 10 days after the date of such assignment of contract, or such assignment of moneys or such order in the office of the County Clerk of the county where the realty is situated. Unfiled assignments and orders are absolutely void as against subsequent assignees in good faith and for a valuable consideration whose assignments and orders are first duly recorded.

Lien for Improvement of Oil or Gas Well: Under lien law real property includes all oil or gas wells and structures and fixtures connected therewith, and any lease of oil lands or other right to operate for the production of oil or gas upon such lands.

Statutory Citation: New York Lien Law, §§3 to 39-c, Article 2.

NORTH CAROLINA

Who May Claim: Any person who performs or furnishes labor or furnishes materials, professional design or surveying services pursuant to a contract, either express or implied, or any person who furnishes rental equipment to or with the owner of real property for the making of improvement thereon. A Notice of Lien may also be claimed by a subcontractor on funds owed the contractor (*see* paragraph 6). The subcontractor may enforce the lien of the contractor against the owner of real property to the extent of his claim. Waiver of right to file or claim a lien is against public policy and is unenforceable.

Where Filed: Office of the Clerk of the Superior Court in each county wherein the real property subject to the claim is located. A subcontractor perfects a lien upon the giving of notice in writing to obligor; effective upon receipt (see paragraph 6). A copy of the notice must be served upon the record owner and if applicable upon the contractor through which subrogation is claimed.

When Notice Filed: Notice of lien shall be filed at any time after maturity of the obligation but not later than 120 days after the last furnishing of labor or materials by persons claiming them.

Contents of Claim of Lien on Real Property: The contents of a lien claim must be in substantially the following form: (1) name and address of the person claiming the lien; (2) name and address of the record owner of the real property claimed to be subject to the lien at the time the claim of lien is filed, and if the claim is asserted and where applicable, the name of the contractor through which subrogation is being asserted; (3) description of the real property upon which the lien is claimed (street address, tax lot and block number, reference to recorded instrument, or any other description of real property is sufficient, whether or not it is specific, if it reasonably identifies what is described); (4) name and address of the person with whom the claimant contracted for the furnishing of labor or materials; (5) date upon which labor or materials were first furnished upon said property by the claimant; (5a) date upon which labor or materials were last furnished upon said property by the claimant; and (6) general description of the labor performed or materials furnished and the amount claimed therefor.

Filing Fee: \$4 for the first page and 25 cents per page for each additional page.

Notice to Obligor: Subcontractors rights are by subrogation of the claims, enforced by a Notice to the party with whom the claimant contracted. Notice of lien must be sent by subcontractor for labor or materials to the obligor and sending of such notice perfects the lien. Upon receipt of such notice, the obligor is under a duty to retain the funds subject to the lien. If, after receipt of notice, the obligor makes any payment to a contractor or subcontractor against whom the lien is claimed, the lien shall continue on the funds in the hands of the contractor or subcontractor who receives the payment and in addition the obligor shall be personally liable. A subcontractor can enforce any contractor's lien against owner. Upon the filing of the notice, a claim of lien and commencement of an action by subcontractor, no action of the contractor shall be effective to prejudice the rights of the subcontractor without his written consent.

Contents of Notice to Obligor: The notice must contain the following: (1) the name and address of person claiming the lien; (2) a general description of the real property improved; (3) the name and address of the person with whom the lien claimant contracted to improve real property; (4) the name and address of each person against or through whom subrogation rights are claimed (5) a general description of the contract and the person against whose interest the lien is claimed; and (6) the amount claimed by the lien claimant under his contract. A statutory form is provided for subcontractors giving notice of claim of lien.

Extent of Lien: Lien extends to the improvement and to the lot or tract on which improvement is situated and to extent of interest of owner. Lien secures payment of all debts owing for labor done or material furnished pursuant to the contract. A subcontractor's lien extends to the funds owed its contractor or to the person with whom it dealt.

Duration of Lien: A timely claim of lien must be perfected by filing a civil action to enforce the lien within 180 days after the last furnishing of labor or materials at the site of improvement. Either the civil action or a *lis pendens* referencing the civil action must be filed in the county where the lien is filed. An action to enforce the lien may be instituted in any county in which the lien is filed. Such action may not be commenced later than 180 days after the last furnishing of labor or materials at the site of the improvement.

Priority of Lien: Liens of general contractors are entitled to priority in accordance with time of the filing of notice. Exemptions of personal and real property shall not be construed as to prevent a laborer's lien for work done and performed for the person claiming such exemption, or a mechanic's lien for work done on the premises. Subcontractor's liens perfected by notice to the obligor have priority over all interest including garnishment, attachment, levy and judgment. If the amount due the contractor by the owner is not sufficient to pay in full the laborer, mechanic or artisan for his labor and the person furnishing materials, owner must distribute amount *pro rata* among several claimants.

Subcontractor/Supplier's Notice of Claim of Lien Upon Funds: G.S. 44A-18 grants to all subcontractors/suppliers a lien upon the funds earned by them "as a result of having furnished labor, materials or rental equipment at the site of the improvement under the contract to improve real property, including interest at the legal rate provided in G.S. 24-5 whether or not such amounts are due and whether or not performance or delivery is complete." In other words, a subcontractor/supplier of any tier who furnishes labor and/or materials for the improvement of real property is entitled to a lien upon the funds owed the person with whom he has contracted, provided such funds arise out of the improvement of real property on or to which he has furnished labor, materials and/or rental equipment. In addition, one can assert by subrogation a Notice of Claim of Lien Upon Funds owed by another upstream obligor (subcontractor or contractor) provided the "payment chain" is not broken (i.e., the money is still owed).

A Notice of Claim of Lien Upon Funds by a first, second or third tier subcontractor/supplier is perfected by timely serving upon the obligor(s) (owner, contractor or subcontractor in any tier who owes money to another) a Notice of Claim of Lien Upon Funds By First, Second, or Third Tier Subcontractor/Supplier in substantially the form set forth in G.S. 44A-19(b). A lien on funds by a subcontractor/supplier more remote than the third tier is perfected by timely serving a Notice of Claim of Lien Upon Funds By Subcontractor/Supplier More Remote than the Third Tier in substantially the form set forth in G.S. 44A-19(c). In contrast to a Claim of Lien on Real Property, there is no requirement to file at the courthouse either a

Notice of Claim of Lien By First, Second or Third Tier Subcontractor/Supplier or a Notice of Claim of Lien By Subcontractor/Supplier More Remote than the Third Tier. It simply must be served on the owner and others involved in the lien claimant's "Relationship Chain."

Additionally, there is no statutory time limit for serving a Notice of Claim of Lien Upon Funds; obviously, if the funds have been paid before the Notice of Claim of Lien Upon Funds is served, then there will be no funds to which the lien can attach.

Subcontractor/Supplier's Claim of Lien on Real Property: A first tier subcontractor may enforce a claim of lien on real property by filing the claim of lien described above.

A second or third tier subcontractor may enforce a claim of lien on real property by filing a claim of lien described above, subject to notice requirements: If an owner, within 30 days of a permit being issued or a contract being awarded (whichever is later) posts and files a Notice of Contract in form described in G.S. 44A-23(b)(2), then the second or third tier subcontractor must give Notice of Subcontract in the form described in G.S. 44A-23(b)(3).

Notice to Lien Agent: On construction projects in excess of \$30,000 (excepting existing residences), the owner must designate a "lien agent" and must provide the identity of the lien agent within seven days of any request by a potential lien claimant (all contractors and subcontractors must identify the lien agent within three days of entering a contract with any lower tier subcontractor). Any potential lien claimant must provide notice—substantially in the form below—within 15 days of first furnishing labor or materials.

NOTICE TO LIEN AGENT

(1) Potential lien claimant's name, mailing address, telephone number, fax number (if available) and electronic mailing address (if available);

(2) Name of the party with whom the potential lien claimant has contracted to improve the real property described below:

(3) A description of the real property sufficient to identify the real property, such as the name of the project, if applicable, the physical address as shown on the building permit or notice received from the owner;

(4) I give notice of my right subsequently to pursue a claim of lien for improvements to the real property described in this notice.

Dated: _____

Potential Lien Claimant

Following such notice, the existing provisions for perfecting a lien claim must be followed.

Statutory Citation: North Carolina General Statutes, Chapter 44A, Article 2, Part 1, §§44A-7 to 44A-23.

NORTH DAKOTA

Who May Claim: Any person who improves real estate by the contribution of labor, skill or materials, whether under contract with the owner of such real estate, or at the instance of any agent, trustee, contractor or subcontractor of such owner, shall have a lien upon the improvement, and upon the land on which it is situated or to which it may be removed, for the price or value of such contribution. "Improve" includes performing architectural services, construction staking, engineering and surveying, mapping and soil testing services (§§35-21-01 and 35-21-02). Liens also exist upon railroad property (§35-27-18) and they may also be filed by miners. (§35-15-07).

How Claimed: A contractor must keep an itemized account thereof separate and apart from all other items of account against the purchaser (§35-27-09); serve a written notice by registered or certified mail upon owner demanding payment of such account and notify him that unless payment is made within 10 days of mailing a lien will be perfected; and record a verified notice of intention to claim a lien (§35-27-02). The notice of intention to claim lien shall contain the following: (1) name of the person in possession of the land; (2) description of the property to be charged with the lien; (3) date of the contract; and (4) that a construction lien against the building, improvement, or premises will be perfected according to law unless the account has been paid. (§35-27-13).

A claimant may serve upon the owner, at any time, a notice of his claim. The owner, within 15 days after completion of the contract, may demand the claimant to furnish an itemized and verified account, the amount due and his name and address (§35-27-09). The demand must contain a provision informing the person holding the lien that if suit is not commenced within 30 days, the person holding the lien forfeits the lien. (§35-27-25).

Notice of Intention to Claim a Lien: Written notice that a lien will be claimed must be given to the owner of the real estate by certified mail at least 10 days before the recording of the "construction" lien. (§35-27-02).

Where Filed: Recorder of the County in county where land, building or improvement is situated. (§35-27-13).

When to Be Filed: Every person desiring to perfect his lien shall file with the Recorder of the County in which the property is situated, within 90 days after all the contribution is done (§35-27-13), or if the property is used in the exploration for or the production of oil and gas, within six months, after all his contribution is done a construction lien describing the property and stating the amount due (§35-13-02). Failure to file within 90 days shall not defeat lien except as to purchasers or encumbrancers in good faith and for value whose rights accrue after the 90 days and before any claim for lien is filed, and as against the owner to the extent of the amount paid to a contractor after the expiration of the 90 days and before filing of the lien. (§35-27-14).

Duration of Lien: Suit to enforce lien must be commenced within 30 days after written demand on the owner, his agent or contractor or lien is forfeited (§35-27-25). In any event, action must be instituted within three years after the date of recording of the verified notice of intention to claim a construction lien. (§35-27-25). Notice of suit must be given to the owner before suit is filed; 20-days notice is sent by mail, 10 days if served personally. (§35-27-24).

Filing Fee: The fee for recording the notice of intention to claim a lien is \$10 for the first page and \$3 for each additional page. If only one page is filed there needs to be a 3” space on the bottom for recording information. Also if there are more than 5 sections or pieces of property add \$1 for each additional section or piece. Margins for the documents are 1” all around.

Extent of Lien: The lien attaches from the time the first item of material or labor is furnished (§35-27-03). It covers the agreed contract price, otherwise, the reasonable value of the work done (§35-27-03). The entire land upon which the building or improvement situated is subject to the lien to the extent of the landowner’s right, title and interest (§35-27-19). When the interest owned in land by the owner of the building, or other improvement for which the lien is claimed is only a leasehold interest, the forfeiture of the lease will not impair the lien so far as it applies to the buildings or improvements, but the improvements may be sold to satisfy the lien and may be removed by the purchaser within 30 days after the sale. (§35-27-21).

Priority of Lien: Construction liens are preferred to any mortgage or other encumbrance not then of record, unless the lien holder had actual notice thereof. Construction liens shall have priority in the following order: (1) for manual labor; (2) for materials; (3) subcontractors other than manual laborers; and (4) original contractors. Liens for manual labor filed within 90-day period share *pro rata*; those filed thereafter shall have priority in order of filing; liens for materials have priority in order of the filing of notices of intention. (§35-27-22).

Improvements Not Authorized by Owner: Any person who has not authorized the same may protect his interest from such liens by serving upon person doing work, etc., within five days after he has knowledge thereof, a written notice that the improvement is not being made at his instance, or by posting like notice and keeping the same posted, in a conspicuous place on the premises. As against a lessor, no lien is given for repairs made by or at the instance of his lessee, unless the lessor shall have actual or constructive notice thereof and not object thereto. (§35-27-07).

Lien for Improvement of Oil or Gas Well: Such liens are created, perfected and enforced in a similar manner as construction liens, except that filing must be made within six months of performing labor or furnishing materials. (§35-24-11).

Statutory Citation: North Dakota Century Code, Title 35, Chapter 35-15, §§35-15-1 to 35-15-07; Chapter 35-24, §§35-24-01 to 35-24-23; Chapter 35-27, §§35-27-01 to 35-27-28.

OHIO

Who May Claim: Every person who performs work or labor upon or furnishes material in furtherance of any improvement undertaken by virtue of a contract, express or implied, with the owner, part owner or lessee of any interest in real estate, or his authorized agent, and every person who as a subcontractor, laborer or materialman, performs any labor or work or furnishes any material to an original contractor or any subcontractor, in carrying forward, performing or completing any improvement, has a lien to secure the payment therefore upon the improvement and all interests that the owner, part owner, or lessee may have or subsequently acquire in the land or leasehold to which the improvement was made or removed.

Notice of Commencement: Contents of Notice of Commencement (Private Projects). A Notice of Commencement for private projects shall contain the following information: (1) legal description of the real property on which the improvement is to be made; (2) brief description of the improvement to be performed containing sufficient specificity to permit lien claimants to identify the improvement; (3) name, address and capacity of the owner, part owner or lessee of the real property contracting for the improvement; (4) name and address of the fee owner of the real property, if the person contracting for the improvement is a land contract vendee or lessee; (5) name and address of the owner’s, part owner’s or lessee’s designee, if any; (6) name and address of all original contractors; (7) date the owner, part owner or lessee first executed a contract with an original contractor for the improvement; (8) name and address of all lending institutions which provide financing for the improvements, if any; (9) name and address of all sureties on any bond which guarantee payment of the original contractor’s obligations under the contract for the improvement, if any; (10) name and address of the person preparing the notice; (11) affidavit of the owner, part owner or lessee or the agent of the owner, part owner or lessee which verifies the notice; and (12) the following statement: “To Lien Claimants and Subsequent Purchasers: Take notice that labor or work is about to begin on or materials are about to be furnished for an improvement to the real property described in this instrument. A person having a mechanic’s lien may preserve the lien by providing a notice of furnishing to the above-named designee and his original contractor, if any, and by timely recording an affidavit pursuant to Section 1311.06 of Revised Code. A copy of this notice may be obtained upon making a written request by certified mail to the above-named owner, part owner, lessee, designee or person with whom you have contracted.”

Notice of Commencement (Commercial Projects). On projects, other than one- or two-family dwellings, in connection with a residential unit of condominium property, where the property is intended to be used as a personal residence by the owner, part owner, or lessee, or public projects (collectively referred to as “commercial projects”), prior to the performance of any labor or work or the furnishing of any materials for an improvement on real property which may give rise to a mechanic’s lien, the owner, part owner or lessee who contracts for the labor, work, or materials shall record in the office of the county recorder where the project is located a Notice of Commencement.

Notice of Commencement (Residential Projects). On projects involving one- or two-family dwellings, in connection with a residential unit of condominium property, where the property is intended to be used as a personal residence by the owner, part owner, or lessee, (collectively referred to as “residential projects”) there is no requirement for the owner to record a Notice of Commencement, and such a recording has no effect on the mechanic’s lien process.

Contents of Notice of Commencement (Public Projects). A Notice of Commencement for public projects shall contain the following information: (1) name, location, and a number, if any, used by the Public Authority to identify the public improvement sufficient to permit the public improvement to be identified; (2) name and address of the Public Authority contracting for the improvement; (3) name, address, and trade of all principal contractors; (4) the date the Public Authority first executed a contract with the principal contractor for the public improvement; (5) names and addresses of all sureties for all principal contractors; and (6) name and address of the representative of the Public Authority upon whom service shall be made for the purposes of service a lien on public funds (mechanic’s lien).

Notice of Commencement (Public Projects). On public improvements, the Public Authority is required to prepare a Notice of Commencement and make it available to subcontractors, laborers and materialmen upon request, but the Notice of Commencement is not recorded.

Notice of Furnishing: Contents of Notice of Furnishing (Private Projects). A Notice of Furnishing for work not related to public projects, shall include: (1) name of the owner, part owner, or lessee who contracted for the project; (2) the original contractor through whom a subcontractor is working or a supplier is supplying materials; (3) a description of the property; (4) name and address of the person furnishing work or materials who is submitting the Notice of Furnishing; (5) the name and address of the contracting party to whom work or materials are furnished (which may be the original contractor or a lower tier subcontractor or supplier); (6) the date work or materials first will be or were furnished; and (7) the book and page number at which the owner’s Notice of Commencement was recorded. If a Notice of Commencement has not been recorded, then there is no requirement for a Notice of Furnishing to be provided by potential lien claimant.

Notice of Furnishing (Commercial Projects). On projects, other than residential projects or public projects and where a Notice of Commencement has been recorded, every subcontractor or materialman who performs work or labor or furnishes material for an improvement must serve a Notice of Furnishing on the original contractor to preserve his lien rights within 21 days of first performing labor or furnishing materials. Failure to serve the Notice of Furnishing within the first 21 days does not defeat all lien rights, merely only allows the lien to cover the previous 21 days of work, labor, or material from when the Notice of Furnishing is actually served.

Notice of Furnishing (Residential Projects). On residential projects, a Notice of Furnishing is not required and has no effect on the lien claim process.

Contents of Notice of Furnishing (Public Projects). A Notice of Furnishing for work related to public projects, shall include: (1) name and address of the principal contractor; (2) a description of the labor, work, or materials provided; and (3) a description of the property or address to identify the project.

Notice of Furnishing (Public Projects). On public projects, any subcontractor, laborer or materialman who is not in direct contract with the principal (original) contractor is required to serve a Notice of Furnishing on the principal contractor to preserve lien rights within 21 days of first performing labor or furnishing materials. Failure to serve the Notice of Furnishing within the first 21 days does not defeat all lien rights, merely only allows the lien to cover the previous 21 days of work, labor, or material from when the Notice of Furnishing is actually served. *See* Appendix 44 for process required to preserve rights under bond claims.

Private Projects. Affidavit for Mechanic’s Lien: How Claimed. To claim a mechanic’s lien, claimant must make and file for record an Affidavit for Mechanic’s Lien and serve a copy of it on the owner, part owner, or lessee of the improved property within 30 days after filing the affidavit.

Contents of Lien. A mechanic’s lien shall contain the following information: (1) an affidavit sworn to by attorney or representative of claimant with knowledge of the claim and notarized; (2) amount due the claimant over and above all credits and setoffs (3) a description of the property to be liened (a legal description of the property is necessary for proper recording); (4) first and last dates of services and materials provided; (5) name and address of lien claimant; (6) name and address of the person/company who the claimant had an account/contract with to provide services and materials; and (7) name and address of the owner, part owner, or lessee.

Where Filed. Office of the county recorder in the counties in which the improved property is located.

When to Be Filed. If the lien arises in connection with a one- or two-family dwelling or in connection with a residential unit of condominium property, lien must be filed within 60 days from the date on which the last labor or work was performed or material was furnished by the person claiming the lien. If the lien is in connection with work done on an oil or gas well, lien must be filed within 120 days from the date on which the last labor or work was performed or material was furnished. If the lien is for any other type of work, lien must be filed within 75 days from the date on which the last of the

labor or work was performed or material was furnished by the person claiming the lien.

Contents of Lien. The lien must contain the following information: (1) amount due over and above all legal setoffs; (2) description of the property to be charged with the lien; (3) name and address of the person to or for whom the labor or work was performed or material was furnished; (4) name of the owner, part owner or lessee, if known; (5) name and address of the lien claimant; and (6) first and last dates that the lien claimant performed any labor or work or furnished any material to the improvement giving rise to the lien. The affidavit may be verified before any person authorized to administer oaths, whether for the owner's agent, part owner, lessee, lien claimant, or an interested other party. There is a statutory form available for the affidavit.

Service of Copy of Affidavit. Service of the mechanic's lien on the owner, part owner, or lessee may be made by sheriff, a method by mail, or hand delivery which includes a written evidence of receipt, or by serving a company's statutory agent. If the lien cannot be served as described within 30 days, then the claimant shall serve a copy by posting it in some conspicuous place on the premises of the improved property within 10 days after the expiration of the 30 days.

Extent of Lien. Liens extend to the improvement and all interests that the owner, part owner or lessee may have or subsequently acquire in the land or leasehold to which the improvement was made or removed.

Duration of Lien. Liens for labor, or work performed, or materials furnished prior to the recording of the Notice of Commencement are effective from the date the first visible work or labor is performed or the first materials are furnished by the original contractor, subcontractor, materialman or laborer at the site of improvement. Liens for labor, or work performed, or materials furnished after the recording of a Notice of Commencement are effective from the date of the recording of the Notice of Commencement. Liens continue in force for six years after a lien is filed in the office of the county recorder. If an action is brought to enforce the lien within that time, the lien continues in force until final adjudication thereof. The owner may serve a Notice to Commence Suit, in which case the claimant must file suit within 60 days, or the lien is invalid as a matter of law.

Priority of Lien. If several liens are obtained by several claimants upon the same improvement, they have no priority among themselves, except as follows: Liens for which the effective date is the date the first visible work or labor is performed or the first materials are furnished (i.e., liens prior to recording of a Notice of Commencement), have priority over all other liens except those claimed by laborers. Liens filed by laborers have priority over all other lien whether the labor or work was performed before or after the recording of Notice of Commencement. Liens for work performed or materials furnished after the recording of a Notice of Commencement shall be preferred to all other titles, liens, or encumbrances which may attach to or upon such improvement or to or upon the land upon which it is situated, which either are given or recorded subsequent to the recording of the notice of commencement. The lien of a subcontractor is superior to any already taken or to be taken by the original contractor in respect of the same labor, work or material, and the liens of laborers, materialmen and subcontractors to an original contractor or subcontractor indebted to them in respect of such labor, work or material.

Residential Projects (Effect of "Paid in Full"). No original contractor, subcontractor, materialman or laborer has a lien to secure payment for labor or work performed or materials furnished by him, in connection with a home construction contract between the original contractor and the owner, part owner or lessee in connection with a one- or two-family dwelling or residential unit of condominium property, that is the subject of a home purchase contract, if the owner, part owner or lessee paid the original contractor in full or if the purchaser has paid in full for the amount of the home construction or home purchase contract price, and the payment was made prior to the owner's, part owner's or lessee's receipt of a copy of an Affidavit of Mechanic's Lien. "Paid in full" is defined as the unpaid balance under the home construction contract or the home purchase contract, minus cost to complete the contract according to its terms and conditions, including any warranty or repair work.

Public Projects. Affidavit for Mechanic's Lien: How Claimed. To claim a lien on public funds, claimant must serve a copy of the lien upon the Public Authority, through the representative listed in the Notice of Commencement, within 120 days from the last date of performance of labor, work or furnishing of material. If the claimant performed its labor, work or material to a subcontractor of the principal contractor, the claimant shall, within 20 days after serving the lien on the Public Authority, furnish a copy to the subcontractor.

Contents of Lien. A lien on public funds shall contain the following information: (1) the amount due and unpaid, with all credits and setoffs; (2) when the last date labor, work, or materials were furnished; and (3) the post office address of the claimant.

Where Filed (Priority of Liens). A lien claimant is not required to record its lien. However, in order to place other subcontractors, laborers, and a material suppliers on notice, a claimant may record its affidavit for lien on public funds with the county recorder (or recorders if the project is in more than one county) where the public improvement is situated. Recording the lien gives the claimant priority over those claimants that did not record their lien.

Notice of Intent to Dispute. Upon receipt of a lien the Public Authority, or the claimant in the name of the Public Authority, may serve the principal contractor with a copy of the lien, together with a notice that the principal contractor must give notice of his intention to dispute the claim within 20 days. If the principal contractor (or the subcontractor within 20 days after receipt of the lien) fails to serve the Public Authority with the notice of intent to dispute, then that contractor (or subcontractor) has assented to the correctness of the claim.

Statutory Citation: Ohio Revised Statutes, Title 13, Chapter 11, §§1311.01 to 1311.38.

OKLAHOMA

Who May Claim: Any person who shall perform labor or furnish material for the erection, alteration or repair of any building, improvement or structure, or who shall furnish material and perform labor in putting up any fixtures, or who shall plant any trees, vines, plants or hedges, or who shall furnish labor, or material for buildings, or repairs any fence, footwalk or sidewalk, shall have lien upon the land upon which such buildings or improvements are made and upon such buildings and appurtenances. Miners and other employees in or about mines have lien on machinery, equipment, income, leases, etc., for payment for work done.

Any person claiming a lien shall file in the office of the county clerk in the county in which the land or property is located, a statement containing: the amount claimed and items thereof, as nearly as practicable, the names of the owners, the contractor, the claimant and the legal description of the property, subject to such lien and verified by affidavit. Such statement by the original contractor shall be filed within four months after the date upon which labor was last performed; subcontractors have 90 days.

How Claimed: (a) *Original Contractor.* Any person claiming a lien as aforesaid shall file in the office of the county clerk of the county in which the land is situated a statement setting forth the amount claimed and the items thereof as nearly as practicable, the names of the owner, the contractor, the claimant, and a legal description of the property subject to the lien, verified by affidavit.

(b) *Subcontractor.* By filing with the county clerk of the county in which the land is situated, within 90 days after the date upon which material or equipment used on said land was last furnished or labor last performed under such subcontract, a statement, verified by affidavit, setting forth the amount due from the contractor to the claimant, and the items thereof, as nearly as practicable, the name of the owner, the name of the contractor, the name of the claimant, and a legal description of the property upon which a lien is claimed.

Pre-Lien Notice: For all claims of \$10,000 and over, a subcontractor or supplier has 75 days from last furnishing labor, materials, service or equipment to give written notice of a claim to the general contractor and property owner to the last known address or original contractor and owner of the property by hand delivery with confirmation receipt, certified mail, return receipt requested, or by email provided it is addressed properly or otherwise directed to an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information. Notice must contain a statement that it is a pre-lien notice, the complete name, address and telephone number of subcontractor or supplier, date of supply of material, equipment or service, description of such, name and last known address of person requesting material, address or legal description of property, statement of the dollar amount of material, etc., and signature of the representative of claimant company.

Where Recorded: In the office of the County Clerk in the county where the land is situated.

When to Be Recorded: Original contractor has four months after the date upon which the material was last furnished or labor last performed, within which to file his statement for a lien; subcontractors, 90 days.

Duration of Lien: Suit must be commenced within one year from date of filing lien claim.

Filing Fee: \$15 for the first page; \$2 for each additional page; and \$13.21 per notice to notify the property owner.

Notice of Lien: County Clerk shall mail notice of lien to owner of property on which lien attaches. The notice shall contain date of filing, name and address of party claiming lien, the person against whom the claim is made and the owner of the property, a legal description of the property and the amount claimed. Within one business day of filing the claim of lien, a notice of such lien shall be mailed by certified mail, return receipt requested to the owner of the property on which the lien attached. The claimant shall furnish the County Clerk with the last known mailing address of the person against whom the claim is made and of the owner.

Contents of Notice of Lien: Statement setting forth amount claimed and items thereof, name of the owner, the contractor and claimant, and description of the property subject to the lien, verified by affidavit.

Extent of Lien: Lien is upon the whole of the tract or piece of land, the buildings and appurtenances. If the title to the land is not in the person with whom contract was made, lien shall be allowed on the buildings and improvements separate from the real estate. The owner shall not be liable for a subcontractor's lien for an amount greater than he contracted to pay the original contractor.

Priority of Lien: Such lien shall be preferred to all other liens or encumbrances which may attach to or upon such land, building or improvements subsequent to the commencement of such building or furnishing or putting up fixtures or machinery.

Lien for Improvement of Oil or Gas Well: A lien exists for anyone contracting to perform labor or services, or furnish material, machinery and oil well supplies used in the digging, drilling, torpedoing, operating, completing or repairing of any oil or gas well. The lien extends to the whole leasehold including the proceeds from sale of the oil or gas. The lien has priority as to all other encumbrances obtained subsequent to the commencement of the furnishing or putting up of the material or supplies. The lien will follow the property and be enforceable against the property wherever it may be found. Filing of a lien statement will constitute constructive notice of the lien to third parties. No lien on the proceeds from the sale of oil or gas produced shall be effective against any purchaser of such oil or gas until a copy of the statement of lien has been delivered to such purchaser by registered or certified mail. Notice of such lien is given and filed in same manner as

mechanic’s liens. Liens for oil and gas wells are limited to the leasehold estate; they do not affect any other interest in the real property involved. However, if the owner also owns a working interest in a well located thereon, the lien attaches to the working interest. Contractor and subcontractor each have 180 days to file lien from date of last work or supply of materials; one year from filing date to file suit.

Statutory Citation: Oklahoma Statutes, Title 42, §§42-141 to 42-180.

OREGON

Who May Claim: (1) Any person, subject to requirements described below, performing labor upon, transporting or furnishing any material to be used in, or renting equipment used in the construction of any improvement (ORS §87.005(5)), which includes any building, wharf, bridge, ditch, flume, reservoir, well, tunnel, fence, street, sidewalk, machinery, aqueduct, and all other structures and superstructures, whenever it can be made applicable thereto, shall have a lien upon the improvement for the labor, transportation, or material furnished or equipment rented at the instance of the owner of the improvement or the construction agent of the owner. (2) Any person who engages in or rents equipment for the preparation of a lot or parcel of land, or improves or rents equipment for the improvement of a street or road adjoining a lot or parcel of land at the request of the owner of the lot or parcel, shall have a lien upon the land for work done and materials furnished or equipment rented. (3) A lien for rented equipment is limited to the reasonable rental value of the equipment, notwithstanding the terms of the underlying rental agreement. (4) Trustees of an employee benefit plan shall have a lien upon the improvement for the amount of contributions, due to labor performed on that improvement, required to be paid by agreement or otherwise into a fund of the employee benefit plan. (5) An architect, landscape architect, land surveyor, or registered engineer who, at the request of the owner or an agent of the owner, prepares plans, drawings, or specifications that are intended for use in, or to facilitate the construction of, an improvement, or who supervises the construction, shall have a lien upon the land and structures necessary for the use of the plans, drawings, or specifications so provided or supervision performed. (6) A landscape architect, land surveyor, or other person who prepares plans, drawings, surveys, or specifications that are used for the landscaping or preparation of a lot or parcel of land or who supervises the landscaping or preparation shall have a lien upon the land for the plans, drawings, surveys, or specifications used or supervision performed. (ORS §87.010).

A contractor may not perform work if the aggregate price of the contract work exceeds \$2,000, or if the original contract was for less than \$2,000, but subsequently became worth more than \$2,000, without a written contract. (ORS §701.305). Absent application of narrow and limited exceptions, contractors who are not registered with the Construction Contractors Board (CCB) are not entitled to perfect or commence a lien claim or foreclose a construction lien. (ORS §701.131). An original contractor may not claim a lien arising from the improvement of real property if a written contract for the work is required by ORS §701.305 and the contractor does not have a written contract. (ORS §87.037). A contractor who contracts directly with an owner, and who fails to give an “Information Notice to Owner,” a document issued by the CCB that describes lien law, may not claim a lien. (ORS §87.093(6)).

How Claimed: Except when material, equipment, services, or labor described in (1) to (3), (5), and (6) above is furnished at the request of the owner, a person furnishing any materials, equipment, services, or labor for which a lien may be perfected under ORS §87.035 shall give a notice of right to a lien to the owner of the site. The notice may be given at any time during the progress of the improvement, but it only protects the right to perfect a lien on those materials, equipment and labor or services provided after a date which is eight days, not including Saturdays, Sundays and holidays, before the notice is delivered or mailed. However, no lien created under (5) or (6) above exists for any services provided for an owner-occupied residence at the request of an agent of the owner. (ORS §87.021).

The notice must include the following information (ORS §87.023) and must be in substantially the following form:

NOTICE OF RIGHT TO A LIEN

WARNING: READ THIS NOTICE. PROTECT YOURSELF FROM PAYING ANY CONTRACTOR OR SUPPLIER TWICE FOR THE SAME SERVICE.

To: (Owner)
(Owner’s address)

Date of mailing: _____

This is to inform you that (name of subcontractor or material supplier) has begun to provide (description of materials, equipment, labor, or services) ordered by (contractor) for improvements to property you own. The property is located at (address of property).

A lien may be claimed for all materials, equipment, labor and services furnished after a date that is eight days, not including Saturdays, Sundays and other holidays as defined in ORS §187.010, before this notice was mailed to you.

Even if you or your mortgage lender has made full payment to the contractor who ordered these materials or services, your property may still be subject to a lien unless the supplier providing this notice is paid.

THIS IS NOT A LIEN. It is a notice sent to you for your protection in compliance with the construction lien laws of the State of Oregon.

This notice has been sent to you by:

(Name)
(Address)
(Telephone)

IF YOU HAVE ANY QUESTIONS ABOUT THIS NOTICE, FEEL FREE TO CALL US.

IMPORTANT INFORMATION ON REVERSE SIDE
IMPORTANT INFORMATION FOR YOUR PROTECTION

Under Oregon’s laws, those who work on your property or provide labor, equipment, services, or materials, and who are not paid, have a right to enforce their claim for payment against your property. This claim is known as a construction lien.

If your contractor fails to pay subcontractors, material suppliers, rental equipment suppliers, service providers, or laborers or neglects to make other legally required payments, the people who are owed money can look to your property for payment, *even if you have paid your contractor in full*.

The law states that all people hired by a contractor to provide you with materials, equipment, labor, or services must give you a notice of right to a lien to let you know what they have provided.

WAYS TO PROTECT YOURSELF ARE:

—RECOGNIZE that this notice of right to a lien may result in a lien against your property unless all those supplying a notice of right to a lien have been paid.

—LEARN more about the lien laws and the meaning of this notice by contacting the Construction Contractors Board, an attorney, or the firm sending this notice.

—ASK for a statement of the labor, equipment, services, or materials provided to your property from each party that sends you a notice of right to a lien.

—WHEN PAYING your contractor for materials, equipment, labor, or services, you may make checks payable *jointly* to the contractor and the firm furnishing materials, equipment, labor, or services for which you have received a notice of the right to a lien.

—OR use one of the methods suggested by the “Information Notice to Owners.” If you have not received such a notice, contact the Construction Contractors Board.

—GET EVIDENCE that all firms from whom you have received a notice of the right to a lien have been paid or have *waived* the right to claim a lien against your property.

—CONSULT an attorney, a professional escrow company, or your mortgage lender.

Where Filed: Recording officer in county or counties where the improvement, or some part thereof, is situated. (ORS §87.035(2)).

When to Be Filed: Every person claiming a lien under ORS §87.010(1) or (2) shall perfect the lien not later than 75 days after the person has ceased to provide labor, rent equipment, or furnish materials, or 75 days after completion of construction, whichever is earlier. (ORS §87.035(1)). Every other person claiming a lien created under ORS §87.010 shall perfect the lien not later than 75 days after the completion of construction. (ORS §87.035(1)). A person filing a claim for a lien shall mail or hand deliver to the owner and to the mortgagee (including a trust deed beneficiary), not later than 20 days after the date of filing, a notice in writing that the claim of lien has been filed. A copy of the claim of lien shall be attached to the notice. (ORS §87.039). In addition, a notice of intent to foreclose must be mailed or hand delivered to the owner and mortgagee at least 10 days before a suit to foreclose the lien is filed. (ORS §87.057). Most notices under Oregon lien law shall be delivered in person or delivered by registered or certified mail. (ORS §87.018).

Duration of Lien: The lien will bind the property for 120 days from the date of recording unless a lawsuit is commenced to foreclose the lien within 120 days from the date of recording, or if extended payment is provided and the terms thereof are stated in the claim of lien, within 120 days after the expiration of such extended payment, but no lien shall continue in force for a longer time than two years from the date the claim for lien is recorded. (ORS §87.055).

Recording Fee: The recording officer will charge a fee to record the claim of lien. The amount charged will vary by county, and you should check with the recording officer

Contents of Lien Claim: The lien claim must contain: (1) a true statement of demand, after deducting all just credits and offsets; (2) the name of the owner or reputed owner, if known; (3) the name of the person by whom the claimant was employed or to whom the claimant furnished the materials or rented the equipment or by whom contributions are owed; and (4) a description of the property to be charged with the lien sufficient for identification, including the address, if known. The claim of lien must be verified by the oath of the person filing or of some other person having knowledge of the facts, subject to the criminal penalties for false swearing. (ORS §87.035(3) and (4)).

Extent of Lien: The lien applies to the site, together with the land that may be required for the convenient use and occupation of the improvement constructed on the site, to be determined by the court at the time of the foreclosure of the lien. If the person who caused the improvement to be constructed had less than absolute ownership (for example, a leasehold interest), then usually only the interest of that person in the land shall be subject to the lien. (ORS §87.015). When a person who has less than absolute ownership causes an improvement to be constructed, the construction shall be deemed at the insistence of the absolute owner, and the owner’s interest shall be subject to a lien for the work unless the owner gives notice (by posting such in a conspicuous place on the project) that the owner will not be responsible for the work

within three days of the owner obtaining knowledge of the work. (ORS §87.030).

Priority of Lien: The perfection of a lien under Oregon law relates to the date of commencement of the improvement. (ORS §87.025(7)). The dates of creating or recording the lien do not affect the priorities of competing lien claimants on the same project. (ORS §87.025(7)). A lien created under ORS §87.010 (2) or (6) upon any lot or parcel of land shall be preferred to any lien, mortgage, or other encumbrance which attached to the land after, or was unrecorded at the time of, commencement of the improvement. (ORS §87.025(1)). Except as provided below, a lien created under ORS §87.010 (1), (4), or (5) upon any improvement shall be preferred to all prior liens, mortgages, or other encumbrances upon the land upon which the improvement was constructed. (ORS §87.025(2)). To enforce such lien, the improvement may be sold separately from the land, and the purchaser may remove the improvement upon the payment to the owner of the land of a reasonable rent for its use from the date of its purchase to the time of removal. (ORS §87.025(2)). No lien for materials or supplies shall have priority over any recorded mortgage or trust deed on either the land or improvement unless the person furnishing the material or supplies, not later than eight days, not including Saturdays, Sundays and holidays, after the date of delivery of material or supplies for which a lien may be claimed, delivers to the lender a copy of the notice given under ORS §87.021. (ORS §87.025(3)). Finally, unless the mortgage or trust deed is given to secure a loan made to finance the alteration or repair, any lien created under ORS §87.010 for the alteration and repair of an improvement commenced and made subsequent to the date of record of a duly executed and recorded mortgage or trust deed on that improvement or on the site shall not take precedence over the mortgage or trust deed. (ORS §87.025(6)).

Payment of the Lien: If proceeds from a foreclosure sale are insufficient to pay all claimants, the payments shall be made to each lien claimant on a *pro rata* basis. (ORS §87.060(6)). Further, each lien claimant is entitled to execution for any balance due after the distribution of the proceeds received from the foreclosure sale. (ORS §87.060(6)).

Statutory Citation: Oregon Revised Statutes, Volume 2, Title 9, Chapter 87, §§87.001 to 87.093; Volume 15, Title 52, Chapter 701, §§701.131, 701.305.

PENNSYLVANIA

Who May Claim: Contractors and subcontractors are entitled to a lien for all debts due for labor or materials furnished in the erection or construction, or the alteration or repair of an improvement, provided that the amount of the claim exceeds \$500. A subcontractor who has a contract with a subcontractor in direct privity of contract with a contractor will also be entitled to a lien for all debts due for labor or materials furnished in the erection or construction, or the alteration or repair of an improvement, provided that the amount of the claim exceeds \$500. However, in an amendment to the Pennsylvania Mechanic's Lien effective September 7, 2014, a subcontractor will not have the right to a lien with respect to an improvement to a residential property if "(1) the property owner or tenant paid the full contract price to the contractor; (2) the property is or is intended to be used as the residence of the owner or subsequent to occupation by the owner, a tenant of the owner; and (3) the residential property is a single townhouse or building that consists of one or two dwelling units used, intended or designed to be built, used, rented or leased for living purposes." Additionally "the term 'townhouse' shall mean a single-family dwelling unit constructed in a group of three or more attached units in which each unit extends from foundation to roof with a yard or public way on at least two sides." Also, effective September 7, 2014, there will be a change to Section 1510 of the Pennsylvania mechanic's lien statute, the provision for "Discharge of Lien on Payment into Court or Entry of Security." That section shall be renamed "Discharge of Lien or Reduction of Lien," and it provides that a mechanic's lien claim filed by a subcontractor with respect to a residential property shall, upon a court order issued upon a petition or motion by the property owner or a party in interest, shall be discharged as a lien against the residential property when the owner or tenant shows that they have paid the full contract price to the contractor. If or when the owner or tenant shows that they have paid a sum to the contractor which is less than the full contract price, then a mechanic's lien claim filed by a subcontractor with respect to an improvement to a residential property shall, upon a court order issued upon a petition or motion by the owner or a party in interest, reduce the amount of the subcontractor's lien to the amount of the unpaid contract price owed by the owner or tenant to the contractor.

How Claimed: Every claimant must file a claim with the Prothonotary of the county where improvement is located and serve notice of filing upon the owner within one month after filing. A subcontractor in privity of contract with the contractor must give a written notice to the property owner, prior to filing a mechanic's lien, in accordance with the Notice to Owner provisions set forth below. A subcontractor who has a contract with a subcontractor in direct privity of contract with a contractor, and/or a subcontractor in direct privity of contract with a contractor, must give a written formal notice to the property owner of intention to file a mechanic's lien claim, at least 30 days prior to filing a mechanic's lien claim, in accordance with the Notice to Owner provisions set forth below.

Where Filed: The claim must be filed with the Prothonotary of the county where the improvement is located. Where the improvement is located in more than one county, the claim may be filed in any one or more of said counties but shall be effective only as to the part of the property in the county in which it has been filed.

When to Be Filed: A mechanic's lien claim must be filed within six months after the claimant last supplied labor and/or material to the job site property.

Notice to Owner: No claim by a subcontractor shall be valid unless, at least 30 days before the claim is filed, the subcontractor gives to the owner a formal written notice of the intention to file a mechanic's lien claim. The formal notice

shall state: (1) name of the party claimant; (2) name of the person with whom contracted; (3) amount claimed to be due; (4) general nature and character of the labor or materials furnished; (5) date of completion of the work for which the claim is made; (6) brief description sufficient to identify the property subject to the lien; and (7) date on which preliminary notice of intention to file a claim was given and a copy thereof. The Formal Notice is required from a subcontractor regardless of whether the project is a new construction or involves the alteration or repair of an existing improvement.

The notice may consist of a copy of the claim intended to be filed, together with a statement that the claimant intends to file the original or a counterpart thereof. Notice provided in this section may be served by first-class mail, registered or certified mail, on the owner or the owner's agent by an adult in the same manner as a *writ of summons in assumpsit*, or if service cannot be so made, then by posting upon a conspicuous public part of the improvement.

Notice of Filing of Claim. Notice of filing of the claim must be given by all claimants whether contractors or subcontractors. Notice of filing must be served upon the owner within 30 days after filing, giving the court term and number of date of filing of the claim.

An affidavit of service of notice or the acceptance of service must be filed within 20 days after such service setting forth the date and manner of service. Failure to serve such notice or file the affidavit within the time specified shall be sufficient grounds for striking off the claim.

Rule by Owner. After completion of the work by a subcontractor, any owner or contractor may file a rule or rules in the court in which the claim may be filed requiring the party named to file his claim within 30 days after notice of the rule. Failure to file the claim within such period shall defeat the right to do so. If subcontractor files as a result of the rule, no notice of intention to file is required. Where a claim is filed by a subcontractor, owner may give written notice thereof to a subcontractor.

Contents of the Claim: The claim of lien must state: (1) name of the party claimant and whether he files as contractor or subcontractor; (2) name and address of the owner or reputed owner; (3) date of completion of the claimant's work; (4) if filed by subcontractor, the name of the person with whom he contracted and the dates on which preliminary notice, if required, and of formal notice of intention to file a claim were given; (5) if filed by a contractor under a contract or contracts for an agreed sum, an identification of the contract and a general statement of the kind and character of the labor or materials furnished; (6) in all other cases than that set forth in clause (5) of this section, a detailed statement of the kind and character of the labor or materials furnished or both and the prices charged for each thereof; (7) amount or sum claimed to be due; and (8) such description of the improvement and of the property claimed to be subject to the lien as may be reasonably necessary to identify them.

Duration of Lien: An action to obtain a judgment on the mechanic's lien claim must be commenced within two years from date of filing of lien unless time extended in writing by owner. A verdict must be recovered or judgment entered within five years from date of filing claim.

Filing Fee: Varies from county to county.

Extent of Lien: Every improvement and the estate or title of the owner in the property is subject to the lien. Claimant may maintain a lien against the owner in fee or any other person having any estate or interest in the property who by agreement, express or implied, contracts for the erection or alteration of the property. If the subcontractor has actual knowledge of the total contract price between the owner and contractor before he began work, his lien will be limited to the unpaid balance to the contractor or a *pro rata* portion thereof.

Priority of Lien: Liens filed take effect and have priority: (1) in the case of new construction of an improvement, as of the date of the visible commencement of the improvement, and (2) in the case of alteration or repair of an existing improvement, as of the date of filing of the mechanic's lien claim. Any mechanic's lien filed pursuant to the statute shall be subordinate to a purchase money mortgage and, presently, to an open-end mortgage, the proceeds of which are used to pay all or part of the cost of completing the erection, construction, alteration or repair of the mortgaged property secured by the open-end mortgage. However, as of September 7, 2014, with regard to open-end mortgages, a mechanic's lien filed pursuant to the statute shall be subordinate to an open-end mortgage where at least 60 percent of the proceeds are intended to pay or are used to pay all or part of the costs of construction.

Waiver of Liens: In an amendment to the Pennsylvania Mechanic's Lien Law that took effect October 11, 2009, a contractor or subcontractor may waive his right to file a mechanic's lien claim against residential property for the erection, construction, alteration or repair of a residential building, regardless of the total contract price between the owner and the contractor, by a written instrument signed by him, or by any conduct which operates to equitably *estop* the contractor or subcontractor from filing a claim. Prior lien waivers are now permitted with regard to residential property regardless of the total prime contract price between the owner and the contractor. *On non-residential buildings*, except as stated above with respect to contractor lien waivers on residential property, a waiver by a contractor of lien rights is against public policy, unlawful and void, unless given in consideration for payment for the labor or materials provided and only to the extent that such payment is actually received. Also *on non-residential buildings*, except as provided above with respect to subcontractor lien waivers, a waiver by a subcontractor of lien rights is against public policy, unlawful and void, unless given in consideration for payment for the labor or materials provided and only to the extent that such payment is actually received, or unless the contractor has posted a bond guaranteeing payment for labor and materials provided by contractors. Provided that lien rights may be waived in accordance with the above provisions, the procedure for filing a waiver of liens in the office of the Prothonotary of the Court of Common Pleas of the county or counties where the structure or other

improvement is situated, shall remain available.

Statutory Citation: Pennsylvania Consolidated Statutes, Title 49, §§49-1101 to 49-1902.

RHODE ISLAND

Who May Claim: Any person who constructs, erects, alters or repairs any building, canal, turnpike, railroad or other improvement with the consent of the owner, tenant or lessee (but not of the state) for all work done and for materials furnished, including architectural and engineering work. Providing materials includes rental or lease of equipment.

A covenant, promise, agreement of understanding in, or in connection with, or collateral to a contract or agreement relative to the construction, alteration, repair or maintenance of a building, structure, appurtenance and appliance, including moving, demolition and excavating connected therewith, purporting to bar the filing of a notice of contract or the taking of any steps to enforce a lien is against public policy and is void and unenforceable.

How Claimed: By serving and filing a notice of intention to claim a lien.

Where Filed: In the records of land evidence in the city or town in which the land is located.

When to File: Within 200 days after the doing of work or furnishing of materials.

Service of Copy of Notice: A copy of the notice must be served not later than 200 days after furnishing work or materials by certified or registered mail with return receipt requested, addressed to the last known address of the owner or lessee or, if not known, to the address of the land. If the notice is returned undelivered, it must be filed with its envelope within 30 days after the return and in no event more than 200 days after the mailing. It is sufficient to describe the realty by metes and bounds and street address, by recitation of the taxing authority's assessor's plat and lot designation and street address or by recitation of the book and page of the mortgage and street address.

Practice tip: Notice should be sent separately to the husband and wife when property is owned jointly.

Contents of Notice of Intention: The notice of intention shall contain the name of the owner of record of the land or if the lien is claimed against the interest of the lessee, the name of the lessee, the mailing address of the owner or lessee (name and address to be located in upper left-hand corner), general description of the land, a general description of the work to be done or of the materials to be furnished, the approximate value of the materials and work performed, the name and address of the person for whom directly the work has been done or the materials furnished, the name and address of the person mailing such notice, a statement that the person mailing said notice has not been paid for said work done or materials furnished or both and a statement that the sender may perfect all liens claimed or that could be claimed by filing the notice of intention within 200 days after doing the work or furnishing of the materials. The filing of the notice perfects the lien on work done 200 days before the mailing of the notice, but not for work done before the 200-day period. The statement must be executed under oath and state that the claimant has not been paid. A statutory form is provided.

Duration of Lien: A petition to enforce the lien must be commenced with the Superior Court for the county where the property is located, within 40 days of the date the notice of intention was recorded. A *lis pendens* must be filed, and the petition must be filed within seven days of the *lis pendens*. Both the petition and the *lis pendens* must be recorded/filed within the 40-day time period. **Note:** This section of the law is a trap for the unwary because a Notice of *Lis Pendens* is given to let the world know that litigation has been filed yet the Statute requires that the *Lis Pendens* be recorded prior to the Civil Action being filed.

Filing Fee: \$8 for filing notice of intention to claim a lien and renewals.

Priority of Lien: All liens receive distribution *pro rata*. Liens are senior to any subsequently recorded encumbrances, but junior to prior recorded encumbrances.

Extent of Lien: Lien improvement and land on which situated; when contract with husband of owner consent in writing of both husband and wife required.

Statutory Citation: Rhode Island General Laws, Title 34, Chapter 34-28, §§34-28-1 to 34-28-37.

SOUTH CAROLINA

Who May Claim: Any contractor, subcontractor, laborer or materialman who furnishes labor or materials used in the erection or repair of any structure upon real estate with the consent or at the request of the owner thereof, or of his agent, contractor or subcontractor, doing land surveying, providing private security guard services at the site, preparing plans, preparations, drawings and specifications for improvement to the site, gradings, pruning, well borings, etc. Lien also available to one who rents tools, appliances, machinery or equipment for use in building or structure. Lien for materials includes flooring, floor coverings and wallpaper. Lien claimants must be licensed or registered, as required by law.

How Claimed: By serving upon the owner or the person in possession and filing sworn statement of account describing property covered and naming the owner or owners thereof. If neither the owner nor the person in possession can be located after a diligent search, verified by a sheriff's affidavit, the statement shall be considered delivered when filed along with the affidavit.

Where Filed: In the office of the Register of Deeds or Clerk of the court of the county where property is situated.

When to Be Filed: At any time after payment is due and within 90 days after the party claiming the lien ceases to labor or to furnish labor or materials for such building or structure.

Notice of Commencement. The owner or contractor in privity with the owner may file a notice of commencement

within 30 days of beginning work on the project.

Notice to Contractor. If notice of commencement is filed, no subcontractor or supplier to a subcontractor not in privity with the contractor can file a lien unless it has first filed a notice of furnishing labor or materials; this notice must be given by certified or registered mail not later than 60 days after the last day of work.

Service of Copy of Notice: Copy of notice must be served upon owner or, if owner cannot be found, upon person in possession, or filed with the clerk as specified above in “How Claimed.”

Duration of Lien: Unless a suit for enforcing the lien is commenced and a notice of pendency of the action is filed, within six months after person desiring to avail himself thereof ceases to labor on or to furnish labor or material for such building or structure, the lien shall be dissolved.

Filing Fee: \$6; additional page, \$1; satisfaction of lien, \$5.

Contents of Notice of Lien: A statement of a just and true account of the amount due with all just credits given, together with a description of the property intended to be covered by the lien, sufficiently accurate for identification, with the name of the owner or owners of the property, if known, which certificate shall be subscribed and sworn to by the person claiming the lien, or by someone in his behalf, and proof of mailing to the owner of the copy of the lien. The contractor must also record his contractor license number or registration number on the lien document.

Extent of Lien: The lien shall extend to the building or structure and the interest of the owner thereof and the land or place upon which the same is situated. A subcontractor’s lien shall in no event exceed the amount due by the owner under the contract for construction. The lien covers the value of the lienor’s work and materials. The prevailing party may recover attorneys’ fees.

Priority of Lien: Lien of laborer, mechanic, subcontractor or materialman is subject to existing liens of which he had actual or constructive notice. The liens of laborer, materialman and subcontractor take precedence over the lien of the principal contractor. Mortgage recorded at date of contract is prior to lien, but as to future advances, if the mortgagee has been served with a lien, the lien prevails.

Miscellaneous: Owner is required to pay contractor or subcontractor within 21 days of request for payment of work completed or service provided. Contractor shall pay subcontractor within seven days of receipt of payment from owner.

Statutory Citation: South Carolina Code of Laws, Title 29, §§29-5-10 to 29-5-430.

SOUTH DAKOTA

Who May Claim: Whoever furnishes skill, labor, services or materials for the improvement, development or operation of any building, fixture, bridge, fence or other structure or public utility or mine or well. Liens also to persons furnishing services, skills, labor, parts, materials, etc., for the alteration, repair, storage, etc., of personal property. (S.D. Codified Laws §44-9-1).

An owner may protect his property against liens for unauthorized improvements by serving upon persons doing the work, within five days after knowledge thereof, written notice that improvement was not made at his instance, or by posting such notice in a conspicuous place on the premises. (S.D. Codified Laws §44-9-4).

How Claimed: By filing verified statement of some person shown by such verification to have knowledge of facts stated. (S.D. Codified Laws §44-9-16). Contractor files a brief statement of the nature of his contract, which statement constitutes his notice of lien. In addition, subcontractor must serve notice of his claim on the owner.

Where Filed: With Register of Deeds in the county or counties where the real property is situated. (S.D. Codified Laws §44-9-18).

When to Be Filed: Subcontractors, materialmen and laborers must file within 120 days after doing the last of such work or furnishing the last item of such skill, material or machinery. (S.D. Codified Laws §44-9-15). Persons other than original contractor may serve upon owner at any time notice of claim subject to S.D. Codified Laws §44-9-1. Owner within 15 days after completion of the contract may require person having such lien to furnish him with an itemized and verified account of the claim, the amount thereof, and his name and address. (S.D. Codified Laws §44-9-14). No action shall be commenced or enforcement of the lien until 10 days after this statement is furnished. (S.D. Codified Laws §44-9-14). Before filing lien with Register of Deeds, claimant must mail to the property owner, at his last known address by registered or certified mail, a copy of the lien statement, and receipt for mailing must be attached to the lien statement and filed in the Office of the Register of Deeds. (S.D. Codified Laws §44-9-17).

Notice of Commencement. A contractor may file a notice of commencement no later than 30 days after beginning work on the project. (S.D. Codified Laws §44-9-50). If a notice of commencement is filed, subcontractors and suppliers must notify the contractor and owner within 60 days of the subcontractor’s or supplier’s last work on the project. (S.D. Codified Laws §44-9-53).

Service of Copy of Notice: Notice must be served by registered or certified mail prior to filing. (S.D. Codified Laws §44-9-17). Filed statement must be accompanied by post office receipt. (S.D. Codified Laws §44-9-17). Owner may demand written itemized account within 15 days after the contract is completed. Owner may then pay claim or claimant may proceed to enforce his lien upon the expiration of 10 days after furnishing such statement. (S.D. Codified Laws §44-9-14).

Duration of Lien: Action to establish the same must be instituted within six years after the date of the last item of the

claim as set forth in the filed lien statement; provided that upon written demand of the owner, his agent or contractor served on the person holding the lien, requiring him to commence suit to enforce such lien, suit shall be commenced within 30 days thereafter or the lien shall be forfeited. At the time suit is filed, a notice must be recorded in the deed records. (S.D. Codified Laws §§44-9-24, 44-9-26).

Filing Fee: \$30 for the first 50 pages plus \$2 for each additional page beginning with page 51. (S.D. Codified Laws §§7-9-15(3), 44-9-19).

Contents of Statement of Lien: (1) Notice of intention to claim and hold a lien and the amount thereof (S.D. Codified Laws §44-9-16); (2) that such amount is due and owing to the claimant for labor performed or for skill, material or machinery furnished and for what improvement the same was done or supplied (§44-9-16); (3) names and addresses of the claimant and of the person for or to whom performed or furnished (§44-9-16); (4) dates when the first and last items of the claimant's contribution to the improvement were made (§44-9-16); (5) name of the owner thereof at the time of making such statement according to the best information then had (§44-9-16); (6) description of the premises to be charged, identifying same with reasonable certainty (§44-9-16); and (7) itemized statement of account upon which lien is claimed. (S.D. Codified Laws §44-9-16).

Extent of Lien: If work or materials made under contract with owner for an agreed price, lien shall be for the sum agreed on plus cost of any additional material or work agreed on, otherwise for the reasonable value of work done. (S.D. Codified Laws §44-9-6). Lien shall not extend or affect any right in any homestead otherwise except by law. (S.D. Codified Laws §44-9-5).

Priority of Lien: The liens shall, as against the owner of the land, attach and take effect from the time the first item of material or labor is furnished upon the premises by the lien claimant, and shall be preferred to any mortgage or other encumbrance not then of record, unless the lienholder had actual notice thereof. (S.D. Codified Laws §44-9-1). As against a *bona fide* purchaser, mortgagor or encumbrancer without notice, however, no lien shall be attached prior to the actual and visible beginning of the improvement of the grounds, but a person having a contract for such improvement may file with the Register of Deeds of the county within which the premises are situated, a brief statement of the nature of such contract, which statement shall be notice of his lien for the contract price or value of the contribution of such improvement thereafter made by him or at his instance. (S.D. Codified Laws §§44-9-7, 44-9-8).

Lien for Improvement of Oil or Gas Well: The mechanic's lien laws are equally applicable to oil and gas wells. (S.D. Codified Laws §44-9-1(3)).

Statutory Citation: South Dakota Codified Laws, Title 44, Chapter 44-9, §§44-9-1 to 44-9-53.

TENNESSEE

Who May Claim: Every person (to include any legal or commercial entity such as a corporation, limited liability company, partnership, etc.), including land surveyors, architects, engineers and any other person who supervises or performs work or labor or who furnishes material, services, equipment, or machinery in furtherance of any improvement. A contract provision that purports to waive any right of lien is void and unenforceable pursuant to Tenn. Code Ann. §66-11-124(b).

How Claimed: Under Tennessee law, there are two categories of lien claimants: (1) prime contractors; and (2) remote contractors. Prime contractors are qualified lien claimants in direct privity of contract with an owner, or the owner's agent, of the improvement. If the lien claimant is in direct privity of contract with the owner or the owner's agent, then they qualify as a prime contractor regardless of whether their role on the project is as a general contractor, subcontractor or supplier. Remote contractors are qualified lien claimants who did not contract directly with the owner or owner's agent. These are usually the subcontractors and suppliers. The lien process, including notice requirements and deadlines, are less onerous for prime contractors. A prime contractor has a lien for one year after the date the improvement is complete or is abandoned and until the final decision of any suit properly brought within that time period for its enforcement. In order to preserve the lien as concerns subsequent purchasers or encumbrancers, however, a prime contractor must record a notice of lien with the Register of Deeds within 90 days of completion or abandonment of the improvement. A remote contractor must not only record a notice of lien with the Register of Deeds, but must also serve the notice of lien on the owner or the owner's agent within 90 days of completion or abandonment of the improvement. A remote contractor must then enforce the lien by filing suit within 90 days of service of the notice of lien on the owner. In the lawsuit to enforce the lien, prime contractors and remote contractors must seek attachment against the subject real property.

Notice of Non-Payment: A remote contractor may only properly assert a lien for amounts for which the remote contractor has timely served a notice of non-payment. A notice of non-payment must be served on the owner and prime contractor in contractual privity with the remote contractor within 90 days of the last day of each month in which the remote contractor provided services or materials for which it has not been paid. The notice of non-payment must contain: (a) the name of the remote contractor asserting the claim and the address to which the owner or prime contractor may communicate with the remote contractor; (b) a general description of the work, labor, materials, services, equipment or machinery provided; (c) the amount owed as of the date of the notice; (d) a statement of the last date the claimant performed work or provided materials in connection with the improvement; and (e) a description of the affected real property. Notices of non-

payment are not required for one- to four-family residential units. Remote contractors, however, cannot claim liens against residential real property, which is defined as a one- to four-dwelling unit in which the owner (at the time the work or services were provided) resides or intends to reside as the owner's principal place of residence. Also, remote contractors cannot claim liens against property consisting of one dwelling unit that is intended to be the principal place of residence of a person or family, when the owner of that property and the general contractor are one and the same person. Prime contractors are not limited and may assert a lien against any and all residential property.

Where Filed: Notices of lien and notices of completion must be recorded with the Register of Deeds in the county where the real property or any affected part thereof is located.

Time of Attachment of Lien: Liens shall relate back to and take effect from the time of the visible commencement of operations, excluding, however, demolition, surveying, excavating, clearing, filling or grading, placement of sewer or drainage lines, or other underground utility lines or work preparatory therefore, erection of temporary security fencing and the delivery of materials therefore. If there be a cessation of all operations at the site of the improvement for more than 90 days and a subsequent visible resumption of such operations, any lien for labor performed or for materials furnished after the visible resumption of operations shall attach and take effect only from such visible resumption of operations.

Filing Fee: For recording a notice of lien or notice of completion, \$12, plus \$5 per page for each additional page over two.

Contents of Notice of Lien: As a requisite to precedence of the lien, a sworn statement containing: the amount due for the work, labor, materials, services, equipment, or machinery; the name of the lien claimant; the name of the party with whom the lien claimant is in privity of contract; the name of the owner of the improved property; the first and last date that work, labor, materials, services, equipment, or machinery were furnished and a reasonably certain description of the premises, must be recorded with the Register of Deeds.

Lien Amount: Is the contract price. The contract price means the amount agreed upon by the parties for or the reasonable value of all work, labor, materials, services, equipment, machinery, overhead and profit. The lien amount cannot include any interest, service charges, late fees, attorneys' fees or other amounts, which the lienor may otherwise be entitled to by contract.

Priority of Lien: No matter when the work, labor, materials, services, equipment or machinery are furnished, the lien relates back to the visible commencement of operations and takes priority over subsequent purchasers and encumbrancers, so long as the lienor has timely recorded a notice of lien with the Register of Deeds.

Notice of Completion: Upon completion of the project, the owner, purchaser or prime contractor may record a notice of completion with the Register of Deeds. A copy of the notice of completion must be simultaneously served on any prime contractor, except on those projects where the owner of the subject property also acts as the general contractor. It is not required that a copy of the notice of completion be served on a remote contractor unless that remote contractor has served a required notice of non-payment. Otherwise the remote contractor must learn on its own that a notice of completion has been recorded. Any prime or remote contractor claiming a lien against the project, who has not already recorded and served a notice of lien must serve written notice to the party designated in the notice of completion for receiving notice of claim, stating the amount of the claim, and certifying that the claim does not include any amount owed to the claimant on any other job or under any other contract. For improvements to one- to four-family residential units, the written notice from the lien claimant shall be served on the party designated in the notice of completion within 10 days of the date that the notice of completion was recorded with the Register of Deeds. For all other improvements, the written notice from the lien claimant shall be served on the party designated in the notice of completion within 30 days of the date that the notice of completion was recorded with the Register of Deeds. If the written notice is not served within the required time period, the lien rights of the claimant expire.

Bonds in Lieu of Liens: Owners may protect themselves from liens by remote contractors by recording a payment bond equal to 100 percent of the prime contractor's contract price in favor of all remote contractors. The payment bond must have sufficient surety. The payment bond must be recorded with the Register of Deeds in the county where the subject property lies before any work, labor, materials, services, equipment or machinery are furnished to the subject property.

Once a lien is recorded, then any person may record with the Register of Deeds a bond to indemnify against the lien. The bond shall be in the amount of the lien, have sufficient surety and be in favor of the person that recorded the lien. The bond operates to discharge the lien.

Miscellaneous: Tennessee's Truth in Construction and Consumer Protection Act of 1975 requires any contractor who is about to enter into a contract, either written or oral, for improving real property with the owner or owners thereof, prior to commencing the improvement of said real property or making of the contract, to deliver by registered mail or otherwise, to the owner or owners of the real property to be improved, written notice advising the owner or owners that: (a) the contractor has a lien upon the property to be improved for one year after the work is completed or material furnished; (b) remote contractors have liens for 90 days after completion of the improvement; and (c) remote contractors may enforce liens even though the prime contractor has been paid in full if the prime contractor has not paid the remote contractors. Failure to comply with the Act is a misdemeanor, but does not affect the lien rights of the contractor.

Statutory Citation: Tennessee Code, Title 66, Chapter 11, §§66-11-101 to 66-11-208.

Who May Claim: Any person, including architects, engineers, surveyors, contractors, and subcontractors, who performs labor, specially fabricates material, even if not delivered, or furnishes labor or materials for construction or repair of a house, building or improvement, for the construction or repair of levees or embankments, for the reclamation of overflow lands or for the construction or repair of any railroad may claim a lien. The word “improvement” includes: (a) abutting sidewalks and streets and utilities in or on those sidewalks and streets; (b) clearing, grubbing, draining or fencing of land; (c) wells, cisterns, tanks, reservoirs or artificial lakes or pools made for supplying or storing water; (d) pumps, siphons and windmills or other machinery or apparatuses used for raising water for stock, domestic use or irrigation; and (e) planting orchard trees, grubbing out orchards and replacing trees and pruning of orchard trees. Additionally, any person who provides labor, material or other supplies for the installation of landscaping for a house, building or improvement, including construction of a retention pond, retaining wall, berm, irrigation system, fountain or other similar installation, under or by virtue of a written contract with the owner or owner’s agent, has a lien.

How to Claim: If the claimant has a direct contractual relationship with the owner, then the only step required to perfect a lien claim is that claimant must file an affidavit claiming lien with the county clerk of the county in which the property is located by the 15th day of the fourth calendar month after the day on which the indebtedness accrues. A person who files an affidavit must send a copy of the affidavit by registered or certified mail to the owner or reputed owner not later than the fifth day after the affidavit is filed with the county clerk. If the claimant has a direct contractual relationship with the original contractor, then in addition to filing the lien affidavit, the claimant must also give notice to the owner or reputed owner, with a copy to the original contractor, of the unpaid balance not later than the 15th day of the third month following each month in which all or part of the claimant’s labor was performed or material was delivered. This notice is commonly referred to as a “fund trapping” notice and must state “that if the claim remains unpaid, the owner may be personally liable and the owner’s property may be subjected to a lien unless the owner withholds payments from the contractor for payment of the claim, or the claim is otherwise paid or settled.” If the claimant is a second tier subcontractor or below, i.e., does not have a direct contractual relationship with the original contractor, then in addition to filing the lien affidavit and sending the fund trapping notice, the claimant must also give notice to the original contractor of the unpaid balance not later than the 15th day of the second month following each month in which all or part of the claimant’s labor was performed or material was delivered. This notice is commonly called the “preliminary notice.” All notices must be sent by registered or certified mail.

Where to File: The lien affidavit must be filed with the County Clerk of the county in which the property is located.

When to File: The lien affidavit must be filed not later than the 15th day of the fourth calendar month after the day on which the indebtedness accrues. Indebtedness to an original contractor accrues on the last day of the month in which a written declaration by the original contractor or the owner is received by the other party to the contract stating that the original contract has been terminated, or on the last day of the month in which the original contract has been completed, finally settled or abandoned.

Special Procedures: In addition to the procedures outlined in the “How to Claim” section above, the following notices and deadlines may also be necessary.

(a) **Contractual Retainage Claim.** If an agreement providing for retainage exists, written notice must be given to the owner or reputed owner not later than the earlier of the 30th day after the date the claimant’s agreement providing for retainage is completed, terminated or abandoned; or the 30th day after the date the original contract is terminated or abandoned. If the agreement is with a subcontractor, the claimant must also give notice within that time to the original contractor. The notice must generally state the existence of a requirement for retainage and contain the name and address of the claimant, and if the agreement is with a subcontractor, the name and address of the subcontractor. Notice of the contractual retainage agreement must be sent to the last known business address of the owner or reputed owner and to the original contractor, if applicable. A lien for contractual retainage is valid only for the amount specified to be retained in the contract between the claimant and the original contractor or between the claimant and a subcontractor. If a claimant properly sends its notice of contractual retainage, then the claimant has until the 15th day of the fourth month after labor was performed or material furnished under its contract to file its lien affidavit on contractually retained funds. This period, however, may be cut short. If an owner files an affidavit of completion for the original contract and the owner sends a copy of the affidavit of completion to the claimant in the manner described in the “Affidavit of Completion” section below, the claimant must file its lien affidavit within 40 days after the date of completion stated in the affidavit of completion. If an owner sends notice related to termination or abandonment of the original contract to the claimant in the manner described in the “Notice of Termination or Abandonment” section below, the claimant must file its lien affidavit within 40 days after the date of termination or abandonment stated in the notice. If an owner sends written demand for the claimant to file its lien affidavit, the claimant must file its lien affidavit within 30 days after the owner sends the notice of demand to the claimant.

(b) **Statutory Retainage Claim.** During the progress of work under an original contract for which a mechanic’s lien may be claimed, and for 30 days after the work is completed, the owner must retain: (1) 10 percent of the contract price of the work to the owner; or (2) 10 percent of the value of the work, measured by the proportion that the work done bears to the work to be done, using the contract price or, if there is no contract price, using the reasonable value of the completed work. The retained funds secure the payment of artisans and mechanics who perform labor or service and the payment of other persons who furnish material, labor, or specially fabricated material for any contractor, subcontractor, agent or receiver in the performance of the work. A claimant has a lien on the retained funds if the claimant: (1) sends the notices

required by the Texas Property Code in the time and manner required; and (2) files an affidavit claiming a lien generally not later than the 30th day after the work is completed. However, if an owner sends an Affidavit of Completion or Notice of Termination or Abandonment in the manner described below, the claimant must file the lien affidavit not later than the 40th day after the original contract has been completed, terminated, or abandoned.

(c) **Notice of Specially Fabricated Items.** If a claim is based on specially fabricated items, the claimant must notify the owner not later than the 15th day of the second month after the month in which the claimant receives and accepts the order for the specially fabricated items. The notice must state that the order was received and accepted as well as the price of the order. In cases where indebtedness was incurred by one other than an original contractor, the claimant must also give notice to the original contractor.

Duration of Lien: Suit must be filed within two years after the last day a claimant may file a lien affidavit, or within one year after completion, termination or abandonment of the work under the original contract, whichever is later. For claims arising from a residential construction project, suit must be filed within one year after the last day the lien claimant may file a lien affidavit, or within one year after completion, termination, or abandonment of the work, whichever is later. Where a surety bond is filed indemnifying against liens on a private improvement, the claimant must sue on the bond within one year after the claim is perfected. If the bond is not recorded at the time the lien is filed, the claimant must sue on the bond within two years following perfection of his claim.

Filing Fee: The filing fee depends upon the length of the lien affidavit to be recorded and varies from county to county.

Contents of Statement of Lien: The affidavit claiming a lien must contain the following: (1) a sworn statement of the amount of the claim; (2) the name and last known address of the owner or reputed owner; (3) a general statement of the kind of work done and material furnished by the claimant, and, for a claimant other than an original contractor, a statement of each month in which work was done or material was furnished for which payment is requested; (4) the name and last known address of the person by whom the claimant was employed or to whom the claimant furnished the material or labor; (5) the name and last known address of the original contractor; (6) a description, legally sufficient for identification, of the property sought to be charged with the lien; (7) the claimant's name, mailing address and, if different, physical address; and (8) for a claimant other than the original contractor, a statement identifying the date each notice of the claim was sent to the owner and the method by which the notice was sent. The form requirements of the affidavit are liberally construed, and the affidavit must "substantially comply" with the statutory requirements to perfect a lien, as well as be signed by the claimant before a notary. To satisfy the requirement of a sworn statement, courts have held that the affidavit must contain a *jurat*, a mere acknowledgment is insufficient. The instrument must recite that the necessary oath was administered. The affidavit is not required to set forth individual items of work done, or material furnished or specially fabricated, and may use any abbreviations or symbols customary in the trade.

Demand for Payment: If an owner has received proper notice of an unpaid claim, and is therefore authorized to withhold funds, the claimant may then proceed to make a demand for payment. A copy of the demand must be sent to the original contractor, who may give written notice to the owner that he disputes the claim. If the original contractor does not dispute the claim within 30 days after the original contractor receives the demand, the owner must then pay the claim. The demand may accompany the notice of an unpaid claim, but may not be made after the expiration of the time within which a claimant may secure a lien for the claim. This demand for payment has the effect of placing the burden on the original contractor to dispute the claim within 30 days, or the claim is to be paid directly by the owner.

Extent of Lien: The lien secures payment for: (1) the labor done or material furnished for the construction or repair; (2) the specially fabricated material, even if the material has not been delivered or incorporated into the project, less its fair salvage value; or (3) the preparation of a plan or plat by an architect, engineer or surveyor. However, the amount of a lien claimed by a subcontractor may not exceed:

- (1) an amount equal to the proportion of the total subcontract price that the sum of the labor performed, materials furnished, materials specially fabricated, reasonable overhead costs incurred and proportionate profit margin bears to the total subcontract price; minus
- (2) (2) the sum of previous payments received by the claimant on the subcontract. The lien extends to the house, building, fixtures or improvements, the land reclaimed from overflow, or the railroad and all of its properties, and to each lot of land necessarily connected or reclaimed. The lien does not extend to abutting sidewalks, streets and utilities that are public property.

Priority of Lien: For standard construction work, all mechanic's liens are on equal footing without reference to date of filing and all mechanic's liens relate back to the commencement of construction of improvements or delivery of materials to the land on which the improvements are to be located. If the amount of statutory retainage and funds trapped by the owner after receipt of a fund trapping notice letter is insufficient to pay all lien claims in full, the lien claimants share the funds *pro rata*. However, a lien claim for fixtures or improvement that can be removed without material injury to the land or preexisting improvements, takes priority over all other liens, even if not first in time, and the fixture or improvement may be removed and sold separately. Some examples of items that Texas Courts have considered removable without material injury to the property include carpets, appliances, components of air conditioning and heating equipment, smoke detectors, burglar alarms, light fixtures and door locks.

Lien on Money Due Public Works Contractor: To the extent a public works project is not covered by an applicable payment bond as defined in the Texas Government Code set forth in Chapter 14 herein, and all notices are otherwise

provided, a person who furnishes material or labor on such project has a lien on the money, bonds, or warrants due to the contractor for the improvements.

Liens for Improvement of Oil or Gas Wells: A mineral contractor or subcontractor has a lien to secure payment for labor or services related to the mineral activities. “Mineral contractor” means a person who performs labor or furnishes or hauls material, machinery or supplies used in mineral activities under an express or implied contract with a mineral property owner. “Mineral property owner” means an owner of land, an oil, gas or other mineral leasehold, or an oil or gas pipeline or right-of-way. “Mineral activities” means digging, drilling, torpedoing, operating, completing, maintaining or repairing an oil, gas or water well, an oil or gas pipeline, or a mine or quarry. The lien extends to the material, machinery and supplies furnished, and to the land, leasehold, and oil or gas well for which the labor performed or the material was supplied, and the buildings and appurtenances on this property. However, a lien created by performing labor or furnishing materials for a lease holder does not attach to the fee title in the property. To claim a lien, a claimant must file an affidavit with the County Clerk of the county in which the property is located not later than six months after the day the indebtedness accrues. Not later than the 10th day before the day the affidavit is filed, a mineral subcontractor claiming the lien must serve on the property owner written notice that the lien is claimed.

Lien on Homestead: A lien affidavit that relates to a homestead must contain the following notice conspicuously printed, stamped or typed in a size equal to at least 10-point boldface or computer equivalent, at the top of the page:

NOTICE: THIS IS NOT A LIEN, THIS IS ONLY AN AFFIDAVIT CLAIMING A LIEN.

For a lien on a homestead to be valid, the fund trapping notice required to be given to the owner must include or have attached the following statement:

“If a subcontractor or supplier who furnishes materials or performs labor for construction of improvement on your property is not paid, your property may be subject to a lien for the unpaid amount if: (1) after receiving notice of the unpaid claim from the claimant, you fail to withhold payment to your contractor that is sufficient to cover the unpaid claim until the dispute is resolved; or (2) during construction and for 30 days after completion of construction, you fail to retain 10 percent of the contract price or 10 percent of the value of the work performed by your contractor.

If you have complied with the law regarding the 10 percent retainage and you have withheld payment to the contractor sufficient to cover any written notice of claim and have paid that amount, if any, to the claimant, any lien claim filed on your property by a subcontractor or supplier, other than a person who contracted directly with you, will not be a valid lien on your property. In addition, except for the required 10 percent retainage, you are not liable to a subcontractor before you received written notice of the claim.”

To claim a lien on a residential construction project the lien affidavit must be filed not later than the 15th day of the third calendar month after the day on which the indebtedness accrues.

Affidavit of Completion: An owner may file an affidavit of completion with the County Clerk of the county in which the property is located. A copy of this affidavit must be sent by certified or registered mail to the original contractor not later than the date the affidavit is filed and to each claimant who sends a notice of lien liability to the owner not later than the date the affidavit is filed or the 10th day after the date the owner receives the notice of lien liability, whichever is later. A copy must also be sent to each person who provides labor or materials and who furnishes the owner with a written request for a copy.

Notice of Termination or Abandonment: The Texas Property Code requires an owner to provide notice to all subcontractors who have given notice to the owner of an unpaid claim if the original contract is terminated or abandoned after the date the subcontractor’s notice is given. A subcontractor may also request, at any time, notice from the owner of termination or abandonment, by sending a request for notice by certified or registered mail to the owner. If an owner sends notice of termination or abandonment on or before the 10th day after the original contract is terminated or abandoned, it is *prima facie* evidence of the date the original contract was terminated or abandoned for purposes of filing lien affidavits.

Discharge: A mechanic’s lien may be discharged by recording a release of lien signed by the claimant, failure to initiate suit, recording a final judgment providing for discharge or filing a bond.

Fraudulent Liens: Section 12.002 of the Texas Civil Practice and Remedies Code provides a civil cause of action against persons who fraudulently file, or attempt to file, documents purporting to create a lien on property. The statute imposes liability in the amount of the greater of \$10,000 or actual damages, plus attorneys’ fees, court costs and exemplary damages, on persons found to have made, presented or used a fraudulent lien or claim against real or personal property. Importantly, however, a person claiming a lien under Chapter 53 of the Texas Property Code is not liable for the making, presentation or use of a document or other record in connection with the assertion of the claim, unless the person acts with intent to defraud. Thus, a lien claimant that makes an inadvertent or good faith mistake or error in the filing of a mechanic’s lien will not be subject to liability for filing a fraudulent lien.

Waivers and Releases of Lien and Bond Claim Rights: Texas has four statutory forms for releases of lien and bond claim rights. These forms are specifically set out in Texas Property Code §53.284. The parties in the construction chain utilizing these forms are directed to this statute in order to comply with Texas law. A waiver and release releases the owner, the owner’s property, the contractor, and the surety on a payment bond from claims and liens only if (1) the waiver and release substantially complies with one of the forms approved by the Texas Legislature; (2) the waiver and release is signed

by the claimant or the claimant’s authorized agent and notarized; and (3) in the case of a conditional release, evidence of payment to the claimant exists.

Forms for Waiver and Release of Lien or Payment Bond Claim: A waiver and release given by a claimant or potential claimant is unenforceable unless substantially complies with one of the following forms applicable to the particular circumstance:

STATUTORY FORM #1: Conditional Waiver and Release on Progress Payment: This form is used if a claimant or a potential claimant is required to execute a waiver and release in exchange for, or to induce the payment of, a progress payment, and makes the receipt of payment a condition precedent to the enforceability of the waiver and release. The statutory form is as follows:

CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

Project _____

Job No. _____

On receipt by the signer of this document of a check from _____ [*maker of check*] in the sum of \$_____ payable to _____ [*payee or payees of check*] and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic’s lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer’s position that the signer has on the property of _____ [*owner*] located at _____ [*location of property*] to the following extent: _____ [*job description*].

This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to _____ [*person with whom signer contracted*] as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

Before any recipient of this document relies on this document, the recipient should verify evidence of payment to the signer.

The signer warrants that the signer has already paid or will use the funds received from this progress payment to promptly pay in full all of the signer’s laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project in regard to the attached statement(s) or progress payment request(s).

Date: _____

(Company name)

By: _____

(Signature)

(Title)

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned notary, on the ____ day of _____, 20____.

Notary Public in and for
The State of Texas

My Commission Expires: _____

STATUTORY FORM #2: Unconditional Waiver and Release on Progress Payment: This form is used if a progress payment has already been made. A person may not require a claimant or a potential lien claimant to execute an unconditional release for a progress or final payment unless the claimant or potential claimant has received payment in that amount in good or sufficient funds. This waiver and release must contain a boldface notice at the top that is at least as large as the largest type used in the document that payment has been made, but in no case smaller than 10-point type. The statutory form is as follows:

NOTICE:

This document waives rights unconditionally and states that you have been paid for giving up those rights. It is prohibited for a person to require you to sign this document if you have not been paid the payment amount set forth below. If you have not been paid, use a conditional release form.

UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

Project _____

Job No. _____

The signer of this document has been paid and has received a progress payment in the sum of \$_____ for all

labor, services, equipment, or materials furnished to the property or to _____ [person with whom signer contracted] on the property of _____ [owner] located at _____ [location of property] to the following extent: _____ [job description]. The signer therefore waives and releases any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the above referenced project to the following extent:

This release covers a progress payment for all labor, services, equipment, or materials furnished to the property or to _____ [person with whom signer contracted] as indicated in the attached statement(s) or progress payment request(s), except for unpaid retention, pending modifications and changes, or other items furnished.

The signer warrants that the signer has already paid or will use the funds received from this progress payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project in regard to the attached statement(s) or progress payment request(s).

Date: _____

(Company name)

By: _____

(Signature)

(Title)

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned notary, on the ____day of _____, 20__.

Notary Public in and for
The State of Texas

My Commission Expires: _____

STATUTORY FORM #3: Conditional Waiver and Release on Final Payment: This form is used if a claimant or potential claimant is required to execute a waiver and release in exchange for, or to induce, final payment. The statutory form is as follows:

CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

Project _____

Job No. _____

On receipt by the signer of this document of a check from _____ [maker of check] in the sum of \$_____ payable to _____ [payee or payees of check] and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the property of _____ [owner] located at _____ [location of property] to the following extent: _____ [job description].

This release covers the final payment to the signer for all labor, services, equipment, or materials furnished to the property or to _____ [person with whom signer contracted].

Before any recipient of this document relies on this document, the recipient should verify evidence of payment to the signer.

The signer warrants that the signer has already paid or will use the funds received from this final payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project up to the date of this waiver and release.

Date: _____

(Company name)

By: _____

(Signature)

(Title)

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned notary, on the ____day of _____, 20__.

Notary Public in and for
The State of Texas

My Commission Expires: _____

STATUTORY FORM #4: Unconditional Waiver and Release on Final Payment: This form is used if final payment has already been made. It must contain a boldface notice at the top of the waiver and release that is at least as large as the largest type used in the document, but in no case smaller than 10-point type. The statutory form is as follows:

NOTICE:

This document waives rights unconditionally and states that you have been paid for giving up those rights. It is prohibited for a person to require you to sign this document if you have not been paid the payment amount set forth below. If you have not been paid, use a conditional release form.

UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

Project _____

Job No. _____

The signer of this document has been paid in full for all labor, services, equipment, or materials furnished to the property or to _____ [*person with whom signer contracted*] on the property of _____ [*owner*] located at _____ [*location of property*] to the following extent: _____ [*job description*]. The signer therefore waives and releases any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position.

The signer warrants that the signer has already paid or will use the funds received from this final payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project up to the date of this waiver and release.

Date: _____

(Company name)

By: _____

(Signature)

(Title)

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned notary, on the ____ day of _____, 20__.

Notary Public in and for
The State of Texas

My Commission Expires: _____

Statutory Citation: Texas Property Code, Title 5, Subtitle B, §§53.001 to 53.260; 53.281 to 53.284; 56.001 to 56.045. Texas Civil Practice and Remedies Code, Title 2, Subtitle A, §12.002.

UTAH

Who May Claim: All persons performing any preconstruction or construction services, including scheduling, estimating, staking, supervising, managing, materials testing, inspection, observation, quality control, consulting, conducting a site investigation or assessment, programming, cost or quantity estimating, performing a feasibility review, procuring construction services, preparing a study, surveying, designing, and planning.

A person otherwise entitled to file a lien upon an owner-occupied residence and the real property associated with it who provides qualified services under an agreement other than with the owner is barred from maintaining a lien upon that residence and real property or recovering a judgment in any civil action against the owner or the owner-occupied residence to recover monies owed for said services provided by that person if the owner of the residence obtains a certificate of compliance from the Division of Occupational and Professional Licensing that shows: (a) the owner of the residence or the owner's agent entered a written agreement with a licensed contractor for the performance of qualified services, to obtain the performance of a qualified service by others, or for the supervision of the performance by others of the services in construction on that residence; (b) the owner paid the contractor with whom the owner had a written agreement in accord with its terms; and (c) the contractor subsequently failed to pay the claimant pursuant to an agreement.

How Claimed: By filing a claim containing a notice of intention to hold and claim a lien.

Where Filed: With county recorder offices in counties where property is located.

When to Be Filed: A notice to hold and claim a preconstruction services lien must be filed within 90 days from completion of the claimant's preconstruction services. A notice to hold and claim a construction services lien must be filed within 90 days from the filing of a notice of completion. If no notice of completion is filed, the notice to hold and claim a

construction services lien must be filed within 180 days from final completion of the project.

For those providing preconstruction services, a notice of preconstruction service must be filed with the State Construction Registry before a notice to hold and claim a preconstruction services lien may be recorded. The notice of preconstruction service must be filed within 20 days of commencement of the claimant's services.

A notice of preconstruction service must include: (1) claimant's name, address, email address and telephone number; (2) name, address, email address and phone number of the person who contracted for the services; (3) description of the services provided; (4) name of the record or reputed owner of the project; (5) name of the county in which the project is located; (6) statement that claimant intends to claim a preconstruction lien if not paid in full; and (7) either of the following: (a) tax parcel identification number of each parcel included in the project property or (b) entry number of a previously filed notice of preconstruction service that includes the tax parcel identification number(s) of each parcel included in the project property.

For those providing construction services, a preliminary notice must be filed with the State Construction Registry before a notice to hold and claim a construction services lien may be recorded. The preliminary notice must be filed within 20 days of commencement of the claimant's services. Preliminary notices filed after this timeframe only become effective five days after the date on which they are filed and preclude the claimant from filing a claim for compensation for construction services prior to the effective date of the preliminary notice.

A preliminary notice must include: (1) claimant's name, address, email address and telephone number; (2) name and address of the person who contracted for the services; (3) name of the record or reputed owner of the project; (4) name of the original contractor under which claimant is providing work; (5) address of the project property or a description of the location of the project; (6) name of the county in which the project is located; and (7) one of the following: (a) tax parcel identification number of each parcel included in the project property, (b) entry number of a previously filed notice of construction loan on the same project, (c) entry number of a previously filed preliminary notice that includes the tax parcel identification number(s) of each parcel included in the project property, or (d) entry number of the building permit issued for the project.

An owner of a construction project that is registered with the database who intends to file a notice of completion or a contractor of a commercial nonresidential construction project that is registered with the database who intends to file a notice of completion shall first file a "notice of intent to file a notice of completion" with the database if: (1) the completion of performance time under the original contract is greater than 120 days; (2) the total original construction contract price exceeds \$500,000; and (3) the contractor or owner has not obtained a payment bond in accordance with Section 14-2-1.

The notice of intent to file a notice of completion shall be filed at least 45 days before the day on which the owner or contractor of a commercial nonresidential construction project files or could have filed a notice of completion. If filed, a person supplying labor, materials or services to an owner, a contractor or subcontractor who files a notice of intent shall file an amendment to the person's preliminary notice that includes: (1) a good faith estimate of the total amount remaining due to complete the contract, purchase order or agreement relating to the person's approved labor, approved materials and approved services; (2) the identification of each contractor or subcontractor with whom the person has a contract or contracts for supplying project labor, materials or services; and (3) a separate statement of all known amounts or categories of work in dispute.

The person's preliminary notice must be amended no later than 20 days after the day on which the owner or contractor files a notice of intent.

A notice of completion may be filed upon final completion of a construction project by: (1) the owner; (2) the original contractor; (3) the lender that has provided financing; (4) the surety that has provided bonding; or (5) the title company issuing a title insurance policy. The notice of completion shall include: (1) the name, address, telephone number, and email address of the person filing the notice of completion; (2) the name of the county in which the project is located; (3) the tax parcel identification number of the property, the entry number of a preliminary notice on the same project, or the entry number of the building permit issued for the project; (4) the date on which final completion is alleged to have occurred; and (5) the method used to determine final completion. Upon the filing of the notice of completion, the timeframe for filing preliminary notices changes so that all preliminary notices shall be filed within 10 days of the date on which the notice of completion is filed.

Final completion means: (1) issuance of a permanent certificate of occupancy, if required; (2) the date of final inspection by the local government entity, if a permanent certificate of occupancy is not required; or (3) if neither a permanent certificate of occupancy nor final inspection is required, the date on which there remains no substantial work to be completed to finish work on the original contract. Final completion does not occur if the owner is holding payment to ensure completion of incomplete work.

Service of Copy of Notice: Within 30 days after filing notice to hold and claim a lien (whether for preconstruction or construction services), the lien claimant shall deliver or mail by certified mail to either the reputed owner or record owner of the real property a copy of the said notice to hold and claim a lien. Where the record owner's current address is not readily available, the copy of the claim may be mailed to the last known address of the record owner using for such purpose the names and addresses appearing on the last completed real property assessment rolls of the county where the affected property is located. Failure to deliver or mail the notice of lien to the reputed owner or record owner shall prevent the lien claimant from collection of costs and attorneys' fees against the reputed owner or record owner in an action to enforce the

lien.

If suit is filed to enforce a lien on residential real property, the claimant must also serve to the owner a notice, instructions and forms relating to the Residence Lien Restriction and Lien Recovery Fund Act.

Duration of Lien: Must be enforced by filing an action and a *lis pendens* within 180 days from the date the lien claimant recorded the notice to hold and claim a lien.

Filing Fee: \$10 plus \$2 for each additional page. If more than one description, \$1 for each.

Contents of Notice of Lien: (1) Owner's name or record owner's name; (2) name of the person who employed claimant or to whom claimant furnished services; (3) dates of first and last services; (4) property description sufficient for identification; (5) claimant's name, address and telephone number; (6) amount of the claim; (7) claimant's/agent's signature; and (8) on an owner-occupied residence, a statement describing the steps for removal of the lien under the Residence Lien Restriction and Lien Recovery Fund Act. Substantial compliance with these requirements is sufficient to hold and claim a lien.

Extent of Lien: Only to such interests as the owner or lessee may have in the real property. Lien shall extend to so much of the land on which the improvement is situated as may be necessary for its convenient use and occupation, and if the improvement shall occupy two or more lots or other subdivisions of land, they shall be deemed as one lot.

Subcontractors' liens shall extend to the full contract price, but if at the time of commencement to do the construction services, owner has paid upon the contract, any portion of the contract price, either in money or property, the lien of the contractor shall extend only to such unpaid balance, and the lien of any subcontractor having notice of such payment shall be limited to the unpaid balance of the contract price. No part of the contract price shall by the terms of any contract be made payable nor shall the same or any part thereof be paid in advance of the commencement of the work for the purpose of defeating the lien law.

Priority of Lien: Preconstruction service liens relate back to, and take effect as of, the first notice of preconstruction service filed on the project, except that such liens are subordinate to a *bona fide* loan to the extent preconstruction services are provided after the *bona fide* loan is recorded. Construction service liens relate back to, and take effect as of, the first preliminary notice filed on the project. Liens shall have priority over any lien, mortgage or other encumbrance that attached subsequent to that first preliminary notice. Lenders, however, can purchase a first priority position over any lien claimant.

Lien for Improvement of Oil or Gas Well: Contractors, subcontractors and all persons performing work upon, or furnishing materials or equipment for, any production unit under contract with the owner, his agent or contractor must file a notice of lien within 180 days after the last day work was performed, or material or equipment was furnished, by the lien claimant. Preliminary notice to the owner or operator within 20 days of commencement of work is required for all subcontractors and material or equipment suppliers. To enforce the liens, the lien claimant shall institute an action within 180 days of the date of filing of the notice of lien, and shall, within 10 working days after commencement of the action, file a *lis pendens* with the County Recorder of each county in which the lien is recorded. Lien claimant's interest extends to the owner's production unit and access rights, pipelines, buildings, wells and oil tanks located on the property, as well as the ore, minerals, oil or gas substances in the ground or in storage. The owner of an interest in the production unit shall not be subject to a lien if he gives timely written notice in recordable form filed with the County Recorder of the county where the production unit is located stating that he will not be responsible for work performed or materials or equipment furnished.

Statutory Citation: Utah Code, Title 38, Chapter 1a, §§38-1a-101 to 38-1a-804; Chapter 10, §§38-10-101 to 38-10-115; Chapter 11, §§38-11-101 to 38-11-302.

VERMONT

Who May Claim: A person who is proceeding pursuant to a contract or agreement for erecting, repairing, moving or altering improvements to real property, or for furnishing materials or labor therefore has a lien; and a person who performs labor or furnishes material in the above-named works, under an agreement with an agent, the contractor or subcontractor of the owner shall have a lien. Although there is no Vermont case directly on this point, the statutes are broad enough to cover "suppliers to suppliers" in contrast to many other states' lien laws.

How Claimed: Claimant must file signed written memorandum and give the written memorandum to the owner or his agent that the mechanic will claim a lien for labor to be performed or materials to be furnished.

Where Filed: Town Clerk of town in which real estate is situated.

When to Be Filed: Within 180 days of due date of payment for the last labor performed or material supplied. Note, Vermont law does not use the last day of work or furnishing of materials to begin the lien process. The time limitation for filing a Claim of Lien in Vermont begins to run from the date when payment became due for the last of labor performed or materials furnished.

Service of Copy of Notice: Formal service of the notice of lien on the owner or his agent is not required, but is advisable.

Duration of Lien: Lien expires 180 days after last payment is due if notice is not recorded. Lien must be perfected by filing suit within 180 days of the filing of the Notice of Mechanic's Lien, if payment is due at the time of filing. If payment is not due at time of filing, suit to perfect must be filed within 180 days from the time payment becomes due. In addition to

filing a Complaint to enforce the lien and obtain payment, lienor must seek and obtain a pre-judgment attachment against the real estate within the applicable 180 day period.

Filing Fee: \$10 per page.

Contents of Statement of Lien: Notice should describe the land and improvements, assert a lien thereon, state the amount claimed and that it is for such indebtedness as specified by 12 V.S.A. §1921, identify the person to whom and from whom it is due, and the latter's interest in the building or improvement. Notice should also state the date payment is due, if known.

Extent of Lien: Not to exceed the portion of the contract price remaining unpaid at the time when lien is asserted. Within five months after judgment being entered, the claimant may foreclose after recording a certified copy of the judgment. Attorney fees are not included in the amount of the lien, unless recoverable by contract, but prejudgment interest may be awarded in the court's discretion. Lien covers all land owned or held by owner and used or designated for use in connection with the improvements, but not other adjacent lands.

Priority of Lien: Does not take precedence over a mortgage given by the owner upon such building, etc., as security for the payment of money loaned and to be used by said owner in payment of the expenses of the same, if mortgage is recorded before notice of lien. Does not take precedence over a deed or conveyance to the extent that consideration has been given in good faith before record of lien. If notice of lien is given to mortgagee, lien takes precedence over mortgage as to all advances made under mortgage to the mortgagor, except those shown by mortgagee to have been actually expended in completing improvements to the property. If several mechanic's liens are asserted, they shall be paid *pro rata*.

Waiver: Lien may not be waived in advance of work or supply of materials and any attempted advance waiver is not enforceable.

Contractor's and subcontractor's payment obligations: Statute: Vt. Stat. Ann., Title 9, §4003.

This statute requires that the due date for receipt of payments from the owner be disclosed to the subcontractor. When a subcontractor has performed in accordance with the provisions of its contract, a contractor shall pay to the subcontractor, and each subcontractor shall in turn pay to its subcontractors, the full or proportional amount received for each such subcontractor's work and materials based on work completed or service provided under the subcontract, within seven days after receipt of each progress or final payment or seven days after receipt of the subcontractor's invoice, whichever is later. If there is a delay in payment, "the contractor or subcontractor shall pay its subcontractor interest, beginning on the next day, at an interest rate equal to that established by 12 V.S.A. §2903(b), on such unpaid balance as may be due."

Statutory Citation: Vermont Statutes, Title 9, §§1921 to 1928.

VIRGINIA

Who May Claim: All persons performing labor or furnishing materials, for the construction, removal, repair or improvement of any building or structure permanently attached to the real estate. The statute includes storage tanks, dispensing equipment, wells, excavations, sidewalks, driveways, pavements, parking lots, retaining walls, curb and/or gutter, breakwater, water system, drainage structure, filtering systems (including septic or waste disposal systems), swimming pools, surveying, grading, clearing, earth moving, shrubbery, sod, sand, gravel, brick and the rental or use value of equipment. Any person providing labor or materials for site development improvements or for streets, sanitary sewers, water lines, traffic signalization, or installation of electric, gas, cable, or other utilities for the purpose of providing access or service to the individual lots in a development shall have a *pro rata* lien on each individual lot in the development, provided that the claimant files a Memorandum of Disclosure in the land records prior to the sale of such lot, setting forth a full disclosure of the nature of the lien to be claimed, the amount claimed against each lot and a description of the development. Special provisions also exist for liens on condominiums. A person who provides labor or furnishes materials without a valid contractor's license, or without a proper class of license, when such a license is required by law, shall not be entitled to a lien.

How Claimed: All claimants must file a Memorandum of Mechanic's Lien and later a suit to enforce the Mechanic's Lien. Some claimants on residential projects must also give a preliminary notice.

Where Filed: The Memorandum of Mechanic's Lien is filed in the land records of the Circuit Court Clerk's office of county or city in which property is located.

When to Be Filed: Any time after work is commenced or material furnished, but not later than 90 days after the last day of the month in which the claimant last performed work or furnished material and in no event later than 90 days after the improvement is completed. In addition the Virginia mechanic's lien statute allows a contractor to file a lien only for unpaid amounts for work done within 150 days of the last day of work performed on the project.

Service of Copy of Notice: All claimants must also give notice of the mechanic's lien by certified mail to owner of property and any general contractor in the form required by statute. General contractor must also file with their memorandum of lien a certification that a copy was sent to the owner's last known address.

Preliminary Notice: For single- or double-family residences, the owner can identify a Mechanic's Lien Agent (MLA) in the building permit, in which case all claimants are also required to give notice to the Mechanic's Lien Agent (MLA) by certified mail within 30 days of beginning supply of labor or materials. The MLA notice must contain: (i) the name, mailing address and telephone number of the person (or company) sending the Notice; (ii) the claimant's Virginia Board of

Contractors license number, if any, and the date such license was issued and the date such license expires; (iii) the building permit number; (iv) a description of the property as shown on the building permit; and (v) a statement that the person filing such Notice seeks payment for labor performed or material furnished.

Duration of Lien: Suit to enforce the mechanic's lien must be filed within six months from time memorandum of lien was recorded, or 60 days from the time the building, structure or railroad was completed or work terminated, whichever last occurs.

Filing Fee: \$21 for up to 10 pages; \$35 for 11-30 pages; and \$55 for 31 or more pages for Memorandum of Mechanic's Lien.

Contents of Memorandum of Mechanic's Lien: The memorandum contents are: (1) name and address of the owner; (2) the claimant's Virginia Board of Contractors license number, if any, and the date such license was issued and the date such license expires; (3) name of the general contractor, if any; (4) name and address of the claimant; (5) type of materials or service furnished; (6) amount claimed; (7) type of structure on which the work was performed; (8) brief description and location of the property; (9) date from which interest is claimed; (10) a statement declaring the intention to claim the benefit of the lien; and (11) an affidavit that the owner or upper tier contractor is indebted to the claimant in the amount claimed for labor or material supplied as stated in the memorandum and that no Virginia Board of Contractors license is required for this claimant, if no such license number was listed in the lien memorandum. Any number of such memoranda may be filed, but no memorandum may include sums due for labor or materials furnished more than 150 days prior to the last day on which labor was performed or material furnished to the job. However, any memorandum may include retainages of up to 10 percent of the contract price or sums not yet due because of a "pay when paid" contract clause. Any person who, with intent to mislead, includes in the memorandum work not performed upon, or materials not furnished for the property described in the memorandum, forfeits any right to this lien.

Extent of Lien: Upon the buildings or structures, and so much land therewith as shall be necessary for the convenient use and enjoyment thereof. If a tenant or contract purchaser ordered the work, the lien extends only to the extent of the interest of the tenant or contract purchaser.

Subcontractors, Materialmen, etc.: The owner has a defense of payment. A subcontractor may not enforce a lien for an amount greater than the amount that the owner is, or shall thereafter become, indebted to the general contractor. A sub-subcontractor cannot perfect a lien for an amount greater than the amount the subcontractor could perfect a lien. A subcontractor or sub-subcontractor may be able to avoid a defense of payment and create personal liability on the owner and/or the general contractor by providing a Virginia Code §43-11 notice to the owner and/or the general contractor before furnishing labor or material and then providing a statement of account verified by affidavit within 30 days after the building or structure is completed. However, an owner always has priority to deductions allowed in an agreement because of the failure or refusal of the general contractor to comply with his contract.

Priority of Lien: Lien preferred to all judgments, mortgages, deeds of trusts, liens and conveyances recorded after commencement of work and to all loan advances made after commencement of work. Subcontractor liens have priority over general contractor liens, and the lien of a person performing labor or furnishing materials for a subcontractor shall be preferred to a subcontractor lien. Manual laborers are preferred to other lienors for labor performed during last 30 days of work. If owner is compelled to finish his own structure, the amount so expended shall have priority over all mechanic's liens. No lien upon land created after work commenced or materials were furnished shall operate on the land or the new building until the mechanic's lien is satisfied.

Waiver: The right to file or enforce a mechanic's lien may be waived at any time by the person entitled to the lien.

Statutory Citation: Code of Virginia, Title 43, Chapter 1, §§43-1 to 43-71.

WASHINGTON

Who May Claim: Any person furnishing labor, professional services, materials or equipment for the improvement of real property shall have a lien upon the improvement for the contract price of labor, professional services, materials or equipment furnished at the instance of the owner, or the agent or construction agent of the owner.

How Claimed: By giving notice to owner (see sample below) that a claim may be filed and by filing a notice of claim of lien (see sample below).

Recording of Lien: Every person claiming a lien shall file for recording, in the county where the subject property is located, a notice of claim of lien.

When to Be Filed: Within 90 days from the date of cessation of performance of labor, furnishing material or supplying equipment. Liens for supply of agricultural materials must be filed after commencement of delivery of materials and products, but before commencement of the harvest of the crops. A copy of the recorded lien must be served or sent registered mail return receipt requested within 14 days of recording or the claimant will not be entitled to recover attorneys' fees. It is further recommended that the claimant send its customer and the general contractor a copy of the recorded lien registered mail with return receipt requested.

Contents of Lien for Recording: The notice of claim of lien, see sample below: (1) Shall state in substance and effect: (a) name, phone number and address of the claimant; (b) first and last date on which the labor, professional services, materials or equipment was furnished or employee benefit contributions were due; (c) name of the person indebted to the

claimant; (d) street address, legal description or other description reasonably calculated to identify, for a person familiar with the area, the location of the real property to be charged with the lien; (e) name of the owner or reputed owner of the property, if known, and if not known, that fact shall be stated; and (f) principal amount for which the lien is claimed.

(2) Shall be signed by the claimant or some person authorized to act on his or her behalf who shall affirmatively state they have read the notice of claim of lien and believe the notice of claim of lien to be true and correct under penalty of perjury, and shall be acknowledged. If the lien has been assigned, the name of the assignee shall be stated. Where an action to foreclose the lien has been commenced such notice of claim of lien may be amended as pleadings may be by order of the court insofar as the interests of third parties are not adversely affected by such amendment.

_____, claimant,

v.

_____, name of person indebted to claimant.

Notice is hereby given that the person named below claims a lien pursuant to Chapter 64.04 RCW. In support of this lien the following information is submitted:

1. NAME OF LIEN CLAIMANT:

TELEPHONE NUMBER:

ADDRESS:

2. DATE ON WHICH THE CLAIMANT BEGAN TO PERFORM LABOR, PROVIDE PROFESSIONAL SERVICES, SUPPLY MATERIAL OR EQUIPMENT OR THE DATE ON WHICH EMPLOYEE BENEFIT CONTRIBUTIONS BECAME DUE:

3. NAME OF PERSON INDEBTED TO THE CLAIMANT:

4. DESCRIPTION OF THE PROPERTY AGAINST WHICH A LIEN IS CLAIMED (Street address, legal description or other information that will reasonably describe the property):

5. NAME OF THE OWNER OR REPUTED OWNER (If not known state "unknown"):

6. THE LAST DATE ON WHICH LABOR WAS PERFORMED; PROFESSIONAL SERVICES WERE FURNISHED; CONTRIBUTIONS TO AN EMPLOYEE BENEFIT PLAN WERE DUE; OR MATERIAL, OR EQUIPMENT WAS FURNISHED:

7. PRINCIPAL AMOUNT FOR WHICH THE LIEN IS CLAIMED IS:

8. IF THE CLAIMANT IS THE ASSIGNEE OF THIS CLAIM SO STATE HERE:

(Claimant)

(Phone number, address, city and state of claimant)

STATE OF WASHINGTON)

)ss.

COUNTY OF _____)

_____, being sworn, says: I am the claimant (or attorney of the claimant, or administrator, representative, or agent of the trustees of an employee benefit plan) above named; I have read or heard the foregoing claim, read and know the contents thereof, and believe the same to be true and correct and that the claim of lien is not frivolous and is made with reasonable cause, and is not clearly excessive under penalty of perjury.

(Signature)

Subscribed and sworn to before me this ____ day of _____, 20____.

Notices/Exceptions: (1) Every person furnishing professional services, materials or equipment for the improvement of real property who is not in privity with the owner shall give the owner or reputed owner and prime contractor notice in writing of the right to claim a lien. The notice may be given at any time but only protects the right to claim a lien for professional services, materials or equipment supplied after the date which is 60 days before: (a) mailing the notice by certified or registered mail to the owner or reputed owner; or (b) delivering or serving the notice personally upon the owner or reputed owner and obtaining evidence of delivery in the form of a receipt or other acknowledgment signed by the owner or reputed owner or an affidavit of service.

In the case of new construction of a single-family residence, the notice of a right to claim a lien may be given at any time but only protects the right to claim a lien for professional services, materials or equipment supplied after a date which is 10 days before the notice is given as described in this subsection.

(2) Notices of a right to claim a lien shall not be required of: (a) persons who contract directly with the owner or the owner's common-law agent; (b) laborers whose claim of lien is based solely on performing labor; or (c) subcontractors who contract for the improvement of real property directly with the prime contractor.

(3) Persons who furnish professional services, materials or equipment in connection with the repair, alteration or remodel of an existing *owner-occupied single-family residence or appurtenant garage*: (a) who contract directly with the owner-occupier or their common-law agent shall not be required to send a written notice of the right to claim a lien and shall have a lien for the full amount due under their contract, as provided in RCW 60.04.021 of this act; or (b) who do not contract directly with the owner-occupier or their common-law agent shall give notice of the right to claim a lien to the owner-occupier.

Liens of persons who do not contract directly with the owner-occupier may only be satisfied from amounts not yet paid to the prime contractor by the owner at the time the notice, see sample in contents of notice section below, is received, regardless of whether amounts not yet paid to the prime contractor are due.

It is recommended that the notice be sent to the claimant's customer, the general contractor in addition to the property owner. It is further recommended the notice be sent registered mail return receipt requested.

Contents of Notice: The notice required shall include but not be limited to the following information and shall substantially be in the following form, using lowercase and uppercase 10-point type where appropriate.

NOTICE TO OWNER

**IMPORTANT: READ BOTH SIDES OF NOTICE CAREFULLY.
PROTECT YOURSELF FROM PAYING TWICE.**

To: _____ Date: _____

RE: _____ (description of property: street address or general location)

From: _____

AT THE REQUEST OF: (Name of person placing the order)

THIS IS NOT A LIEN: This notice is sent to you to tell you who is providing professional services, materials or equipment for the improvement of your property and to advise you of the rights of these persons and your responsibilities. Also take note that laborers on your project may claim a lien without sending you a notice.

OWNER/OCCUPIER OF EXISTING RESIDENTIAL PROPERTY

Under Washington law, those who work on or provide materials for the repair, remodel or alteration of your owner-occupied principal residence and who are not paid, have a right to enforce their claim for payment against your property. This claim is known as a construction lien.

The law limits the amount that a lien claimant can claim against your property. Claims may only be made against that portion of the contract you have not yet paid to your prime contractor as of the time you received this notice. Review the back of this notice for more information and ways to avoid lien claims.

COMMERCIAL AND/OR NEW RESIDENTIAL PROPERTY

We have or will be providing labor, materials, professional services or equipment for the improvement of your commercial or new residential project. In the event you or your contractor fails to pay us, we may file a lien against your property. A lien may be claimed for all materials, equipment and professional services furnished after a date that is 60 days before this notice was given to you, unless the improvement to your property is the construction of a new single-family residence, then 10 days before this notice was mailed to you.

(Sender)

(Address)

(Telephone)

Brief description of professional services, materials or equipment provided or to be provided:

IMPORTANT INFORMATION ON REVERSE SIDE

IMPORTANT INFORMATION FOR YOUR PROTECTION

This notice is sent to inform you that we have or will provide materials, professional services or equipment for the repair, remodel or alteration of your property. We expect to be paid by the person who ordered our services, but if we are not paid, we have the right to enforce our claim by filing a construction lien against your property.

WAYS TO PROTECT YOURSELF ARE:

—LEARN more about the lien laws and the meaning of this notice by discussing with your contractor, suppliers, Department of Labor and Industries, the firm sending you this notice, your lender or your attorney.

—COMMON METHODS TO AVOID CONSTRUCTION LIENS: There are several methods available to protect your property from construction liens. The following are two of the more commonly used methods.

—DUAL PAYCHECKS (Joint Checks): When paying your contractor for services or materials, you may make checks payable jointly to the contractor and the firms furnishing you this notice.

—LIEN RELEASES: You may require your contractor to provide lien releases signed by all the suppliers and subcontractors from whom you have received this notice. If they cannot obtain lien releases because you have not paid

them, you may use the dual payee check method to protect yourself.

YOU SHOULD TAKE WHATEVER STEPS YOU BELIEVE NECESSARY TO PROTECT YOUR PROPERTY FROM LIENS.

YOUR PRIME CONTRACTOR AND YOUR CONSTRUCTION LENDER ARE REQUIRED BY LAW TO GIVE YOU WRITTEN INFORMATION ABOUT LIEN CLAIMS. IF YOU HAVE NOT RECEIVED IT, ASK THEM FOR IT.

Violation of the Consumer Protection Act: Acts of coercion or attempted coercion, including threats to withhold future contracts, made by a contractor or developer to discourage a contractor, subcontractor, or material or equipment supplier from giving an owner the notice of right to claim a lien or from filing a claim of lien is a violation of Washington States Consumer Protection Act.

Contractor Registration: A contractor or subcontractor required to be registered under RCW Chapter 18.27 or licensed under RCW Chapter 19.28, or otherwise required to be registered or licensed by law, shall be deemed the construction agent of the owner for the purpose of establishing the lien created by this chapter only if so registered or licensed.

Duration: No lien binds the property subject to the lien for a longer period than eight calendar months after the claim of lien has been recorded unless an action is filed by the lien claimant within that time in the superior court in the county where the subject property is located to enforce the lien, and service is made upon the owner of the subject property within 90 days of the date of filing the action; or, if credit is given and the terms are stated in the claim of lien, then eight calendar months after the expiration of such credit; and in case the action is not prosecuted to judgment within two years after the commencement, the court may dismiss the action for want of prosecution, and the dismissal of the action or a judgment rendered thereon that no lien exists shall constitute a cancellation of the lien. This is a period of limitation, which shall be tolled by the filing of any petition for bankruptcy by an owner of any property subject to the lien established by this chapter.

Assignment of Liens: Any lien or right of lien and the right of action to recover, is assignable so as to vest in the assignee all rights and remedies of the assignor, subject to all defenses.

Filing Fee: Filing fees will be imposed and the claimant should verify the amount as the amount may vary from county to county and may change from time to time.

Property Subject to Lien: The lot, tract or parcel of land which is improved is subject to a lien to the extent of the interest of the owner at whose instance, directly or through a common-law or construction agent, the labor, professional services, equipment or materials were furnished, as the court deems appropriate for satisfaction of the lien. If, for any reason, the title or interest in the land upon which the improvement is situated cannot be subjected to the lien, the court in order to satisfy the lien may order the sale and removal of the improvement from the land, which is subject to the lien.

Priority of Lien: The claim of lien created by this chapter upon any lot or parcel of land shall be prior to any lien, mortgage, deed of trust or other encumbrance which attached to the land after or was unrecorded at the time of commencement of labor or professional services or first delivery of materials or equipment by the lien claimant.

(1) In every case in which different construction liens are claimed against the same property, the court shall declare the rank of such lien or class of liens, which liens shall be in the following order: (a) liens for the performance of labor; (b) liens for contributions owed to employee benefit plans; (c) liens for furnishing material, supplies or equipment; (d) liens for subcontractors, including but not limited to their labor and materials; and (e) liens for prime contractors, or for professional services.

(2) The proceeds of the sale of property must be applied to each lien or class of liens in order of its rank and, in an action brought to foreclose a lien, *pro rata* among each claimant in each separate priority class. A personal judgment may be rendered against any party personally liable for any debt for which the lien is claimed. If the lien is established, the judgment shall provide for the enforcement thereof upon the property liable as in the case of foreclosure of judgment liens. The amount realized by such enforcement of the lien shall be credited upon the proper personal judgment. The deficiency, if any, remaining unsatisfied, shall stand as a personal judgment and may be collected by execution against any party liable therefor.

(3) The court may allow the prevailing party in the action, whether plaintiff or defendant, as part of the costs of the action, the moneys paid for recording the notice of costs of title report, bond costs and attorneys' fees and necessary expenses incurred by the attorney in the superior court, court of appeals, supreme court or arbitration, as the court or arbitrator deems reasonable. Such costs shall have the priority of the class of lien to which they are related, as established by subsection (1) of this section.

Real property against which a lien is enforced may be ordered sold by the court and the proceeds deposited into the registry of the clerk of the court, pending further determination respecting distribution of the proceeds of the sale.

Bond in Lieu of Claim: Any owner of real property subject to a recorded claim of lien under, or contractor, subcontractor, lender, or lien claimant who disputes the correctness or validity of the claim of lien may record, either before or after the commencement of an action to enforce the lien, in the office of the county recorder or auditor in the county where the claim of lien is recorded, a bond.

Release of Lien Rights: Upon payment and acceptance of the amount due to the lien claimant and upon demand of the owner or the person making payment, the lien claimant shall immediately prepare and execute a release of all lien rights for which payment has been made, and deliver the release to the person making payment. In any suit to compel deliverance of the release thereafter in which the court determines the delay was unjustified, the court shall, in addition to ordering the

delivery of the release, award the costs of the action including reasonable attorneys' fees and any damages.

Stop Payment Notice: Lien claimants who have not received payments for labor or materials previously furnished within five days after the date required by the contract or purchase order may within 35 days of the date required for payment file a written notice, see sample below, with the lender, with a copy to the owner and appropriate general contractor, stating the sums due and to become due for which a potential lien claimant may claim a lien. After receipt of such notice the lender shall withhold from the next and subsequent draws the percentage thereof equal to that percentage of completion which is attributable to the potential lien claimant. Such sums, however, shall not be disbursed by the lender except by written agreement of claimant, owner and general contractor or an order of the court.

NOTICE TO REAL PROPERTY LENDER

(Authorized by RCW 60.04.221)

TO: (Name of Lender) Certified mail, Return Receipt Requested
(Administrative Office - Street Address)
(City, State, Zip)

AND TO: (Owner) Certified mail, Return Receipt Requested

AND TO: (Prime Contractor) Certified mail, Return Receipt Requested

(Name of Laborer, Professional, Materials or Equipment Supplier)
whose business address is:

did at the property located at, perform labor, furnish professional services, provided materials or supplied equipment as follows:

which was ordered by (Name of person)
whose address was stated to be

The amount owing to the undersigned according to contract or purchase order for labor, supplies or equipment (as above mentioned) is the sum of

Dollars (\$_____). Said sums became due and owing as of _____.

You are hereby required to withhold from any future draws on existing construction financing which has been made on the subject property (to the extent there remain undisbursed funds) the sum of _____ Dollars (\$_____).

IMPORTANT

Failure to comply with the requirements of this notice may subject the lender to a whole or partial compromise of any priority lien interest it may have pursuant to RCW 60.04.226 of this act.

DATE: _____

By: _____

Its: _____

cc: Claimant's Customer Certified mail #_____
(If other than owner or Prime Contractor) Return Receipt Requested

Statutory Citation: Revised Code of Washington, Title 60, Chapter 60.04, §§60.04.011 to 60.04.904.

WEST VIRGINIA

Who May Claim: Every person, firm, corporation, workman, artisan, mechanic, laborer, materialman, subcontractor, or other person who shall erect, build, construct, alter, remove or repair any building or other structure or other improvement appurtenant to any such building or other structure, or alters or improves the real property in which a building or structure stands, under and by virtue of a contract with the owner or his authorized agent, or for the completion of any general contract with the owner or his authorized agent. Architects, surveyors, engineers and landscape architects are included within such definition.

How Claimed: If the contract is made with the owner, by recording notice in the Office of the Clerk of the County Court [County Commission] of the county wherein such property is situated within 100 days from the last date work was performed on the construction project, or within 100 days from the last date when materials and/or supplies were delivered to the construction project; if the contract is made with a contractor or subcontractor, by serving notice on the owner or his

authorized agent in the same way as service of legal notice or summons within 100 days from the last date work was performed on the construction project, or within 100 days from the last date when materials and/or supplies were delivered to the construction project, and recording in County Clerk's office within 100 days from the last date work was performed on the construction project, or within 100 days from the last date when materials and/or supplies were delivered to the construction project.

Where Filed: In the Office of the Clerk of the County Commission where the property is situated.

When to Be Filed: Within 100 days from the last date work was performed on the construction project, or within 100 days from the last date when materials and/or supplies were delivered to the construction project, subject to the notice requirements set out above and below.

Service of Copy of Notice: On the owner, when the material or labor was furnished by a claimant who is not in direct contract with the owner, within 100 days from the last date work was performed on the construction project, or within 100 days from the last date when materials and/or supplies were delivered to the construction project. Service is by any of the methods provided by law for the service of a legal notice or summons. If the owner cannot be found or is a nonresident, notice is sufficient by publication and posting.

Duration of Lien: Suit in chancery must be brought within six months after the filing of the notice or such lien shall be discharged, but a suit commenced by any person having such lien shall for the purpose of preserving the same, inure to the benefit of all other persons having a lien under this chapter on the same property, and such persons may intervene in such suit for the purpose of enforcing their liens, in the same manner as in other chancery suits.

The failure of any person claiming a lien to give notice as required and in the manner and within the time specified, or the failure of any lien claimant to comply substantially with all of the requirements for the perfecting and preservation of his or her lien, within the time provided shall, except for those who filed a preliminary notice to owner (*see* "Optional Notice" section below), operate as a complete discharge of the lien.

The owner may, at any time, by notice in writing, require a lien claimant (or possible lien claimants) to file with such owner an itemized account of the work done, or of the materials/machinery/equipment furnished. The neglect or failure of any such lien claimant (or possible lien claimant) to file such itemized statement with the owner, within 10 days after the receipt by him of such written notice to do so, shall release the owner from all responsibility and his property from all lien or charge for all labor done and for all materials furnished by the lien claimant (or possible lien claimant) so failing to file such required itemized statement, prior to the giving of such notice.

Optional Notice: W.Va. Code §38-2-20 sets out an optional notice that is available to parties not in privity with the owner that can offer certain advantages to a potential claimant. A paraphrased version of the statute follows:

Any laborer or other person (subcontractor or supplier) employed by a party (Contractor) who has contracted with the owner may, *before doing any work or furnishing any material or machinery*, give the owner notice in writing that if he is not paid by the person employing him, he will look to the owner for payment. It shall not be necessary for the person who has given such notice in writing to file the account and notice with the owner within 60 days of the date of last work or last furnishing of materials or machinery, unless he is required by the owner in writing within such 60 days to do so and his neglect or failure to file such notice and account within 60 days, unless so required to do so, shall in no way effect or impair his lien if it be otherwise perfected and preserved.

The statute does not set out a specific form to be used for the notice or the manner of service. Although not specifically required, the better practice is to serve the owner in the same manner as legal notices or summons are served in order to provide evidence of the notice.

Filing Fee: For liens up to nine pages, it is \$11 for the first five pages, \$1 for each additional page up to nine pages. For liens up to 19 pages, it is \$17 for the first 10 pages, \$1 for each additional page up to 19 pages. For liens up to 29 pages, it is \$28 for the first 20 pages, \$1 for each additional page up to 29 pages. For liens up to 39 pages, it is \$39 for the first 30 pages, \$1 for each additional page up to 39 pages. For liens of 40 pages or more, it is \$50 for the first 40 pages, \$1 for each page thereafter.

Contents of Statement of Lien: Description of property, the improvements thereon and amount due. The statutory language is found at §§38-2-9, 38-2-10 and 38-2-11.

Extent of Lien: Lien extends to interest of owner in the improvement and the land on which same is situated. Different rules may apply to Leasehold estates.

Priority of Lien: Mechanic's lien attaches as of the date such labor, materials, machinery or other necessary equipment shall have begun to be furnished. Liens and deeds of trust made subsequent to commencement of work or furnishing material are inferior to mechanic's lien. The lien of the contractor is inferior to that of the subcontractor, and those for labor and materials to whom the contractor is indebted, and the lien of the contractor and subcontractor is inferior to mechanic's liens for labor and materials to whom the contractor or subcontractor is indebted. Otherwise, there is no priority among liens.

Possible Statutory Changes Effective June, 2015: §§38-2-21, and 38-2-34 of the West Virginia Mechanic's Lien law are undergoing statutory changes as they relate to residential construction/remodel of single-family, owner-occupied dwelling. If the statutory changes become effective, owners of these type of construction projects may assert payment to the

general contractor as an affirmative defense, or an affirmative partial defense to mechanic's liens filed by subcontractors and/or those not in privity of contract with the owner. A notice requirement on behalf of the owner may be a requirement before the owner may take advantage of the affirmative defense, or affirmative partial defense. At this time, there is no definite statutory change. Any change should not become effective until June, 2015.

Statutory Citation: West Virginia Code, Chapter 38, §§38-2-1 to 38-2-39; 38-12-1 to 38-12-13.

WISCONSIN

Who May Claim: Any person who performs, furnishes, or procures any work labor, service, materials, plans or specifications used or consumed for the improvement of land, including any building, structure, fixture, demolition, erection, alteration, excavation, filling, grading, tiling, planting, clearing, landscaping, repairing or remodeling which is built, erected, made or done on or to land for its benefit. Where a payment bond is provided in conformance with the statute, all liens except for those of the prime contractor do not exist. Prime contractor is a person, other than laborer, including an architect, professional engineer, construction manager, surveyor, or other service provider employed by the owner, who enters into a contract with an owner of land who is not personally the prime contractor, or who takes over from a prime contractor the uncompleted contract.

How Claimed: To perfect a construction lien one must: (1) for prime contractors only, serve a written notice about the lien law, either as part of the contract or separately, upon the owner; (2) for subcontractors only, serve duplicate written notices of participation in the project on the owner, unless exempted; (3) properly serve a written notice of intent to file a lien claim on the owner; and (4) properly file a claim for lien.

(a) *Notice by Prime Contractor about Lien Law.* Every prime contractor who has contracted or will contract with any subcontractors or materialmen for the improvement must include in any written contract with the owner or if an oral contract, prepared separately and serve personally or by registered mail on the owner within 10 days after the first labor or materials are furnished, the following notice printed in at least eight-point boldface type, or in capital letters, if typewritten, in substantially the following form:

“AS REQUIRED BY THE WISCONSIN CONSTRUCTION LIEN LAW, CLAIMANT HEREBY NOTIFIES OWNER THAT PERSONS OR COMPANIES PERFORMING, FURNISHING OR PROCURING LABOR, SERVICES, MATERIALS, PLANS OR SPECIFICATIONS FOR THE CONSTRUCTION ON OWNER’S LAND MAY HAVE LIEN RIGHTS ON OWNER’S LAND AND BUILDINGS IF NOT PAID. THOSE ENTITLED TO LIEN RIGHTS, IN ADDITION TO THE UNDERSIGNED CLAIMANT, ARE THOSE WHO CONTRACT DIRECTLY WITH THE OWNER OR THOSE WHO GIVE THE OWNER NOTICE WITHIN 60 DAYS AFTER THEY FIRST PERFORM, FURNISH, OR PROCURE LABOR, SERVICES, MATERIALS, PLANS OR SPECIFICATIONS FOR THE CONSTRUCTION. ACCORDINGLY, OWNER PROBABLY WILL RECEIVE NOTICES FROM THOSE WHO PERFORM, FURNISH, OR PROCURE LABOR, SERVICES, MATERIALS, PLANS OR SPECIFICATIONS FOR THE CONSTRUCTION, AND SHOULD GIVE A COPY OF EACH NOTICE RECEIVED TO THE MORTGAGE LENDER, IF ANY. CLAIMANT AGREES TO COOPERATE WITH THE OWNER AND OWNER’S LENDER, IF ANY, TO SEE THAT ALL POTENTIAL LIEN CLAIMANTS ARE DULY PAID.”

If any prime contractor required to give the notice about lien law fails to do so as required, the prime contractor will not have a lien unless the contractor pays all of the contractor’s obligations to subcontractors and materialmen in respect to the work of improvement within the time limits for notice of intent to file and filing of claim for lien and until the time for notice by subcontractors, materialmen, or laborers [see paragraph (b) below] has elapsed and no subcontractor, materialman or laborer has given notice.

(b) *Notice by Subcontractor, Materialmen or Laborers.* Every person other than a prime contractor must, within 60 days after furnishing the first labor or materials, serve two signed copies on the owner either by personal service or by registered mail, return receipt requested. The owner must provide a copy of the notice within 10 days after receipt to any mortgage lender providing funds for the construction of the improvement. The notice must be in substantially the following language:

“AS PART OF YOUR CONSTRUCTION CONTRACT, YOUR PRIME CONTRACTOR OR CLAIMANT HAS ALREADY ADVISED YOU THAT THOSE WHO FURNISH, PERFORM, OR PROCURE LABOR, SERVICES, MATERIALS, PLANS, OR SPECIFICATIONS FOR THE WORK WILL BE NOTIFYING YOU. THE UNDERSIGNED FIRST PERFORMED, FURNISHED, OR PROCURED LABOR, SERVICES MATERIALS, PLANS, OR SPECIFICATIONS ON [DATE] FOR THE IMPROVEMENT NOW UNDER CONSTRUCTION ON YOUR REAL ESTATE AT [LEGAL DESCRIPTION, STREET ADDRESS OR OTHER CLEAR DESCRIPTION]. PLEASE GIVE YOUR MORTGAGE LENDER THE EXTRA COPY OF THIS NOTICE WITHIN 10 DAYS AFTER YOU RECEIVE THIS, SO YOUR LENDER, TOO, WILL KNOW THAT THE UNDERSIGNED IS INCLUDED IN THE JOB.”

The failure to give this notice prohibits the acquisition of a lien except when notice is not required as set forth in (c) below.

Any subcontractor who serves a late but otherwise proper notice of participation personally or by registered mail on the owner shall have a lien for any labor or materials furnished after the late notice is actually received by the owner.

(c) *Exceptions to the 10-day and 60-day Notice Requirements in (a) and (b).* In the following instances the notice about the lien law need not be given: (1) by any laborer or mechanic employed by any prime contractor or subcontractor; (2) by any lien claimant who has contracted directly with the owner for the work or materials furnished, unless the claimant is a prime contractor; (3) by any lien claimant furnishing labor or materials for an improvement in any case where more than four-family living units are to be provided in which the project is wholly residential in character, or in any case where the improvement is partly or wholly nonresidential in character; (4) by any prime contractor who is an owner of the land to be improved, by any corporate prime contractor of which an owner of the land is an officer or controlling shareholder, by any prime contractor who is an officer or controlling shareholder of a corporation which is an owner of the land, or by any corporate prime contractor managed or controlled by substantially the same persons who manage or control a corporation which is an owner of the land; and (5) by any lien claimant, other than a prime contractor, who furnishes labor or materials for an improvement on a project on which the prime contractor is not required to give notice under this section.

(d) *Notice of Intent to File Claim for Lien.* The notice of intent to file must be served on the owner personally or by registered mail, return receipt requested, at least 30 days before timely filing of the claim for lien. The written notice is required whether or not the claimant has given the written notice about the lien law or participation. The notice of intent to file must briefly describe the nature of the claim, its amounts, and the land and improvements to which it relates. The time to serve is at least 30 days before the six-month anniversary of the last furnishing or last performing.

(e) *Claim for Lien.* The claim for lien must have attached a copy of the notice of intent to file a lien claim and a copy of any prime contractor's notice about the lien law or subcontractor's notice of participation. The claim must contain a statement of the contract or demand upon which it is founded, the name of the person against whom the demand is claimed, the name of the claimant and any assignee, the last date of performing, furnishing, or procuring any labor, services, materials, plans, or specifications, a legal description of the property against which the lien is claimed, a statement of the amount claimed and all other material facts. Claim must be signed by claimant or attorney and filed within six months of the last performing.

(f) There are also special provisions relating to theft by contractor available to subcontractors where the prime contractor has received payment by the owner but has not paid the subcontractor. Where the nonpaying contractor or subcontractor is a corporation, the misappropriation is also deemed theft by any officers, directors or agents of the corporation responsible for the misappropriation. [See Chapter 14 "Trust Fund Laws and Agreements" under Wisconsin.]

Where Filed: The claim for lien must be filed in the Office of Clerk of the Circuit Court for the county in which the real estate is situated.

When to Be Filed: Lien claim must be filed within six months from date last labor, services, materials, plans or specifications are performed, furnished or procured by lien claimant. The owner must be provided notice of the filing of the lien within 30 days of its filing with the Court.

Duration of Lien: Action to foreclose must be commenced within two years from date of filing such claim for lien.

Filing Fee: \$5.

Extent of Lien: Lien attaches upon all interest in the land belonging to the owners. Lien extends to all contiguous land of the owner, but if improvement is located wholly on one or more platted lots belonging to the owner, the lien applies only to the lots on which the improvement is located.

Priority of Lien: Takes precedence over any lien which originates subsequent to the visible commencement in place of the work improvement. When new construction is the principal improvement involved, commencement is considered to occur no earlier than the beginning of substantial excavation for the foundations, footings or base of the new construction, except where the new construction is to be added to a substantial existing structure, in which case the commencement is the time of the beginning of substantial excavation or the time of the beginning of substantial preparation of the existing structure to receive the added new construction, whichever is earlier. Also a construction lien has priority to any unrecorded mortgage given before commencement of such services, etc., if the lien claimant has no actual notice of the mortgage before the commencement. Prior recorded mortgages have priority over construction liens for subsequent work performed.

Statutory Citation: Wisconsin Statutes, Chapter 779, §§779.01 to 779.17 cited as Wis. Stats. §§779.01 *et seq.*

WYOMING

Who May Claim: Every contractor, subcontractor or materialman performing any work on or furnishing any materials or plans for any building or any improvement upon real property shall have a lien upon the building or improvements and upon the real property of the owner on which they are situated. (W.S. §29-2-101). Materials also include equipment and machinery, whether or not incorporated into the project. (W.S. §29-1-201(a)(viii)(B)).

How Claimed: A lien claimant must file a lien statement with the County Clerk, sworn to before a notary public. Notice must be given of the lien to the last known owner or his agent in the case of a real property lien within five days after the lien statement is filed, by certified mail. W.S. §29-10-103 contains the specifications for a form of notice which may be

used and the notice forms may be obtained at the county clerk's office of each county. The lien statement can only be filed with the County Clerk after a notice of intention to file lien has been served and the requisite 20 days have passed.

Where Filed: Office of County Clerk of the county where the real property which was benefited by the work or material is situated.

When to Be Filed: Every contractor shall file his lien statement within 150 days, and every other person within 120 days: (1) after the last day when work was performed or materials furnished under contract; (2) from the date the work was substantially completed or substantial completion of the contract to furnish materials, whichever is earlier; or (3) with respect to a subcontractor, after the last day he performed work at the direction of his contractor or other person authorized to provide direction. The record owner may record a notice of substantial completion of the project in the records of the county clerk where the project is located. If the notice is recorded, the date the notice is recorded shall be presumed to be the date of substantial completion. However, the notice shall not extend the date by which a lien statement shall be filed as otherwise provided by the statutes. Further, the owner shall have five days to send a copy of the notice to all contractors, subcontractors and materialmen who had provided the owner with a preliminary notice pursuant to W.S. §29-2-112. The parties may agree to extend the time for filing for up to twice the otherwise applicable time limit. The agreement must be acknowledged before a notary public and signed by the owner, the contractor and any other parties to the contract and it shall be filed with and recorded by the county clerk in the same manner as lien statements. (W.S. §29-2-106).

Service of Copy of Notice of Intention to File Lien: A lien claimant must give written notice of their claim, its amount and from whom it is due, to the owner or his agent 20 days prior to filing the lien statement. The notice should be sent by certified mail. W.S. §29-10-102 contains the specifications for a form of notice. (W.S. §29-2-107).

Duration of Lien: An action to foreclose or enforce a lien must be commenced within 180 days after filing of the lien statement.

Filing Fee: At the time of this edit the recording fee was \$8 for the first page of a lien and \$3 for each additional page. It is best to confirm the amount of the recording fee with the county clerk's office. (W.S. §18-3-402).

Contents of Statement of Lien: (1) Name and address of the person seeking to enforce the lien; (2) amount claimed to be due and owing; (3) name and address of the record owner against whose property the lien is filed; (4) itemized list setting forth and describing materials delivered or work performed; (5) name of the person against whom the lien claimant alleges is contractually responsible to pay the debt secured by the lien; (6) date when labor was last performed or services were last rendered or the date when the project was substantially completed; (7) legal description of the premises where the materials were furnished or upon which the work was performed; and (8) copy of the contract, if available, or a summary of the lien claimant's contract together with a statement of the location where a copy of the contract, if written, can be obtained. (W.S. §29-1-312).

Extent of Lien: Upon buildings or improvements and the land belonging to owner upon which same is erected to the extent of one acre, or if such improvements cover more than one acre, the lien shall extend to the additional land covered thereby. If the land subject to a lien is located in any city, town, or subdivision, the lien shall extend to the entire lot upon which the building or improvement is located. (W.S. §29-2-101). A properly perfected lien will extend to the entire interest of the owner. (W.S. §29-2-102).

Preliminary Notice: The contractor, subcontractor and materialman shall send written notice to the record owner or his agent of the right to assert a lien against the property for which services or materials are provided if the contractor, subcontractor or materialman is not paid, and the right of the owner or contractor to obtain a lien waiver upon payment for services or materials. In addition, each subcontractor and materialman shall provide a copy of the written notice to the contractor for which the subcontractor or materialman is providing services or materials. The notice must be sent by the contractor prior to receiving any payment from the owner, including advances. The notice must be sent by the subcontractor or materialman within 30 days after first providing services or materials to the construction project. The preliminary notice is required and, if it is not sent within the time specified, the contractor, subcontractor or materialman shall be barred from asserting a lien. The preliminary notice must be sent for all projects. Wyoming has provided a sample preliminary notice form and lien waiver under W.S. §29-10-101. The form contains the following language:

NOTICE TO OWNER

The undersigned party is providing work or materials to the property described below. Failure of payment due and owing to a contractor, subcontractor or materialman for work performed or materials provided to the project located on the property can result in the filing of a lien against the property. To avoid this result, when paying for labor and materials you may ask the contractor, subcontractor or materialman for "lien waivers" from all persons supplying materials or services. Failure to secure lien waivers may result in your paying for labor and materials twice. A form of lien waiver is attached to this notice.

The notice further requires: (1) name address and telephone number of contractor, subcontractor or the materialman and a contact person; (2) description of materials to be provided or work to be performed; (3) property description by address and legal description; and (4) name and signature of person completing notice as well as date. Since the sample notice also contains a sample blank lien waiver, a blank lien waiver should be included with the preliminary notice. (W.S. §29-2-112).

Priority of Lien: Liens are on equal footing without reference to date of filing. A perfected lien has priority over any

subsequent lien, security interest or mortgage, but is subordinated to liens perfected prior to the commencement of any construction work or repairs. (W.S. §29-1-402).

Liens for Improvement of Oil or Gas Wells: Wyoming statutes specify certain procedures for liens against specific types of property which may be in addition to or different from the above. A list of these specific types of liens is as follows: (1) mines, quarries, oil, gas or other wells; (2) labor and materials on ditches, canals and reservoirs; (3) owners and operators of harvesting machines; (4) Uniform Federal Tax Lien Registration Act; and (5) personal property, breeders and house trailers.

Statutory Citation: Wyoming Statutes, Title 29, §§29-1-201 to 29-1-407; 29-2-101 to 29-2-113; 29-10-101 to 29-10-106.