

# OKLAHOMA STATUTES

## TITLE 42. LIENS

### (Sections of Interest to Construction Industries Board Constituents)

#### **Section 1. Lien defined**

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

*Historical Data:* R.L. 1910, § 3822.

#### **Section 2. Classes of liens**

Liens are either general or special.

*Historical Data:* R.L. 1910, § 3823.

#### **Section 3. General lien**

A general lien is one which the holder thereof is entitled to enforce as a security for the performance of all the obligations, or all of a particular class of obligations, which exist in his favor against the owner of the property.

*Historical Data:* R.L. 1910, § 3824.

#### **Section 4. Special lien – Prior lien**

A special lien is one which the holder thereof can enforce only as a security for the performance of a particular act or obligation, and of such obligations as may be incidental thereto. Where the holder of a special lien is compelled to satisfy a prior lien for his own protection, he may enforce payment of the amount so paid by him, as a part of the claim for which his own lien exists.

*Historical Data:* R.L. 1910, § 3825.

#### **Section 5. Law applies to what**

Contracts of mortgage and pledge, are subject to all the provisions of this chapter.

*Historical Data:* R.L. 1910, § 3826.

#### **Section 6. Lien created, how**

A lien is created:

1. By contract of the parties; or,
2. By operation of law.

*Historical Data:* R.L. 1910, § 3827.

### **Section 7. Lien created by law**

No lien arises by mere operation of law until the time at which the act to be secured thereby ought to be performed.

*Historical Data:* R.L. 1910, § 3828.

### **Section 8. Lien on future interest**

An agreement may be made to create a lien upon property not yet acquired by the party agreeing to give the lien, or not yet in existence. In such case the lien agreed for attaches from the time when the party agreeing to give it acquires an interest in the thing to the extent of such interest.

*Historical Data:* R.L. 1910, § 3829.

### **Section 9. Lien to take immediate effect**

A lien may be created by contract, to take immediate effect, as security for the performance of obligations not then in existence.

*Historical Data:* R.L. 1910, § 3830.

### **Section 10. Lien transfers no title**

Notwithstanding an agreement to the contrary, a lien or a contract for a lien transfers no title to the property subject to the lien.

*Historical Data:* R.L. 1910, § 3831.

### **Section 11. Contracts for forfeiture of property and restraining redemption**

All contracts for the forfeiture of property subject to a lien, in satisfaction of the obligation secured thereby, and all contracts in restraint of the right of redemption from a lien, are void, except in the case specified in Section 1122.

*Historical Data:* R.L. 1910, § 3832.

### **Section 12. Lien does not imply obligation**

The creation of a lien does not of itself imply that any person is bound to perform the act for which the lien is a security.

*Historical Data:* R.L. 1910, § 3833.

### **Section 13. Extent of lien limited**

The existence of a lien upon property does not of itself entitle the person, in whose favor it exists, to a lien upon the same property for the performance of any other obligation than that which the lien originally secured.

*Historical Data:* R.L. 1910, § 3834.

#### **Section 14. Holder of lien not entitled to compensation**

One who holds property by virtue of a lien thereon, is not entitled to compensation from the owner thereof for any trouble or expense which he incurs respecting it, except to the same extent as a borrower, under Sections 1018 and 1019.

*Historical Data:* R.L. 1910, § 3835.

#### **Section 15. Priority of liens according to date**

Other things being equal, different liens upon the same property have priority according to the time of their creation, except in cases of bottomry and respondentia.

*Historical Data:* R.L. 1910, § 3836.

#### **Section 16. Priority of mortgage for price of realty**

A mortgage given for the price of real property, at the time of its conveyance, has priority over all other liens created against the purchaser, subject to the operation of the recording laws.

*Historical Data:* R.L. 1910, § 3837.

#### **Section 17. Order of resort for payment of prior liens**

Where one has a lien upon several things, and other persons have subordinate liens upon or interests in, some but not all of the same things, the person having the prior lien, if he can do so without the risk of loss to himself, or injustice to other persons, must resort to the property in the following order, on the demand of any party interested:

1. To the things upon which he has an exclusive lien.
2. To the things which are subject to the fewest subordinate liens.
3. In like manner inversely to the number of subordinate liens upon the same thing; and,
4. When several things are within one of the foregoing classes, and subject to the same number of liens, resort must be had, -
  - (a) To the things which have not been transferred since the prior lien was created.
  - (b) To the things which have been so transferred without a valuable consideration; and,
  - (c) To the things which have been so transferred for a valuable consideration.

*Historical Data:* R.L. 1910, § 3838.

#### **Section 18. Persons entitled to redeem lien – Federal right of first refusal – Rule of construction**

A. Every person having an interest in property subject to a lien, has a right to redeem it from the lien, at any time after the claim is due, and before his right of redemption is foreclosed.

B. Neither this section nor any existing or future order or regulation of any entity of state government or case law or common law shall be construed as limiting or diminishing any federally guaranteed "right of first refusal" granted by the Agricultural Credit Act of 1987 (P.L. 100-233).

*Historical Data:* R.L. 1910, § 3839; Amended by Laws 1988, HB 2003, c. 100, § 1, emerg. eff. April 1, 1988.

## **Section 19. Holder of inferior lien – Redemption**

One who has a lien, inferior to another upon the same property, has a right:

1. To redeem the property in the same manner as its owner might, from the superior lien; and,
2. To be subrogated to all the benefits of the superior lien when necessary for the protection of his interests, upon satisfying the claim secured thereby.

*Historical Data:* R.L. 1910, § 3840.

## **Section 20. Redemption – How made**

Redemption from a lien is made by performing, or offering to perform, the act for the performance of which it is a security, and paying, or offering to pay, the damages, if any, to which the holder of the lien is entitled for delay.

*Historical Data:* R.L. 1910, § 3841.

## **Section 21. Lien is an accessory obligation**

A lien is to be deemed accessory to the act for the performance of which it is a security, whether any person is bound for such performance or not, and is extinguishable in like manner with any other accessory obligation.

*Historical Data:* R.L. 1910, § 3842.

## **Section 22. Sale or conversion of property extinguishes lien**

The sale of any property on which there is a lien, in satisfaction of the claim secured thereby, or, in case of personal property, its wrongful conversion by the person holding the lien, extinguishes the lien thereon.

*Historical Data:* R.L. 1910, § 3843.

## **Section 23. Limitation of time**

A lien is extinguished by the mere lapse of the time within which, under the provisions of civil procedure, an action can be brought upon the principal obligation.

*Historical Data:* R.L. 1910, § 3844.

## **Section 24. Partial performance as extinguishing lien**

The partial performance of an act secured by a lien does not extinguish the lien upon any part of the property subject thereto, even if it is divisible.

*Historical Data:* R.L. 1910, § 3845.

## **Section 25. Voluntary restoration as extinguishing lien**

The voluntary restoration of property to its owner, by the holder of a lien thereon, dependent upon possession, extinguishes the lien as to such property, unless otherwise agreed by the

parties, and extinguishes it, notwithstanding any such agreement, as to creditors of the owner and persons subsequently acquiring title to the property, or a lien thereon, in good faith and for a good consideration.

*Historical Data:* R.L. 1910, § 3846.

### **Section 26. Vendor's lien for price of realty**

One who sells real property has a special or vendor's lien thereon, independent of possession, for so much of the price as remains unpaid and unsecured, otherwise than by the personal obligation of the buyer, subject to the rights of purchasers and encumbrancers, in good faith, without notice.

*Historical Data:* R.L. 1910, § 3847.

### **Section 27. Waiver of vendor's lien**

Where the buyer of real property gives to the seller a written contract for payment of all or part of the price, an absolute transfer of such contract by the seller, waives his lien to the extent of the sum payable under the contract, but a transfer of such contract in trust to pay debts, and return the surplus, is not a waiver of the lien.

*Historical Data:* R.L. 1910, § 3848.

### **Section 28. Validity of liens of vendors and purchasers**

The liens defined in Sections 3847 and 3851 are valid against everyone claiming under the debtor, except a purchaser or encumbrancer in good faith, and for value.

*Historical Data:* R.L. 1910, § 3849.

### **Section 35. Judgment liens**

The lien of a judgment is regulated by civil procedure.

*Historical Data:* R.L. 1910, § 3857.

### **Section 91. Lien on certain personal property for service thereon - Foreclosure - Notice - Purchaser - Unpaid checks - Repossession**

A. 1. a. This section applies to every vehicle, all-terrain vehicle, utility vehicle, manufactured home, motorcycle, boat, outboard motor, or trailer that has a certificate of title issued by the Oklahoma Tax Commission or by a federally recognized Indian tribe in the State of Oklahoma, except as otherwise provided in subsection D of this section. This section does not apply to farm equipment as defined in Section 91.2 of this title. The items of personal property to which this section applies are collectively referred to as "Section 91 Personal Property". If personal property is apparently covered both by this section and by Sections 191 through 200 of this title, the procedures set out in this section shall apply instead of Sections 191 through 200 of this title.

b. Salvage pools as defined in Section 591.2 of Title 47 of the Oklahoma Statutes and class AA licensed wrecker services taking possession of a vehicle pursuant to an agreement with or at the direction of, or dispatched by, a state or local law enforcement or government agency, or pursuant to the abandoned vehicle

renewal provisions of Section 954A of Title 47 of the Oklahoma Statutes, shall not be subject to the provisions of this section, but shall be subject to the provisions of Section 91A of this title. Unless otherwise provided by this subparagraph, class AA licensed wrecker services performing consensual tows shall be subject to the provisions of this section.

2. Any person who, while lawfully in possession of an article of Section 91 Personal Property, renders any service to the owner thereof by furnishing storage, rental space, material, labor or skill for the protection, improvement, safekeeping, towing, right to occupy space, storage or carriage thereof, has a special lien thereon, dependent on possession, for the compensation, if any, which is due to such person from the owner for such service.

3. This special lien shall be subordinate to any perfected security interest unless the claimant complies with the requirements of this section. Failure to comply with any requirements of this section shall result in denial of any title application and cause the special lien to be subordinate to any perfected lien. Upon such denial, the applicant shall be entitled to one resubmission of the title application within fifteen (15) business days of receipt of the denial, and proceed to comply with the requirements of this section. In the event of a denial, the Notice of Possessory Lien and the Notice of Sale may be mailed on the same day in separate envelopes and storage charges shall only be charged from the date of resubmission. "Failure to comply" includes, but is not limited to:

- a. failure to timely provide additional documentation supporting or verifying any entry on submitted forms as requested by the Tax Commission, including but not limited to United States Postal Service proof of return receipt requested such as Form 3811 or United States Postal Service electronic equivalent,
- b. failure to provide the documentation supporting lawful possession as defined in paragraph 3 of subsection H of this section,
- c. claimant or the agent being other than the individual who provided the service giving rise to the special lien, as in paragraph 2 of this subsection,
- d. claimant not being in possession of the vehicle,
- e. notice of lien not filed in accordance with paragraph 4 of this subsection, or
- f. foreclosure notification and proceedings not accomplished in accordance with paragraph 6 of this section.

4. Any person claiming the special lien provided in paragraph 2 of this subsection shall mail a notice of such lien, no later than sixty (60) days after the first services are rendered, by regular, first-class United States mail, and by certified mail, return receipt requested, to all interested parties who reside at separate locations. If services provided are pursuant to a contract primarily for the purpose of storage or rental of space, the beginning date of the sixty-day period provided in the previous sentence shall be the first day of the first period or partial period for which rental or storage charges remain unpaid. The notice shall be in writing and shall contain, but not be limited to, the following:

- a. a statement that the notice is a Notice of Possessory Lien,
- b. the complete legal name, physical and mailing address, and telephone number of the claimant,
- c. the complete legal name, physical and mailing address of the person who requested that the claimant render service to the owner by furnishing material, labor or skill,

storage, or rental space, or the date the property was abandoned if the claimant did not render any other service,

- d. a description of the article of personal property, including a photograph if the property is Section 91 Personal Property, and the complete physical and mailing address of the location of the article of personal property,
- e. an itemized statement describing the date or dates the labor or services were performed and material furnished, and the charges claimed for each item, the totals of which shall equal the total compensation claimed,
- f. a statement by the claimant that the materials, labor or skill furnished, or arrangement for storage or rental of space, was authorized by the owner of the personal property and was in fact provided or performed, and written proof of authority to perform the work, labor or service, or that the property was abandoned by the owner if the claimant did not render any other service, and that storage or rental fees will accrue as allowed by law, and
- g. the signature of the claimant which shall be notarized and, if applicable, the signature of the claimant's attorney. If the claimant is a business, then the name of the contact person representing the business must be shown. In place of an original signature and notary seal, a digital or electronic signature or seal shall be accepted.

5. For services rendered or vehicles abandoned on or after November 1, 2005, storage charges or charges for rental of space, unless agreed to by contract as part of an overall transaction or arrangement that was primarily for the purpose of storage of the Section 91 Personal Property or rental of space, may only be assessed beginning with the day that the Notice of Possessory Lien is mailed as evidenced by certified mail. Provided, however, in the case of contractual charges incurred for storage or rental of space in an overall transaction primarily for the purpose of storage or rental, charges subject to the special lien may only be assessed beginning with a date not more than sixty (60) days prior to the day that the Notice of Possessory Lien is mailed, and shall accrue only at the regular periodic rate for storage or rental as provided in the contract, adjusted for partial periods of storage or rental. The maximum allowable compensation for storage shall not exceed the fees established by the Corporation Commission for nonconsensual tows.

6. The lien may be foreclosed by a sale of such personal property upon the notice and in the manner following: The Notice of Sale shall be in writing and shall contain, but not be limited to:

- a. a statement that the notice is a Notice of Sale,
- b. the names of all interested parties known to the claimant,
- c. a description of the property to be sold, including a photograph if the property is Section 91 Personal Property and if the condition of such property has materially changed since the mailing of Notice of Possessory Lien required pursuant to paragraph 4 of this subsection,
- d. a notarized statement of the nature of the work, labor or service performed, material furnished, or storage or rental of space, and the date thereof, and the name of the person who authorized the work, labor or service performed, or the storage or rental arrangement, and written proof of authority to perform the work, labor or service, or that the property was abandoned if the claimant did not render any other service,
- e. the date, time, and exact physical location of sale,

- f. the name, complete physical address, mailing address, and telephone number of the party foreclosing such lien. If the claimant is a business, then the name of the contact person representing the business must be shown. In place of an original signature and notary seal, a digital or electronic signature or seal shall be accepted, and
- g. itemized charges which shall equal the total compensation claimed.

7. Such Notice of Sale shall be posted in two public places in the county where the property is to be sold at least ten (10) days before the time therein specified for such sale, and a copy of the notice shall be mailed to all interested parties at their last-known post office address by regular, first-class United States mail and by certified mail, return receipt requested, at least ten (10) days before the date of the sale. If the item of personal property is a manufactured home, notice shall also be sent by certified mail to the county treasurer and to the county assessor of the county where the manufactured home is located.

8. Interested parties shall include all owners of the article of personal property as indicated by the certificate of title issued by the Tax Commission or by a federally recognized Indian tribe in the State of Oklahoma; lien debtors, if any, other than the owners; any lienholder whose lien is noted on the face of the certificate of title; and any other person having any interest in the article of personal property, of whom the claimant has actual notice.

9. Any interested party shall be permitted to inspect and verify the services rendered by the claimant prior to the sale of the article of personal property during normal business hours. The lienholder shall be allowed to retrieve the Section 91 Personal Property without being required to bring the title into the lienholder's name, if the lienholder provides proof it is a lienholder and any payment due the claimant for lawful charges where the claimant has complied with the requirements of this section. Upon the release of personal property to an insurer or representative of the insurer, wrecker operators shall be exempt from all liability and shall be held harmless for any losses or claims of loss.

10. The claimant or any other person may in good faith become a purchaser of the property sold.

11. Proceedings for foreclosure under this act shall be commenced no sooner than ten (10) days and no later than thirty (30) days after the Notice of Possessory Lien has been mailed as evidenced by certified mail. The date actually sold shall be within sixty (60) days from the date of the Notice of Sale as evidenced by certified mail.

- B. 1. a. Any person who is induced by means of a check or other form of written order for immediate payment of money to deliver up possession of an article of personal property on which the person has a special lien created by subsection A of this section, which check or other written order is dishonored, or is not paid when presented, shall have a lien for the amount thereof upon the personal property.
- b. The person claiming such lien shall, within thirty (30) days from the date of dishonor of the check or other written order for payment of money, file in the office of the county clerk of the county in which the property is situated a sworn statement that:
  - (1) the check or other written order for immediate payment of money, copy thereof being attached, was received for labor, material or supplies for producing or repairing an article of personal property, or for other specific property-related services covered by this section,



- (2) the check or other written order was not paid, and
  - (3) the uttering of the check or other written order constituted the means for inducing the person, one possessed of a special lien created by subsection A of this section upon the described article of personal property, to deliver up the article of personal property.
2.
  - a. Any person who renders service to the owner of an article of personal property by furnishing storage, rental space, material, labor, or skill for the protection, improvement, safekeeping, towing, right to occupy space, storage, or carriage thereof shall have a special lien on such property pursuant to this section if such property is removed from the person's possession, without such person's written consent or without payment for such service.
  - b. The person claiming such lien shall, within five (5) days of such nonauthorized removal, file in the office of the county clerk of the county in which the property is located, a sworn statement including:
    - (1) that services were rendered on or in relation to the article of personal property by the person claiming such lien,
    - (2) that the property was in the possession of the person claiming the lien but such property was removed without his or her written consent,
    - (3) an identifying description of the article of personal property on which the service was rendered, and
    - (4) that the debt for the services rendered on or in relation to the article of personal property was not paid. Provided, if the unpaid total amount of the debt for services rendered on or in relation to the article of personal property is unknown, an approximated amount of the debt due and owing shall be included in the sworn statement but such approximated debt may be amended within thirty (30) days of such filing to reflect the actual amount of the debt due and owing.

3. The enforcement of the lien shall be within sixty (60) days after filing the lien in the manner provided by law for enforcing the lien of a security agreement and provided that the lien shall not affect the rights of innocent, intervening purchasers without notice.

C. If the person who renders service to the owner of an article of personal property to which this section applies relinquishes or loses possession of the article due to circumstances described in subparagraph a of paragraph 1 or subparagraph a of paragraph 2 of subsection B of this section, the person claiming the lien shall be entitled to possession of the article until the amount due is paid, unless the article is possessed by a person who became a bona fide purchaser. Entitlement to possession shall be in accordance with the following:

1. The claimant may take possession of an article pursuant to this subsection only if the person obligated under the contract for services has signed an acknowledgement of receipt of a notice that the article may be subject to repossession. The notice and acknowledgement pursuant to this subsection shall be:

- a. in writing and separate from the written contract for services, or
- b. printed on the written contract for services, credit agreement or other document which displays the notice in bold-faced, capitalized and underlined type, or is separated from surrounding written material so as to be conspicuous with a separate signature line;

2. The claimant may require the person obligated under the contract for services to pay the costs of repossession as a condition for reclaiming the article only to the extent of the reasonable fair market value of the services required to take possession of the article;

3. The claimant shall not transfer to a third party or to a person who performs repossession services, a check, money order, or credit card transaction that is received as payment for services with respect to an article and that is returned to the claimant because of insufficient funds or no funds, because the person writing the check, issuing the money order, or credit cardholder has no account or because the check, money order, or credit card account has been closed. A person violating this paragraph shall be guilty of a misdemeanor; and

4. An article that is repossessed pursuant to this subsection shall be promptly delivered to the location where the services were performed. The article shall remain at the services location at all times until the article is lawfully returned to the record owner or a lienholder or is disposed of pursuant to this section.

D. 1. If a vehicle, all-terrain vehicle, utility vehicle, manufactured home, motorcycle, boat, outboard motor, or trailer has a certificate of title issued by the Tax Commission or by a federally recognized Indian tribe in the State of Oklahoma, but there is no active lien recorded on the certificate of title, Section 91A of this title will apply instead of this section. Likewise, if there is an active lien recorded on the certificate of title but the lien is over fifteen (15) years old and the property is not a manufactured home, Section 91A of this title will apply instead of this section.

2. If personal property that otherwise would be covered by this section has been registered by the Tax Commission or by a federally recognized Indian tribe in the State of Oklahoma, and there is a lien of record but no certificate of title has been issued, Section 91A of this title will apply instead of this section.

3. If personal property otherwise would be covered by this section, but the services were rendered or the property was abandoned prior to November 1, 2005, Section 91A of this title will apply instead of this section.

E. A person who knowingly makes a false statement of a material fact regarding the furnishing of storage, rental space, material, labor or skill for the protection, improvement, safekeeping, towing, right to occupy space, storage or carriage thereof in a proceeding under this section, or attempts to use or uses the provisions of this section to foreclose an owner or lienholder's interest in a vehicle knowing that any of the statements made in the proceeding are false, upon conviction, shall be guilty of a felony.

F. Upon receipt of notice of legal proceedings, the Tax Commission shall cause the sale process to be put on hold until notice of resolution of court proceedings is received from the court. If such notice of commencement of court proceedings is not filed with the Tax Commission, the possessory lien sale process may continue.

G. No possessory lien sale shall be held on a Sunday.

H. For purposes of this section:

1. "Possession" includes actual possession and constructive possession;

2. "Constructive possession" means possession by a person who, although not in actual possession, does not have an intention to abandon property, knowingly has both power and the intention at a given time to exercise dominion or control over the property, and who holds claim to such thing by virtue of some legal right;

3. "Lawfully in possession" means a person has documentation from the owner or the owner's authorized agent, or an insurance company or its authorized agent, authorizing the furnishing of material, labor or storage, or that the property was authorized to be towed to a repair facility. If the person lacks such documentation, he or she shall not be lawfully in possession of the Section 91 Personal Property and shall not be entitled to a special lien as set forth in this section; and

4. "Itemized charges" means total parts, total labor, total towing fees, total storage fees, total processing fees and totals of any other fee groups, the sum total of which shall equal the compensation claimed.

I. For purposes of this section, the United States Postal Service approved electronic equivalent of proof of return receipt requested Form 3811 shall satisfy return receipt requested documentation requirements.

J. If a person claiming a special lien pursuant to this section fails to comply with any of the requirements of this section, any interested party may proceed against the person claiming such lien for all damages arising therefrom, including conversion, if the article of personal property has been sold. If the notice or notices required by this section shall be shown to be knowingly false or fraudulent, the interested party shall be entitled to treble damages. The prevailing party shall be entitled to all costs, including reasonable attorney fees.

K. This section shall apply to all actions or proceedings that commence on or after the effective date of this act.

*Historical Data:* R.L. 1910, § 3852; Amended by Laws 1955, HB 955, p. 248, § 1, emerg. eff. June 6, 1955; Amended by Laws 1973, SB 170, c. 111, § 1, emerg. eff. May 4, 1973; Amended by Laws 1992, HB 2279, c. 309, § 1, eff. September 1, 1992; Amended by Laws 2003, SB 702, c. 214, § 1, emerg. eff. July 1, 2003; Amended by Laws 2005, SB 419, c. 213, § 4, eff. November 1, 2005; Amended by Laws 2005, SB 835, c. 477, § 1, eff. November 1, 2005; Amended by Laws 2006, HB 1580, c. 247, § 1; Amended by Laws 2008, SB 1793, c. 98, § 1, emerg. eff. July 1, 2008; Amended by Laws 2011, HB 1743, c. 355, § 11, eff. November 1, 2011; Amended by Laws 2014, SB 582, c. 405, § 1, eff. November 1, 2014; Amended by Laws 2016, SB796, eff May 20, 2016.

### **Section 91A. Lien on certain personal property for service thereon - Certificate of title - Foreclosure - Notice - Purchaser - Unpaid checks - Repossession**

- A. 1. a. This section applies to all types of personal property other than:
- (1) farm equipment as defined in Section 91.2 of this title, and
  - (2) "Section 91 Personal Property" as defined in Section 91 of this title.
- b. This section applies to any vehicle, all-terrain vehicle, utility vehicle, manufactured home, motorcycle, boat, outboard motor, or trailer that is excluded from coverage under subsection A of Section 91 of this title because the personal property:
- (1) does not have a certificate of title, or
  - (2) has a certificate of title but does not have an active lien recorded on the certificate of title, or
  - (3) has a certificate of title that is not issued by the Oklahoma Tax Commission or by a federally recognized Indian tribe in the State of Oklahoma, or
  - (4) is otherwise excluded by subparagraph b of paragraph 1 of subsection A of Section 91 of this title or subsection D of Section 91 of this title.
- c. If personal property has a certificate of title, or would be required to have a certificate of title under Oklahoma law, and is apparently covered both by this

section and by Sections 191 through 200 of this title, the procedures set out in this section shall apply instead of Sections 191 through 200 of this title. If personal property without a certificate of title and not required to be titled under Oklahoma law is covered both by this section and Sections 191 through 200 of this title, the procedures set out in Sections 191 through 200 of this title shall apply instead of this section.

2. a. Any person who, while lawfully in possession of an article of personal property to which this section applies, renders any service to the owner thereof by furnishing storage, rental space, material, labor or skill for the protection, improvement, safekeeping, towing, right to occupy space, storage or carriage thereof, has a special lien thereon, dependent on possession, for the compensation, if any, which is due to such person from the owner for such service. Charges owed under a contract primarily for the purpose of storage or rental of space shall be accrued only at the regular periodic rate for storage or rental as provided in the contract, adjusted for partial periods of storage or rental.
- b. Except for Class AA licensed wrecker towing charges, the special lien shall be subordinate to any perfected security interest unless the claimant complies with the requirements of this section. Failure to comply with any requirements of this section shall result in denial of any title application and cause the special lien to be subordinate to any perfected lien. Upon such denial, the applicant shall be entitled to one resubmission of the title application within fifteen (15) business days of receipt of the denial, and proceed to comply with the requirements of this section. "Failure to comply" includes, but is not limited to:
  - (1) failure to timely provide additional documentation supporting or verifying any entry on submitted forms as requested by the Tax Commission,
  - (2) failure to provide the documentation supporting lawful possession as outlined in paragraph 3 of subsection H of this section,
  - (3) claimant being other than the individual who provided the service giving rise to the special lien, as in subparagraph a of this paragraph,
  - (4) claimant not being in possession of the vehicle, or
  - (5) notification and proceedings not accomplished in accordance with subparagraph c of this paragraph, and paragraph 3 of this subsection.
- c. Any person claiming a lien under this section shall request, within five (5) business days of performing any service or work on the property, the Tax Commission or other appropriate license agency to furnish the name and address of the current owner of and any lienholder upon the property. The Motor Vehicle Division of the Tax Commission or appropriate license agency shall respond in person or by mail to the lien claimant within ten (10) business days of the receipt of the request for information. The Tax Commission shall render assistance to ascertain ownership, if needed. The lien claimant shall send, within seven (7) business days of receipt of the requested information from the Oklahoma Tax Commission or other license agency, a notice of the location of the property by certified mail with return receipt requested, postage prepaid, to the owner and any lienholder of the vehicle at the addresses furnished. The lien claimant may charge Twenty Dollars (\$20.00) for

processing plus the cost of postage if the notice is timely sent pursuant to the requirements of this subparagraph in addition to fees regulated by the Oklahoma Corporation Commission for licensed wreckers. If the lien claimant is unable to meet the time requirements due to a lack of or an altered vehicle identification number on the property, the lien claimant shall proceed diligently to obtain the proper vehicle identification number and shall meet the time requirements on the notice once the vehicle identification number is known. If the lien claimant is required to send additional notices because of change of ownership or lienholder after it has timely complied with the requirements of this subparagraph, the lien claimant shall remain in compliance if such additional notices are sent within the required time periods from the date of discovery of the new owners or lienholders. The notice shall be in writing and shall contain, but not be limited to, the following:

- (1) a statement that the notice is a Notice of Possessory Lien,
- (2) the complete legal name, physical and mailing address, and telephone number of the claimant,
- (3) the complete legal name, physical and mailing address of the person who requested that the claimant render service to the owner by furnishing material, labor or skill, storage, or rental space, or the date the property was abandoned if the claimant did not render any other service,
- (4) a description of the article of personal property, and the complete physical and mailing address of the location of the article of personal property,
- (5) the nature of the work, labor or service performed, material furnished, or the storage or rental arrangement, and the date thereof, and written proof of authority to perform the work, labor or service provided that, in the case of a law enforcement directed tow, the logbook entry prescribed in OAC 595:25-5-5 or the tow ticket as defined by the Corporation Commission shall serve as written proof of authority,
- (6) the signature of the claimant which shall be notarized and, if applicable, the signature of the claimant's attorney. If the claimant is a business, the name of the contact person representing the business shall be shown. In place of an original signature and notary seal, a digital or electronic signature or seal shall be accepted, and
- (7) an itemized statement describing the date or dates the labor or services were performed and material furnished and the charges claimed for each item, the totals of which shall equal the total compensation claimed.

The lien claimant shall not be required to send the notice required in this subparagraph if the property is released to an interested party before the notice is mailed and no additional charges or fees continue to accrue. If a law enforcement agency has the property towed to a law enforcement facility, the person claiming a lien under this section shall not be required to send notice until the property is released by law enforcement to the claimant or the date which claimant starts charging storage, whichever is earlier. A lien claimant shall have an extension of ten (10) business days to send the notice required in this subparagraph if a state of emergency has been declared in the county in which the property is located.

- d. Subparagraphs b and c of this paragraph shall not apply to salvage pools as defined in Section 591.2 of Title 47 of the Oklahoma Statutes.

3. The lien may be foreclosed by a sale of such personal property upon the notice and in the manner following: The notice shall be in writing and shall contain, but not be limited to:
  - a. the names of the owner and any other known party or parties who may claim any interest in the property,
  - b. a description of the property to be sold, including a visual inspection or a photograph if the property is a motor vehicle, and the physical location of the property,
  - c. the nature of the work, labor or service performed, material furnished, or the storage or rental arrangement, and the date thereof, and written proof of authority to perform the work, labor or service provided. In the case of a law enforcement directed tow, the logbook entry prescribed in OAC 595:25-5-5 or the tow ticket as defined by the Corporation Commission, shall serve as written proof of authority,
  - d. the time and place of sale,
  - e. the name, telephone number, physical address and mailing address of the claimant, and agent or attorney, if any, foreclosing such lien. If the claimant is a business, then the name of the contact person representing the business must be shown. In place of an original signature and notary seal, a digital or electronic signature or seal shall be accepted, and
  - f. itemized charges which shall equal the total compensation claimed.
4.
  - a. Such Notice of Sale shall be posted in two public places in the county where the property is to be sold at least ten (10) days before the time therein specified for such sale, and a copy of the notice shall be mailed to the owner and any other party claiming any interest in the property, if known, at their last-known post office address, by certified mail, return receipt requested, at least ten (10) days before the time therein specified for such sale. If the item of personal property is a manufactured home, notice shall also be sent by certified mail to the county treasurer and to the county assessor of the county where the manufactured home is located.
  - b. In the case of any item of personal property without a certificate of title and not required to be titled under Oklahoma law, a party who claims any interest in the property shall include all owners of the property; any secured party who has an active financing statement on file with the county clerk of Oklahoma County listing one or more owners of the property by legal name as debtors and indicating a collateral description that would include the property; and any other person having any interest in the personal property, of whom the claimant has actual notice.
  - c. In the case of personal property subject to this section for which a certificate of title has been issued by any jurisdiction, a party who claims any interest in the property shall include all owners of the article of personal property as indicated by the certificate of title; lien debtors, if any, other than the owners; any lienholder whose lien is noted on the face of the certificate of title; and any other person having any interest in the article of personal property, of whom the claimant has actual notice.
  - d. When the jurisdiction of titling for a vehicle, all-terrain vehicle, motorcycle, boat, outboard motor, or trailer that is five (5) model years old or newer, or a manufactured home that is fifteen (15) model years old or newer, cannot be

determined by ordinary means, the claimant, the agent of the claimant, or the attorney of the claimant, shall request, in writing, that the Oklahoma Tax Commission Motor Vehicle Division ascertain the jurisdiction where the vehicle or manufactured home is titled. The Oklahoma Tax Commission Motor Vehicle Division shall, within fourteen (14) days from the date the request is received, provide information as to the jurisdiction where the personal property is titled. If the Oklahoma Tax Commission Motor Vehicle Division is unable to provide the information, it shall provide notice that the record is not available.

- e. When personal property is of a type that Oklahoma law requires to be titled, the owner of record of that property is unknown, and the jurisdiction of titling and owner of record cannot be determined by ordinary means and also, if applicable, cannot be determined in accordance with the preceding subparagraph, then the special lien may be foreclosed by publication of a legal notice in a legal newspaper in the county where the personal property is located, as defined in Section 106 of Title 25 of the Oklahoma Statutes. Such notice shall include the description of the property by year, make, vehicle identification number if available from the property, the name of the individual who may be contacted for information, and the telephone number of that person or the address where the vehicle is located. The legal notice shall be published once per week for three (3) consecutive weeks. As soon as circumstances exist as described in the first sentence of this subparagraph, the first date of publication may occur even if the special lien has not accrued for over thirty (30) days. The first date available for public sale of the vehicle is the day following publication of the final notice, but no fewer than thirty (30) days after the lien has accrued. When the owner of record is unknown, the Notice of Sale nevertheless must be completed and mailed to any known interested party by certified mail. For purposes of this paragraph, interested parties shall include all persons described in subparagraph b or subparagraph c of this paragraph, whichever is applicable, with the exception of any owner who is unknown. Except in circumstances described in paragraph 7 of this subsection that provide for a shorter time period, the Notice of Sale shall be posted in two public places in the county where the property is to be sold at least ten (10) days before the time therein specified for such sale, and the Notice of Sale shall not be mailed until at least thirty (30) days after the lien has accrued.

5. The lienor or any other person may in good faith become a purchaser of the property sold.

6. Proceedings for foreclosure under this act shall not be commenced until thirty (30) days after the lien has accrued, except as provided elsewhere in Oklahoma law.

7. Notwithstanding any other provision of law, proceedings for foreclosures for the storage of junk vehicles towed and stored pursuant to Section 955 of Title 47 of the Oklahoma Statutes by Class AA wreckers listed with the Motor Vehicle Division of the Department of Public Safety, may be commenced five (5) days after the lien has accrued. For purposes of this paragraph, "junk vehicles" means any vehicle that is more than ten (10) years old if the cost of a comparable vehicle would be less than Three Hundred Dollars (\$300.00) as quoted in the latest edition of the National Automobile Dealers Association Official Used Car Guide or latest monthly edition of any other nationally recognized published guidebook, adjusting to the condition of the vehicle.

- B. 1. a. Any person who is induced by means of a check or other form of written order for immediate payment of money to deliver up possession of an article of personal property on which the person has a special lien created by subsection A of this section, which check or other written order is dishonored, or is not paid when presented, shall have a lien for the amount thereof upon the personal property.
- b. The person claiming such lien shall, within thirty (30) days from the date of dishonor of the check or other written order for payment of money, file in the office of the county clerk of the county in which the property is situated a sworn statement that:
  - (1) the check or other written order for immediate payment of money, copy thereof being attached, was received for labor, material or supplies for producing or repairing an article of personal property, or for other specific property-related services covered by this section,
  - (2) the check or other written order was not paid, and
  - (3) the uttering of the check or other written order constituted the means for inducing the person, one possessed of a special lien created by subsection A of this section upon the described article of personal property, to deliver up the article of personal property.
2. a. Any person who renders service to the owner of an article of personal property by furnishing storage, rental space, material, labor, or skill for the protection, improvement, safekeeping, towing, right to occupy space, storage, or carriage thereof shall have a special lien on such property pursuant to this section if such property is removed from the person's possession, without such person's written consent or without payment for such service.
- b. The person claiming such lien shall, within five (5) days of such nonauthorized removal, file in the office of the county clerk of the county in which the property is located, a sworn statement including:
  - (1) that services were rendered on or in relation to the article of personal property by the person claiming such lien,
  - (2) that the property was in the possession of the person claiming the lien but such property was removed without his or her written consent,
  - (3) an identifying description of the article of personal property on or in relation to which the service was rendered, and
  - (4) that the debt for the services rendered on or in relation to the article of personal property was not paid. Provided, if the unpaid total amount of the debt for services rendered on or in relation to the article of personal property is unknown, an approximated amount of the debt due and owing shall be included in the sworn statement but such approximated debt may be amended within thirty (30) days of such filing to reflect the actual amount of the debt due and owing.
3. The enforcement of the lien shall be within sixty (60) days after filing the lien in the manner provided by law for enforcing the lien of a security agreement and provided that the lien shall not affect the rights of innocent, intervening purchasers without notice.



C. If the person who renders service to the owner of an article of personal property to which this section applies relinquishes or loses possession of the article due to circumstances described in subparagraph a of paragraph 1 or subparagraph a of paragraph 2 of subsection B of this section, the person claiming the lien shall be entitled to possession of the article until the amount due is paid, unless the article is possessed by a person who became a bona fide purchaser. Entitlement to possession shall be in accordance with the following:

1. The claimant may take possession of an article pursuant to this subsection only if the person obligated under the contract for services has signed an acknowledgment of receipt of a notice that the article may be subject to repossession. The notice and acknowledgment pursuant to this subsection shall be:

- a. in writing and separate from the written contract for services, or
- b. printed on the written contract for services, credit agreement or other document which displays the notice in bold-faced, capitalized and underlined type, or is separated from surrounding written material so as to be conspicuous with a separate signature line;

2. The claimant may require the person obligated under the contract for services to pay the costs of repossession as a condition for reclaiming the article only to the extent of the reasonable fair market value of the services required to take possession of the article;

3. The claimant shall not transfer to a third party or to a person who performs repossession services, a check, money order, or credit card transaction that is received as payment for services with respect to an article and that is returned to the claimant because of insufficient funds or no funds, because the person writing the check, issuing the money order, or credit cardholder has no account or because the check, money order, or credit card account has been closed. A person violating this paragraph shall be guilty of a misdemeanor; and

4. An article that is repossessed pursuant to this subsection shall be promptly delivered to the location where the services were performed. The article shall remain at the services location at all times until the article is lawfully returned to the record owner or a lienholder or is disposed of pursuant to this section.

D. 1. This section applies if a vehicle, all-terrain vehicle, manufactured home, motorcycle, boat, outboard motor, or trailer has a certificate of title issued by the Tax Commission or by a federally recognized Indian tribe in Oklahoma, but there is no active lien recorded on the certificate of title.

2. This section applies if a vehicle, all-terrain vehicle, utility vehicle, motorcycle, boat, outboard motor or trailer has a certificate of title issued by the Tax Commission or by a federally recognized Indian tribe in Oklahoma, and there is an active lien recorded on the certificate of title, but the lien is over fifteen (15) years old.

3. This section applies if personal property to which Section 91 of this title otherwise would apply has been registered by the Tax Commission or by a federally recognized Indian tribe in the State of Oklahoma, and there is a lien of record but no certificate of title has been issued.

4. This section applies if personal property to which Section 91 of this title otherwise would apply has not been registered by either the Tax Commission or a federally recognized Indian tribe in the State of Oklahoma, and no certificate of title has been issued, but there is a lien of record.

5. This section applies to personal property that otherwise would be covered by Section 91 of this title, except that the services were rendered or the property was abandoned prior to November 1, 2005.

6. This section applies to a vehicle, all-terrain vehicle, utility vehicle, manufactured home, motorcycle, boat, outboard motor, or trailer for which ownership cannot be determined by ordinary means or by the Oklahoma Tax Commission Motor Vehicle Division, as provided in subparagraphs d and e of paragraph 4 of subsection A of this section, as applicable.

7. This section applies to items of personal property that are not required by Oklahoma law to be titled, and that do not have a certificate of title.

8. This section applies to salvage pools as defined in Section 591.2 of Title 47 of the Oklahoma Statutes.

9. This section applies to class AA licensed wrecker services taking possession of a vehicle pursuant to an agreement with, or at the direction of, or dispatched by a state or local law enforcement or government agency, or pursuant to the abandoned vehicle removal provisions of Section 954A of Title 47 of the Oklahoma Statutes with respect to all types of personal property, regardless of whether that personal property has a certificate of title.

10. For a vehicle abandoned at a salvage pool, if the cost of repairing the vehicle for safe operation on the highway does not exceed sixty percent (60%) of the fair market value of the vehicle as defined in Section 1111 of Title 47 of the Oklahoma Statutes, a salvage title shall not be required.

E. A person who knowingly makes a false statement of a material fact regarding the furnishing of storage, rental space, material, labor or skill for the protection, improvement, safekeeping, towing, right to occupy space, storage or carriage thereof in a proceeding under this section, or attempts to use or uses the provisions of this section to foreclose an owner or lienholder's interest in a vehicle knowing that any of the statements made in the proceeding are false, upon conviction, shall be guilty of a felony.

F. Upon receipt of notice of legal proceedings, the Tax Commission shall cause the sale process to be put on hold until notice of resolution of court proceedings is received from the court. If such notice of commencement of court proceedings is not filed with the Tax Commission, the possessory lien sale process may continue.

G. No possessory lien sale shall be held on a Sunday.

H. For purposes of this section:

1. "Possession" includes actual possession and constructive possession;

2. "Constructive possession" means possession by a person who, although not in actual possession, does not have an intention to abandon property, knowingly has both power and the intention at a given time to exercise dominion or control over the property, and who holds claim to such thing by virtue of some legal right;

3. "Lawfully in possession" means a person has documentation from the owner or the owner's authorized agent, or an insurance company or its authorized agent, authorizing the furnishing of material, labor or storage, or that the property was authorized to be towed to a repair facility.

Class AA wrecker services taking possession of a vehicle pursuant to an agreement with, or at the direction of, or dispatched by, a state or local law enforcement or government agency, or pursuant to the abandoned vehicle removal provisions of Section 954A of Title 47 of the Oklahoma Statutes, shall be considered lawfully in possession of the vehicle. If the person lacks such documentation, the procedures established by this section shall not apply; and

4. "Itemized charges" means total parts, total labor, total towing fees, total storage fees, total processing fees and totals of any other fee groups, the sum total of which shall equal the compensation claimed.

I. For purposes of this section, the United States Postal Service approved electronic equivalent of proof of return receipt requested Form 3811 shall satisfy return receipt requested documentation requirements.

J. If a person claiming a special lien pursuant to this section fails to comply with any of the requirements of this section, any interested party may proceed against the person claiming such lien for all damages arising therefrom, including conversion, if the article of personal property has been sold. If the notice or notices required by this section shall be shown to be knowingly false or fraudulent, the interested party shall be entitled to treble damages. The prevailing party shall be entitled to all costs, including reasonable attorney fees.

K. Any interested party shall be permitted to visually inspect and verify the services rendered by the claimant prior to the sale of the article of property during normal business hours. If the claimant fails to allow any interested party to inspect the property, the interested party shall mail a request for inspection by certified mail, return receipt requested, to the claimant. Within three (3) business days of receipt of the request for inspection, the claimant shall mail a photograph of the property, by certified mail, return receipt requested, and a date of inspection within five (5) business days from the date of the notice to inspect. The lienholder shall be allowed to retrieve the property without being required to bring the title into the lienholder's name, if the lienholder provides proof it is a lienholder and any payment due the claimant for lawful charges where the claimant has complied with this section. Upon the release of personal property to an insurer or representative of the insurer, wrecker operators shall be exempt from all liability and shall be held harmless for any losses or claims of loss. In the event any law enforcement agency places a hold on the property, the party wanting to inspect or photograph the property shall obtain permission from the law enforcement agency that placed the hold on the property before inspecting or photographing.

L. This section shall apply to all actions or proceedings that commence on or after the effective date of this act.

*Historical Data:* Laws 2005, SB 835, c. 477, § 2, eff. Nov. 1, 2005; Amended by Laws 2006, HB 1580, c. 247, § 2; Amended by Laws 2008, SB 1793, c. 98, § 2, emerg. eff. July 1, 2008; Amended by Laws 2014, SB 582, c. 405 § 2, eff. November 1, 2014; Amended by Laws 2016, SB796, eff May 20, 2016.

## **Section 92. Laborer's lien on products of labor**

Laborers who perform work and labor for any person under a verbal or written contract, if unpaid for the same, shall have a lien on the production of their labor, for such work and labor; Provided, that such lien shall attach only while the title to the property remains in the original owner.

*Historical Data:* Laws 1910-11, HB 117, c. 114, p. 254, § 1.

### **Section 93. Enforcement of lien**

The lien provided for in this act may be enforced as in an ordinary action or by attachment proceeding as provided in the Code of Civil Procedure.

*Historical Data:* Laws 1910-11, HB 117, c. 114, p. 254, § 2.

### **Section 94. When lien attaches**

Liens under the provisions of this act are in full force and effect from and after the time the labor is performed.

*Historical Data:* Laws 1910-11, HB 117, c. 114, p. 254, § 3.

### **Section 95. Time for enforcement**

The proceedings under this act shall be commenced within eight (8) months after the work is done.

*Historical Data:* Laws 1910-11, HB 117, c. 114, p. 254, § 4.

### **Section 96. Priority of lien**

Liens created under this act shall take precedence over all other liens whether created prior or subsequent to the laborer's lien herein created and provided.

*Historical Data:* Laws 1910-11, HB 117, c. 114, p. 254, § 5.

### **Section 97. Lien for labor or materials for production, alteration or repair of personal property – Commencement of lien**

Any person, firm or corporation who furnishes labor, money, material or supplies for the production of, altering or repairs of any personal property at the request of the owner of said property, shall have a lien for the value of his money, labor, material or supplies upon said personal property as provided for in Section 2 of this act. Lien to date from commencement of furnishing of labor, money, material or supplies.

*Historical Data:* Laws 1917, HB 654, c. 187, p. 350, § 1, emerg. eff. February 27, 1917.

### **Section 98. Filing of statement of lien with county clerk – Innocent purchasers**

1. Except as otherwise provided by this chapter, any person entitled to a lien pursuant to this chapter shall within one hundred twenty (120) days after last furnishing of labor, money, material or supplies for the production of, altering or repairing of said personal property, file in the office of the county clerk of the county in which the property is situated a statement in writing verified by oath, showing the amount of labor, money, material or supplies furnished for the producing of, altering or repairing of said personal property, the name of the person for, and by whom labor, money, material or supplies, was furnished.

2. If the person entitled to such lien does not file such statement within the time required by this chapter, such person shall be deemed to have waived his rights thereto.

3. The lien provided for in this chapter shall not attach to any personal property after it has been purchased by an innocent purchaser for value, and has passed into his possession unless the lien shall have been filed with the county clerk of the county before the property was purchased

by such purchaser, or he shall have received written notice, from the party entitled to the lien, of his intention to file the same.

B. Immediately upon the receipt of such statement, the county clerk shall enter a record of the same in a book kept for that purpose, to be called the Personal Property Lien Journal, which shall be ruled off into separate columns, with headings as follows: "When filed", "Name of owner", "Name of claimant", "Amount claimed", and "Remarks", and the clerk shall make the proper entry in each column.

*Historical Data:* Laws 1917, HB 654, c. 187, p. 351, § 2, emerg. eff. February 27, 1917; Amended by Laws 1992, HB 2279, c. 309, § 2, eff. September 1, 1992; Amended by Laws 2003, SB 512, c. 409, § 1, eff. November 1, 2003.

### **Section 99. Priority of mortgage liens**

The lien herein provided for shall be subject to prior mortgage liens, unless the holder thereof has received notice of the intention of the furnishing of said labor, money, material or supplies and consents thereto in writing after which the holder of such mortgage lien shall become jointly liable with the owner of said property for the expense of producing, altering or repairing of same.

*Historical Data:* Laws 1917, HB 654, c. 187, p. 351, § 3, emerg. eff. February 27, 1917.

### **Section 100. Foreclosure of liens**

Said lien may be foreclosed by the sale of the property so covered any time within twelve (12) months in the same manner provided by law for the foreclosure of chattel mortgages.

*Historical Data:* Laws 1917, HB 654, c. 187, p. 351, § 4, emerg. eff. February 27, 1917.

### **Section 101. Sale, disposal or removal of property covered by lien - Punishment**

Any person convicted of selling, disposing of or removing property covered by a lien not subordinate to that person's interest, arising under Sections 91 through 102 of this title or Section 1 or 2 of this act without either obtaining the written consent of the owner of the lien or making provision adequate to satisfy the lien, shall be guilty of a misdemeanor punishable by imprisonment in the county jail for not more than six (6) months or by a fine of not less than One Hundred Dollars (\$100.00).

*Historical Data:* Laws 1917, HB 654, c. 187, p. 351, § 5, emerg. eff. February 27, 1917; Amended by Laws 1992, HB 2279, c. 309, § 3, eff. September 1, 1992; Amended by Laws 2005, SB 419, c. 213, § 3, eff. November 1, 2005.

### **Section 102. Discharge of lien when satisfied**

It shall be the duty of the holder of the lien under this act when the same is satisfied to immediately file a notice of discharge thereof with the county clerk of the county wherein the lien is filed. Failure to do so shall subject the holder of the lien to a fine of not less than Twenty-five Dollars (\$25.00) nor more than One Hundred Dollars (\$100.00).

*Historical Data:* Laws 1917, HB 654, c. 187, p. 352, § 6, emerg. eff. February 27, 1917.

### **Section 141. Right to lien - Priority - Enforceability against property - Constructive notice**

Any person who shall, under oral or written contract with the owner of any tract or piece of land, perform labor, furnish material or lease or rent equipment used on said land for the erection, alteration or repair of any building, improvement or structure thereon or perform labor in putting up any fixtures, machinery in, or attachment to, any such building, structure or

improvements; or who shall plant any tree, vines, plants or hedge in or upon such land; or who shall build, alter, repair or furnish labor, material or lease or rent equipment used on said land for buildings, altering, or repairing any fence or footwalk in or upon said land, or any sidewalk in any street abutting such land, shall have a lien upon the whole of said tract or piece of land, the buildings and appurtenances in an amount inclusive of all sums owed to the person at the time of the lien filing, including, without limitation, applicable profit and overhead costs. If the title to the land is not in the person with whom such contract was made, the lien shall be allowed on the buildings and improvements on such land separately from the real estate. Such liens shall be preferred to all other liens or encumbrances which may attach to or upon such land, buildings or improvements or either of them subsequent to the commencement of such building, the furnishing or putting up of such fixtures or machinery, the planting of such trees, vines, plants or hedges, the building of such fence, footwalk or sidewalks, or the making of any such repairs or improvements; and such lien shall follow said property and each and every part thereof, and be enforceable against the said property wherever the same may be found, and compliance with the provisions of this act shall constitute constructive notice of the claimant's lien to all purchasers and encumbrancers of said property or any part thereof, subsequent to the date of the furnishing of the first item of material or the date of the performance of the first labor or the first use of the rental equipment on said land.

*Historical Data:* R.L. 1910, § 3862; Amended by Laws 1919, HB 431, c. 258, p. 367, § 1; Amended by Laws 1923, SB 123, c. 54, p. 97, § 1; Amended by Laws 1977, HB 1293, c. 207, § 6, eff. October 1, 1977; Amended by Laws 1980, SB 604, c. 216, § 1, emerg. eff. May 30, 1980; Amended by Laws 2013, HB 1087, c. 78, § 1, eff. November 1, 2013.

### **Section 141.1. Transfer of records, funds and powers and duties to county clerk**

On the effective date of this act, the records, funds and powers and duties relating to the filing of mechanics' and materialmen's liens in the office of the court clerk in each county of this state shall be transferred to the office of the county clerk. The county clerk shall thereafter exercise all such powers and duties formerly performed by the court clerk relating to such liens.

*Historical Data:* Laws 1977, HB 1293, c. 207, § 3, eff. October 1, 1977.

### **Section 142. Statement to be filed**

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. Such statement shall be filed within four (4) months after the date upon which material or equipment used on said land was last furnished or labor last performed under contract as aforesaid; and if the claim be for the planting of any trees, vines, plants, or hedge, such statement shall be filed within four (4) months from such planting. Immediately upon the receipt of such statement the county clerk shall enter a record of the same against the tract index and in a book kept for that purpose, to be called the mechanics' lien journal, which shall be ruled off into separate columns, with headings as follows: "When filed", "Name of owner", "Name of claimant", "Amount claimed", "Legal description of property", and "Remarks", and the clerk shall make the proper entry in each column.

*Historical Data:* R.L. 1910, § 3863; Amended by Laws 1977, HB 1293, c. 207, § 7, eff. October 1, 1977; Amended by Laws 1978, SB 530, c. 133, § 3, eff. October 1, 1978; Amended by Laws 1980, SB 604, c. 216, § 2, emerg. eff. May 30, 1980.

#### **Section 142.4. Fraudulent statement – Felony**

Any original contractor who falsifies any statement regarding liens on labor or material to any owner of a dwelling, upon conviction, shall be guilty of a felony.

*Historical Data:* Laws 1980, SB 192, c. 359, § 4, eff. October 1, 1980; Amended by Laws 1997, HB 1213, c. 133, § 458 (effective date amended to July 1, 1999, by Laws 1998, 1st Extr. Sess., HB 1002, c. 2, §§ 23-26, emerg. eff. June 19, 1998).

#### **Section 142.6. Pre-lien notice – Requirements – Affidavit – Penalties**

A. For the purposes of this section:

1. "Claimant" means a person, other than an original contractor, that is entitled or may be entitled to a lien pursuant to Section 141 of this title; and

2. "Person" means any individual, corporation, partnership, unincorporated association, or other entity.

B. 1. Prior to the filing of a lien statement pursuant to Section 143.1 of this title, but no later than seventy-five (75) days after the last date of supply of material, services, labor, or equipment in which the claimant is entitled or may be entitled to lien rights, the claimant shall send to the last-known address of the original contractor and an owner of the property a pre-lien notice pursuant to the provisions of this section. Provided further, no lien affecting property then occupied as a dwelling by an owner shall be valid unless the pre-lien notice provided in this section was sent within seventy-five (75) days of the last furnishing of materials, services, labor or equipment by the claimant.

2. The provisions of this section shall not be construed to require:

a. a pre-lien notice with respect to any retainage held by agreement between an owner, contractor, or subcontractor, or

b. more than one pre-lien notice during the course of a construction project in which material, services, labor, or equipment is furnished.

A pre-lien notice sent in compliance with this section for the supply of material, services, labor, or equipment that entitles or may entitle a claimant to lien rights shall protect the claimant's lien rights for any subsequent supply of material, services, labor, or equipment furnished during the course of a construction project.

3. Except as otherwise required in paragraph 1 of this subsection, the pre-lien notice requirements shall not apply to a claimant:

a. whose claim relates to the supply of material, services, labor, or equipment furnished in connection with a residential project. For the purposes of this subparagraph, the term "residential" shall mean a single family or multifamily project of four or fewer dwelling units, none of which are occupied by an owner, or

b. whose aggregate claim is less than Ten Thousand Dollars (\$10,000.00).

4. The pre-lien notice shall be in writing and shall contain, but not be limited to, the following:

a. a statement that the notice is a pre-lien notice,

b. the complete name, address, and telephone number of the claimant, or the claimant's representative,

c. the date of supply of material, services, labor, or equipment,

- d. a description of the material, services, labor, or equipment,
- e. the name and last-known address of the person who requested that the claimant provide the material, services, labor, or equipment,
- f. the address, legal description, or location of the property to which the material, services, labor, or equipment has been supplied,
- g. a statement of the dollar amount of the material, services, labor, or equipment furnished or to be furnished, and
- h. the signature of the claimant, or the claimant's representative.

5. A rebuttable presumption of compliance with paragraph 1 of this subsection shall be created if the pre-lien notice is sent as follows:

- a. hand delivery supported by a delivery confirmation receipt,
- b. automated transaction pursuant to Section 15-115 of Title 12A of the Oklahoma Statutes, or
- c. certified mail, return receipt requested. Notice by certified mail, return receipt requested, shall be effective on the date mailed.

6. The claimant may request in writing, the request to be sent in the manner as provided in paragraph 5 of this subsection, that the original contractor provide to the claimant the name and last-known address of an owner of the property. Failure of the original contractor to provide the claimant with the information requested within five (5) days from the date of receipt of the request shall render the pre-lien notice requirement to the owner of the property unenforceable.

C. At the time of the filing of the lien statement, the claimant shall furnish to the county clerk a notarized affidavit verifying compliance with the pre-lien notice requirements of this section. Any claimant who falsifies the affidavit shall be guilty of a misdemeanor, and upon conviction thereof may be punished by a fine of not more than Five Thousand Dollars (\$5,000.00), or by imprisonment in the county jail for not more than thirty (30) days, or by both such fine and imprisonment.

D. Failure of the claimant to comply with the pre-lien notice requirements of this section shall render that portion of the lien claim for which no notice was sent invalid and unenforceable.

*Historical Data:* Added by Laws 2001, SB 112, c. 21 § 1, emerg. eff. April 3, 2001; Amended by Laws 2011, SB 277, c. 23, § 1, eff. November 1, 2011.

### **Section 143. Lien by or through subcontractor**

Any person who shall furnish any such material or lease or rent equipment used on said land or perform such labor as a subcontractor, or as an artisan or day laborer in the employ of the contractor, may obtain a lien upon such land, or improvements, or both, from the same time, in the same manner, and to the same extent as the original contractor, for the amount due for such material, equipment and labor, as well as any applicable profit and overhead costs due to the person; and any artisan or day laborer in the employ of, and any person furnishing material or equipment used on said land to, such subcontractor may obtain a lien upon such land, or improvements, or both, for the same time, in the same manner, and to the same extent as the subcontractor, for the amount due for such material, equipment used on said land and labor, as well as any applicable profit and overhead costs due to the person, by filing with the county clerk of the county in which the land is situated, within ninety (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. Immediately upon the filing of such statement the county clerk shall enter a record of the same against the tract index and in the journal provided for in the preceding section, and in the manner therein specified. Provided further, that the owner of any land affected by such lien shall not thereby become liable to any claimant for any greater amount than he contracted to pay the original contractor. The risk of all payments made to the original contractor shall be upon such owner until the expiration of the ninety (90) days herein specified, and no owner shall be liable to an action by such contractor until the expiration of said ninety (90) days, and such owner may pay such subcontractor the amount due him from such contractor for such labor, equipment used on said land and material, and the amount so paid shall be held and deemed a payment of said amount to the original contractor.

*Historical Data:* R.L. 1910, § 3864; Amended by Laws 1957, p. 417, § 1; Amended by Laws 1977, HB 1293, c. 207, § 8, eff. October 1, 1977; Amended by Laws 1978, SB 530, c. 133, § 4, eff. October 1, 1978; Amended by Laws 1980, SB 604, c. 216, § 3, emerg. eff. May 30, 1980; Amended by Laws 2013, HB 1087, c. 78, § 2, eff. November 1, 2013.

### **Section 143.1. Notice - Filing of lien statement – Fees**

A. Within five (5) business days after the date of the filing of the lien statement provided for in Sections 142 and 143 of this title, a notice of the lien shall be mailed by certified mail, return receipt requested, to the owner of the property on which the lien attaches. The claimant shall furnish to the county clerk the last-known mailing address of the person or persons against whom the claim is made and the owner of the property. The notice shall be mailed by the county clerk. The fee for preparing and mailing the notice of mechanics' and materialmen's lien and costs for each additional page or exhibit shall be as provided for in Section 32 of Title 28 of the Oklahoma Statutes and shall be paid by the person filing the lien. The fee shall be deposited into the County Clerk's Lien Fee Account, created pursuant to the provisions of Section 265 of Title 19 of the Oklahoma Statutes.

B. The notice shall contain the date of filing; the name and address of the following: The person claiming the 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. Provided that, if with due diligence the person against whom the claim is made or the owner of the property cannot be found, the claimant after filing an affidavit setting forth such facts may, within sixty (60) days of the filing of the lien statement, serve a copy of the notice upon the occupant of the property or the occupant of the improvements, as the case may be, in a like manner as is provided for service upon the owner thereof, or, if the same be unoccupied, the claimant may post a copy in a conspicuous place upon the property or any improvements thereon.

*Historical Data:* Laws 1977, HB 1293, c. 207, § 9, eff. October 1, 1977; Amended by Laws 1979, HB 1006, c. 251, § 1, emerg. eff. June 5, 1979; Amended by Laws 1983, SB 119, c. 51, § 1, emerg. eff. April 26, 1983; Amended by Laws 1984, HB 1729, c. 268, § 5, eff. November 1, 1984; Amended by Laws 1985, HB 1265, c. 166, § 4, emerg. eff. July 1, 1985; Amended by Laws 1989, SB 328, c. 366, § 2, eff. November 1, 1989; Amended by Laws 2000, SB 1172, c. 363, § 23, emerg. eff. June 6, 2000; Amended by Laws 2001, SB 112, c. 21, § 2, emerg. eff. April 3, 2001; Amended by Laws 2010, SB 2104, c. 148, § 1, eff. November 1, 2010.

### **Section 143.3. Leased or rented equipment – Exemption from act**

The provisions of this act as relating to leased or rented equipment shall not apply to real property qualified for homestead exemption or real property used for agricultural purposes or real property used for the production of or growing of agricultural products.

*Historical Data:* Laws 1980, SB 604, c. 216, § 5, emerg. eff. May 30, 1980; Amended by Laws 1984, SB 418, c. 9, § 1, emerg. eff. March 12, 1984.

### **Section 143.4. Leased or rented equipment - Property used for production of oil or gas**

The provisions of this act relating to leased or rented equipment shall not apply to such equipment used for the development or production of oil or gas, except insofar as is specifically allowed by Section 144 of Title 42.

*Historical Data:* Laws 1980, SB 604, c. 216, § 6, emerg. eff. May 30, 1980.

### **Section 147.1. Discharge of lien**

Any property owner or other interested party, including but not limited to mortgagees, contractors, subcontractors and others against whom a lien claim is filed under the provisions of the law relating to mechanics' and materialmen's liens, may at any time discharge the lien by depositing with the county clerk in whose office the lien claim has been filed either: An amount of money equal to one hundred twenty-five percent (125%) of the lien claim amount; or a corporate surety bond with a penal amount equal to one hundred twenty-five percent (125%) of the lien claim amount. Within three (3) business days after the deposit of money or bond is made, the county clerk shall serve upon the lien claimant, at the address shown on the lien claim, written notice setting forth: The number of the lien claim; the name of the lien claimant; the name of the property owner; the name of the alleged debtor, if someone other than the property owner; the property description shown on the lien claim; and the amount of cash deposited or, if a bond is filed, the names of the principal and surety and the bond penalty. The party seeking to discharge the lien shall prepare and deliver the notice to the county clerk and pay a fee in accordance with Section 32 of Title 28 of the Oklahoma Statutes. An abbreviated notice may be used if the same refers to and encloses a copy of the lien claim and either a copy of the cash receipt issued by the county clerk or a copy of the bond with the clerk's filing stamp thereon. The notice shall be mailed by registered or certified mail at the option of the county clerk.

If cash is deposited, the county clerk shall immediately show the lien released of record. If a bond is deposited, the lien claimant shall have ten (10) days after the notice is mailed within which to file a written objection with the county clerk. If a written objection is not timely filed the county clerk shall immediately show the lien released of record. If an objection is timely made, the county clerk shall set a hearing within ten (10) days thereafter and notify by ordinary mail both the lien claimant and the party making the deposit of the date and time thereof. The only grounds for objection shall be that: The surety is not authorized to transact business in this state; the bond is not properly signed; the penal amount is less than one hundred twenty-five percent (125%) of the claim; the power of attorney of the surety's attorney-in-fact does not authorize the execution; there is no power of attorney attached if the bond is executed by anyone other than the surety's president and attested by its secretary; or a cease and desist order has been issued against the surety either by the Insurance Commissioner or a court of competent jurisdiction. Within two (2) business days following the hearing the county clerk shall either sustain or overrule the objections and notify the parties of the county clerk's ruling by ordinary mail. If the objections are sustained, the ruling of the county clerk shall be conclusive for lien release purposes unless appealed within ten (10) days to the district court. If the objections are overruled, the county clerk shall immediately show the lien released of record.

The bond shall: Name the lien claimant as obligee and the party seeking the release as principal; be executed by both the principal and the surety; have a proper power of attorney attached if executed by an attorney-in-fact; be executed by a corporate surety authorized to transact business in this state; and be conditioned that the principal and surety will pay the full amount of the claim as established in any appropriate court proceeding, plus any court costs and attorney fees awarded the lien claimant, but in no event shall the liability of the principal or surety under the bond exceed the bond penalty. The preceding clause shall not limit the common law liability of the party who created the indebtedness upon which the lien claim is based. The conditions of any bond filed pursuant to this section shall be deemed to comply with the requirements hereof, regardless of the language or limitations set forth therein, if both the principal and surety intend that the bond be filed to secure a lien release under this section.

The cash deposit or bond, as the case may be, shall stand in lieu of the released lien, and the lien claimant must proceed against the substituted security in the same time and manner as is required for foreclosure of a lien claim. The cash deposit or bond shall stand liable for such principal, interest, court costs and attorney fees to the extent they could be awarded in a lien foreclosure proceeding.

The only proper parties to an action against the substituted security are: The party making the cash deposit; the bond principal and surety; the party primarily liable for the indebtedness giving rise to the lien claim; and anyone else who may be liable to the lien claimant for the same indebtedness. The party making the cash deposit and the bond principal and surety are necessary parties to an action against the substituted security, and by making a deposit or filing a bond the parties subject themselves to personal jurisdiction in the court where the action is properly filed and may be served with process as in other cases.

If the lien claimant fails to timely file a foreclosure action, upon application of the party making the deposit or filing the bond and the payment of a fee of Ten Dollars (\$10.00), the county clerk shall return the cash to the party making the deposit or appropriately note on the bond that the same has been released. The clerk shall not incur liability to any lien claimant for an inadvertent release of cash or bond. At the end of ten (10) years and after the county clerk has attempted written notification to the lien claimant at the address shown on the lien claim, if no foreclosure has been commenced by the lien claimant or such money has not been withdrawn upon application of the depositing party, the cash deposit plus all accrued interest shall be forfeited to the county general fund.

Nothing contained in this section shall preclude the lien claimant and other interested parties from entering into agreements for the substitution of a different form of security in lieu of the lien claim.

The county clerk shall invest the deposited cash in the manner provided for county treasurers in Section 348.1 of Title 62 of the Oklahoma Statutes. Any interest earned thereon shall become a part of the deposit and be either returned to the party making the deposit, if no action is filed, or paid in accordance with any final judgment rendered by the court in the action against the substituted security. If a district court judgment adverse to the depositing party is entered, in setting the amount of supersedeas bond the court shall take into consideration the existing cash deposit or bond.

**Historical Data:** Added by Laws 1982, SB 548, c. 332, § 1, eff. October 1, 1982; Amended by Laws 2003, SB 534, c. 184, § 4, eff. November 1, 2003; Amended by Laws 2007, HB 1432, c. 100, § 6, eff. November 1, 2007; Amended by Laws 2007, SB 590, c. 132, § 7, eff. November 1, 2007; Laws 2007, SB 590, c. 132, § 7 repealed by Laws 2008, SB 1830, c. 3, § 23, emerg. eff. February 28, 2008.

### **Section 150. Filing statement**

Any person claiming a lien as aforesaid shall file in the office of the county clerk of the county in which the land or property is situated, a statement setting forth the amount claimed and the items thereof, as nearly as practicable, the names of the managers, lessees, sublessees, operators, mortgagees, trustees and beneficiaries under trusts, or owners, the contractor, the claimant and the legal description of the property, subject to such lien and verified by affidavit. Such statement shall be filed within forty-five (45) days after the date upon which such labor was last performed. Upon receipt of such lien statement, the clerk shall enter same against the tract index and in a record kept for that purpose, to be called the mechanics' lien journal. Except as provided herein, the provisions of Sections 92 through 96 and 141 through 147 of this title shall apply with reference to the liens herein created.

*Historical Data:* Laws 1925, HB 38, c. 108, p. 156, § 3; Amended by Laws 1977, HB 1293, c. 207, § 11, eff. October 1, 1977; Amended by Laws 1978, SB 530, c. 133, § 5, eff. October 1, 1978.

### **Section 152. Proceeds of building or remodeling contracts, mortgages or warranty deeds as trust funds for payment of lienable claims**

(1) The amount payable under any building or remodeling contract shall, upon receipt by any contractor or subcontractor, be held as trust funds for the payment of all lienable claims due and owing or to become due and owing by such contractors or subcontractors by reason of such building or remodeling contract.

(2) The monies received under any mortgage given for the purpose of construction or remodeling any structure shall upon receipt by the mortgagor be held as trust funds for the payment of all valid lienable claims due and owing or to become due and owing by such mortgagor by reason of such building or remodeling contract.

(3) The amount received by any vendor of real property under a warranty deed shall, upon receipt by the vendor, be held as trust funds for the payment of all valid lienable claims due and owing or to become due and owing by such vendor or his predecessors in title by reason of any improvements made upon such property within four (4) months prior to the delivery of said deed.

*Historical Data:* Laws 1965, SB 100, c. 58, § 1; Amended by Laws 1968, SB 617, c. 174, § 1, emerg. eff. April 15, 1968.

### **Section 153. Payment of lienable claims**

(1) The trust funds created under Section 152 of this title shall be applied to the payment of said valid lienable claims and no portion thereof shall be used for any other purpose until all lienable claims due and owing or to become due and owing shall have been paid.

(2) If the party receiving any money under Section 152 of this title is an entity having the characteristics of limited liability pursuant to law, such entity and the natural persons having the legally enforceable duty for the management of the entity shall be liable for the proper application of such trust funds and subject to punishment under Section 1451 of Title 21 of the Oklahoma Statutes. For purposes of this section, the natural persons subject to punishment shall be the managing officers of a corporation and the managers of a limited liability company.

(3) The existence of such trust funds shall not prohibit the filing or enforcement of a labor, mechanic or materialmen's lien against the affected real property by any lien claimant, nor shall the filing of such a lien release the holder of such funds from the obligations created under this section or Section 152 of this title.

*Historical Data:* Laws 1965, SB 100, c. 58, § 2, emerg. eff. April 7, 1965; Amended by Laws 1968, SB 617, c. 174, § 2, emerg. eff. April 15, 1968; Amended by Laws 1983, SB 279, c. 111, § 1, eff. November 1, 1983; Amended by Laws 1985, SB 131, c. 191, § 1, emerg. eff. June 24, 1985; Amended by Laws 1997, HB 1213, c. 133, § 460 (effective date amended to July 1, 1999, by

Laws 1998, 1st Extr. Sess., HB 1002, c. 2, §§ 23-26, emerg. eff. June 19, 1998); Amended by Laws 1999, 1st Extr. Sess., HB 1009, c. 5, § 334, emerg. eff. July 1, 1999; Amended by Laws 1999, HB 1165, c. 212, § 5, eff. November 1, 1999 (repealed by Laws 2000, HB 2711, c. 6, § 33, emerg. eff. March 20, 2000); Amended by Laws 2000, HB 2711, c. 6, § 9, eff. March 20, 2000; Amended by Laws 2002, SB 1536, c. 460, § 32, eff. November 1, 2002.

### **Section 154. Corporations – Execution, attestation, seal or acknowledgment of lien statement - Release of lien**

Any lien statement authorized by the provisions of Sections 141 through 164 of Title 42 of the Oklahoma Statutes when executed on behalf of a corporation may be signed and verified by any officer or agent of said corporation without the necessity of attestation, seal, or acknowledgment and any release of such lien when executed on behalf of a corporation may be signed by any officer or agent of such corporation without the necessity of attestation, seal, or acknowledgment.

With respect to the execution and release of lien statements in accordance with this section the provisions of Sections 15, 93, 94 and 95 of Title 16 of the Oklahoma Statutes shall not apply.

*Historical Data:* Added by Laws 1984, HB 1439, c. 257, § 1, emerg. eff. May 30, 1984.

### **Section 161. Right to lien against railroads**

Every mechanic, builder, artisan, workman, laborer, or other person, who shall do or perform any work or labor upon, or furnish any materials, machinery, fixtures or other thing towards the equipment, or to facilitate the operation of any railroad, shall have a lien therefor upon the roadbed, buildings, equipments, income, franchises, and all other appurtenances of said railroad, superior and paramount, whether prior in time or not, to that of all persons interested in said railroad as managers, lessees, mortgagees, trustees beneficiaries under trusts or owners.

*Historical Data:* R.L. 1910, § 3868.

### **Section 162. Limitations**

The lien mentioned in the preceding section shall not be effectual unless suit shall be brought upon the claim within one (1) year after it accrued.

*Historical Data:* R.L. 1910, § 3869.

### **Section 163. How enforced**

The said lien shall be mentioned in the judgment rendered for the claimant in an ordinary suit for the claim, and may be enforced by ordinary levy and sale under final or other process at law or equity.

*Historical Data:* R.L. 1910, § 3870.

### **Section 164. Notice**

A notice of ten (10) days shall be given to the railroad of the existence of a claim or the intended lien which is contemplated under this article.

*Historical Data:* R.L. 1910, § 3871.

### **Section 171. Assignment of Liens**

All claims for liens and rights of action to recover therefor hereunder shall be assignable so as to vest in the assignee all rights and remedies herein given, subject to all defenses thereto that might be made if such assignment had not been made. Where a statement has been filed and recorded as provided in Section 142 of this title, such assignment may be made by an entry, on the same page of the mechanics' lien journal containing the record of the lien, signed by the claimant or his lawful representative, and attested by the county clerk; or such assignment may be made by a separate instrument in writing.

*Historical Data:* R.L. 1910, § 3872; Amended by Laws 1977, HB 1293, c. 207, § 12, eff. October 1, 1977.

### **Section 172. Enforcement by civil actions - Limitations - Practice, pleading and proceeding - Amendment of lien statement**

Any lien provided for by this chapter may be enforced by civil action in the district court of the county in which the land is situated, and such action shall be brought within one (1) year from the time of the filing of said lien with the county clerk. The practice, pleading and proceedings in such action shall conform to the rules prescribed by the code of civil procedure as far as the same may be applicable; and in case of action brought, any lien statement may be amended by leave of court in furtherance of justice as pleadings may be in any matter, except as to the amount claimed.

*Historical Data:* R.L. 1910, § 3873; Amended by Laws 1935, SB 103, p. 226, § 1; Amended by Laws 1977, HB 1293, c. 207, § 13, eff. October 1, 1977.

### **Section 173. Parties**

In such actions all persons whose liens are filed as herein provided shall be made parties, and issues shall be made and trials had as in other cases. Where such action is brought by a subcontractor, or other person not the original contractor, such original contractor shall be made a party defendant, and shall at his own expense defend against the claim of every subcontractor, or other person claiming a lien under this chapter, and if he fails to make such defense the owner may make the same at the expense of such contractor; and until all such claims, costs and expenses are finally adjudicated, and defeated or satisfied, the owner shall be entitled to retain from the contractor the amount thereof, and such costs and expenses as he may be required to pay: Provided, that if the sheriff of the county in which such action is pending shall make return that he is unable to find such original contractor, the court may proceed to adjudicate the liens upon the land and render judgment to enforce the same with costs.

*Historical Data:* R.L. 1910, § 3874; Amended by Laws 1977, HB 1293, c. 207, § 14, eff. October 1, 1977.

### **Section 174. Consolidation of actions and stay of trial**

If several actions brought to enforce the liens herein provided for are pending at the time, the court may order them to be consolidated; and in any action brought to enforce a lien, if the building or other improvement is still in course of construction, the court, on application of any party engaged in furnishing labor or materials for such building or improvement, may stay the trial thereof for a reasonable time to permit the filing of a lien statement by such party as herein provided.

*Historical Data:* R.L. 1910, § 3875.

### **Section 175. Sale of property after judgment**

In all cases where judgment may be rendered in favor of any person or persons to enforce a lien under the provisions of this chapter, the real estate or other property shall be ordered to be sold as in other cases of sales of real estate, such sales to be without prejudice to the rights of any prior encumbrancer, owner or other person not a party to the action.

*Historical Data:* R.L. 1910, § 3876.

### **Section 176. Attorney's fees**

In an action brought to enforce any lien the party for whom judgment is rendered shall be entitled to recover a reasonable attorney's fee, to be fixed by the court, which shall be taxed as costs in the action.

*Historical Data:* R.L. 1910, § 3877.

### **Section 177. Suit by owner to determine lien and cancellation of lien on docket**

If any lien shall be filed under the provisions of this chapter, and no action to foreclose such lien shall have been commenced, the owner of the land may file his petition in the district court of the county in which said land is situated, making said lien claimants defendants therein, and praying for an adjudication of said lien so claimed, and if such lien claimant shall fail to establish his lien, the court may tax against said claimant the whole, or such portion of the costs of such action as may be just. Provided, that if no action to foreclose or adjudicate any lien filed under the provisions of this chapter shall be instituted within one (1) year from the filing of said lien, the lien is canceled by limitation of law. If a lien is canceled by limitation of law, the owner of the land may file an affidavit attesting to the cancellation with the county clerk of the county in which the land is located. Upon receipt of the affidavit, the county clerk shall attach the affidavit to the original lien document in the lien docket file and enter a notation of the filing in the mechanics' lien journal. The affidavit shall be on a form prescribed by the Office of the Administrative Director of the Courts.

*Historical Data:* R.L. 1910, § 3878; Amended by Laws 1977, HB 1293, c. 207, § 15, eff. October 1, 1977; Amended by Laws 1995, HB 1324, c. 338, § 21, eff. November 1, 1995.

### **Section 178. Proceeds insufficient**

If the proceeds of the sale be insufficient to pay all the claimants, then the court shall order them to be paid in proportion to the amount due each.

*Historical Data:* R.L. 1910, § 3879.