

NORTH DAKOTA OIL AND GAS WELL OR PIPELINE
CONSTRUCTION LIEN LAW SUMMARY

Date: January 25, 2016

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CAUTION: Lien laws are subject to constant change by the state legislature and interpretation by courts. As such, this summary could become outdated at any time. Regardless, this summary should be used as general information only, and never as legal advice either generally or for any specific situation. Seek independent legal advice from a competent attorney for each situation.

WHO HAS LIEN RIGHTS: any person or entity furnishing labor, materials, or services under a contract with the either (a) the owner of a leasehold for oil or gas, or any pipeline, (b) the original contractor, or (c) a subcontractor under the original contractor, whose labor, materials, or services were used or employed, or furnished to be used or employed, in the drilling or operating of any oil or gas well or the construction of any pipeline, is entitled to a lien, whether or not a producing well is obtained and whether or not the materials are incorporated in or become a part of the completed oil or gas well or pipeline. NDCC 35-24-02 and 35-24-04. If the lien claimant contracts with the original contractor or a subcontractor, the lien also extends to all materials and fixtures owned by such original contractor or subcontractor that are furnished and used to drill or operate the oil or gas well or to construct the pipeline. NDCC 35-24-04.

PRE-CLAIM NOTICE: none required. The statute does not even discuss or provide for an optional pre-claim notice.

THE LIEN CLAIM: record a statement of lien within six (6) months after the lien claimant last furnished labor, materials, or services. NDCC 35-24-11. Trifling or small amount may count, but best to run the six (6) months from the date on which a substantial amount of labor, materials, or services were last furnished. The statement of lien must be verified by affidavit, and set forth the amount claimed and the items thereof, the dates on which the labor was performed or the materials or services furnished, the name of the owner of the leasehold or pipeline (if known), the name of the claimant and the claimant's mailing address, a description of the leasehold or pipeline, and if the claimant contracted with the original contractor or a subcontractor, the name of such original contractor or subcontractor. NDCC 35-24-11.

POST CLAIM NOTICE: None, except a lien claimant furnishing at the request of the original contractor or a subcontractor should immediately send the property owner written notice of lien recording so as to establish the lien against the amount of the contract price (in the contract between the property owner and original contractor) still held by the property owner and not yet paid to the original contractor. NDCC 35-24-07. Also, the lien insofar as it extends to oil or gas or the proceeds of the sale of oil or gas, is

not effective against any purchaser of the oil or gas until written notice of the lien claim has been delivered to such purchaser. NDCC 35-24-06. The notice to the purchaser of the oil or gas must state the claimant's name and address, the lien claim amount, and a description of the leasehold upon which the lien is claimed. The notice must be delivered to the purchaser personally or by registered or certified letter. Until the notice is delivered, no purchaser is liable to the lien claimant for any oil or gas produced or the proceeds thereof, except to the extent of such part of the purchase price of such oil or gas or the proceeds thereof as is owing by such purchaser at the time the written notice of lien claim is delivered. NDCC 35-24-06.

LIMIT OF LIEN AGAINST PROPERTY OWNER: the property owner's liability to a lien claimant furnishing at the request of the original contractor or a subcontractor appears to be limited to the amount the property owner owes the original contractor. NDCC 35-24-07. For example, it appears that if, at the time the property owner is notified of a \$25,000 lien claim by one furnishing to the original contractor or a subcontractor, the property owner owes the original contractor only \$10,000, the property owner will have to pay only \$10,000 to satisfy the lien claim. NOTE: the lien claimant benefits by recording a lien and giving notice thereof as soon as the lien claimant ceases providing labor, materials, or services. The sooner the lien claimant records a lien and gives notice thereof to the property owner, the more of the contract price the property owner will still have in its possession.

FORECLOSURE: A foreclosure action must be commenced no later than two (2) years after the lien statement is recorded. NDCC 35-24-14.

ATTORNEY FEES: In any lien foreclosure action, the party for whom judgment is rendered is entitled to recover their reasonable attorney fees. NDCC 35-24-19. However, the property owner will not have to pay the lien claimant's attorney fees if, at least ten (10) days before trial, the property owner pays into court the maximum amount of the property owner's liability under NDCC 35-24-07. For example, if the property owner is only liable to the lien claimant in the amount of \$10,000, if the property owner pays that amount into court at least ten (10) days before trial, the lien claimant will not be able to recover its reasonable attorney fees from the property owner.

BONDING OFF LIEN: Upon receipt of a lien, the property owner, original contractor, or the subcontractor through whom the lien is claimed may bond off the lien by recording a lien release bond with the recorder's office in double the amount of the lien claim. NDCC 35-24-13. The person posting the bond must send written notice thereof, with a copy of the bond, to the obligees in the bond by registered or certified mail. Such notice must be recorded. The lien attaches to the bond upon the bond being recorded. If the lien claimant recovers in a suit on the bond, the lien claimant is entitled to its reasonable attorney fees. This may be a one way statute, in that if the bond principal or surety successfully defends in any lawsuit on the bond, they may not be entitled to their reasonable attorney fees.