

## **CHAPTER 35-13 REPAIRMAN'S LIEN**

### **35-13-01. Repairman's lien authorized.**

Any blacksmith, machinist, farm equipment dealer, construction equipment dealer, welder, garage keeper, mechanic, or aviation operator, having an established place of business in this state who makes, alters, or repairs any automobile, truck, engine, combine, tractor, farm equipment, construction equipment, well machine, aircraft, or watercraft at the request of the owner or legal possessor of the property has a lien on that property, and on any accessories and parts placed upon the property, for reasonable charges for work done and materials furnished, until the charges are paid. If the cost of repair would exceed four thousand dollars or thirty percent or, nine thousand dollars or thirty percent for property used for agricultural or construction purposes, of the value of the property, in the property's repaired condition, whichever is greater, and the repairman intends to have the entire repair bill constitute a lien with priority over the mortgage or financing statement of record, the repairman shall give notice by registered or certified mail to the recordholder of the mortgage or financing statement of the proposed repair, the estimated cost of repair, and the estimated value of the property in its repaired condition.

### **35-13-02. (Effective through July 31, 2015, or see note) Lien statement - Contents - When required - Filing.**

1. The secretary of state shall prescribe one form that can be used to obtain a lien under this section and also be entered in the central indexing system. A person entitled to a lien under this chapter who retains possession of the property made, altered, or repaired is not required to file any statement to perfect the lien. If the possession of the property so made, altered, or repaired is relinquished, the person shall file, within ninety days, or if the property is used for agricultural purposes within one hundred twenty days, or in the exploration for or the production of oil or gas within six months, after the materials are furnished or the labor is completed, in the office of the recorder of the county in which the owner or legal possessor of the property resides, a verified written statement showing:
  - a. The labor performed.
  - b. The materials furnished.
  - c. The price agreed upon for the labor performed or materials furnished, or, if no price was agreed upon, the reasonable value thereof.
  - d. The name of the person for whom the labor was performed or to whom the materials were furnished.
  - e. The name and address of the person claiming the lien.
  - f. A description of the property upon which the lien is claimed.
2. A person filing a verified statement shall within thirty days serve notice of the filing, by registered mail, upon the owner or legal possessor of the property. A person entitled to the lien who fails to file a verified statement within the time limited in this section is deemed to have waived the right to a lien.
3. A lienholder may file an amendment to add or correct the social security number or internal revenue service taxpayer identification number of the debtor, to correct the spelling of the debtor's or lienholder's name, or to correct or change the address of the lienholder. The secretary of state shall prescribe a form that may be used to amend the repairman's lien that has been filed pursuant to this section. The amendment of the lien does not affect the priority of the lien.

### **(Effective after July 31, 2015, or see note) Lien statement - Contents - When required - Filing.**

1. The secretary of state shall prescribe an electronic system that can be used to obtain a lien under this section and also be entered in the central indexing system. A person entitled to a lien under this chapter who retains possession of the property made, altered, or repaired is not required to file any statement to perfect the lien. If the possession of the property so made, altered, or repaired is relinquished, the person

shall file electronically, within ninety days, or if the property is used for agricultural purposes within one hundred twenty days, or in the exploration for or the production of oil or gas within six months, after the materials are furnished or the labor is completed, in the central indexing system, a statement showing:

- a. The labor performed.
  - b. The materials furnished.
  - c. The price agreed upon for the labor performed or materials furnished, or, if no price was agreed upon, the reasonable value thereof.
  - d. The name and address of the person for whom the labor was performed or to whom the materials were furnished.
  - e. The social security number or, in the case of a debtor doing business other than as an individual, the internal revenue service taxpayer identification number of the person for whom the labor was performed or to whom the materials were furnished.
  - f. The name and address of the person claiming the lien.
  - g. A description of the property upon which the lien is claimed.
2. A person filing a statement shall within thirty days serve notice of the filing, by registered mail, upon the owner or legal possessor of the property. A person entitled to the lien who fails to file a statement within the time limited in this section is deemed to have waived the right to a lien.
  3. A lienholder may file electronically an amendment to add or correct the social security number or internal revenue service taxpayer identification number of the debtor, to correct the spelling of the debtor's or lienholder's name, or to correct or change the address of the debtor or lienholder. The secretary of state shall provide a means to amend electronically the repairman's lien that has been filed pursuant to this section. The amendment of the lien does not affect the priority of the lien.

**35-13-03. Separate articles of personal property may be included in one lien statement.**

Any person entitled to a lien under this chapter who makes, alters, or repairs more than one article of personal property for the same owner or legal possessor may include all the articles of personal property so made, altered, or repaired within ninety days, or if the property is used for agricultural purposes within one hundred twenty days, or in the exploration for or the production of oil or gas within six months, preceding the filing of the lien statement in the same statement, and the statement has the same force and effect as though a separate statement had been filed for each article.

**35-13-04. Priority of lien.**

A lien obtained under this chapter has priority over all other liens, chattel mortgages, or encumbrances against the personal property upon which the lien is secured, but if the repairman has failed to notify the recordholder of the mortgage or financing statement as provided in section 35-13-01, or if such notice was given and the holder of the mortgage or financing statement, within five days after receiving such notice, communicated in writing to the repairman an objection to all the proposed repair costs becoming a lien against the property with priority over the mortgage or financing statement, then only that portion of the repairman's lien up to four thousand dollars or thirty percent, or nine thousand dollars or thirty percent for property used for agricultural or construction purposes, of the retail value, whichever is greater, in the property's repaired condition, has priority over the mortgage or financing statement.

**35-13-05. Notice before foreclosure to prior mortgagee.**

A person holding a lien under this chapter on property which has been encumbered previously by mortgage, before beginning any action or proceeding for the foreclosure of the lien, shall give twenty days' notice in writing of the lienholder's intention to foreclose the lien to the recordholder of the mortgage. The notice may be served by registered or certified mail addressed to the recordholder at the recordholder's last-known post-office address.

**35-13-06. Mortgagee may pay amount of lien - Assignment of lien.**

The holder of any mortgage against property on which a lien has been filed under the provisions of this chapter may pay the amount due on the lien at any time previous to a sale upon the foreclosure thereof. Upon payment of the lien by a mortgageholder, the holder of the lien shall assign it to such mortgageholder, and thereafter the mortgageholder is entitled to all the rights which the person filing the lien had before the lien was paid.