

## **CHAPTER 35-15 MINER'S LIEN**

### **35-15-01. Miner's lien for work or material furnished to owner or contractor.**

Every miner or other person who, at the request of the owner or the agent of the owner of any lode, lead, ledge, mine, or deposit bearing gold, cinnabar, or copper, or of any coal bank or mine, or at the request of any contractor or subcontractor, performs any labor on the mine or furnishes any timber, rope, nails, or any other materials for timbering shafts or levels for the mine, or who furnishes any kind of materials for erecting any windlass, whims, or any other hoisting apparatus or machinery, or for any car track, cars, tunnels, drifts, or openings thereon, or performs any labor in any tunnel, has a lien upon such lode, lead, ledge, mine, deposit, bank, or tunnel to secure the payment therefor.

### **35-15-02. Verified account to owner - Amount deducted from payment to contractor.**

Any miner or other person doing and performing any work or furnishing any material as specified in section 35-15-01 under a contract, either express or implied, between the owner of any mine or the mine owner's agent, and any contractor working on such mine, whether such work is performed or materials furnished as miner, laborer, or otherwise, whose demand for work so performed or materials so furnished has not been paid, may deliver to the owner of such mine or tunnel or to the owner's agent or superintendent a verified account of the amount in value of the work and labor performed or of the materials furnished and remaining unpaid, and thereupon, the owner or the owner's agent shall retain out of the first subsequent payments to the contractor the amount due for the work and labor or materials furnished for the benefit of the person performing or furnishing the same.

### **35-15-03. Duty of owner - Delivery of copy to contractor - Notice - Disputed claim - Payment of claim.**

Whenever any account for labor performed or materials furnished as specified in section 35-15-02 is placed in the hands of the owner of any mine or tunnel or the owner's agent, it is the duty of the owner or agent to furnish the contractor with a copy of the papers so that if there is any disagreement between such contractor or the contractor's subcontractor and the creditor of either, they, by amicable adjustment or by arbitration, may ascertain the sum due, if any. If the contractor or subcontractor does not give the owner or the owner's agent written notice within ten days after the receipt of the papers that the contractor or subcontractor intends to dispute the claim, or if ten days after giving the notice the contractor or subcontractor refuses or neglects to have the matter adjusted, the contractor or subcontractor shall be considered to have assented thereto, and such owner or the owner's agent may pay the amount when it becomes due, and for that purpose may deduct the amount out of any moneys due the contractor who in like manner may deduct the amount from any moneys due from the contractor to the contractor's subcontractor in case the account or demand is against a subcontractor for work and labor performed or materials furnished.

### **35-15-04. Amount due from contractors recovered from owner - Action against owner.**

The creditor of a contractor may recover from the owner, under the contract in force between the contractor and the owner, the sum due at the time notice was given and any sum thereafter accruing.

### **35-15-05. Account filed with clerk - Recorded by clerk - Liens concurrent and paid pro rata.**

Any person entitled to a lien under this chapter shall make a verified account in writing of the items of labor and material furnished and, within sixty days from the time of completing the labor or furnishing the last item of materials, shall file the account in the office of the clerk of the district court of the county where the lode, lead, ledge, mine, deposit, bank, or tunnel for which labor or material is furnished is situated. The person shall file, with the account, a correct description of the property to be charged with the lien. The account and description must be

recorded in a separate record and filing system to be provided for that purpose by the clerk of court. Thereupon the account will operate as a lien on the property charged in the description from the time of the completion of the work or furnishing the last item of material, and for one year thereafter. When labor or materials have been furnished under a written contract, the contract or a copy thereof must be filed with the account and description. All lien claims for labor or materials furnished must be concurrent liens upon the property charged and must be paid pro rata out of the proceeds arising from the sale of the property, if sold, or upon settlement without sale.

**35-15-06. Foreclosure - When lienholders joined in action.**

Any person holding a miner's lien may foreclose the same in the same manner as a construction lien may be foreclosed. In an action for the foreclosure of such lien, each person claiming a lien upon the property charged must be made a party to the action, and the rights of all parties must be determined by the court and such order made in regard thereto as shall preserve and protect the rights of all parties.

**35-15-07. Chapter applies to oil and gas wells, iron and lead mines, and other mines.**

The provisions of this chapter apply to oil and gas wells, iron and lead mines, and all other mines not herein specified so far as the same may be applicable.