

**TITLE 35  
LIENS**

**CHAPTER 35-01  
GENERAL PROVISIONS**

**35-01-01. Scope of statutes relating to liens.**

The general statutes relating to liens apply to all liens, including mortgages and pledges, unless from the context relating to any of them a different intention appears, and except as modified by the provisions of chapter 41-09.

**35-01-02. Definition of lien.**

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

**35-01-03. Classification of liens - General - Special - Definition.**

Liens are either general or special:

1. 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 the holder's favor against the owner of the property.
2. 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 the obligations that may be incidental thereto.

**35-01-04. Creation of lien by contract or by operation of law - Special circumstances and exception.**

A lien or security interest is created by contract or by operation of law. No lien arises by operation of law until the time at which the act secured by the lien is to be performed. A security interest in personal property is governed by chapter 41-09, except that a bill of sale or security agreement, that is not a purchase money security interest, with respect to household goods, effects, furniture of married persons, or personal property exempt from execution is void unless the instrument by which it is transferred or encumbered is jointly executed by the husband and wife, if both are living. This section does not apply to transfers or liens arising by operation of law nor to security agreements relating to threshed grains made with any lending agency authorized to make commodity credit corporation loans on threshed grains.

**35-01-05. Lien on future interest - When lien attaches.**

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

**35-01-05.1. When security interest in vehicle valid.**

1. No security interest, including a security interest under chapter 41-09, in a vehicle, including a manufactured home, which is not inventory held for sale is valid as against subsequent purchasers and encumbrances of the property in good faith and for value unless the security interest is clearly indicated upon the certificate of title to the vehicle or unless such certificate of title is in the possession of the secured party, provided, however, that a purchase money security interest under chapter 41-09 in a manufactured home is perfected against the rights of judicial lien creditors and execution creditors on and after the date the purchase money security interest attaches, and provided further the holder of a security interest in or a lien on a manufactured home may deliver lien release documents to a person to facilitate conveying or encumbering the manufactured home. A person receiving documents so delivered holds the documents in trust for the security interest holder or the lienholder.

2. Except as otherwise provided in section 47-10-27 and in subsections 1 and 2 of section 39-05-35, after a certificate of title has been issued for a manufactured home and as long as the manufactured home is subject to a security interest perfected under this section, the department may not file an affidavit of affixation, cancel the manufacturer's certificate of origin, or revoke the certificate of title, and the validity and priority of a security interest perfected under this section continues, notwithstanding any other provision of law.
3. The term "manufactured home" as used in subsections 1 and 2 is a manufactured home as defined in section 41-09-02, excluding a manufactured home with respect to which the requirements of subsections 1 through 3 of section 39-05-35, as applicable, have been satisfied.
4. The term "vehicle" as used in this section includes any vehicle for which a certificate of title is required under title 39 or other statutes of this state.
5. With respect to a manufactured home that is or will be permanently affixed to real property, upon recordation of an affidavit of affixation under section 47-10-27 and satisfaction of the requirements of subsections 1 through 3 of section 39-05-35, as applicable, a perfection or termination of a security interest with respect to the permanently affixed property is governed by chapter 47-10.

**35-01-05.2. Priority of liens securing future advances.**

A lien document relating to a real estate transaction and containing a written provision securing the repayment of future advances, whether or not the lien creditor is obligated to make such future advances, has priority over all subsequent encumbrances to the extent of all sums advanced, with interest thereon, with the same effect as if the entire sum had been advanced at the time of the creation of the lien.

**35-01-06. Obligations not in existence.**

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

**35-01-07. Holder of special lien may acquire and enforce prior lien.**

When the holder of a special lien is compelled to satisfy a prior lien for the holder's own protection, the holder may enforce payment of the amount so paid by the holder as a part of the claim for which the holder's own lien exists.

**35-01-08. 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.

**35-01-09. Recorder to file and index lien.**

The recorder shall file and index a statutory lien upon personal property required by law to be filed in the recorder's office, designating the person filing the lien as lien creditor and the person against whom the lien is filed as debtor.

**35-01-09.1. Last-known address required for valid lien statement.**

Notwithstanding any other provision of law concerning the filing of lien statements, the lien statement filed against an individual must contain the last-known address of the debtor in order to be valid.

**35-01-10. Contracts for forfeiting property subject to lien void - Waiver of redemption void.**

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.

**35-01-11. Obligation to perform not to be implied from creation of lien.**

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.

**35-01-12. Extent of lien limited to original obligation.**

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.

**35-01-13. Holder of property not compensated for expense - Exception.**

Any person holding property by virtue of a lien thereon is not entitled to compensation from the owner thereof for any trouble or expense which the person holding the property incurs respecting it, except to the same extent as a borrower under sections 47-12-08 and 47-12-09.

**35-01-14. Priority according to date of creation.**

Other things being equal, different liens upon the same property have priority according to the time of their creation.

**35-01-15. Order of resort for payment - Marshalling securities.**

When a person 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 that person can do so without the risk of loss to that person or of injustice to other persons, on the demand of any party interested, must resort to the property in the following order:

1. To the things upon which that person 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.
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 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 in the inverse order of the transfers.

**35-01-16. Right of redemption - When made.**

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

**35-01-17. Inferior lienholder may redeem - Subrogation.**

Any person 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 the person's interests, upon satisfying the claim secured thereby.

**35-01-18. 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. If the act requires the delivery of money, property, or a conveyance of property, the offer must be accompanied by a deposit of the same and the giving of notice thereof as provided in section 9-12-25.

**35-01-19. Lien accessory to act secured - Extinguishment.**

A lien is 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.

**35-01-20. Extinguishment of lien by sale or conversion of property - Mitigation of damages in conversion.**

The sale of any property in satisfaction of a lien, or in case of personal property, the wrongful conversion thereof by the person holding the lien, extinguishes the lien thereon. In an action for the conversion of personal property, the defendant may show in mitigation of damages the amount due on any lien to which the plaintiff's rights were subject and which was held or paid by the defendant or any person under whom the defendant claims.

**35-01-21. Lien dependent on possession - Voluntary restoration of property extinguishes lien.**

The voluntary restoration of property to its owner by the holder of a lien which is dependent upon possession extinguishes the lien as to such property unless otherwise agreed by the parties, and notwithstanding any such agreement, extinguishes it 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.

**35-01-22. Lien not extinguished by lapse of time for enforcing main obligation.**

A lien is not extinguished by the lapse of the time within which an action can be brought upon the principal obligation under the provisions of the laws of this state.

**35-01-23. Lien not extinguished by partial performance.**

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.

**35-01-24. Satisfaction of lien before maturity.**

Any lien or mortgage upon property may be satisfied by the mortgagor before the date of maturity by the payment or tender of the full amount which would be due on the date of maturity.

**35-01-25. Assignment, satisfaction, foreclosure of mortgage, judgment, or other lien by heir, legatee, foreign administrator, executor, or guardian.**

A mortgage, judgment, or other lien upon real or personal property may be satisfied, assigned, or foreclosed by the following persons upon complying with the provisions of this section:

1. By an executor or administrator appointed in another state or foreign country to administer the estate of any person owning any such mortgage, judgment, or other lien, when no executor or administrator of the estate of such person has been appointed in this state, upon recording or filing an authenticated copy of the person's letters testamentary or letters of administration in the office in which such mortgage, judgment, or other lien is recorded or filed.
2. By an heir or legatee of such deceased person, residing within or without the state, upon recording or filing in the office in which such mortgage, judgment, or other lien is recorded or filed, an authenticated copy of the judgment or decree of the foreign court transferring the ownership of such mortgage, judgment, or other lien to such heir or legatee.
3. By a guardian appointed in another state or foreign country of a person owning any such mortgage, judgment, or other lien upon real or personal property, upon recording or filing an authenticated copy of the person's letters of guardianship in the office in which the mortgage, judgment, or other lien is recorded or filed, together with an authenticated copy of the judgment or decree of the foreign court transferring the

ownership of such mortgage, judgment, or other lien to the ward, if it has been so transferred.

**35-01-26. Destroying, concealing, selling property subject to lien - Penalty.**

Repealed by S.L. 1975, ch. 106, § 673.

**35-01-27. Discharge of mortgage or lien on real property - Penalty.**

Within sixty days after any mortgage or other lien upon real property is satisfied or within thirty days of receipt of a written demand of the owner of the property, whichever is shorter, the owners of the mortgage or other lien shall execute a certificate of discharge duly acknowledged and cause a satisfaction of record to be entered. The fee for filing the satisfaction must be paid by the owner of the property or added to the debt paid by the owner of the property. Any mortgagee or owner of a mortgage or lien who fails to execute or deliver a discharge or to enter a satisfaction as provided under this section is liable to the owner of the property for all damages sustained as a result of the refusal and exemplary damages of one hundred dollars.

**35-01-28. Discharge of statutory lien on personal property must be filed - Penalty.**

When a statutory lien on personal property has been satisfied, the holder of the lien, within thirty days after satisfaction, shall cause a certificate of discharge to be transmitted to the recorder or the clerk of court of the county where such lien is filed. Such satisfaction must be filed and entered by the recorder or clerk of court without fee or charge. Every person, firm, corporation, or limited liability company failing to comply with the provisions of this section is liable to the owner of such property for the damages sustained by reason of such failure and exemplary damages of ten dollars for each and every satisfaction not transmitted.

**35-01-29. Foreclosure of statutory lien on personal property.**

Upon default in the payment of a debt secured by a statutory lien on personal property, unless a different procedure is otherwise expressly prescribed by law, such lien may be foreclosed by action as prescribed in chapter 32-20.

**35-01-30. Costs and fees on foreclosure - Report of foreclosure required - Filing.**

The costs and fees for the foreclosure of a statutory lien on personal property are the same as are provided in the foreclosure of a security interest in personal property. The person making the sale shall make a written report of all proceedings in such foreclosure, specifying the property sold, the amount received therefor, the amount of the costs and expenses itemized, and the disposition of the proceeds of the sale. The person shall verify the report under oath and file the same within ten days after the sale in the office of the recorder of the county or counties where the lien is filed. Such report is prima facie evidence of the facts therein stated.