

## **CHAPTER 35-20 MISCELLANEOUS LIENS**

### **35-20-01. Vendor's lien on real property for purchase price authorized.**

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.

### **35-20-02. Vendor's lien waived by transfer of written contract for payment - Exception.**

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

### **35-20-03. Purchaser's lien on real property for purchase price.**

One who pays to the owner any part of the price of real property under an agreement for the sale thereof has a special lien upon the property, independent of possession, for such part of the amount paid as the person may be entitled to recover in case of a failure of consideration.

### **35-20-04. Vendor's and purchaser's liens on realty subject to rights of subsequent purchaser.**

The liens defined in sections 35-20-01 and 35-20-03 are subject to the rights of subsequent creditors without notice and of purchasers or encumbrancers in good faith and for value.

### **35-20-05. Vendor's lien on personalty - Dependent on possession - Enforced as pledge.**

One who sells personal property has a special lien thereon, dependent on possession, for its price, if it is in that person's possession when the price becomes payable, and may enforce that person's lien in like manner as if the property was pledged to that person for the price.

### **35-20-06. Factor's lien - Dependent on possession.**

A factor has a general lien, dependent on possession, for all that is due to that person as a factor upon all articles of commercial value that are entrusted to that person by the same principal.

### **35-20-07. Officer's lien in attachment or execution.**

An officer who levies an attachment or execution upon personal property acquires a special lien, dependent on possession, upon the property, which authorizes the officer to hold it until the process is discharged or satisfied or a judicial sale of the property is had.

### **35-20-08. Attorney's lien - On money - Against a judgment.**

An attorney has a lien for a general balance of compensation in and for each case upon:

1. Money in the attorney's hands belonging to the attorney's client in the case.
2. Money due the attorney's client in the hands of the adverse party, or attorney of such party, in an action or proceeding in which the attorney claiming the lien was employed, from the time of giving notice in writing to the adverse party, or the attorney of such party if the money is in the possession or under the control of such attorney, which notice must state the amount claimed and in general terms for what services. After judgment in any court of record, the notice may be given and the lien made effective against the judgment debtor by entering the same in the judgment docket opposite the entry of the judgment.

**35-20-09. Release of attorney's lien by undertaking.**

Any interested person may release an attorney's lien by executing an undertaking in an amount double the amount claimed, or in such other amount as may be fixed by a judge of the district court of the county in which the lien is filed or in which the subject of the lien is held. The undertaking must be conditioned to pay to the attorney the amount finally due the attorney for the attorney's services, which amount may be ascertained by suit on the undertaking. The undertaking must be filed after approval by the clerk of court of the county. Any interested person may make written demand upon the holder of an attorney's lien for a bill of particulars of the services and amount claimed for each item or upon each written contract with the person for whom the services were rendered, and thereupon, unless such bill of particulars is furnished within ten days after service of the demand, the lien must be released.

**35-20-10. Lien for federal taxes - Notice.**

Repealed by S.L. 1987, ch. 73, § 42.

**35-20-11. Lien for repair, protection, improvement, safekeeping, or carriage of personalty.**

Every person, excepting those entitled to a specific lien under other chapters of this title, who, while lawfully in possession of an article of personal property, renders any service to the owner thereof by labor or skill employed for the repair, protection, improvement, safekeeping, or carriage thereof has a special lien thereon, dependent on possession, for the compensation, if any, which is due to the person from the owner for such service. In addition to other remedies available for the enforcement of liens, the holder of such special lien may foreclose the same and acquire ownership of such article of personal property, provided the holder of such a special lien has obtained the address of the owner at the time such article was left, by causing a notice of intention to foreclose such special lien to be sent to the owner thereof, by registered or certified mail, to the address obtained from such owner at the time such article is left, which notice shall be in substantially the following form:

To \_\_\_\_\_, owner of (describe the article upon which lien is claimed.)

You are hereby notified that the undersigned claims a special lien upon the above-described article by virtue of section 35-20-11, and hereby further advises you of the undersigned's intention to foreclose such special lien and acquire ownership of such article, unless the sum of (insert amount claimed) is paid within sixty days from the date hereof; or unless you shall notify the undersigned within such period of your election to challenge the amount claimed due for services rendered thereon.

Dated

(Party claiming lien)

If, at the expiration of sixty days from the date of mailing such notice, payment has not been received of the amount claimed to be due, or an election to challenge the amount due has been received, the lien claimant is deemed to have succeeded to ownership of the article of personal property upon which the special possessory lien is claimed.

If the owner of such property causes an election to challenge the amount claimed to be delivered to the lienholder, then the summary foreclosure procedure set out herein is not available to the lien claimant; and the lien must be foreclosed by action.

**35-20-12. Housemover's lien.**

Any housemover having an established place of business within this state, who has complied with the provisions of title 65 and who moves any building under contract with the legal owner or possessor thereof, has a lien thereon for the housemover's reasonable charges for work done and materials furnished until such charges are paid.

**35-20-13. Lien statement for housemover's lien - When required - Contents - Filing - Enforcement - Requiring suit to be commenced.**

The lien provided for in section 35-20-12 must be perfected within ninety days after such moving is completed by recording a verified statement showing all of the following:

1. The labor performed and the materials furnished.
2. The price agreed upon, or if no price was agreed upon, the reasonable value of the work done and the materials furnished.
3. The name of the person for whom the work was performed.
4. A description of the building moved and the description of the land upon which the building is located.

Such statement must be recorded in the office of the recorder of the county in which such building remains after moving. Unless such statement is recorded as aforesaid, any lien hereunder is deemed to be lost and waived. The housemover's lien provided for herein must be enforced according to the provisions and procedure set out in section 35-27-24; and the owner, the owner's agent, or contractor may require suit to be commenced according to the provisions and procedure set out in section 35-27-25.

#### **35-20-14. Priority of housemover's lien.**

A housemover's lien has priority over all other liens and encumbrances upon any building moved under contract except where there is an existing mortgage or lien thereon of record.

#### **35-20-15. Lien for unpaid earned property or casualty insurance premiums.**

An insurance agent, insurance broker, or surplus lines insurance broker licensed to do business in this state, upon filing the statement provided for in section 35-20-16, has a lien on the covered property for the amount of any unpaid earned property or casualty insurance premium.

#### **35-20-15.1. Amendment of lien for unpaid earned property or casualty insurance premiums.**

A lienholder may file an amendment to correct the social security 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 or assign the unpaid earned property or casualty insurance premium lien that has been filed under section 35-20-15. The amendment or assignment of a lien does not affect the priority of the lien.

#### **35-20-16. Procedure to obtain unpaid earned property or casualty insurance premium lien - Filing.**

The secretary of state shall provide a means to obtain electronically a lien under this section and also be entered in the central indexing system. Any person entitled to an unpaid earned property or casualty insurance premium lien, within ninety days after termination of coverage, shall file in the central indexing system and with any loss payee named in the policy, an electronic statement stating all of the following:

1. The name and address of the policyholder.
2. The name and address of the lienholder.
3. The nature and quantity of insurance coverage provided.
4. The amount of unpaid earned premium.
5. A description of the property covered by the insurance and subject to the lien.
6. That a lien is claimed upon the property described.
7. The name of the county or counties where the property is located.
8. The social security number of the debtor, or in the case of a debtor doing business other than as an individual, the internal revenue service taxpayer identification number of that person.

#### **35-20-17. Landlord's mobile home lien - Penalty.**

1. A landlord of a mobile home lot has a lien for accrued rents, storage, and removal relating to any mobile home left on the lot after the tenant has vacated the premises after an eviction or the expiration of the lease term. A lien under this section does not have priority over a prior perfected security interest in the property. A holder of a lien

under this section may retain possession of the mobile home subject to the lien until the amount due is paid.

2. For the lien or subsequent title obtained by the lienholder to be valid against a good-faith purchaser, the landlord shall post a signed and dated notice of the lien on the primary entrance to the mobile home. An individual who without authorization from the landlord willfully removes the notice is guilty of a class B misdemeanor. The notice of lien must contain the name and last-known address of the owner of the mobile home, the name and post-office address of the lien claimant, the amount of the lien, a description of the location and type of mobile home, and a recitation of the penalty provisions of this section.
3. A lienholder may sell a mobile home thirty days after the lienholder mails notice of the lien to the owner of the mobile home and secured parties of record. After the sale, the lienholder shall forward to the former owner any money resulting from the sale of the mobile home in excess of the amount owed to the lienholder for accrued rents, storage, and removal relating to the mobile home. If the location of the former mobile home owner is not known, any money from a sale in excess of the amount owed is presumed abandoned under chapter 47-30.2.