

# REVISED LAWS

# MINNESOTA

## 1905

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EDITED AND ANNOTATED BY  
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**3502. Assignment of debt**—Every assignment of a debt, unless the same be in writing and be filed with the clerk of the town or municipality in which the assignor resides, shall be presumed to be fraudulent and void as against his creditors, unless those claiming thereunder make it appear that it was made in good faith and for a valuable consideration: Provided, that this section shall not apply to debts evidenced by writing subscribed by the debtor, and delivered to the assignee at the time of the assignment thereof. Assignments required by this section to be filed need not be acknowledged. ('99 c. 268)

82-21, 84+640; 85-355, 88+997.

**3503. Sale of stock of merchandise**—Every sale of a portion of a stock of merchandise, otherwise than in the ordinary course of the seller's business, and every sale of an entire stock of merchandise, shall be presumed fraudulent and void as against the seller's creditors, unless at least five days before the sale:

1. The seller and purchaser make an inventory showing the quantity, and, so far as possible, with the exercise of reasonable diligence, the cost to the seller, of each article to be sold;

2. The purchaser in good faith make full inquiry of the seller as to the names and places of residence and business of the seller's creditors and the amount owing to each; and

3. The purchaser mail to each creditor, of whom he can with the exercise of reasonable diligence acquire knowledge, notice of the proposed sale, stating the cost to the seller of the merchandise sold and the price to be paid therefor.

Except as herein provided, nothing in this section shall change or affect the rules of evidence and the presumptions of law otherwise applicable to such sales. ('99 c. 291)

104+371. See § 3498 Note 26.

**3504. "Conveyance" defined**—The term "conveyance," as used in this chapter, shall be construed to embrace every instrument in writing, except a will, whatever its form, and by whatever name known in law, by which any estate or interest in lands is created, aliened, assigned, or surrendered. (4226)

Leases included (24-172; 37-218, 34+21). Names and forms not controlling (4-533, 418; 23-242, 252; 30-419, 421, 15+687).

3503  
103-M - 459  
115-NW 640

## CHAPTER 69

### LIENS FOR LABOR AND MATERIAL

#### FOR IMPROVEMENT OF REAL ESTATE

**3505. Mechanics, laborers, and materialmen**—Whoever contributes to the improvement of real estate by performing labor, or furnishing skill, material, or machinery, for any of the purposes hereinafter stated, whether under a contract with the owner of such real estate or at the instance of any agent, trustee, contractor, or subcontractor of such owner, shall have a lien upon said improvement, and upon the land on which it is situated or to which it may be removed, for the price or value of such contribution; that is to say, for the erection, alteration, repair, or removal of any building, fixtures, bridge, wharf, fence, or other structure thereon, or for grading, filling in, or excavating the same, or for digging or repairing any ditch, drain, well, fountain, cistern, reservoir, or vault thereon, or for laying, altering, or repairing any sidewalk, curb, gutter, paving, sewer, pipe, or conduit in or upon the same, or in or upon the adjoining half of any highway, street, or alley upon which the same abuts. (6229, 6230)

1. Constitutional—46-285, 48+1120; 48-425, 51+224.

**2. Nature of lien**—The lien is purely statutory (64-531, 535, 67+639; 28-404, 10+473; 4-546, 430; 60-54, 61+830). It is a "statutory security"; not a remedy (17-342, 320). It is not an estate or interest in realty within the statute of frauds (53-70, 54+1055). The lien is continuing and binds the whole estate or interest of the debtor in the building and lot on which it stands (36-9, 29+338; 70-146, 72+974).

**3. Basis of lien**—The basis of the lien is the consent of the owner, either expressed or implied (39-438, 40+513; 46-285, 48-1120; 50-525, 52+926; 32-358, 20+354; 26-329, 4+47; 40-441, 42+294; 42-286, 44+65). Under the present law the lien does not necessarily rest on a contract with the owner (48-18, 50+1018). All who have contributed to increase the value of the property by consent of the owner, or in pursuance of a contract with him for that purpose, should have an interest in it for the satisfaction of their claims (32-358, 20+354; 40-441, 42+294; 13-473, 438).

**4. Construction**—The statute is to be construed liberally; at least, so far as the proceedings for the perfection and enforcement of the lien are concerned (77-514, 80+695; 48-18, 24, 50+1018; 52-114, 53+1063; 28-404, 10+473). It is not to be strictly construed as to the parties entitled to a lien (60-54, 61+830). It should not be extended beyond its legitimate scope to the prejudice of third parties (3-86, 43).

**5. Who are "owners"**—The term "owner" includes equitable owners and those holding any estate or interest which the court may order sold (34-517, 26+725; 17-342, 320; 76-434, 79+541). One in possession will be presumed to be rightfully in possession and to have an interest in the land sufficient to sustain a lien (36-9, 29+338). The separate property of a married woman is chargeable (5-155, 119; 14-145, 113. See 48-18, 50+1018). The interest of a vendee under an executory contract to convey is chargeable (42-286, 44+65; 40-441, 42+294; 50-457, 52+915. See § 3509). Interest of a devisee held chargeable (42-427, 44+313).

**6. Subcontractors**—The lien of a subcontractor may be enforced irrespective of the state of the accounts between the contractor and owner (32-358, 20+354). How far necessary to conform to contract between owner and original contractor (67-329, 69+1091; 46-285, 48+1120; 44-22, 46+146). Subcontractors of second degree are within the statute (48-515, 51+469). One who furnishes material to a subcontractor is entitled to a lien (83-29, 85+829).

**7. Original contract notice**—Laborers, materialmen and subcontractors are charged with notice of the original contract and to a certain extent restricted by it (46-285, 289, 48+1120; 44-22, 46+146. See 67-329, 69+1091).

**8. Nature of work or material**—The work or material must be reasonably adapted to or suitable for the building or improvement contracted for by the owner (32-358, 20+354; 46-285, 48+1120).

**9. Who "performs" labor**—One may "perform" labor through servants or teams (56-306, 57+792).

**10. Materials furnished but not used**—A lien may be had for materials furnished in good faith for a particular building although they are not used in such building (47-565, 50+918; 48-425, 51+224; 52-203, 53+1144; 53-388, 396, 55+543; 61-303, 63+718).

**11. When materials are "furnished"**—Materials may be "furnished" before they are incorporated in the building (46-44, 48+448; 48-425, 51+224). The lien does not attach until they are furnished on the ground (53-388, 55+543).

**12. Knowledge of intended use unnecessary**—60-54, 61+830. See 17-342, 320.

**13. Labor performed at shop**—46-44, 48+448; 60-54, 61+830.

**14. Repair of machinery—Shipping charges**—46-426, 49+195.

**15. Held not to defeat lien**—Burning of building (27-516, 8+764); abandonment of work (46-44, 48+448); suspension of work (13-473, 438); failure of register to record lien (33-384, 23+550); transfer of title (36-9, 29+338); contract between vendor and vendee (50-457, 52+915); withdrawal of lien statement after recording (44-453, 47+51); an accounting and payment on account (38-494, 38+695).

**16. Public buildings exempt**—39-298, 39+801; 67-327, 69+1091. See 83-512, 519, 86+775.

**17. Homesteads not exempt**—74-366, 77+292; 76-226, 78+1113; 89-150, 94+438.

**18. Release and waiver**—53-70, 54+1055; 52-547, 54+739; 64-269, 66+979; 42-433, 44+311; 48-5, 50+921; 35-451, 29+65.

**19. Claim assignable**—14-145, 113; 58-455, 60+23. See 57-402, 59+482.

**20. Held entitled to lien**—Laborer polishing granite columns at quarry (60-54, 61+830); architect (52-522, 54+746; 61-262, 63+717; 13-473, 438. See 53-388, 55+543); one furnishing material to a subcontractor (83-29, 85+829); one furnishing material to a contractor for a particular building though it was not so used (48-425, 51+224. See 52-203, 53+1144; 61-303, 63+718; 53-388, 55+543); one superintending the construction of a building (61-262, 63+717); one furnishing permanent stationary machinery, in the nature of a fixture, for a shop (38-272, 37+99); one repairing machinery (46-426, 49+195); a non-resident (17-342, 320).

**21. Held not entitled to lien**—One selling a common article of merchandise to one who is neither the owner of the building nor an agent, trustee, contractor or subcontractor of such owner (66-480, 69+468; 81-26, 83+438; 43-29, 44+526. See 83-29, 85+829); one drilling a hole in search of minerals (64-37, 65+1079).

**3506. Extent and amount of lien**—If the contribution be made under a contract with the owner and for an agreed price, the lien as against him shall be

for the sum so agreed upon; otherwise, and in all cases as against others than the owner, it shall be for the reasonable value of the work done, and of the skill, material, and machinery furnished. It shall extend to all the interest and title of the owner in and to the premises improved, not exceeding forty acres in area if situated outside the limits of an incorporated city or village, and not exceeding one acre if within such limits. (6229, 6230, 6234)

Limitation to reasonable value of labor or material (32-358, 20+354; 46-285, 289, 48+1120. See 42-414, 44+309). *Limitation of one acre* (14-145, 113).

**3507. Lines of railway, telegraph, telephone, etc.**—If such contribution be thus made for the construction, alteration, or repair of any line of railway, or any structure or appurtenance of such railway, or of any telegraph, telephone, or electric light line, or of any line of pipe, conduit, or subway, or any appliance or fixture pertaining to either, the person performing such labor, or furnishing such skill, material or machinery, shall have a like lien upon the line so improved, and upon all the rights, franchises, and privileges of the owner appertaining thereto. (6231)

56-306, 57+792; 64-420, 67+348. See under former statute: 48-515, 51+469; 52-551, 54+743; 45-13, 47+259; 47-124, 49+661.

**3508. When lien attaches—Notice**—All such liens, as against the owner of the land, shall attach and take effect from the time the first item of material or labor is furnished upon the premises for the beginning of the improvement, and shall be preferred to any mortgage or other incumbrance not then of record, unless the lienholder had actual notice thereof. As against a bona fide purchaser, mortgagee or incumbrancer without notice, however, no lien shall attach prior to the actual and visible beginning of the improvement on the ground, but a person having a contract for the furnishing of labor, skill, material or machinery for such improvement, may file for record with the register of deeds of the county within which the premises are situated, or, if claimed under § 3507, with the secretary of state, a brief statement of the nature of such contract, which statement shall be notice of his lien for the contract price or value of all contributions to such improvement thereafter made by him or at his instance. ('95 c. 101)

The liens of all mechanics and materialmen attach as of the date of the performance of the first work or the delivery of the first material on the ground (53-388, 55+543). Mortgages attaching during the course of an improvement are subordinate to the liens of all who contribute to the completion of the improvement (50-386, 52+900; 52-522, 54+746; 93-501, 101+963). 1895 c. 101 does not change this rule (93-501, 101+963). The provision as to filing notice of contract is new. See the following cases, arising prior to 1895 c. 101, as to priority between mortgages and mechanic's liens (34-292, 35+629; 38-240, 36+346; 46-426, 49+195; 47-74, 49+398, 645; 47-590, 50+826; 48-73, 50+1020; 49-397, 52+33; 49-404, 52+34; 50-386, 52+900; 50-457, 52+915; 50-272, 52+895; 51-75, 52+1069; 51-246, 53+464; 52-51, 53+1023; 52-121, 53+1064; 52-522, 54+746; 52-534, 54+751; 53-388, 55+543; 54-486, 56+131; 55-46, 56+241; 55-162, 56+594; 68-213, 70+1075).

**3509. Vendors, consenting owners, etc.**—Whenever land is sold under an executory contract requiring the vendee to improve the same, and such contract is forfeited or surrendered after liens have attached by reason of such improvements, the title of the vendor shall be subject thereto; but he shall not be personally liable if the contract was made in good faith. When improvements are made by one person upon the land of another, all persons interested therein otherwise than as bona fide prior incumbrancers or lienors shall be deemed to have authorized such improvements, in so far as to subject their interests to liens therefor. But any person who has not authorized the same may protect his interest from such liens by serving upon the persons doing work or otherwise contributing to such improvement, within five days after knowledge thereof, written notice that the improvement is not being made at his instance, or by posting like notice, and keeping the same posted, in a conspicuous place on the premises: Provided, that as against a lessor no lien is given for repairs made by or at the instance of his lessee. (6232, 6233)

**1. Forfeiture of executory contracts**—48-13, 50+1016; 48-73, 50+1020; 48-18, 50+1018; 49-397, 52+33; 50-525, 52+926; 51-246, 53+464, 52-484, 55+54; 68-213, 70+1075. See 40-441, 42+294; 42-1, 43+485; 41-408, 43+86.

**2. Consent implied—Notice**—The presumption of consent created by the statute is only prima facie (50-525, 52+926. See 47-81, 49+521). It establishes a rule of evidence in the nature of an equitable estoppel where owners remain silent when improvements are being made on their property without their consent (49-404, 52+34). The burden of proving the posting of notice is on the owner (51-246, 53+464). Lessors are required to give notice under this section except as to repairs. A peaceable entry to post the notice is not a trespass. Statute held constitutional (55-1, 56+253. See 42-427, 44+313). Notice to an agent held notice to the owner (60-251, 62+277). Knowledge of an agent to sell land is not knowledge of the owner within this section (53-252, 54+1109). The "improvements" of this section are the improvements specified in § 3505 (64-37, 65+1079). Application in case of executory contracts (50-525, 52+926; 48-13, 50+1016). Exception as to bona fide incumbrancers (52-534, 54+751; 48-73, 50+1020; 49-397, 52+33; 50-272, 52+895. See cases cited under § 3508). Notice held not posted (38-422, 38+112).

**3510. Payment to subcontractors, etc.**—The owner may withhold from his contractor so much of the contract price as may be necessary to meet the demands of all persons, other than such contractor, having a lien upon the premises for labor, skill, or material furnished for the improvement, and for which the contractor is liable; and he may pay and discharge all such liens and deduct the cost thereof from such contract price. Any such person having a lien under the contractor, may serve upon the owner, at any time, a notice of his claim. The owner, within fifteen days after the completion of the contract, may require any person having a lien hereunder, by written request therefor, to furnish to him an itemized and verified account of his lien claim, the amount thereof, and his name and address; and no action or other proceeding shall be commenced for the enforcement of such lien until ten days after such statement is so furnished. The word "owner" as used in this section shall include any person interested in the premises otherwise than as a lienor thereunder. (6242; '99 c. 277)

88-200, 92+964.

**3511. Lien statement**—The lien shall cease at the end of ninety days after doing the last of such work, or furnishing the last item of such skill, material, or machinery, unless within such period a statement of the claim therefor be filed for record with the register of deeds of the county in which the improved premises are situated, or, if the claim be made under § 3507, with the secretary of state. Such statement shall be made by or at the instance of the lien claimant, be verified by the oath of some person shown by such verification to have knowledge of the facts stated, and shall set forth:

1. A notice of intention to claim and hold a lien, and the amount thereof.
2. That such amount is due and owing to the claimant for labor performed, or for skill, material, or machinery furnished, and for what improvement the same was done or supplied.
3. The names of the claimant, and of the person for or to whom performed or furnished.
4. The dates when the first and last items of the claimant's contribution to the improvement were made.
5. A description of the premises to be charged, identifying the same with reasonable certainty.
6. The name of the owner thereof at the time of making such statement, according to the best information then had. (6236)

**1. In general**—The right to a lien is dependent on the filing of a proper statement (39-438, 448, 40+513). The filing for record of the verified statement operates as the creation of the lien, and, at the same time, as notice of its existence to all interested parties (28-404, 10+473; 37-298, 33+791). It must conform substantially to the statute (See, under former statute, 24-300; 32-486, 21+729; 33-384, 23+550), but it is provided that inaccuracies in particulars shall not be fatal (§ 3549). Surplusage does not vitiate (61-303, 63+718). The inclusion of non-lienable items is not fatal if they are separable from the lienable items (38-494, 38+695). It need not allege that the materials were furnished under contract with the owner or at his instance (47-81, 49+521). It may include several claims (34-517, 26+725; 58-455, 60+23). It may be withdrawn from the register's office after it is recorded (44-453, 47+51). It may be filed by an assignee of a claim (58-455, 60+23), or by one who has assigned a claim as collateral security (57-402, 59+482). Defects in the statement cannot be remedied by averments in the complaint (37-298, 33+791). The statement is to be liberally construed and technical objections are disfavored (77-514, 80+695; 48-18, 24, 50+1018; 52-114, 53+1063. See § 3549).

**2. Time of filing**—When materials are furnished for the same job at different times as a continuous transaction (34-403, 26+225; 45-254, 47+796; 45-327, 47+974; 32-535, 21+719; 61-303, 63+718); when, after the completion of a job, repairs or additions are made to supply omissions or remedy defects (72-465, 75+705; 74-30, 76+953; 81-28, 83+463. See 63-48, 65+133); when materials are changed (77-514, 80+695; 63-471, 65+920); when "extras" are furnished (77-514, 80+695; 53-57, 54+936); when new material is furnished in place of the original in pursuance of a warranty (63-471, 65+920); when work is suspended for a time with the consent of the owner (48-325, 51+218. See 13-473, 438). A statement is ineffectual if it shows on its face that it was filed too late, even though the fact may have been otherwise (37-298, 33+791).

**3. Description of premises**—The description need not be as full and precise as in a deed or judgment. It is sufficient if it describes the property with reasonable certainty so as to put interested parties on inquiry and enable them to identify (52-114, 53+1063; 40-88, 41+436; 43-449, 45+868; 47-31, 49+394; 52-121, 53+1064; 65-271, 68+21. See 47-124, 49+661). This rule applies where third parties have acquired intervening rights (52-114, 53+1063). The proper description is by reference to a recorded plat or the government survey (43-449, 45+868). Where the tract exceeds the statutory limit it is not necessary for the claimant to carve out the statutory quantity (33-1, 21+740; 33-384, 23+550; 42-1, 43+485; 65-271, 68+21). The building on the land need not be described (70-146, 72+974). A false particular may be disregarded (43-449, 45+868; 65-271, 68+21). A description of the wrong lot is fatal (50-448, 52+915).

**4. Subd. 1**—Claim of lien (33-384, 23+550).

**5. Subd. 4**—48-18, 50+1018; 52-455, 55+47; 53-57, 54+936; 55-162, 56+594; 77-514, 80+695.

**6. Subd. 6**—51-202, 53+362; 47-81, 49+521. Under former statute (46-336, 48+1134; 35-192, 28+239; 28-404, 10+473; 24-300; 32-486, 21+729; 33-172, 22+302).

**7. Verification**—62-264, 64+565; 47-565, 50+918; 42-411, 44+308; 36-9, 29+338.

**8. Amendment**—55-162, 56+594; 83-187, 86+19.

**9. Recording**—Failure of register to record not fatal (33-384, 23+550). Place of recording on organization of new county (77-63, 79+655. See 91-79, 97+412).

**3512. Two or more buildings**—A lienholder who has contributed to the erection, alteration, removal, or repair of two or more buildings or other improvements situated upon or removed to one lot, or upon or to adjoining lots, under or pursuant to the purposes of one general contract with the owner, may file one statement for his entire claim, embracing the whole area so improved; or, if he so elect, he may apportion his demand between the several improvements, and assert a lien for a proportionate part upon each, and upon the ground appurtenant to each respectively. (6235)

42-214, 44+3; 43-228, 45+150; 45-61, 47+313; 47-590, 50+826; 50-268, 52+894; 51-364, 53+653, 1017; 52-522, 54+746; 70-146, 72+974; 81-64, 83+497.

**3513. Liens foreclosed by action**—Such liens may be enforced by action in the district court of the county in which the improved premises or some part thereof are situated, or if claimed under § 3507, of any county through or into which said railway or other line extends, which action shall be begun and conducted in the same manner as actions for the foreclosure of mortgages upon real estate, except as herein otherwise provided. (6238)

Nature of action (44-97, 46+315; 47-74, 49+398, 645; 64-531, 67+639; 51-364, 53+653, 1017). No right to jury trial (27-312, 7+265).

**3514. Summons, pleadings, etc.**—The action may be commenced by any lienholder who has filed his lien statement for record, and all other such lienholders shall be made defendants therein. The summons shall state that the complaint has been filed with the clerk and shall be of no effect unless such complaint be in fact so filed. It shall contain a notice that the action is brought to foreclose a lien, giving the amount thereof, and a brief description of the premises affected, and of the improvement out of which the lien arose, and shall require each defendant to file his answer to the complaint with said clerk within twenty days after service on him. Such answer, in addition to all other matters proper to be pleaded, shall set up any lien claimed by the defendant, and demand the enforcement thereof. No copies of such complaint or answer need be served on any party, upon demand or otherwise, and all averments of the answer shall be taken as denied without further pleading. (6238)

**1. Summons**—51-364, 367, 53+653, 1017.

**2. Parties**—The owner is a necessary party (64-531, 67+639; 44-544, 47+162; 54-499, 56+172. See 76-434, 79+541). Under a former statute the original contractor was held

a necessary party to an action by a subcontractor (43-449, 45+868). Other lien claimants of record are necessary parties (51-364, 53+653, 1017). All incumbancers should be made parties (47-74, 49+398, 645; 52-121, 53+1064. See 59-456, 61+556). Bringing in parties (50-525, 52+926; 43-449, 45+868). Assignee in insolvency may maintain action (52-455, 55+47).

**3. Complaint**—Must allege due filing of claim within statutory time (47-81, 49+521; 34-400, 26+14; 34-403, 26+225; 59-456, 61+556); must describe property with reasonable certainty (42-1, 43+485; 4-20, 7; 4-461, 358); must allege all the facts entitling the plaintiff to a lien (See 4-450, 352; 43-228, 45+150; 34-407, 26+227; 26-329, 4+47; 48-13, 50+1016); need not allege filing of lis pendens (61-303, 63+718; 63-154, 65+267); need not show that land is within statutory limit (42-1, 43+485); should demand a lien on the premises (4-461, 358).

**4. Answer**—New matter in defence must be pleaded as in an ordinary action (46-357, 49+37). When a lien claimant appears and answers, setting up his claim, he makes the action his own for the purpose of enforcing his lien and the failure of the plaintiff to recover will not affect him (53-431, 55+540). One who has no interest in the property cannot interpose a defence to a lien claim (11-475, 354).

**5. Cross-complaint**—64-531, 67+639.

**6. Variance**—48-18, 50+1018; 53-57, 54+936; 41-483, 43+377; 46-231, 48+1022.

**7. No reply necessary**—52-547, 54+739; 57-402, 59+482; 58-508, 60+342.

**8. Burden of proof**—51-246, 53+464; 50-525, 52+926; 90-403, 97+143.

**9. Evidence**—41-235, 42+1022; 43-442, 45+723; 48-18, 50+1018; 68-481, 71+667; 90-403, 97+143.

3515  
111-NW 275

3515  
100-M - 383

**3515. Lis pendens, parties, limitation, etc.**—At the beginning of the action the plaintiff shall file for record with the register of deeds of the county in which it is brought, and of the several counties if the lien be claimed under § 3507, a notice of the pendency thereof, embracing therein a copy of the summons, omitting the caption. After such filing, no other action shall be commenced for the enforcement of any lien arising from the improvement described, but all such lienholders shall intervene in the original action by answer, as provided in § 3514. Any such lienholder not named as a defendant may nevertheless answer the complaint and be admitted as a party. If more than one action shall be commenced in good faith, all shall be consolidated and tried as one, under such order of the court as may best protect the rights of all parties concerned. But no lien shall be enforced in any case unless the holder thereof shall assert the same, either by complaint or answer, within one year after the date of the last item of his claim as set forth in the recorded lien statement; nor shall any person be bound by the judgment in such action unless he is made a party thereto within said year. (6238)

Lis pendens (61-303, 63+718; 63-154, 65+267; 64-531, 67+639; 54-499, 56+172). But one action authorized. Other claimants to intervene. Consolidation of actions (52-455, 55+47). Claim must be asserted within one year from furnishing the last item (53-431, 55+540; 50-445, 52+915; 50-457, 52+915; 53-252, 54+1109; 50-503, 52+922; 64-269, 66+979; 68-405, 71+386). Action may be prosecuted to judgment after the end of the year (See 33-1, 21+740).

**3516. Bill of particulars**—Each lienholder shall attach to and file with his complaint or answer a bill of the items of his claim, verified by the oath of some person having knowledge thereof, and shall file such further and more particular account, as the court may at any time direct. Upon his failure to file such original or further bill, his pleading shall be stricken out and his claim disallowed. But no failure to comply with any of the provisions of this chapter shall affect the right of any person to recover, in an ordinary civil action, from the party with whom he has contracted. (6238)

51-364, 53+653, 1017; 77-514, 80+695.

3517  
118-NW 555

**3517. Postponement, judgment, subrogation, etc.**—If upon the trial of such action, or at any time before the execution of final judgment therein, it shall transpire that any proper party who may still be brought in has been omitted, or that any party then entitled to answer has not yet appeared, or that for any other reason the trial or judgment should be delayed, or the judgment as ordered or entered be modified, the court may postpone the trial, or make such other or further order in the premises as shall be just. And if it be found that any indebtedness for which a lien is demanded be not then due, the same shall be allowed for the amount of its present worth. Judgment shall be given in favor of each lienholder for the amount demanded and proved by him, with

costs and disbursements to be fixed by the court at the trial, and such amount shall not be included in the lien of any other party; but if, after judgment, a lienholder who is personally indebted for the amount of any lien so adjudged in favor of another shall pay such indebtedness, he shall thereby become subrogated to the rights of the person so paid. (6238)

Bringing in new parties (50-525, 52+926; 43-449, 45+868). Opening default (56-476, 58+38).

**3518. Judgment, sale, redemption, etc.**—The judgment shall direct a sale of the real estate or other property for the satisfaction of all liens charged thereon, and the manner of such sale, subject to the rights of all persons which are paramount to such liens or any of them. It shall require the officer making such sale to pay over and distribute the proceeds of the sale, after deducting all lawful charges and expenses, to and among the lienors to the amount of their respective claims, if there is sufficient therefor; and if there is not sufficient then to divide and distribute the same among the several lienors in proportion to the amount due to each, and without priority among themselves. If the estate sold be a leasehold having not more than two years to run, or be the interest of a vendee under an executory contract of sale the conditions whereof are to be performed within the same period, no redemption shall be allowed; in all other cases the right of redemption shall be the same as upon execution sales. But no sale shall be deemed complete until reported to and confirmed by the court. (6238, 6241)

No priority among lienors in the distribution of proceeds of sale (52-522, 54+746; 54-486, 56+131; 93-501, 101+963. See 50-457, 52+915). Deduction of amount due subcontractor from amount due principal contractor (67-329, 69+1091). Judgment cannot be docketed as a personal judgment (58-365, 59+1086). If plaintiff establishes a cause of action for the recovery of money, but fails to establish his right to a specific lien, he may have an ordinary personal judgment (58-365, 59+1086; 35-451, 29+65; 37-455, 35+178). A sale of an equitable owner's interest may be ordered before the extent of such interest is judicially determined (76-434, 79+541). Redemption (48-223, 50+1038; 51-417, 53+719. See 13-455, 424).

**3519. Severance of building, resale, receiver, etc.**—If, without material injury to the building or other improvement to which the lienholder has contributed, the same can be severed and removed from the land, the judgment, in the discretion of the court, may direct the sale of such improvement, with the privilege to the purchaser of removing the same at any time within sixty days, unless before such removal the owner or other person interested in the land shall pay to the sheriff, for the purchaser, the amount realized from the sale, with interest and all expenses incurred toward such removal. If in any case the sale be not confirmed, the court may direct a resale, or, if deemed best, may appoint a receiver to lease or otherwise handle the property, under its direction, in the interests of all persons concerned. And in all cases of liens arising under § 3507 such receivership may be created in the first instance instead of directing a sale of the property. (6238-6241)

**3520. Miners**—Whoever performs labor, or furnishes any skill, material, or machinery, in or about the opening or working of any mine, at the request of the owner thereof, or of the lessee of such owner, or of any contractor with either, shall have a lien for the value thereof upon the interest of such owner or lessee, as the case may be, in said mine and its appurtenances, which lien may be asserted and enforced as in this chapter prescribed in respect to other liens upon real estate. ('97 c. 350; '03 c. 338)

### PERSONALTY IN POSSESSION

**3521. For keeping, repairing, etc.**—Whoever, at the request of the owner or legal possessor of personal property, shall contribute in any of the modes mentioned in § 3522 to its preservation, or to the enhancement of its value, shall have a lien upon such property for the price or value of such contribution, and the right to retain the property in his possession until such lien is

lawfully discharged. But a voluntary surrender of possession shall extinguish the lien herein given. (6247, 6248)

See 1905 c. 328

43-148, 44+1083; 60-54, 56, 61+830; 60-525, 63+103.

**3522. For what given**—Such lien and right of detainer shall exist for:

1. Transporting property from one place to another, as a common carrier or otherwise.

2. Keeping or storing property, as a warehouseman or other bailee for hire.

3. Keeping, feeding, pasturing, or otherwise caring for domestic animals or other beasts, including medical or surgical treatment thereof and shoeing the same.

4. Making, altering, or repairing any article, or expending any labor, skill, or material thereon.

And such lien shall embrace all reasonable disbursements occasioned by the detention and sale of the property. (6247-6249; '01 c. 228).

See 1905 c. 328

Subd. 2 (45-222, 47+784). Subd. 3 (43-148, 44+1083; 64-375, 67+203; 64-472, 67+365; 66-57, 68+514). Subd. 4 (45-222, 47+784; 60-54, 56, 61+830).

**3523. Sale—Notice, etc.**—If any sum secured by such lien be not paid within ninety days after it becomes due, the lienholder may sell the property so held, at auction, upon two weeks' published notice, which notice, in addition to the time and place of sale, shall briefly describe the property to be sold, and state the amount which will then be due (excluding the expenses of advertisement and sale), and the grounds of the lien. Out of the proceeds of such sale there shall be paid, first, the expenses aforesaid, and, second, the total indebtedness then secured by the lien. The remainder, if any, shall be paid on demand to the owner or other person entitled thereto. (6247)

45-222, 47+784.

See 1905 c. 328

### ON LOGS AND TIMBER

**3524. To whom given—Against whom**—Whoever performs manual labor or other personal service for hire, in or in aid of the cutting, hauling, banking, driving, rafting, towing, cribbing, or booming any logs, cross-ties, poles, or other timber, shall have a lien thereon for the price or value of such labor or service, which shall be preferred to all other claims on the same except those of the state of Minnesota and of the owner or occupant of the land from which the same may have been unlawfully removed, and no agreement to waive such lien shall be valid. (2434, 2451; '99 c. 342 ss. 1, 18)

To be liberally construed (64-420, 67+348; 79-114, 81+757). Applicable to one furnishing team (42-176, 43+966; 64-420, 67+348); to camp cook and blacksmith (64-420, 67+348); to contractors and subcontractors (79-114, 81+757). Inapplicable to government timber (89-172, 94+548). Act of 1876 constitutional (60-233, 62+123; 60-216, 62+125).

**3525. Lien statement—Filing—Assignment of lien**—If the indebtedness so due be not paid within five days after demand therefor made upon the debtor in person, or upon some agent or clerk of the debtor at his business office, the lienholder may file for record with the surveyor general of the lumber district in which such labor or service was performed a statement, verified by the oath of some person having knowledge of the facts, setting forth his postoffice address, the dates of beginning and ending the labor or service, the rate of compensation agreed upon or claimed, the sums, if any, paid thereon, the amount then due, a description of the logs or other timber on which the lien is claimed, and the fact of such claim: Provided, that if such labor or service be terminated by the direction or act of the employer, or by the completion of the work in which the employee is engaged, then no demand for payment shall be necessary, and the lien statement may be filed at once; and provided, further, that, if no mark or description of such logs or other timber be filed for record with said surveyor general, the lien statement shall be filed, not with him, but with the clerk of the district court of the county in which the labor or service was performed: Provided, further, that any person having a claim upon logs, cross-ties, poles or other timber as provided in § 3524, may

assign the same in writing to any person, either before or after the making and filing of the statement therefor as provided in this section; and the person to whom such claim may be assigned, his agent or attorney, may make and file for record the statement for lien therefor required by this section, in case no such statement has been filed. And when such statement and assignment have been made and filed in the office of the surveyor general of the lumber district in which such logs are situated, or in the office of the clerk of the district court, in case such statement is filed in the office of the clerk of the district court, said person to whom said assignment is made shall be subrogated to all the rights of the original claimant, and is hereby authorized to enforce the lien against said logs, cross-ties, poles and all other timber in his own name, in the same manner and with the same effect as the original claimant could have done had not such assignment been made; and any person holding the title to said logs or timber, or any lien by mortgage or otherwise thereon, as security for payment of any sum as stumpage thereon, may in like manner purchase and take an assignment of any or all such claims for labor, or may pay and discharge the same, and in either case may tack the same to his original claim and hold the same as an additional incumbrance thereon, and may enforce the payment of the same, with interest, in like manner as his original claim thereon, but in no case shall he be required to pay more than the reasonable and current value of such labor. ('99 c. 342 ss. 2, 16; '01 c. 293)

32-126, 19+647; 79-114, 81+757.

**3526. Termination of lien**—The lien shall cease unless said statement be so filed within thirty days after the termination of such labor or service, unless the same shall have been wholly performed between October 1 and April 1 next thereafter, in which case the statement may be filed on or before the last day of said April. Such filing shall continue the lien in force for ninety days thereafter, and no longer, unless within that period an action be commenced for its enforcement as herein provided. ('99 c. 342 s. 2)

3526  
101-M - 110

**3527. Action—Attachment**—Said lien shall be enforced by attaching the property subject thereto in a civil action in the district court of any county of the judicial district in which the labor or service was performed, or within which judicial district is situated the surveyor general's office wherein the marks of such property are recorded; such county to be determined by the plaintiff's choice, and such attachment to be governed by the rules regulating ordinary attachment proceedings in the district court, except as in this chapter otherwise provided. But no bond or other security shall be required of the plaintiff as a condition of obtaining such writ. ('99 c. 342 ss. 4, 8)

3527  
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32-126, 19+647; 60-216, 62+125; 72-143, 75+122.

**3528. Allowance and issue of writ**—The affidavit for such attachment shall be made by or in behalf of the plaintiff, shall be entitled in said action, shall set forth the amount of indebtedness secured by the lien and then unpaid, with the name of the debtor, and a copy of the lien statement shall be attached thereto as an exhibit. No other averments shall be necessary therein. Any judge of the district or the court commissioner of any county therein may allow the writ, and upon the filing of said affidavit and order of allowance with the clerk said writ shall issue forthwith. ('99 c. 342 s. 5)

**3529. Contents and levy of writ**—Such writ shall contain a description of the property, substantially as set forth in the lien statement, and shall require the sheriff or other proper officer to attach and safely keep the same, or so much thereof as shall be sufficient to satisfy the plaintiff's demand, with such costs, disbursements, and charges as he may recover. If the levy be made upon logs or other timber, the marks whereof have been filed with the surveyor general of the lumber district in which the labor or service was performed, the officer shall file for record with said surveyor general a copy of the writ and of his return thereon, which return shall specify such marks and the quantity attached. And in all cases a copy of such writ and return shall be filed with

the clerk of the court in which the action is brought. No other filing or service thereof shall be necessary to perfect such levy. ('99 c. 342 s. 6)

60-233, 62+123; 62-528, 64+1132; 79-114, 81+757.

**3530. Logs, etc., scaled to officer—Where held—Fees—**The officer serving such writ, if necessary to save the property from loss, shall have such logs or other timber scaled to him in any boom to which they may have arrived, but he shall not delay the driving thereof to their destination, if within the state: Provided, that logs and timber cut in the first lumber district may be held at Stillwater, and those cut in the second district at Minneapolis, though their destination be below such points. The boomage and scalage fees may be paid by the attaching officer, and the amount so paid returned as a part of his charges. And, whether paid before or after judgment, said amount shall be collected out of the property, as other costs and disbursements are collected. ('99 c. 342 ss. 7, 11)

**3531. Pleadings—Priority of liens—**The complaint shall allege the facts upon which the plaintiff's right to a lien depends, and the averments thereof shall be taken as true unless expressly denied by answer. When more than one lien is claimed on the same property, they shall have priority in the order in which the attachments are levied. ('99 c. 342 ss. 7, 14)

3531  
101-M - 111

**3532. Discharge of attachment—Bond—**The defendant, or any person entitled to defend, upon presenting an affidavit showing that he has a valid defence to the whole or some part of the plaintiff's claim, and upon paying into court such part thereof as he admits, with costs and disbursements then incurred, may have the attachment dissolved by giving a bond, to be approved by the judge, conditioned for the payment of any sum that may be recovered in the action. At least five days' notice shall be given of the application for such dissolution, and at the hearing thereof the judge, in his discretion, may require the sureties to justify orally at such time and place as he may direct. The bond so approved, the affidavit and notice, and the order of dissolution shall be filed with the clerk, whereupon the property shall be released. ('99 c. 342 s. 8)

**3533. Findings, judgment, costs—**Upon the trial of such action the court or jury, in addition to finding the sum due to plaintiff, shall find how much thereof is due for labor or service upon the property described in the complaint, and how much of such property is subject to plaintiff's lien. The judgment entered thereon shall include costs and disbursements as follows:

1. The costs allowed in ordinary actions in the district court, and in addition an attorney's fee of twenty dollars;
2. The disbursements made by or in behalf of the plaintiff in enforcing the lien, including all scalage, boomage, and officers' fees;
3. If the plaintiff be the original lienholder his fees and mileage as a witness. ('99 c. 342 s. 17)

60-233, 62+123; 79-114, 81+757.

**3534. Execution sale—**The judgment shall be enforced by execution sale of the property found subject to the lien, if any there be; if not, execution shall issue in ordinary form for the amount recovered. And if a part only of the recovery be secured by the lien, separate executions may issue as the case shall require. The levy upon property covered by the lien shall be made in the manner provided for the levy of the attachment, and notice of the sale shall be given as in the case of ordinary execution sales, except that such notice shall also be posted in the office of the surveyor general of the district; and if the sale be made in the county wherein the surveyor general's office is situated, it shall take place at said office. The officer making the sale shall give his certificate thereof to the purchaser, which shall vest in him the title of all parties to the action, and entitle him to a scale bill for such part of said property as is described by recorded marks. ('99 c. 342 s. 10)

**3535. Obstructing or intermixed logs—**Any person desiring to float logs or other timber in any of the streams or waters of this state, and being

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hindered or obstructed in so doing by the logs or timber of another, or any person whose logs or timber shall become so intermingled therein with those of another as to make it difficult to separate his own without floating all to other waters, may drive all such obstructing or mingled logs or timber, with his own, to some point where the same can conveniently be assorted and his own separated from the mass. And he shall have a lien upon the logs or timber so driven for the reasonable value of his services in driving the same, which shall be asserted and enforced as in the case of other liens. (2466, 2467)

To be liberally construed (33-455, 457, 23+843; 78-438, 81+216). What constitutes hindrance or obstruction (32-76, 19+387). Notice to person to be charged unnecessary. Custom cannot affect statutory liability (33-285, 22+540). Applicable where artificial supply of water necessary (33-455, 23+843; 35-324, 29+142); where logs are intermingled by consent or under a contract for driving the performance of which has been abandoned (34-427, 26+232; 35-324, 29+142). Driver must exercise care and skill (35-324, 29+142; 77-153, 79+664). and actually drive the logs (46-338, 48+1109). Statute does not abrogate common law action for obstructing stream (46-338, 48+1109). Driving beyond destination. Separation of logs belonging to different owners (35-415, 29+167). Filing lien statement not a condition precedent to action for personal judgment (72-135, 75+7). Driving to limits of boom company with exclusive privileges sufficient (77-153, 79+664). Duty of several owners to supply men for driving mass of commingled logs. Lien where one of several owners is required to furnish more than his share (78-438, 81+216). Measure of compensation (32-76, 19+387; 33-285, 22+540; 35-415, 29+167; 78-438, 81+216).

**3536. Logs, etc., cut in other states**—If such logs or other timber are cut in another state, and are thence rafted or otherwise transported into this state, any person who has performed labor or service thereon for which he would have been entitled to a lien if the same had been performed in Minnesota shall have the same lien therefor, and may enforce it at any place where said logs or timber may be found, to the same extent and with like effect as though the same had accrued in this state. ('97 c. 336)

**3537. Stray logs, etc., secured in other states**—Any person authorized by the laws of another state so to do, who shall pick up or secure lost or stray logs, timber, or other floating property upon any waters of said state whereon there is, during the season of navigation, an actual commerce carried by vessels drawing eight feet of water or more, which property shall thereafter be rafted or otherwise transported to waters of the same description within this state, shall have a lien thereon for the value of such services and the expenses thereof, to the same extent and effect as that given by law to persons authorized to perform like services upon such waters in this state. ('97 c. 173)

**3538. How preserved and enforced**—The liens provided for in §§ 3536, 3537 shall be preserved and enforced as in the case of labor liens, except that no demand for payment need be made before the lien statement is filed, and that said lien statement, in addition to the other facts required, shall specify under which of said sections the lien is claimed; and except, further, that in no case need the same be filed for record elsewhere than with the surveyor general of the lumber district in which said property is found.

**3539. Surveyor general—Lien for charges**—To secure the payment of his fees, mileage, and other charges for official services relating to logs, timber, and lumber, any surveyor general shall have a lien upon the same, which he may retain by affixing to the scale bill of such logs, timber, or lumber a statement of the amount due him, with a declaration that he claims and is entitled to such lien, and by taking actual possession of a quantity of such logs, timber, or lumber sufficient to pay such amount, with the expenses of seizure and sale. (2402)

75-343, 345, 77+991.

**3540. Sale and distribution of proceeds**—If the amount of such lien be not paid within sixty days after delivery of the scale bill and statement aforesaid, the property so seized may be sold at auction by the sheriff or any constable of the county upon ten days' posted notice. One copy of the notice shall be posted in the office of said surveyor general, who may become a purchaser at the sale. Out of the proceeds of the sale the officer making the same shall

retain his fees and charges therefor, and pay to the surveyor general the amount of his lien and all expenses lawfully incurred by him in enforcing the same. The remainder, if any, shall be paid to the owner or other person entitled thereto. (2402)

### IN OTHER CASES

**3541. For wages, as against attachment, etc.**—Every mechanic, salesman, clerk, operative, or other employee of a manufacturer, merchant, or dealer in merchandise shall have a lien upon all the property of his employer, as against any attachment or execution levied thereon, for the security of his wages earned within the six months last preceding, to an amount not exceeding two hundred dollars. Such lien shall not be affected by any agreement with the employer to waive the same, and shall be preferred to mortgages, judgments, and other liens which shall have attached after the beginning of the labor or services in which said wages were earned. (6254, 6257, 6258)

26-424, 4+814; 35-287, 28+658; 37-298, 33+791; 46-488, 49+250.

**3542. Notice to sheriff—Property held**—Within five days after such levy the lienholder shall give to the officer making the same a written notice of the amount and grounds of his claim; whereupon the officer shall hold the property, or the proceeds thereof in case of sale, subject to such claim until the same is determined by agreement of the parties concerned or by the judgment of a court. But the lien shall cease unless such agreement be reached, or an action to determine the claim be commenced, within thirty days after such notice was served. Upon a sale of the property by the officer holding the sale he shall pay said liens, in the order of the giving of said notices, out of the moneys derived therefrom. (6255)

26-424, 4+814; 46-488, 49+250.

**3543. Death or dissolution of employer**—Said lien shall also exist, as against all other creditors, in case of the death, dissolution, or insolvency of the employer. The notice provided for in § 3542 shall in such case be given to the personal representative of the decedent, or to the receiver or other officer of court entitled to possession of the assets of the employer, within five days after his qualification as such. And the lien shall cease unless determined or sued upon as in said section prescribed. (6256)

**3544. For service of stallions, etc.**—The owner of any stallion, jack, bull, ram, or boar kept for public service shall have a lien upon the offspring of such animal for the price or value of its service. (6252)

**3545. How preserved and enforced**—To preserve said lien the holder thereof, within six months after such service, shall file for record, with the clerk of the town wherein the female bred to such animal may be, a verified statement containing a description of said female, and stating the time and place of the service and the amount due therefor. A certified copy of such statement shall be sufficient to authorize the lienholder to take possession of said offspring at any time within one year after its birth, and to foreclose his lien thereon by advertisement and sale, as in the case of a chattel mortgage. (6253)

**3546. For threshing grain**—Any person owning or operating a threshing machine shall have a lien upon the grain threshed therewith for the price or value of such service, which shall be preferred to all other liens or incumbrances except those given for the seed from which said grain was grown. ('97 c. 200 ss. 1, 2)

**3547. How preserved and enforced**—Within ten days after such threshing is completed the claimant of such lien shall file with the clerk of the town in which it was done a verified statement of the amounts and kinds of grain threshed, the time and place of doing the same, giving the first and last days thereof, the rates per bushel and the total charge therefor, the amounts paid thereon, if any, and the balance due, the name of the reputed owner and of the person requesting the work to be done, and a notice that a lien is claimed for the amount remaining unpaid. A certified copy of such statement shall au-

thorize the seizure and sale of so much of the grain covered by the lien as may be necessary to satisfy the same, with reasonable costs and expenses; but such seizure must be made, or an action to foreclose be commenced, within six months after such filing. So far as applicable thereto, the laws relating to the enforcement of chattel mortgages shall govern the foreclosure of liens hereunder. Any person secreting or disposing of property covered by such lien, without the consent of the lienholder, shall be guilty of a misdemeanor, the minimum penalty whereof shall be a fine of twenty-five dollars. ('97 c. 200 ss. 3, 5-8)

### GENERAL PROVISIONS

**3548. Liens assignable**—All liens given by this chapter are assignable, and may be asserted and enforced by the assignee, or by the personal representatives of any holder thereof in case of his death. (6245; '99 c. 342 s. 3)

14-145, 113; 58-455, 60+23. See 57-402, 59+482.

**3549. Inaccuracies in lien statement**—In no case shall the liens given by this chapter be affected by any inaccuracy in the particulars of the lien statement; but, as against all persons except the owner of the property, the lien claimant shall be concluded by the dates therein given, showing the first and last items of his account. And in no case shall a lien exist for a greater amount than the sum claimed in the lien statement, nor for any amount whatever, if it be made to appear that the claimant has knowingly demanded in such statement more than is justly due. (6234, 6237)

51-202, 206, 53+362; 52-114, 119, 53+1063; 52-121, 127, 53+1064; 65-271, 68+21.

**3550. Promissory note—Effect**—The taking of a promissory note or other written obligation to pay any indebtedness for which a lien is given by this chapter shall not discharge such lien unless the obligation by its terms shall so provide, or the time for payment be thereby extended beyond the date fixed by law for enforcing such lien. (6243; '99 c. 342 s. 12)

3-147, 92; 42-433, 44+311; 46-426, 49+195; 64-269, 66+979; 70-507, 512, 73+406, 510.

**3551. Satisfaction—Penalty for refusal**—Every lien claimed under any provision of this chapter shall be satisfied of record, at the expense of the claimant, upon payment or tender to him of the amount actually due thereon, or upon written demand made at any time after expiration of the time within which it may be asserted in an action or other proceeding to enforce the same, if it has not been so asserted. Refusal to cause satisfaction to be entered within ten days after such payment, tender, or demand shall render the party so refusing liable in a civil action, to any person interested, for twenty-five dollars as liquidated damages if the lien was claimed upon real estate; otherwise, ten dollars. Also, in either case, for any further damages which the plaintiff may have suffered therefrom. (6246)

34-407, 26+227.

## CHAPTER 70

### MARRIAGE

**3552. Marriage a civil contract**—Marriage, so far as its validity in law is concerned, is a civil contract, to which the consent of the parties capable in law of contracting, is essential. (4768)

23-528.

**3553. Who capable of contracting**—Every male person who has attained the full age of eighteen years, and every female person who has attained the full age of fifteen years, is capable in law of contracting marriage, if otherwise competent. (4769)

78-166, 80+877; 80-216, 83+141.