

LEGISLATURE OF NEBRASKA
NINETY-EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 201

Introduced by Burling, 33; Bourne, 8; Stuthman, 22

Read first time January 10, 2003

Committee: Judiciary

A BILL

1 FOR AN ACT relating to construction liens; to amend sections
2 52-131, 52-135, and 52-136, Reissue Revised Statutes of
3 Nebraska; to require notice of recording to a contracting
4 owner by a claimant; to harmonize provisions; and to
5 repeal the original sections.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 52-131, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 52-131. (1) A person who furnishes services or materials
4 pursuant to a real estate improvement contract has a construction
5 lien, only to the extent provided in ~~sections 52-125 to 52-159~~ the
6 Nebraska Construction Lien Act, to secure the payment of his or her
7 contract price.

8 (2) A lien arises under ~~sections 52-125 to 52-159~~ the act
9 only if the claimant records a lien within the time specified by
10 section 52-137.

11 (3) Real estate to which a construction lien attaches is
12 specified by section 52-133, and limitations on the existence of a
13 lien for materials are specified by section 52-134.

14 (4) The amount of a claimant's lien is specified by
15 section 52-136. The content of the notice of the right to assert a
16 lien liability to be given to the owner under section 52-136 is
17 specified by section 52-135.

18 (5) The priority of a claimant's lien as against other
19 construction-lien claimants is specified in section 52-138, and
20 priority as against claimants other than construction-lien
21 claimants is specified in section 52-139.

22 (6) Foreclosure of a lien under ~~sections 52-125 to 52-159~~
23 the act is governed by section 52-155, and the time within which an
24 action to foreclose must be brought by section 52-140.

25 Sec. 2. Section 52-135, Reissue Revised Statutes of
26 Nebraska, is amended to read:

27 52-135. (1) At any time after a claimant has entered
28 into the contract under which he or she may claim a lien under

1 ~~sections 52-125 to 52-159~~ the Nebraska Construction Lien Act, he or
2 she may give a notice of the right to assert a lien liability to
3 the contracting owner. The notice of the right to assert a lien
4 ~~liability~~ must be in writing, state that it is a notice of a right
5 to assert a lien against real estate for services or materials
6 furnished in connection with improvement of the real estate, and
7 contain:

8 (a) The name of the claimant and the address to which the
9 owner or others may send communications to the claimant;

10 (b) The name and address of the person with whom the
11 claimant contracted;

12 (c) The name of the owner against whom a lien is or may
13 be claimed;

14 (d) A general description of the services or materials
15 provided or to be provided;

16 (e) A description sufficient to identify the real estate
17 against which the lien is or may be claimed;

18 (f) A statement that the claimant ~~has recorded a lien and~~
19 ~~the date of recording or, if the lien has not been recorded, a~~
20 ~~statement that the claimant~~ is entitled to record a lien;

21 (g) The amount unpaid to the claimant for services or
22 materials, whether or not due, or if no amount is fixed by the
23 contract, a good faith estimate of the amount designated as an
24 estimate; and

25 (h) The following statement in type no smaller than that
26 used in providing the information required by subdivisions (1)(a)
27 ~~to~~ through (1)(g) of this subsection:

28 Warning. If you did not contract with the person giving

1 this notice, any future payments you make in connection with this
2 project may subject you to double liability.

3 (2) A claimant may notify the contracting owner, either
4 in the notice of the right to assert a lien liability or
5 separately, that the claimant must be notified of the recording of
6 any termination of the notice of commencement. The notice to the
7 owner must be in writing and, if not part of the notice of the
8 right to assert a lien, liability, shall contain the information
9 specified in subdivisions (1)(a) ~~to~~ through (1)(e) of this section.
10 In addition, the notice shall state that a written notice of the
11 recording of any notice of termination must be given to the
12 claimant at least three weeks before the effective date of the
13 notice of termination.

14 (3) The claimant shall send a copy of a recorded lien to
15 the contracting owner within ten days after recording, and the
16 recording shall be within the time specified for the filing of
17 liens under section 52-137.

18 (4) If the contracting owner has held out another person
19 as contracting owner, either by naming that person in the notice of
20 commencement or otherwise, a notice directed to and received by
21 that person is effective against the contracting owner.

22 ~~(4)~~ (5) If the contracting owner has held out a
23 fictitious or nonexisting person as contracting owner either by
24 naming that person in the notice of commencement or otherwise, a
25 notice to that fictitious or nonexisting person delivered at an
26 address held out by the contracting owner as the address of the
27 fictitious or nonexisting person is effective against the
28 contracting owner.

1 ~~(5)~~ (6) This section shall apply to a lien claimant only
2 when the contracting owner is a protected party.

3 Sec. 3. Section 52-136, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 52-136. (1) Subject to subsection (3) of this section:

6 (a) The lien of a prime contractor is for the unpaid part
7 of his or her contract price; and

8 (b) Except as against a protected party contracting
9 owner, the lien of a claimant other than a prime contractor is for
10 the amount unpaid under the claimant's contract.

11 (2) Except as modified by subsections (4) and (5) of this
12 section, as against a protected party contracting owner the lien of
13 a claimant other than a prime contractor is for the lesser of:

14 (a) The amount unpaid under the claimant's contract; or

15 (b) The amount unpaid under the prime contract through
16 which the claimant claims at the time the contracting owner
17 receives the claimant's notice of the right to assert a lien.
18 ~~liability.~~

19 (3) The lien of a claimant is reduced by the sum of the
20 liens of claimants who claim through him or her.

21 (4) If a protected party contracting owner's lien
22 liability under a particular prime contract as provided in
23 subsection (5) of this section is less than the sum of claims of
24 all claimants claiming through that particular prime contractor:

25 (a) Lien claimants whose liens attach at different times
26 have liens in the order of attachment until the owner's lien
27 liability is exhausted; and

28 (b) Among claimants whose liens attach, or may attach, at

1 the same time, each claimant's lien is for his or her pro rata
2 portion of the amount of the contracting owner's lien liability to
3 claimants whose liens attach at that time.

4 (5) A protected party contracting owner's lien liability
5 under a particular prime contract is the prime contract price less
6 payments properly made thereon. A payment is properly made on a
7 prime contract to the extent that the payment:

8 (a) Is made in good faith before the receipt by the
9 contracting owner of a copy of a recorded lien or of a notice of
10 the right to assert a lien; ~~liability,~~ or

11 (b) If made after receipt by the contracting owner of a
12 copy of a recorded lien or of a notice of the right to assert a
13 lien, ~~liability,~~ is made in good faith and leaves unpaid a part of
14 the prime contract price sufficient to satisfy the unpaid claims of
15 all claimants who have provided a copy of a recorded lien or who
16 have given notice of the right to assert a lien ~~liability~~ and whose
17 claims are not being satisfied by the payment.

18 Sec. 4. Original sections 52-131, 52-135, and 52-136,
19 Reissue Revised Statutes of Nebraska, are repealed.