

## Nebraska Construction Lien Basics: 10 Questions Answered

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Construction liens, sometimes called mechanic's liens, are useful tools to secure payment for unpaid services and materials under a contract to improve real estate in Nebraska. Liens operate by encumbering a property such that it is difficult to sell or re-finance the property without first removing the lien through payment to the lien holder. In some cases the person filing the lien may be given the authority to sell the property and receive payment out of the proceeds of the sale. However, construction liens do not exist automatically, and the provider of services or materials under a construction contract must take steps to ensure that lien rights are protected.

### 1. Who can file a lien?

Contractors, suppliers, architects, surveyors, or builders who provide materials or labor for a project can record a construction lien. Subcontractors also have lien rights; however, a lien is not allowed for subcontractors if the owner of the real estate or general contractor secures a bond and records notice of the surety. In such cases, a subcontractor wishing to assert lien-like rights must sue within one year of providing labor or materials, or within 90 days if there is no direct contract with the general contractor. In bond/surety cases, a subcontractor who would otherwise be able to assert a lien may sue the surety directly and does not need to name the general contractor as a defendant.

### 2. When is a lien allowed?

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Generally, Nebraska allows construction liens to be filed when an agreement exists for services or materials to be furnished for the purpose of improving or producing a change in real property.

More specifically, a construction lien can be recorded to secure payment when a person furnishes services, including labor, or materials under a real estate improvement contract to secure payment for the unpaid portion of his or her contract price. A real estate improvement contract is an agreement to perform services, including labor, or to furnish materials for the purpose of producing a change in the physical condition of land or of a structure. Services may include: (1) alteration of the land's surface; (2) demolition, repair, remodeling, or removal of a structure already on the land; (3) landscaping operations; (4) surface or subsurface testing; and (5) the preparation of plans, surveys, and drawings for any change or improvement to real property, whether or not such plans, surveys, or drawings are actually used. Materials may include: (1) items delivered to the site, used in the course of construction, or incorporated into the improvements; (2) items specially fabricated, and not readily resalable, for the project, even if not used; and (3) items used for the construction or for the operation of machinery or equipment used in the course of construction. Nebraska also includes the renting or purchase of tools and machinery, but only if the rental or purchase is for the property at issue and, if purchased, the tools or machinery have no substantial value to the purchaser after completion of the project.

### **3. Where is a lien filed?**

Liens are recorded with the Register of Deeds for the county in which the property is located.

### **4. What information must be included in a lien?**

When a claimant records a lien with the Register of Deeds, the document must have: (a) the property subject to the lien; (b) the name of the person against whom the lien is claimed; (c) the name and address of the claimant asserting the lien; (d) the name and address of the person with whom the claimant contracted; (e) a description of the services performed or materials furnished for the improvement and the contract price; (f) the unpaid amount; and (g) the date the last services or materials were furnished.

### **5. What is the amount of the lien?**

In Nebraska, as a broad generalization and subject to certain exceptions, a contractor's lien is for the unpaid part of his or her contract price.

The lien amount of a general contractor is for the unpaid portion of his or her contract price with the owner. The lien for a claimant other than the general contractor is for the amount unpaid under the claimant's contract with the general contractor or for the amount remaining under the general contractor's contract with the owner through which the claimant is claiming, whichever

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is less. Further, the lien of a general contractor is reduced by the sum of the liens of claimants who claim through the general contractor, such as subcontractors and/or suppliers. Similarly, a subcontractor's claim is reduced by any sub-subcontractor claiming through them.

### **6. What is the deadline to file the lien?**

A claimant must record a lien within 120 days from the date the claimant last furnished services or materials. Once a lien is recorded, the claimant must send a copy of the lien to the property owner within 10 days.

### **7. How does lien priority work?**

Nebraska has fairly complex rules regarding the priority or lack of priority of liens over other types of encumbrances against property. Beyond the general rules below, the priority rules of Nebraska are beyond the scope of this article.

In relation to other liens of the same type and on the same property, the date of attachment governs priority. All liens attaching at the same time have equal priority. Attachment occurs when the following two requirements are both met: (1) a contract for provision of labor or services has been entered into, and (2) the lien has been recorded within 120 days of the last of the labor or materials being provided. If a notice of commencement has been recorded, the lien attaches as of the date of the recording of the notice of commencement.

### **8. How can I enforce my lien?**

A claimant may bring a civil lawsuit to foreclose on the lien. The lawsuit should be filed in the county in which the property is located. A properly recorded lien is enforceable for two years, unless the owner or other person having an interest in the property makes a written demand upon the claimant to institute judicial proceedings on the lien, in which case the claimant has 30 days to enforce the lien.

### **9. Can liens be waived or assigned?**

A written waiver of construction lien rights signed by the claimant is allowed either before or after the materials or services were contracted for or furnished. The waiver can waive all construction lien rights of the claimant or it can specifically limit the waiver to a particular portion of the services or materials furnished. Liens may also be assigned through the recording of a statement of assignment with the Register of Deeds.

### **10. How are liens released?**

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Liens can be discharged at any time by the claimant who asserted the lien by filing a signed statement with the Register of Deeds stating the lien is released. Liens may also be released by recording a certified copy of a final judgment or decree of a court providing for the discharge of the lien, or by recording a certificate of the clerk of the district court showing that an appropriate deposit has been made to substitute for the lien.

Additionally, anyone having an interest in the subject real estate may release the real estate from liens by depositing money with the office of the clerk of the district court of the county in which the lien is recorded in the amount of 115% of said liens. Said person must also record a certificate of the clerk of the district court showing the deposit has been made with the Register of Deeds Office.

### **Summary**

This article is meant to provide a general understanding of lien rights in Nebraska. However, there are many nuances to the filing of liens and Nebraska, in certain instances, has authority to punish misconduct associated with lien filing. For that reason, please do not hesitate to contact one of the members of Koley Jessen's Construction Industry Practice area if you need to file a lien or if a lien is filed against your property.

### **References**

The Nebraska Construction Lien Act (Neb. Rev. Stat. Ann. §§ 52-125 to 52-59) can be found [here](#).