North Dakota Law Review

Volume 38 | Number 3 Article 8

1962

The North Dakota Mechanic's Lien

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NOTES

THE NORTH DAKOTA MECHANIC'S LIEN

I. ORIGIN OF MECHANIC'S LIEN ACTS

The first statute giving materialmen and artificers a lien upon property improved by their labor or supplies was enacted by the Dakota Territorial Legislature in 1877.[1] But similar statutes were already widespread in other jurisdictions, and the earliest enactment of this type was passed by the General Assembly of Maryland in 1791.[2] The purpose of this particular legislation was to expedite the development of the city of Washington by giving the master builder a lien on structures that he built.

The mechanic's lien law was unknown to the common law or the courts of equity, and originated in this country.[3] A form of it existed, however, in Roman law[4] and was incorporated in the Code Napoleon.[5] As commercial activity increased in the United States, mechanic's lien acts were increasingly enacted. Every state today has such a law in one form or another.[6] The history and evolution of such acts are purely statutory in character, and in consequence the construction given to any provision is normally determined by the local conditions existing at the time. Since local policy and conditions do much to dictate the terms of such statutes, resort to each particular locality must be had before any precise analysis may be ventured.

II. BASIC THEORY AND OPERATION

Mechanic's lien laws have been generally grouped into two basic categories: (1) the New York type[7] and (2) the Pennsylvania type.[8] The distinction between the two types of statutes lies in the nature of the lien given to each of the various lien claimants. Under the Pennsylvania type, subcontractors and materialmen are given a direct lien on the improvement

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1. C. Civ. P., 1877 § 655.
2. Acts of General Assembly of Maryland, 1791, ch. 45, § 10.
3. See OSBORNE, MORTGAGES 564 (1951).
4. MACKELDY, HANDBOOK OF THE ROMAN LAW, 274 (Dropsie's Translation).
tion, 274.
5. Code Napoleon, Privileges and Mortgages, § 2 (2103).
6. **Supra** note 3.
7. See generally OSBORNE, MORTGAGES 566 (1951).
8. **Ibid.**

and the property, *i.e.*, the lien is not dependent for its existence upon the presence of an unfulfilled contract obligation between the owner and the general contractor.[9] This means that under certain conditions payment to a general contractor will not extinguish the possibility of a subsequent assertion of a mechanic's lien, and double liability may at times occur. The New York type, which is the most prevalent, limits the liability of the property by the amount of the original contract only. Under statutes of this type the liens of subcontractors and materialmen are indirect rather than direct,[10] and the chance that a property owner may be compelled to pay twice for improvements on his property is eliminated.

In 1961 the North Dakota Legislative Assembly enacted new legislation substantially revising the previous law regarding mechanic's liens. This legislation is of the Pennsylvania type.[11] It provides that "*Any*" person who improves real estate . . . whether, under 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 . . . ."[12] Moreover, the lien may be perfected 90 days after the date on which a subcontractor or materialman last furnishes supplies or labor.[13] As between the materialman and the owner the new statute creates a lien on the property the moment the first item of material or labor is furnished.[14] As between the materialman and a subsequent encumbrancer or purchaser, the lien has priority from the beginning of visible construction or alteration of the property.[15] The above fact emphasizes the importance of clearly ascertaining the status of mechanic's liens upon the property in the course of title examinations, both by careful search of the appropriate records and factual examination of the premises. It should be observed that one consequence of the Pennsylvania type enactment is to shift the economic risk of the general contractor's insolvency from the materialman to the property owner.

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9. This type of statute generally provides that liens in the aggregate cannot total more than the general contract so as to preclude the possibility of the claims of ancillary contracts from exceeding original contract. See N.D. Cent. Code § 35-12-07 (1961).
10. See OSBORNE, MORTGAGES 566 (1951).
11. N.D. Cent. Code § 35-27 (Supp. 1961); see Robertson Lumber Co. v. State Bank of Edinburg, 14 N.D. 511, 105 N.W. 719 (1905).
12. N.D. Cent. Code § 35-27-02 (Supp. 1961).
13. N.D. Cent. Code § 35-27-13 (Supp. 1961).
14. N.D. Cent. Code § 35-27-03 (Supp. 1961).
15. **Ibid.**

Generally, the lien attaches to the interest of the contracting owner in the land, as well as to the improvement itself.[16] This was so under the old statute as well.[17] In addition, the lien may extend to the interest or estate in land of one not a party to the contract in some cases. Thus, where a contract for the sale of land requires the vendee to make improvements on the property, and the vendor subsequently repossesses the property, the lien can attach to the vendor's title.[18] Similarly, when one person goes onto the land of another and makes improvements thereon, the owner is deemed to have authorized such improvements unless objection to them is made as required by statute.[19] This provision has been vehemently criticized as unconstitutional in at least one study,[20] on the ground that it renders a property owner liable for improvements to which he has not consented and thus deprives him of property in an arbitrary manner.

III. OPERATION OF PRIOR STATUTE

Before undertaking a detailed examination of the new enactment, the operation and effect of the prior statutes dealing with mechanic's liens in North Dakota should be considered briefly. This is particularly true because the new statute incorporates many pre-existing statutory provisions into the law. Thus the term "owner" is defined by the new statute in the same terms as the earlier one.[21] It means every person for whose immediate use and benefit any building, erection, or improvement is made. Under this definition an "owner" has been held to be a vendee under a contract of purchase,[22] a vendor who retains an undivided portion of the land and acquiesces in an improvement thereon,[23] and a person entering under the Homestead Act, even though under the terms of the Homestead Act the land was not liable to liens.[24] Conversely, under the old statute a vendor under an executory contract for

16. N.D. Cent. Code §§ 35-27-02 (Supp. 1961), 35-27-19 (Supp. 1961).
17. N.D. Cent. Code §§ 35-12-03, 35-12-16.
18. N.D. Cent. Code § 35-27-07 (Supp. 1961).
19. **Ibid.**
20. See Myhre, **Fiction, Fallacy and Facts in Relation to "Implied Consent" Provisions of Certain Mechanics' Lien Statutes,** 32 Minn. L. Rev. 559 (1948).
21. Compare N.D. Cent. Code § 35-12-01 with N.D. Cent. Code § 35-27-01 (Supp. 1961).
22. Salzer Lumber Co. v. Claflin, 16 N.D. 601, 113 N.W. 1036 (1907).
23. Vicker v. Beggs, 53 N.D. 858, 208 N.W. 383 (1926).
24. Mahon v. Surerus, 9 N.D. 57, 81 N.W. 64 (1899). The court reasoned that the materialman had a lien against the building as a distinct right and not dependent upon the land.

the sale of land did not have an interest to which a mechanic's lien could attach.[25] Under the prior statute a person was entitled to a lien if he furnished labor or materials for the improvement or erection of any buildings upon lands under contract with the owner, his agent, contractor or subcontractor, to secure the payment for his contribution.[26] The substance of this section was incorporated into the new act with some slight alteration in the wording.[27]

Section 35-12-03 of the old act did not precisely state when the lien arose but merely stated that the contributor was "entitled" to a lien upon compliance with the provisions of the chapter. The lien is inchoate until perfected by requiring the contributor to: (1) keep a separate itemized account, (2) make a written demand for payment fifteen days prior to filing the lien, (3) file with the clerk of court a notice of the person in possession, describing the land, contract date and stating that a lien will be perfected if payment is not received.[28] A failure to file the lien within the statutory ninety days does not defeat the lien except for payments made by the owner after the ninety days and before the lien is filed.[29] The repealed act also required the materialman furnishing materials to a contractor to notify the owner by registered mail that he is about to furnish such materials.[30] A significant change in the new law occurs at this point and will be discussed later. Nevertheless, the rationale behind this notice was clear; it is only fair that the owner be informed of who and how many persons had potential interests in his land and improvement. For this reason the mechanic's lien acts have been sometimes referred to as "secret liens". Under the old act, the possibility of the owner being held liable for liens exceeding the amount of the original contract was mitigated by section 35-12-07 which limited the owner's total lien liability by the amount of the original contract. When the owner contracted directly with the materialman the notice provision is not required.[31]

The account required to be filed within ninety days had to contain the amount of the lien and a description of the land

25. Johnson v. Soliday, 19 N.D. 463, 126 N.W. 99 (1910).
26. N.D. Cent. Code § 35-12-03.
27. N.D. Cent. Code § 35-27-02 (Supp. 1961).
28. N.D. Cent. Code § 35-12-04.
29. Robertson Lumber Co. v. State Bank of Edinburg, 14 N.D. 511, 105 N.W. 719 (1905).
30. N.D. Cent. Code § 35-12-05.
31. Pudwill v. Bismarck Lumber Co., 89 N.W.2d 424 (N.D. 1958); North Dakota Lumber Co. v. Bulger, 19 N.D. 516, 125 N.W. 883 (1910).

to be charged.[32] A clerical error concerning the amount of the lien did not disturb its validity,[33] but it has been held that a misdescription of the land will create no charge upon the land.[34] It is well settled that a misdescription does not create a lien and to do so would be an unreasonable burden upon the third party.

A lien was authorized upon multiple improvements and parcels of land if the contribution was made under a single contract.[35] If the various improvements were on separate lands the lien will attach also, but upon foreclosure the court could apportion, if such was necessary to protect the rights of third parties.[36] Thus it was held in *State Loan Co. of Minneapolis v. White Earth Coal Mining, Brick and Tile Co.*,[57] that a lien attached to land which was actually never improved. Defendant, a coal company, owned a quarter of section 15 and in addition leased a contiguous quarter of section 16. It had a coal mine on section 15. Another defendant, an elevator company, furnished materials to the coal company for the erection of buildings near the coal mine. The buildings were actually erected on section 16, the leased site, however, it was conceded by all that they conferred an improvement to the coal mine on section 15. A month after the materials were furnished, plaintiff took a mortgage from the coal company on the quarter section of 15, but upon recording the mortgage designated the SW¼ instead of the NW¼. This mistake remained for three years and was then corrected. Two questions were presented to the court: (1) did the elevator-materialman have a lien on section 15 and, (2) was it prior to the mortgage of plaintiff? The court answered in the affirmative on both questions stating that the materials were for the improvement of section 15 and therefore the lien attached. As to the priority of the mortgage, the court stated that not until the error was corrected was there notice as to third parties. The dissent, which contended that the same result would have obtained without this unwarranted construction of the statute, reasoned that a contract to

32. N.D. Cent. Code § 35-12-10.
33. Robertson Lumber Co. v. Swenson, 24 N.D. 134, 138 N.W. 984 (1912).
34. Kuntz v. Partridge, 65 N.W.2d 681, (N.D. 1954); Sarles v. Sharlow, 5 N.D. 100, 37 N.W. 748 (1888).
35. N.D. Cent. Code § 35-12-14; Robertson Lumber Co. v. Swenson, 24 N.D. 134, 138 N.W. 984 (1912).
36. N.D. Cent. Code § 35-12-14.
37. 34 N.D. 101, 157 N.W. 834 (1916).

furnish materials could not constitute notice to the plaintiff and that furthermore section 15 was never improved.

The act not only confers a lien upon the improvement and the land necessary to its foundation but the entire land to the extent of all the right, title and interest of the owner.[38] This is so even if the materials intended to be used never in fact found their way into the improvement.[39] Homestead land has been held not subject to a lien but the building erected upon the land would be.[40] Another example is a leasehold interest where upon forfeiture by the lessee the lien attaches to the building and it may be removed and sold.[41]

The old act appears fair and equitable in its operation with the filing and notice provisions being the source of difficulty in many cases. The new statute, 35-27 will now be noted and the changes emphasized.

IV. THE NEW STATUTE

The new statute preserves the basic type of lien provided for in the old law, namely the Pennsylvania type.[42] However, some of the incidents have been changed, some for the better and, it is submitted, some for the worse. Many of the new provisions were taken from the Minnesota statute,[43] therefore citations construing those provisions from that state should be in order.

Section 35-27-03 leaves no doubt that the lien attaches, as against the owner, when the first materials are delivered upon the premises. As against third parties without notice the lien attaches when the actual and visible construction has commenced. Clearly set out in the next section is the provision that in the event of a good faith mortgage given for the purpose of paying for the improvement such mortgage shall have priority even though the mortgage is recorded subsequent to the visible beginning of the work but prior to the filing of a notice of intention to claim a lien.[44] This section was not included in the old statute but seems desirable since the very

38. N.D. Cent. Code § 35-12-16.
39. McCaull-Webster Elevator Co. v. Adams, 39 N.D. 259, 167 N.W. 220 (1918).
40. **Supra** note 24.
41. N.D. Cent. Code § 35-12-20; Gull River Lumber Co. v. Briggs, 9 N.D. 485, 84 N.W. 349 (1900).
42. N.D. Cent. Code § 35-27-02 (Supp. 1961).
43. Minn. Stat. Ann., ch. 514 (1945).
44. N.D. Cent. Code § 35-27-04 (Supp. 1961).

reason for a mechanic's lien law is to give security for money expended to improve land while still preserving the right of a lienor to file his claim. While the statute seems clear, the mechanic's lien law as it affects purchase-money mortgages and building and loan mortgages is both interesting and complex and a discussion of these conflicting claims will be reserved until later.

The filing of a notice of intention to claim a lien is substantially the same as in the old statute.[45] The only difference is that under the new law the filing of notice of intention and the itemized account and demand conditions precedent to obtaining the lien are separated into two sections.[46] Compliance with the three sections on (1) filing the notice of intention, (2) itemized account and demand conditions and, (3) filing of the account, changes the lien from an inchoate form to a perfected form. These requirements are essentially the affirmative or objective steps that the lien claimant must take to secure the mechanic's lien. It can be easily seen that great care was taken by the creators to insure that the lienor be required to give the widest possible notice to third parties which may be a concession in mitigation of the priority of mechanic's liens.

A significant change in the new law occurs in the section on the extent and amount of the lien.[47] As will be recalled, an earlier discussion noted that the old act limited the amount of the owners liability by the original contract. This section precluded the owner from being held by various liens in excess of his deal with the general contractor,[48] the rule being that he ought not to be held for more that he bargained for. The new section merely states that if the contribution is under contract with the owner the lien shall be for the amount of the contract. Otherwise it shall be for the reasonable value of the work done.[49] It is submitted that this section does not attempt to limit in any way the owners liability to the original contract price. Indeed, it appears not to say anything, since without a contract the reasonable amount of the contribution would always be the measure and to say that when there is a

45. N.D. Cent. Code § 35-27-05 (Supp. 1961); see Red River Lumber Co. v. Friel, 7 N.D. 46, 73 N.W. 203 (1897).
46. N.D. Cent. Code §§ 35-27-05, 35-27-11 (Supp. 1961).
47. N.D. Cent. Code § 35-27-06 (Supp. 1961).
48. N.D. Cent. Code § 35-12-07.
49. N.D. Cent. Code § 35-27-06 (Supp. 1961).

contract the stated price shall govern is merely stating the obvious. The value of the section would seem merely to be an affirmation that the general contract will not govern the aggregate amount of the liens and such has been the construction placed upon it in the Minnesota Courts.[50] Therefore, it may be safely said that our new statute does not limit the liability of the property by the amount of the contract.

A new section appears that was apparently taken from the Minnesota statute.[51] The section concerns the liability of the title of a vendor under an executory contract; the consent of owners and lessors to improvements.[52] An executory contract that requires the vendee to improve the land subjects the title of the vendor, upon forfeiture, to the lien. Also, when one person performs labor or furnishes materials upon another's land, that owner is deemed to have consented to the improvements unless he objects by written notice within five days after he first acquires knowledge of the work or by posting a notice on the premises. This provision would not include prior bona fide encumbrancers or lienors. A lessor will not be held liable by this section where the lessee makes unauthorized improvements unless the lessor shall have actual or constructive notice.

A new section appears in the new statute titled, "Payment to contractors withheld",[53] and provides that an owner may deduct so much of the contract price as may be necessary to meet the demands of other persons having a lien on the premises for which the contractor is liable. In addition, any person having a lien may serve upon the owner a notice of his claim. The owner may, within fifteen days of completion of the contract, require the person having the lien under the contract to furnish him an itemized statement and that no action for the foreclosure of the lien may be commenced until ten days after the statement is furnished.[54] A Minnesota case, *First Church of Christ, Scientist v. Lawrence*,[55] held that where original contract required the owner to pay 85 per cent each month of the cost of materials and labor furnished, only that part of the labor and materials furnished by the subcontractors that was

50. Minn. Stat. Ann. § 514.03; Laird v. Noonan, 32 Minn. 358, 20 N.W. 354 (1884).
51. Minn. Stat. Ann. § 514.06 (1945).
52. N.D. Cent. Code § 35-27-07 (Supp. 1961).
53. N.D. Cent. Code § 35-27-09 (Supp. 1961).
54. See Clark v. Anderson, 88 Minn. 200, 92 N.W. 964 (1903).
55. 210 Minn. 37, 297 N.W. 99 (1941).

actually paid for by the contractor himself would be allowed. The reason for this statute is clear and would seem to be a favorable addition to our new act. The defaulting contractor would certainly increase the possibility of more liens being brought against the owner's property. This is especially true in the "Pennsylvania type" jurisdictions such as North Dakota where there is no section that limits the aggregate amount of the liens to the contract price. It must be remembered that the ninety day period merely gives priority to mechanic's liens over other encumbrances and that as between the owner and the lienor the lien could exist indefinitely and is diminished only to the extent of payments made to the contractor after the ninety days.[56]

A new section appearing in the statute concerns inaccuracies in the lien statement and provides in substance that in no case shall liens given by this chapter be affected by any inaccuracy in the particulars of the lien account.[57] Lien statement is synonomous with the lien account and it should be noted that the lien account includes among other things the name of the person against whose property the lien is claimed and a description of the property to be charged. This would seem to indicate that an inaccurate description of the land would not affect the validity of the lien as to subsequent encumbrancers in good faith. Although it was obviously not the intent of the legislature to charge land with a lien when the record did not disclosure that such a lien existed, nevertheless such a construction is possible by reading this section. It was held by our Supreme Court in *Sarles v. Sharlow*,[58] that a mistake in the description of the land creates no charge upon the land. If notice is the essence of priorities, it would seem unjust to hold the lien valid and it is submitted that no such intent ever existed. The purpose of the section is apparently to preserve the substantive rights of the parties when an insignificant error arises. This is advisable in view of the strict application of the provisions of the law by our courts.

The section on priority of classes of mechanic's liens is substantially the same as the old except for an additional provision allowing liens for materials to share ratably in the secur-

56. N.D. Cent. Code § 35-27-14 (Supp. 1961).
57. N.D. Cent. Code § 35-27-16 (Supp. 1961).
58. 5 N.D. 100, 37 N.W. 748 (1888).

ity when they are filed within the ninety day period.[59] Prior to this the section only applied to liens for labor filed within the ninety day period.[60] The only apparent effect of the addition is that now if a materialman's lien is filed within the ninety day period, he would share ratably with any other materialman who filed within this period whereas before a materialman's lien had priority in the order of filing.

V. PRIORITIES

As noted in Section 35-27-03 a mechanic's lien does not attach, as against bona fide purchasers, mortgagees or other encumbrancers without notice until the actual and visible construction begins. This means, of course, that any recorded mortgage that is prior to this visible construction will prevail. The only exception to this is that when the mortgage is given to provide funds for the building or improvement, no mechanic's lien shall be given priority even though such mortgage is recorded after the lien attaches but before the lienor has filed his intention to claim a lien.[61] Section 35-27-03 expressly provides that a lien shall be preferred to any unrecorded prior mortgage unless the lienor had actual notice and if the mortgage was not for the purpose of creating funds for the improvement.

There are generally two views as to priorities concerning improvements: (1) That all improvements to mortgaged land such as new buildings, improvements upon the old, feed the mortgage and that such mortgage would be prior to a mechanic's lien on both the land and the improvement. (2) The other view is that while the priority as to the original mortgaged land is preserved, the mechanic should be entitled to a lien upon improvement he has created. The rationale is that since he created the improvement he should have first claim to repayment for his labor.[62] The mechanic's lien in North Dakota attaches not only to the improvement but also to the land upon which the improvement is situated.[63] But as to liens upon improvements on mortgaged premises the court held in *Dunham Lumber Co. v. Gresz*,[64] that in certain cases the mortgage

59. N.D. Cent. Code § 35-27-22 (Supp. 1961).
60. N.D. Cent. Code § 35-12-19.
61. N.D. Cent. Code § 35-27-04 (Supp. 1961).
62. See OSBORNE, MORTGAGES 571 (1951).
63. N.D. Cent. Code §§ 35-27-02 (Supp. 1961), 35-27-19 (Supp. 1961).
64. 71 N.D. 491, 2 N.W.2d 175 (1942).

is prior and in others the lien will prevail. Thus, the State of North Dakota took a mortgage on a one-half section of land in 1927 and the owners in 1930 purchased materials from the plaintiff for the purpose of erecting a house on the mortgaged property. The state contended that it's mortgage attached to the house as it was being constructed and at all times was superior and prior to the mechanic's lien. Intervening between the time of the mortgage and the purchase of the materials, the legislature amended the lien act so as to provide that a mechanic's lien for any original, independant structure or improvement, whether placed upon foundation or not should be prior to any other encumbrance.[65] The state contended further that to give the lien priority would be to impair the mortgagee's contract obligation. The plaintiff asserted that inasmuch as the new house was erected after the amendment, the legislature had the power to change the law and give the lienor this priority without impairing either contractual or vested rights. The court held that the purpose of the statute was to intervene in favor of the lienor to give him security for the fruits of his labor and that to give him priority as to the house alone in no way affected or diminished the interest of the mortgagee. He had what he started with and to give him the additional security of the improvement would be to award the mortgagee a windfall and deprive the materialman of any security whatsoever. The court stated further that the statute operates as though it were an agreement between the landowner and the materialman to the effect that the building should remain personal property. It thus prevents annexation as against the claim of the mortgagee, to which all other types of accessions insure.

We can thus see that as to a complete and independent structure or improvement, North Dakota adheres to the latter rule enunciated above. By implication or otherwise it can be seen that where the improvement is of such a nature as to injure the interest of the mortgagee if separation should be ordered, the mechanic's lien priority would not arise.[66] In fact, the court stated directly that all annexations that are considered realty would feed the mortgage; the view taken first above. But for this exception, the rule in North Dakota is that a prior

65. N.D. Cent. Code § 35-27-21 (Supp. 1961).
66. See Dunham Lumber Co. v. Gresz, 71 N.D. 491, 2 N.W.2d 175 (1942); James River Lumber Co. v. Danner, 3 N.D. 470, 57 N.W. 343 (1893).

recorded mortgage is superior to a subsequent mechanic's lien.

Generally, if a vendor's security interest is recorded and he has not authorized improvements either expressly or impliedly, his interest is not subject to the lien.[67] However, as noted before, the new act puts an affirmative duty upon the vendor to disclaim any responsibility for the improvement by posting notices within five days after he acquires knowledge.

Section 35-12-12 concerning priorities of mechanic's liens is not present in the new act. The old section provided that a lien obtained under that chapter would have priority as against all other liens or encumbrances as follows: (1) If the lien is for labor, it shall have priority over any other encumbrance filed or docketed subsequent to the commencement of the improvement and (2) if the lien is for materials it shall have priority as against liens filed or docketed subsequent to the filing of the notice of intention. The last subsection (2) is ambiguous when read together with the main body of the section. The main body states that the mechanic's lien shall have priority over *all* encumbrances upon the building and the land as follows, and then goes on to state in subsection two that one lien will have priority over another lien (not other encumbrances) if such subsequent lien is filed or docketed subsequent to the filing of the notice of intention of the first lien. If the section was originally intended to give a mechanic's lien priority over a mortgage under certain conditions, it was never effectual for the courts have held that improvements on existing buildings covered by a mortgage would be for the benefit of the mortgagee and not for the lienor.[68]

VI. CONCLUSION

One can easily see from what has been said that a mechanic's lien act is a very technical and complex piece of legislation. Decisions of other jurisdictions are of little value unless the provisions of the act are identical and then they may not be too reliable.

The new North Dakota Mechanic's Lien Act does not alter the basic type of lien *i.e.*, the Pennsylvania type. However, the exclusion of the provision that the total of the liens shall not exceed the amount of the original contract is significant be-

67. See **Priority of Mechanic's Liens in Iowa**, 45 Iowa L. Rev. 813 (1960).
68. See **Supra** note 67.

cause it shifts the burden of a defaulting contractor from the materialman and subcontractors to the property owner. A new provision allows an owner to withhold so much of the contract price as may be necessary in order to satisfy any ancillary claims for materials. A provision of this type is needed, especially with the absence of the "aggregate lien" section. But there is no question that with respect to these sections the burden of the defaulting contractor and the duty to search for possible lien claimants is shifted to the property owner.

Under the old act the lien attached when the lien claimant filed his notice of intention to perfect the lien. The new statute creates a lien immediately upon furnishing the materials upon the premises. At this point the lien is inchoate and is perfected in the same manner as provided for under the previous law.

The new statute is explicit about who is entitled to a lien, when the lien attaches and the extent and amount of the lien and, when compared to the old, is much easier to read and understand. From a drafting standpoint the old act left much to be desired.

Probably the most significant change in the new law is the deletion of the requirement that the materialman give notice to the owner when he is about to furnish materials. Under this deleted section the owner was always aware of who might claim his property as security for furnishing materials for his improvement. And non-compliance with this section prevented the perfection of the lien. As it now stands, the property owner has the duty to ascertain who the possible claimants might be; a result that seems totally unjustified and appears quite illogical. The materialman always has within his knowledge or can easily secure the name of the owner, but it is quite a different matter when the property owner must be on guard to inform himself of the various suppliers. This is especially true when construction projects are large and suppliers by the score may be involved.

It would be indeed difficult to draft a mechanic's lien law that would contemplate every conceivable question. In many respects the new statute embodies desirable additions and reformations. To the extent that it does not, it reflects the need for the services of the Legislative Research Committee on most types of proposed legislation.

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