# CHAPTER 35-24
# WELL OR PIPELINE CONSTRUCTION LIEN

**35-24-01. Definitions.**

In this chapter unless the context or subject matter otherwise requires:

1. "Construction" means construction, maintenance, operation, or repair.
2. "Contract" means a contract, written or oral, express or implied, or partly express and partly implied, or executory or executed, or partly executory and partly executed.
3. "Drilling" means drilling, digging, torpedoing, acidizing, cementing, completing, or repairing.
4. "Furnish" means sell or rent.
5. "Labor" means work performed in return for wages.
6. "Material" means material, machinery, equipment, appliances, buildings, structures, tools, bits, or supplies but does not include rigs or hoists or their integral component parts except wire lines.
7. "Operating" means all operations in connection with or necessary to the production of oil or gas.
8. "Original contractor" means any person for whose benefit a lien is prescribed under section 35-24-02.
9. "Owner" means a person holding any interest in the legal or equitable title or both to any leasehold for oil or gas purposes, or any pipeline, or that person's agent, and includes purchasers under executory contract, receivers, and trustees.
10. "Person" means an individual, corporation, limited liability company, firm, partnership, or association.
11. "Pipeline" means any pipeline laid and designed as a means of transporting natural gas, oil, or gasoline, or their components or derivatives, and the right of way therefor.
12. "Services" means work performed exclusive of labor, including the hauling of material, whether or not involving the furnishing of material.
13. "Working interest" means interest in oil and gas that may be produced from a well but does not include royalty or overriding royalty interests.

**35-24-02. Who entitled to lien - Amount of lien.**

Any person who shall, under contract with the owner of any leasehold for oil or gas purposes or any pipeline, perform any labor or furnish any material or services used or employed, or furnished to be used or employed in the drilling or operating of any oil or gas well upon such leasehold, or in the construction of any pipeline, or in the constructing, putting together, or repairing of any material so used or employed, or furnished to be used or employed, is entitled to a lien under this chapter, whether or not a producing well is obtained and whether or not such material is incorporated in or becomes a part of the completed oil or gas well, or pipeline, for the amount due that person for the performance of such labor or the furnishing of such material or services, including without limitation transportation and mileage charges connected therewith, and interest from the date the same was due.

**35-24-03. Property subject to lien.**

Liens created under section 35-24-02 extend to:

1. The whole of the leasehold for oil or gas purposes to which the materials or services were furnished, or for which the labor was performed, and the appurtenances thereunto belonging; and
2. All materials and fixtures owned by the owner or owners of such leasehold and used or employed, or furnished to be used or employed in the drilling or operating of any oil or gas well located thereon; and
3. All oil or gas wells located on such leasehold, and the oil or gas produced therefrom, and the proceeds thereof inuring to the working interest therein as such working interest existed on the date such labor was first performed or such material or services were first furnished; or

4. The whole of the pipeline to which the materials or services were furnished, or for which labor was performed, and all buildings and appurtenances thereunto belonging, including, without limiting the generality of the foregoing, gates, valves, pumps, pump stations, and booster stations, and upon all materials and fixtures owned by the owner of such pipeline and used or employed or furnished to be used or employed in the construction thereof.

**35-24-04. Subcontractor's lien.**

Any person who shall, under contract, perform any labor or furnish any material or services as a subcontractor under an original contractor or for or to an original contractor or a subcontractor under an original contractor, is entitled to a lien upon all the property upon which the lien of an original contractor may attach to the same extent as an original contractor, and the lien provided for in this section shall further extend and attach to all materials and fixtures owned by such original contractor or subcontractor to or for whom the labor is performed or material or services furnished and used or employed, or furnished to be used or employed in the drilling or operating of such oil or gas wells, or in the construction of such pipeline.

**35-24-05. Forfeiture or failure of title.**

Forfeiture of a leasehold estate does not impair any lien as to material, appurtenances, and fixtures located thereon and to which said lien has attached prior to forfeiture. If a lien provided for in this chapter attaches to an equitable interest or to a legal interest contingent upon the happening of a condition subsequent, failure of such interest to ripen into legal title or such condition subsequent to be fulfilled does not impair any lien as to material, appurtenances, and fixtures located thereon and to which said lien had attached prior to such failure.

**35-24-06. Notice to purchaser of oil and gas.**

Anything in this chapter to the contrary notwithstanding, any lien claimed by virtue of this chapter insofar as it may extend to oil or gas or the proceeds of the sale of oil or gas is not effective against any purchaser of such oil or gas until written notice of such claim has been delivered to such purchaser. Such notice must state the name of the claimant, the claimant's address, the amount for which the lien is claimed, and a description of the leasehold upon which the lien is claimed. Such notice must be delivered personally to the purchaser or by registered or certified letter deposited in the United States mails. Until such notice is delivered as above provided, no such purchaser is liable to the claimant for any oil or gas produced from the leasehold upon which the lien is claimed or the proceeds thereof except to the extent of such part of the purchase price of such oil or gas or the proceeds thereof as may be owing by such purchaser at the time of delivery of such written notice. Such purchaser shall withhold payments for such oil or gas runs to the extent of the lien amount claimed until delivery of notice in writing that the claim has been paid.

**35-24-07. Rights of subcontractor against contract price.**

Nothing in this chapter may be deemed to fix a greater liability upon an owner in favor of any claimant under an original contractor than the amount for which the owner would be liable to the original contractor; provided, however, that the risk of all payments made to the original contractor is upon the owner after the receipt of notice that a lien is claimed by a person other than the original contractor; and provided further, that an owner does not have the right to offset obligations of the original contractor unless such obligations arise out of the original contract.

**35-24-08. Date lien arises - Preference over other encumbrances.**

The lien provided for in this chapter arises on the date of the furnishing of the first item of material or services or the date of performance of the first labor. Upon compliance with the provisions of section 35-24-11, such lien must be preferred to all other titles, charges, liens, or encumbrances which may attach to or upon any of the property upon which a lien is given by this chapter subsequent to the date the lien herein provided for arises.

**35-24-09. Parity of liens - Exception.**

All liens affixed by virtue of this chapter upon the same property are of equal standing except that liens of persons for the performance of labor are preferred to all other liens affixed by virtue of this chapter.

**35-24-10. Continuing deliveries under single contract.**

All labor performed or materials or services furnished by any person entitled to a lien under this chapter upon the same leasehold for oil and gas purposes or the same pipeline must for the purposes of this chapter be considered as having been performed or furnished under a single contract regardless of whether or not the same was performed or furnished at different times or on separate orders, provided that no more than six months may have elapsed between the date of performance of such labor or the date of furnishing such material or services and the date on which labor is next performed or materials or services are next furnished.

**35-24-11. Contents and filing of statement of lien.**

Every person claiming a lien under this chapter shall file with the recorder of the county in which the leasehold or pipeline, or some part thereof, is situated, a statement verified by affidavit setting forth the amount claimed and the items thereof, the dates on which labor was performed or material or services furnished, the name of the owner of the leasehold or pipeline, if known, the name of the claimant and the claimant's mailing address, a description of the leasehold or pipeline, and if the claimant is a claimant under section 35-24-04, the name of the person for whom the labor was immediately performed or the material or services were immediately furnished. The statement of lien must be filed within six months after the date on which the claimant's labor was last performed or material or services were last furnished under a single contract as provided for in section 35-24-10.

**35-24-12. Recordation of statement of lien.**

Immediately upon receipt of the statement of lien provided for in section 35-24-11, the recorder shall record the statement as a lien against the real property interest which is subject to the lien pursuant to section 35-24-03 and shall keep a record of all lien statements filed in the county, and of any orders or responses relating to orders by the district court. The recorder shall establish and maintain a system for indexing, filing, or recording which is sufficient to enable users of the records to obtain adequate information.

**35-24-13. Bond to indemnify against liens.**

1. Whenever any lien or liens are fixed or attempted to be fixed under the provisions of this chapter, then the owner of the property on which the lien or liens are claimed or the contractor or subcontractor through whom such lien or liens are claimed, or either of them, may file a bond with the recorder of the county in which the property is located as herein provided. Such bond must describe the property on which lien or liens are claimed, must refer to the lien or liens claimed in a manner sufficient to identify them, must be in double the amount of the claimed lien or liens referred to, and must be payable to the party or parties claiming same. Such bond must be executed by the party filing same as principal and by a corporate surety authorized under the laws of this state to execute such bonds as surety and must be conditioned substantially that the principal and surety will pay to the obligees named or their assigns the amounts of the liens so claimed by them with all costs in the event same are proven to be liens on such property.
2. Upon the filing of such bond, the person that posted the bond shall send a notice thereof, together with a copy of the bond, to all obligees named therein, by registered or certified mail addressed to such obligees at the address set forth in their respective claims for lien.
3. Such notice, when mailed, must be filed for record by the recorder, and any purchaser or lender may rely upon the record of such bond and notice in acquiring any interest in said property and is absolutely protected thereby.

4. Such bond, when filed, takes the place of the property against which any claim for lien referred to in such bond is asserted. At any time within the period of time provided in section 35-24-14, any person claiming such lien may sue upon such bond but no action may be brought upon such bond after the expiration of such period. One action upon said bond does not exhaust the remedies thereon but each obligee or assignee of an obligee named therein may maintain a separate suit thereon in any court having jurisdiction.
5. In case the lienholder recovers in a suit upon the bond, the lienholder is entitled to recover a reasonable attorney's fee, to be fixed by the court, which must be taxed as costs in the action.

**35-24-14. Duration of lien - Suit to foreclose.**

Any lien provided for by this chapter may be enforced by civil action in the district court of the county in which the leasehold, or pipeline, or some part thereof, is situated. Such action must be brought within two years from the time of the filing of the lien statement as provided for in section 35-24-11. Any lien statement may be amended by leave of court in furtherance of justice as pleadings may be in any matter except that the amount claimed may not be increased.

**35-24-15. Parties to suit to foreclose.**

In such actions all persons whose liens are filed as herein provided and other encumbrancers may be made parties and the issues must be made and the trials must be conducted as in other civil cases. When such action is brought by any person other than an original contractor, the original contractor through whom such person claims a lien must be made a party defendant and shall at the contractor's own expense defend against the claim and if the contractor fails to make such defense, the owner may make the same at the expense of such original contractor. Until all claims, costs, and expenses are finally adjudicated and defeated or satisfied, the owner is entitled to retain from the original contractor the amount thereof.

**35-24-16. Consolidation of suits to foreclose - Intervention.**

If several actions brought to enforce liens under this chapter on the same property are pending at the same time, the court may order them to be consolidated. Any claimant having filed the claimant's statement of lien as herein provided is entitled to intervene in any pending action brought to enforce a lien on the same property.

**35-24-17. Removal prohibited - Injunction - Lien follows property wrongfully removed.**

When any lien provided for by this chapter has attached to the property covered thereby, it is unlawful for any person to remove such property, or any part thereof, or cause the same to be removed from the land or premises where located at the time such lien attached or otherwise dispose of the same without the written consent of the holder of such lien. In the event such property, or some part thereof, is about to be removed or disposed of in violation of this section, the district court of the county where such property, or any part thereof, is located may upon the verified application of the holder of such lien enjoin all persons alleged in such application to be about to remove or dispose of such property, or some part thereof, from removing or disposing of the same. In the event such property, or any part thereof, has been removed or disposed of in violation of this section, the holder of such lien is entitled in any action to foreclose the same to the appointment of a receiver to take possession of such removed or disposed of property wherever the same may be located within this state; provided, however, that this section does not preclude the appointment of a receiver in actions brought to foreclose liens given by this chapter upon any equitable grounds warranting such appointment. This section does not apply to any lien claims which have been discharged by the filing of a bond as provided by section 35-24-13.

**35-24-18. Sale pursuant to foreclosure.**

In all cases when judgment may be rendered in favor of any person to enforce a lien under the provisions of this chapter, the leasehold, pipeline, or other property must be ordered to be sold as in other cases of sales of real estate or chattels, whichever may apply.

**35-24-19. Allowance of reasonable attorney's fee in foreclosure.**

In any action brought to enforce a lien prescribed by this chapter, the party for whom judgment is rendered is entitled to recover a reasonable attorney's fee, to be fixed by the court, which must be taxed as costs in the action. No costs may be taxed against the owner when the owner has paid into court, at least ten days before trial, the maximum amount of the owner's liability as limited under section 35-24-07.

**35-24-20. Personal action.**

Nothing in this chapter may be construed to impair or affect the right of any person to whom any debt may be due for work performed or materials or services furnished to maintain a personal action against the person liable for such debt.

**35-24-21. Waivers.**

The taking of any note or any additional security by any person given a lien by this chapter does not constitute a waiver of the lien unless made a waiver by express agreement of the parties in writing. The claiming of a lien under this chapter does not constitute a waiver of any other right or security held by the claimant unless made a waiver by express agreement of the parties in writing.

**35-24-22. Assignment of liens and actions.**

All claims for liens and likewise all actions to recover therefor under this chapter are assignable so as to vest in the assignee all rights and remedies herein given subject to all defenses thereto that might be raised if such assignment had not been made. When a statement of lien has been filed as herein provided, such assignment may be made by an instrument in writing filed with the recorder.

**35-24-23. Saving clause - Liberal construction.**

Repealed by omission from this code.