

CONSOLIDATION OF MECHANICS LIEN ACT
R.S.N.W.T. 1988,c.M-7

(Current to: April 19, 2015)

AS AMENDED BY NORTHWEST TERRITORIES STATUTES:

R.S.N.W.T. 1988,c.8(Supp.)

In force July 19, 1993: SI-008-93

S.N.W.T. 1998,c.5

S.N.W.T. 1998,c.17

AS AMENDED BY NUNAVUT STATUTES:

S.Nu. 2011,c.10,s.22

s.22 in force March 10, 2011

This consolidation is not an official statement of the law. It is an office consolidation prepared for convenience only. The authoritative text of statutes can be ascertained from the *Revised Statutes of the Northwest Territories, 1988* and the Annual Volumes of the Statutes of the Northwest Territories (for statutes passed before April 1, 1999) and the Statutes of Nunavut (for statutes passed on or after April 1, 1999).

A copy of a statute of Nunavut can be obtained from the Territorial Printer at the address below. The Annual Volumes of the Statutes of Nunavut and this consolidation are also available online at <http://www.justice.gov.nu.ca/english/legislation.html> but are not official statements of the law.

Any certified Bills not yet included in the Annual Volumes of the Statutes of Nunavut can be obtained through the Office of the Clerk of the Legislative Assembly.

Territorial Printer
Legislation Division
Department of Justice
Government of Nunavut
P.O. Box 1000, Station 550
Iqaluit, NU X0A 0H0

Tel.: (867) 975-6305
Fax: (867) 975-6189
Email: Territorial.Printer@gov.nu.ca

GLOSSARY OF TERMS USED IN CONSOLIDATIONS

Miscellaneous

- c. means "chapter".
- CIF means "comes into force".
- NIF means "not in force".
- s. means "section" or "sections", "subsection" or "subsections", "paragraph" or "paragraphs".
- Sch. means "schedule".
- SI-005-98 means the instrument registered as SI-005-98 in 1998. (*Note: This is a Northwest Territories statutory instrument if it is made before April 1, 1999, and a Nunavut statutory instrument if it is made on or after April 1, 1999 and before January 1, 2000.*)
- SI-012-2003 means the instrument registered as SI-012-2003 in 2003. (*Note: This is a Nunavut statutory instrument made on or after January 1, 2000.*)

Citation of Acts

- R.S.N.W.T. 1988,c.D-22 means Chapter D-22 of the *Revised Statutes of the Northwest Territories, 1988*.
- R.S.N.W.T. 1988,c.10(Supp.) means Chapter 10 of the Supplement to the *Revised Statutes of the Northwest Territories, 1988*. (*Note: The Supplement is in three volumes.*)
- S.N.W.T. 1996,c.26 means Chapter 26 of the 1996 Annual Volume of the Statutes of the Northwest Territories.
- S.Nu. 2002,c.14 means Chapter 14 of the 2002 Annual Volume of the Statutes of Nunavut.

TABLE OF CONTENTS**INTERPRETATION**

Definitions	1	
LIEN FOR WORK, MACHINERY OR MATERIALS		
Agreements	2	
Nature of lien	3	
Attachment of lien	4	(1)
Leasehold estate		(2)
Prior mortgage		(3)
Lien for wages	5	(1)
Estate of spouse		(2)
Holdback	6	
Lien claimed by sub-contractor	7	
Payments in good faith without notice	8	
Posting of payrolls	9	(1)
Form of payroll		(2)
Failure to comply		(3)
Assignments		(4)
Set-off or counterclaim		(5)
Compliance	10	
Liability of owner	11	
Claims against lien holders	12	(1)
Satisfaction of charge		(2)
Settlement of disputes	13	(1)
Amount withheld		(2)
Failure to pay	14	(1)
Effect of payment		(2)
Arbitration of sub-contractor's claim	15	(1)
Appointment of arbitrators		(2)
Decision final		(3)
Appointment by judge		(4)
Removal of property or machinery	16	

REGISTRATION OF LIENS

Registration of lien	17	(1)
Verification of claim		(2)
Claim for wages	18	(1)
Affidavit		(2)
Sufficiency of affidavit		(3)
Claims to be filed as an encumbrance	19	
Deeming provision	20	

Time for registration of lien	21	(1)
Priority of lien		(2)
Time for registration of certain liens	22	

PROCEEDINGS TO REALIZE LIEN

Enforcement of unregistered lien	23	
Expiration of lien	24	(1)
Calculation		(2)
Realizing lien	25	
Joinder	26	(1)
Class action		(2)
Continuance of action		(3)
Sale of land		(4)
Sale of machinery		(5)
Costs		(6)
Ranking of classes of lien holders	27	(1)
Removal of lien		(2)
Annulment of registration		(3)
Hearing		(4)

ASSIGNMENT OF LIEN

Death of lien holder	28	
----------------------	----	--

DISCHARGE OF LIEN

Discharge of lien	29	(1)
Registration of discharge		(2)
Repealed		(3)
Cost of discharge	30	

EXECUTION AGAINST PERSON SUPPLYING MATERIALS

Exemption	31	(1)
Application		(2)

LIENS ON CHATTELS

Sale of chattels	32	(1)
Notice		(2)
Contents of notice		(3)
Application of proceeds		(4)

REGULATIONS

Regulations	33	(1)
Sufficiency of prescribed forms		(2)

MECHANICS LIEN ACT

INTERPRETATION

Definitions

1. In this Act,

"contractor" means a person contracting with or employed directly by the owner for the doing of work or the placing or furnishing of materials or machinery for any of the purposes mentioned in this Act; (*entrepreneur*)

"judge" means a judge of the Nunavut Court of Justice; (*juge*)

"labourer" includes every mechanic, artisan, machinist, miner, builder or other person doing labour for wages; (*ouvrier*)

"owner" includes

- (a) a person having an estate or interest in the lands on or in respect of which work is done or materials or machinery are placed or furnished, at whose request and on whose credit, or on whose behalf or consent or for whose direct benefit the work is done or materials or machinery are placed or furnished, and
- (b) a person claiming under a person referred to in paragraph (a) whose rights are acquired after the commencement of the work or the placing or furnishing of the materials or machinery in respect of which the lien is claimed; (*propriétaire*)

"spouse" has the meaning assigned to it by section 1 of the *Family Law Act*; (*conjoint*)

"sub-contractor" means a person not contracting with or employed directly by the owner for the doing of work or the placing or furnishing of materials or machinery but contracting with or employed by a contractor or under a contractor by another sub-contractor. (*sous-traitant*)

S.N.W.T. 1998,c.17,s.23; S.Nu. 2011,c.10,s.22(3).

LIEN FOR WORK, MACHINERY OR MATERIALS

Agreements

2. No agreement shall be held to deprive a person otherwise entitled to a lien under this Act and not a party to the agreement of the benefit of the lien and the lien shall attach notwithstanding the agreement.

Nature of lien

- 3.** Every labourer, contractor or other person,
- (a) doing work on a building or erection,
 - (b) erecting, furnishing or placing machinery in, on or in connection with a building, erection or mine, or
 - (c) furnishing materials to be used in the construction, alteration or repair of a building or erection,

has, on the building, erection or mine and the lands occupied or enjoyed in connection with the building, erection or mine, a lien for the price of the work, machinery or materials, not exceeding the amount justly due to that person, unless he or she signs an express agreement to the contrary.

Attachment of lien

- 4.** (1) The lien shall attach to the estate and interest of the owner in the building, erection or mine in respect of which the work is done or the materials or machinery are placed or furnished and the land occupied or enjoyed in connection with the building, erection or mine.

Leasehold estate

(2) Where a lien attaches to a leasehold estate or interest, the land itself may also be subject to the lien, with the consent of the owner of the land, if the consent is testified by the signature of the owner on the claim of lien at the time the lien is registered and duly verified.

Prior mortgage

(3) If the land on or in respect of which work is done or materials or machinery are placed or furnished as described in paragraphs 3(a) to (c) is encumbered by a prior mortgage or other charge and the selling value of the land is increased by the work, materials or machinery, the lien under this Act has priority over the mortgage or other charge on the increased value of the land.

Lien for wages

5. (1) Without prejudice to any lien that a labourer may have under section 3 or 4, every labourer who performs labour for wages in the construction, alteration or repair of a building or erection or in the erection or placing of machinery on or in connection with a building, erection or mine has, to the extent of the interest of the owner, on the building, erection or mine and the land occupied or enjoyed in connection with the building, erection or mine, a lien for the wages for that work, not exceeding the wages for 30 days or a balance equal to the wages for 30 days.

Estate of spouse

(2) Where labour is performed in respect of a building, erection or mine on property belonging to the spouse of the person who requested the labour, the lien for wages referred to in subsection (1) attaches to the estate or interest of the spouse in the property as well as to the estate or interest of the person who requested the labour.

Holdback

6. In the absence of a stipulation to the contrary, an owner is entitled to retain 10% of the price to be paid to the contractor for a period of 45 days after the completion of the contract.

Lien claimed by sub-contractor

7. The amount of the lien claimed by a sub-contractor is limited to the amount payable to the contractor or sub-contractor for whom the work was done or the materials or machinery were furnished or placed.

Payments in good faith without notice

- 8.** Subject to section 9,
- (a) payments up to 90% of the price to be paid for the work, machinery or materials referred to in section 3, that are made in good faith by the owner to the contractor, by the contractor to the sub-contractor or by the sub-contractor to another sub-contractor, before the person claiming the lien gives written notice of the claim to the person making the payment, discharge the lien given by this Act for the amount of the payments, but this section does not apply to a payment made for the purpose of defeating or impairing a claim to a lien existing or arising under this Act;
 - (b) in addition to all other rights or remedies given by this Act, a lien operates as a charge, to the extent of 10% of the price to be paid by the owner for the work, machinery or materials referred to in section 3, up to 10 days after the completion of the work or after the delivery of the machinery or materials in respect of which the lien exists, unless written notice is given as provided in paragraph (a); and
 - (c) a lien for wages for 30 days, or for a balance equal to wages for 30 days, to the extent of 10% of the price to be paid to the contractor, has priority over all other liens under this Act and over any claim by the owner against the contractor for or in consequence of the failure of the contractor to complete the contract.

Posting of payrolls

- 9.** (1) No contractor or sub-contractor is entitled to demand or receive any payment in respect of a contract where the contract price exceeds \$500 until the contractor or a person in charge of the works or improvements
- (a) posts at the works or improvements a copy of the receipted payroll from 12 noon to 1 p.m. of the first legal day after pay day; and

- (b) has delivered to the owner or a person acting on behalf of the owner the original payroll containing the names of all labourers who have worked on the works or improvements for the contractor or sub-contractor, with a receipt in full from each labourer with the amounts that were due and the amounts that had been paid to each labourer set opposite the name of the labourer.

Form of payroll

- (2) The payroll referred to in subsection (1) may be in the prescribed form.

Failure to comply

(3) No payment made by the owner without the delivery of the payroll referred to in subsection (1) is valid for the purpose of defeating or diminishing any lien on the property, estate or interest in favour of the labourers listed on the payroll.

Assignments

(4) An assignment by a contractor or sub-contractor of any money due in respect of a contract is not valid against a lien given by this Act.

Set-off or counterclaim

(5) With respect to all liens other than a lien claimed by a contractor, the whole contract price is payable in money and shall not be diminished by any prior or subsequent indebtedness, set-off or counterclaim in favour of the owner against the contractor.

Compliance

10. Substantial compliance only with section 9 is required and no lien is invalidated because of failure to comply with section 9 unless, in the opinion of the Nunavut Court of Justice or a judge adjudicating on the lien under this Act, the owner, contractor, sub-contractor, mortgagee or other person is prejudiced by the failure to comply, and the lien is invalidated only to the extent to which that person is prejudiced, and the Nunavut Court of Justice or judge may allow the affidavit and statement of claim to be amended accordingly. S.Nu. 2011,c.10,s.22(3).

Liability of owner

11. Except as provided in this Act, the lien shall not attach so as to make an owner liable for a greater sum than the sum payable by the owner to the contractor.

Claims against lien holders

- 12.** (1) All persons who
- (a) furnish material to or perform labour for a person having a lien under this Act, in respect of the subject of that lien, and

(b) within 45 days after the material is furnished or the labour performed, notify the lien holder and the owner of the premises to which the lien attaches of an unpaid account or demand against the lien holder for the material or labour,
are entitled, subject to sections 5 and 8, to a charge *pro rata* on any amount payable by the owner under the lien.

Satisfaction of charge

(2) Where the owner pays the amount of a charge referred to in subsection (1) to the person entitled to the charge, the lien shall be deemed to be satisfied in the amount of the payment.

Settlement of disputes

13. (1) A dispute as to the validity or amount of an unpaid account or demand, of which notice is given to the owner under paragraph 12(1)(b), shall be first determined by an action in the Nunavut Court of Justice, or by an arbitration as provided for in section 15, at the option of the person having the unpaid account or demand against the lien holder.

Amount withheld

(2) Pending the proceedings to determine a dispute referred to in subsection (1), the amount of the lien that is in question may be withheld from the person claiming the lien. S.Nu. 2011,c.10,s.22(3).

Failure to pay

14. (1) Where the person primarily liable to the person giving notice under paragraph 12(1)(b) fails to pay the amount awarded within 10 days after the award is made or judgment given, the owner, contractor or sub-contractor may pay the person giving notice the amount awarded out of money due by the owner, contractor or sub-contractor to the person primarily liable for the work done or materials or machinery furnished or placed in respect of which the debt arose.

Effect of payment

(2) A payment referred to in subsection (1) that is made after an award or judgment, or without an arbitration or suit having taken place or a dispute existing, if the debt in fact existed, and to the extent of the debt operates as a discharge for the amount of the payment of the money due by the person making the payment to the person primarily liable.

Arbitration of sub-contractor's claim

15. (1) Where a claim is made by a sub-contractor in respect of a lien on which the sub-contractor is entitled and a dispute arises as to the amount due or payable in respect of the lien, the dispute shall be settled by arbitration.

Appointment of arbitrators

(2) A sub-contractor making a claim under subsection (1) shall appoint one arbitrator, the employer of that person shall appoint one arbitrator and the two arbitrators shall appoint the third arbitrator.

Decision final

(3) The decision of the arbitrators or a majority of them is final and conclusive.

Appointment by judge

(4) If a party to a dispute referred to in subsection (1) refuses or neglects to appoint an arbitrator within three days after receiving written notice requiring him or her to make the appointment, or if the arbitrators appointed fail to agree on the appointment of a third arbitrator, the appointment may be made by a judge.

Removal of property or machinery

16. During the continuance of a lien, no portion of the property or machinery affected by the lien shall be removed to the prejudice of the lien and any attempt to remove the property or machinery may be restrained by application to the Nunavut Court of Justice or a judge. S.Nu. 2011,c.10,s.22(3).

REGISTRATION OF LIENS

Registration of lien

17. (1) A claim of lien may be registered in the land titles office for the registration district in which the land described in the lien is located and must state

- (a) the name and residence of the claimant, the owner of the property to be charged and the person for whom and on whose credit the work is done or materials or machinery furnished;
- (b) the time or period within which the work, machinery or materials were or were to be done or furnished;
- (c) the work done or materials or machinery furnished;
- (d) the amount claimed as due or to become due;
- (e) the description of the property to be charged; and
- (f) the date of expiry of the period of credit agreed to by the lien holder for payment for the work, materials or machinery of the lien holder, where credit has been given.

Verification of claim

(2) The claimant or the agent of the claimant shall verify a claim referred to in subsection (1) by an affidavit in the prescribed form. R.S.N.W.T. 1988,c.8(Supp.),s.223.

Claim for wages

18. (1) A claim for wages may include the claims of any number of labourers who choose to unite their claims.

Affidavit

(2) Each claimant under subsection (1) shall verify his or her claim by an affidavit but need not repeat the facts set out in the claim.

Sufficiency of affidavit

(3) An affidavit referred to in subsection (2) that is substantially in compliance with the prescribed form is sufficient.

Claims to be filed as an encumbrance

19. On payment of the proper fee, the Registrar of Land Titles who accepts the claim of lien shall, as provided in the *Land Titles Act*, enter and register the claim as an encumbrance against the land or the estate or interest in land described in the claim and the claim of lien may be described as a mechanics' lien.

R.S.N.W.T. 1988,c.8(Supp.),s.224.

Deeming provision

20. Where a claim is registered under section 19, the person entitled to the lien shall be deemed to be a purchaser for the amount of the lien.

Time for registration of lien

21. (1) A claim for a lien for wages under section 5 or 8 must be registered within 45 days after the last day of labour for which the wages are payable.

Priority of lien

(2) A lien referred to in subsection (1) has the same priority for all purposes after as well as before registration.

Time for registration of certain liens

22. A claim for a lien, other than a lien for wages under section 5 or 8, must be registered

- (a) in the case of a lien in favour of a contractor, before or during the progress of the work done under the contract, or within 45 days after the day the contract is completed, terminated or abandoned;
- (b) in the case of a lien in favour of a sub-contractor, before or during the progress of the work done under the sub-contract, or within 45 days after the day the sub-contract is completed, terminated or abandoned;
- (c) in the case of a lien for materials, before or during the furnishing of the materials, or within 45 days after the day that the last of the materials is furnished or the contract to furnish the materials is terminated or abandoned; or

- (d) in the case of a lien for the supplying or placing of machinery, before or during the supplying or placing of the machinery or within 45 days after the day that
 - (i) the last of the machinery is supplied or placed; or
 - (ii) the contract to supply or place the machinery is terminated or abandoned.

PROCEEDINGS TO REALIZE LIEN

Enforcement of unregistered lien

23. A lien that is not duly registered under this Act ceases to exist on the expiration of the time periods provided in section 21 or 22 unless, in the meantime,

- (a) proceedings are commenced under this Act to realize the claim of lien; and
- (b) a certificate of proceedings is duly registered in the land titles office for the registration district in which the land affected by the lien is located.

R.S.N.W.T. 1988,c.8(Supp.),s.225.

Expiration of lien

24. (1) A lien that is duly registered under this Act ceases to exist

- (a) after 45 days from the last day on which the claim of lien could have been registered under section 21 or 22, or
- (b) after 90 days from the day on which the period of credit expires, where a period of credit is mentioned in a claim of lien registered under section 21 or 22,

unless, in the meantime,

- (c) proceedings are commenced under this Act to realize the claim of lien, and
- (d) a certificate of proceedings is duly registered in the land titles office in which the lien is registered.

Calculation

(2) Where the last day of the 45-day period referred to in section 21 or 22 falls on a Saturday or a holiday, the calculation of the 45-day period referred to in subsection (1) commences from the actual last day. R.S.N.W.T. 1988,c.8(Supp.),s.226.

Realizing lien

25. A lien may be realized in the Nunavut Court of Justice according to the ordinary procedure of the Nunavut Court of Justice. S.Nu. 2011,c.10,s.22(3).

Joinder

26. (1) Any number of lien holders may join in one action.

Class action

(2) An action brought by a lien holder shall be taken to be brought on behalf of all lien holders of the same class who have registered their liens before or within 30 days after the commencement of the action or who, within the 30 days, file with the Clerk of the Nunavut Court of Justice from which the writ issued a statement of their respective claims, entitled in or referring to the action.

Continuance of action

(3) Where a plaintiff dies or refuses or neglects to proceed, any other lien holder of the same class whose claim is registered or whose statement is filed in the manner and within the time required under this Act may be allowed to prosecute and continue the action on the terms that the Nunavut Court of Justice or a judge considers just and reasonable.

Sale of land

(4) Where the Nunavut Court of Justice or a judge orders that the estate and interest charged with the lien is to be sold, the Nunavut Court of Justice or judge may direct the sale to take place at any time after one month from the recovery of judgment and it is not necessary to delay the sale for a longer period than is required to give reasonable notice of the sale.

Sale of machinery

(5) The Nunavut Court of Justice or a judge may also direct the sale of machinery and may authorize its removal.

Costs

(6) When judgment is given in favour of a lien, the Nunavut Court of Justice or judge may add to the judgment the costs of and incidental to registering the lien as well as the costs of the action. S.Nu. 2011,c.10,s.22(3).

Ranking of classes of lien holders

27. (1) Where there are several liens against the same property, each class of the lien holders shall, subject to sections 4, 8 and 12, rank *pari passu* for the amounts of their liens and the proceeds of a sale shall, subject to sections 4, 8 and 12, be distributed among the lien holders *pro rata* according to their classes and rights and they are respectively entitled to execution for any balance due to them after the distribution.

Removal of lien

(2) On application, the Nunavut Court of Justice or a judge may receive security or payment into court in place of the amount of the claim and may, on receiving the security or payment, vacate the registration of the lien.

Annulment of registration

(3) The Nunavut Court of Justice or a judge may annul the registration on any other ground.

Hearing

(4) In a case referred to in subsection (2) or (3), the Nunavut Court of Justice or judge may proceed to hear and determine the matter of the lien and make an order that seems just, and where the claimant has wrongfully refused to sign a discharge of the lien or without just cause claims a larger sum than is found by the Nunavut Court of Justice or judge to be due, the Nunavut Court of Justice or judge may order and adjudge the claimant to pay the costs to the other party. S.N.W.T. 1998,c.5,s.21(2); S.Nu. 2011,c.10,s.22(3).

ASSIGNMENT OF LIEN

Death of lien holder

28. Where a lien holder dies, the right of lien passes to the personal representatives of the lien holder and the right of a lien holder may be assigned by any instrument in writing.

DISCHARGE OF LIEN

Discharge of lien

29. (1) A lien may be discharged by filing a receipt signed by the claimant or an agent of the claimant, duly authorized in writing, acknowledging payment and verified by affidavit.

Registration of discharge

(2) A discharge referred to in subsection (1) shall be numbered and entered by the Registrar of Land Titles in whose office the receipt is filed like other instruments. R.S.N.W.T. 1988,c.8(Supp.),s.227; S.N.W.T. 1998,c.5,s.21(3).

(3) **Repealed, S.N.W.T. 1998,c.5,s.21(4).**

Cost of discharge

30. When there is a contract for the performance of work, as referred to in this Act, the registration of all discharges of liens arising out of the contract shall be at the cost of the contractor unless the Nunavut Court of Justice or a judge orders otherwise. S.Nu. 2011,c.10,s.22(3).

EXECUTION AGAINST PERSON SUPPLYING MATERIALS

Exemption

31. (1) Where a labourer or contractor or other person furnishes or procures materials for use in the construction, alteration or repair of any building, erection or mine at the request of and for another person, the materials are not subject to execution or other process to enforce a debt, other than a debt for the purchase of the materials, that is due by the person furnishing or procuring the materials.

Application

(2) Subsection (1) applies whether or not the materials have been in whole or in part worked into or made part of the building, erection or mine.

LIENS ON CHATTELS

Sale of chattels

32. (1) Every labourer or other person who, by bestowing money or skill and materials on a chattel or thing in the alteration and improvement of its properties or for the purpose of imparting an additional value to it, is entitled to a lien on the chattel or thing for the amount or value of the money or skill and materials bestowed, has, in addition to any other remedies provided by law, the right to sell the chattel or thing, while

- (a) the lien exists; and
- (b) the amount to which the person is entitled remains unpaid for three months after it became due.

Notice

(2) The person selling a chattel or thing under subsection (1) shall give one month's notice by

- (a) advertising in a newspaper published in the locality in which the work was done or, if there is no newspaper published in the locality or within 15 km of the place where the work was done, by posting for one month not less than five notices in the most public places within the locality; and
- (b) leaving a similar notice in writing at the residence or last known place of residence of the owner or by mailing the notice to the owner by registered letter.

Contents of notice

(3) The notice referred to in subsection (2) must state the name of the person indebted, the amount of the debt, a description of the chattel or thing to be sold, the time and place of sale and the name of the auctioneer.

Application of proceeds

(4) A person who sells a chattel or thing under subsection (1) shall

- (a) apply the proceeds of the sale to the amount due to that person and to the costs of advertising and sale; and
- (b) on application, pay over any surplus to the person entitled to it.

REGULATIONS

Regulations

33. (1) The Commissioner, on the recommendation of the Minister, may make regulations

- (a) prescribing a form for a claim of lien;
- (b) prescribing a form for a claim of lien for wages;

- (c) prescribing a form for a claim of lien for wages where there are several claimants;
- (d) prescribing a form for an affidavit verifying a claim of lien under subsection 17(2); and
- (e) prescribing a form for a payroll under subsection 9(2).

Sufficiency of prescribed forms

(2) The prescribed forms shall be deemed to be sufficient for the purposes specified in the forms. S.Nu. 2011,c.10,s.22(2).