

TITLE 45
LIENS, MORTGAGES AND PLEDGES

CHAPTER 8
MISCELLANEOUS LIENS

45-801. VENDOR'S LIEN. One who sells real property has a vendor's lien thereon, independent of possession, for so much of the price as remains unpaid and unsecured otherwise than by the personal obligation of the buyer.

[(45-801) R.S., sec. 3440; reen. R.C. & C.L., sec. 3441; C.S., sec. 6408; I.C.A., sec. 44-701.]

45-802. VENDOR'S LIEN -- WAIVER. Where a buyer of real property gives to the seller a written contract for payment of all or part of the price, an absolute transfer of such contract by the seller waives his lien to the extent of the sum payable under the contract, but a transfer of such contract, in trust to pay debts, and return the surplus, is not a waiver of the lien.

[(45-802) R.S., sec. 3441; reen. R.C. & C.L., sec. 3442; C.S., sec. 6409; I.C.A., sec. 44-702.]

45-803. VENDOR'S LIEN -- EXTENT. The liens of vendors and purchasers of real property are valid against every one claiming under the debtor, except a purchaser or encumbrancer in good faith and for value.

[(45-803) R.S., sec. 3442; reen. R.C. & C.L., sec. 3443; C.S., sec. 6410; I.C.A., sec. 44-703.]

45-804. LIEN OF PURCHASER OF REAL PROPERTY. One who pays to the owner any part of the price of real property, under an agreement for the sale thereof, has a special lien upon the property, independent of possession, for such part of the amount paid as he may be entitled to recover back, in case of a failure of consideration.

[(45-804) R.S., sec. 3444; reen. R.C. & C.L., sec. 3445; C.S., sec. 6411; I.C.A., sec. 44-704.]

45-805. LIENS FOR SERVICES ON OR CARING FOR PROPERTY. (a) Every person who, while lawfully in possession of an article of personal property, renders any service to the owner thereof, by labor, or skill, employed for the protection, improvement, safekeeping, or carriage thereof, has a special lien thereon, dependent on possession, for the compensation, if any, which is due him from the owner, for such service. If the liens as herein provided are not paid within sixty (60) days after the work is done, service rendered or materials supplied, the person in whose favor such special lien is created may proceed to sell the property at a public auction after giving ten (10) days' public notice of the sale by advertising in some newspaper published in the county where the property is situated, or if there is no newspaper published in the county then by posting notices of the sale in three (3) of the most public places in the county for ten (10) days previous to such sale. The person shall also send the notice of auction to the owner or owners of the property and to the holder or holders of a perfected security interest in the property as provided in subsection (c) of this section. The person who is

about to render any service to the owner of an article of personal property by labor or skill employed for the protection, improvement, safekeeping or carriage thereof may take priority over a prior perfected security interest by, before commencing any such service, giving notice of the intention to render such service to any holder of a prior perfected security interest at least three (3) days before rendering such service. If the holder of the security interest does not notify said person, within three (3) days that it does not consent to the performance of such services, then the person rendering such service may proceed and the lien provided for herein shall attach to the property as a superior lien. The provisions of this section shall not apply to a motor vehicle subject to the provisions of sections [49-1809](#) through [49-1818](#), Idaho Code.

(b) Livery or boarding or feed stable proprietors, and persons pasturing livestock of any kind, have a lien, dependent on possession, for their compensation in caring for, boarding, feeding or pasturing such livestock. If the liens as herein provided are not paid within sixty (60) days after the work is done, service rendered, or feed or pasturing supplied, the person in whose favor such special lien is created may proceed to sell the property at a licensed public livestock auction market, or if the lien is on equines, to sell the animals at a sale offered to the public, after giving ten (10) days' notice to the owner or owners of the livestock and the state brand inspector. The information contained in such notice shall be verified and contain the following:

- (1) The time, place and date of the licensed public livestock auction market, or in the case of equines, the time, place and date of the sale offered to the public;
- (2) The name, address and phone number of the person claiming the lien;
- (3) The name, address and phone number of the owner or owners of the livestock upon which the lien has been placed;
- (4) The number, breed and current brand of the livestock upon which the lien has been placed; and
- (5) A statement by the lienor that the requirements of this section have been met.

(c) Notices provided in subsections (a) and (b) of this section shall be made by personal service or by certified or registered mail to the last known address of the owner or owners and any holder of a prior perfected security interest. The proceeds of the sale must be applied to the discharge of any prior perfected security interest, the lien created by this section and costs; the remainder, if any, must be paid over to the owner.

[(45-805) R.S., sec. 3445; am. 1893, p. 67, sec. 1; reen. 1899, p. 181, sec. 1; reen. R.C. & C.L., sec. 3446; C.S., sec. 6412; I.C.A., sec. 44-705; am. 1982, ch. 262, sec. 1, p. 673; am. 1990, ch. 236, sec. 1, p. 672; am. 2012, ch. 341, sec. 1, p. 952; am. 2013, ch. 86, sec. 1, p. 208.]

45-806. LIEN FOR MAKING, ALTERING, OR REPAIRING PERSONAL PROPERTY. Any person, firm or corporation, who makes, alters or repairs any article of personal property, at the request of the owner or person in legal possession thereof, has a lien, which said lien shall be superior and prior to any security interest in the same for his reasonable charges for work done and materials furnished, and may retain possession of the same until the charges are paid. If not paid within two (2) months after the work is done, the person, firm or corporation may proceed to sell the property at public auction, by giving ten (10) days' public notice of the sale by advertising in some news-

paper published in the county in which the work was done; or, if there be no newspaper published in the county, then by posting up notices of the sale in three (3) public places in the town where the work was done, for ten (10) days previous to the sale. The proceeds of the sale must be applied to the discharge of the lien and the cost of keeping and selling the property; the remainder, if any, must be paid over to the owner thereof. Provided that the said person, firm or corporation who is about to make, alter or repair the said property, in order to derive the benefits of this section, must, before commencing said making, altering or repairing, give notice of the intention to so make, alter or repair said property, by registered mail, to any holder of a security interest which is of record in the county where said property is located, or in the office of the secretary of state, and, if a motor vehicle, to any holder of a security interest which may appear on the certificate of title of said vehicle, at least three (3) days before commencing said making, altering or repairing and if notice in writing within said three (3) days be not given by such holder of a security interest notifying said firm or corporation not to perform said services then the said making, altering or repairing may proceed and the prior lien provided for herein attaches to said property.

[(45-806) R.S., sec. 3446; reen. R.C. & C.L., sec. 3447; C.S., sec. 6413; I.C.A., sec. 44-706; am. 1935, ch. 87, sec. 1, p. 152; am. 1967, ch. 272, sec. 12, p. 745; am. 1995, ch. 157, sec. 1, p. 635.]

45-807. LIEN OF FACTOR. A factor has a general lien, dependent on possession, for all that is due to him as such, upon all articles of commercial value that are entrusted to him by the same principal.

[(45-807) R.S., sec. 3447; reen. R.C. & C.L., sec. 3448; C.S., sec. 6414; I.C.A., sec. 44-707.]

45-808. LIEN OF BANKER. A banker has a general lien, dependent on possession, upon all property in his hands, belonging to a customer, for the balance due to him from such customer in the course of the business.

[(45-808) R.S., sec. 3448; reen. R.C. & C.L., sec. 3449; C.S., sec. 6415; I.C.A., sec. 44-708.]

45-809. LIEN FOR COOPERATIVE CORPORATIONS OR ASSOCIATIONS. Any cooperative corporation, as defined by Idaho Code, which provides goods or services to any person, firm or corporation, may set off any equity interest owned by such person, firm or corporation in the cooperative as a means of collecting obligations owed to it for such goods or services. Equity shall include, but not be limited to, membership stock, capital credits, accounts representing capital credits, capital stock or patronage credits. The cooperative shall have a lien on and a continuing perfected security interest in such equity to secure payment of any indebtedness, whenever incurred, owed to the cooperative by the person, firm or corporation receiving goods or services. Such lien and continuing perfected security interest may be enforced by right of offset when it becomes due and payable under the articles or bylaws of the cooperative. The cooperative's right of offset shall not entitle the debtor to set off its obligations against equity interest it owns in the cooperative which are not yet an obligation of the cooperative payable under the article or bylaws of the cooperative.

[45-809, added 1996, ch. 344, sec. 1, p. 1154.]

45-810. HOMEOWNER'S ASSOCIATION LIENS. (1) Whenever a homeowner's association levies an assessment against a lot for the reasonable costs incurred in the maintenance of common areas consisting of real property owned and maintained by the association, the association, upon complying with subsection (2) of this section, shall have a lien upon the individual lot for such unpaid assessments accrued in the previous twelve (12) months.

(2) (a) An association claiming a lien under subsection (1) of this section shall file in the county in which the lot or some part thereof is located a claim containing:

- (i) A true statement of the amount due for the unpaid assessments after deducting all just credits and offsets;
- (ii) The name of the owner, or reputed owner, if known;
- (iii) The name of the association; and
- (iv) A description, sufficient for identification, of the property to be charged with the lien.

(b) When a claim has been filed and recorded pursuant to this section and the owner of the lot subject to the claim thereafter fails to pay any assessment chargeable to such lot, then so long as the original or any subsequent unpaid assessment remains unpaid, such claim shall automatically accumulate the subsequent unpaid assessments without the necessity of further filings under this section.

(c) The claim shall be verified by the oath of an individual having knowledge of the facts and shall be recorded by the county recorder. The record shall be indexed as other liens are required by law to be indexed.

(d) Within five (5) business days after recording a lien on the property, the association shall serve, by personal delivery to the owner or reputed owner or by certified mail to the last known address of the owner or reputed owner, a true and correct copy of the recorded lien.

(3) The lien may be continued in force for a period of time not to exceed one (1) year from the date the claim is filed and recorded under subsection (2) of this section; provided however, that such period may be extended by the homeowner's association for not to exceed one (1) additional year by recording a written extension thereof. For the purpose of determining the date the claim is filed in those cases when subsequent unpaid assessments have accumulated under the claim as provided in subsection (2) of this section, the claim regarding each unpaid assessment shall be deemed to have been filed at the time such unpaid assessment became due. The lien may be enforced by the board of directors acting on behalf of the association.

(4) This section does not prohibit a homeowner's association from pursuing an action to recover sums for which subsection (1) of this section creates a lien or from taking a deed in lieu of foreclosure in satisfaction of the lien.

(5) An action to recover a money judgment for unpaid assessments may be maintained without foreclosing or waiving the lien securing the claim for unpaid assessments. However, recovery on the action operates to satisfy the lien, or the portion thereof, for which recovery is made.

(6) As used in this section, "homeowner's association" means any incorporated or unincorporated association:

- (a) In which membership is based upon owning or possessing an interest in real property; and

(b) That has the authority, pursuant to recorded covenants, bylaws or other governing instruments, to assess and record liens against the real property of its members.

(7) In order to file a lien as provided in this section, a homeowner's association that is an unincorporated association must be governed by bylaws which provide for at least the following:

- (a) A requirement that the homeowner's association hold at least one (1) meeting each calendar year;
- (b) A requirement that notice of any meeting of the homeowner's association be published and distributed to all members of the homeowner's association;
- (c) A requirement that the minutes of all homeowner's association meetings be recorded;
- (d) A method of adopting and amending fees; and
- (e) A provision providing that no fees or assessments of the homeowner's association may be increased unless a majority of all members of the homeowner's association vote in favor of such increase.

[45-810, added 2002, ch. 275, sec. 1, p. 807; am. 2010, ch. 41, sec. 1, p. 72.]

45-811. NONCONSENSUAL COMMON LAW LIENS PROHIBITED. (1) For purposes of this section, "nonconsensual common law lien" means a lien that:

- (a) Is not provided for by a specific state or federal statute;
- (b) Does not depend upon the consent of the owner of the property affected for its existence;
- (c) Is not a court-imposed equitable, judgment or constructive lien; and
- (d) Is not of a kind commonly used in legitimate commercial transactions.

(2) Nonconsensual common law liens are hereby prohibited. The state of Idaho shall not recognize or enforce nonconsensual common law liens. Provided however, that if a county clerk or other recording officer accepts for filing or recording a claim of a nonconsensual common law lien, the clerk or officer shall not be penalized or be liable for such filing or recording.

(3) Petition to release and complaint for penalties.

(a) A person whose real or personal property is subject to a recorded claim of a nonconsensual common law lien may at any time petition the district court of the county in which the claim has been recorded for an order releasing the claim. The petition, which may be heard ex parte, shall be heard as soon as practicable by the court. If it appears from the content of the lien that the lien is a nonconsensual common law lien, the court shall issue an order to the lienor to appear at a date not sooner than fifteen (15) days after the order is made, nor later than thirty (30) days, at which time the lienor must show cause why the claim of lien should not be released. If the lienor does not appear or if the showing of cause is insufficient, the court shall issue an order releasing the claim of lien. If good cause is shown by the lienor that the lien is not a nonconsensual common law lien and has a valid basis, the matter shall be set for further proceedings to determine the validity of the lien.

(b) A complaint for penalties and other relief awarded pursuant to subsection (4) of this section may be filed separately or in conjunction with a petition filed under paragraph (a) of this subsection, but such

complaint may not be filed any later than ninety (90) days after the hearing on the court's order to show cause as provided in paragraph (a) of this subsection.

(c) The filing fee for a petition filed pursuant to paragraph (a) of this subsection shall be thirty-five dollars (\$35.00). The filing fee for a complaint filed pursuant to paragraph (b) of this subsection shall be prescribed by court rule.

(4) Penalties.

(a) Any person who files or records in the office of a county clerk or recorder, or with the secretary of state, any document attempting to create a nonconsensual common law lien against real or personal property, and who has refused or failed to withdraw such document upon written request by the owner of the property, shall be liable to the owner for the sum of not less than five thousand dollars (\$5,000) or for actual damage caused thereby, whichever is greater, together with any court costs and reasonable attorney's fees.

(b) Any lienor or other person claiming interest in property under a recorded nonconsensual common law lien against real or personal property who has refused or failed to record a release or disclaimer of interest in such property upon written request by the owner of the property shall be liable to the owner for the damages, court costs and attorney's fees provided in paragraph (a) of this subsection.

[45-811, added 2016, ch. 170, sec. 2, p. 471.]