

**"CHAPTER 507
LIENS**

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"PART I. LIENS, GENERALLY

Animals, Care of

§507-1 Animals, lien for care of. Whoever pastures, feeds, or shelters animals by virtue of a contract with or by the consent of the owner of the animals for a compensation agreed upon, has a lien on the animals for pasturing, feeding, or sheltering to secure payment thereof with costs. [L 1892, c 9, §1; RL 1925, §2901; RL 1935, §4350; RL 1945, §8751; RL 1955, §193-1; HRS §507-1]

" **§507-2 Enforcement by sale of animals.** If the owner of the animals, after demand and notice in writing that the lien will be enforced has been served upon the owner, fails to pay the amount due for the pasturing, feeding, or sheltering within thirty days, the holder of the lien may cause the animals to be sold at public auction, upon notice of sale being given for fifteen days by publication in a newspaper of general circulation in the county where the animals are pastured, fed, or sheltered. [L 1892, c 9, §2; RL 1925, §2902; RL 1935, §4352; RL 1945, §8752; am L 1955, c 53, §2; RL 1955, §193-2; HRS §507-2; gen ch 1985]

" **§507-3 Excess returned to owner.** Any excess over the amount due, and costs of sale and advertising realized from the sale, shall be paid to the owner of the animals sold. [L 1892, c 9, §3; RL 1925, §2903; RL 1935, §4352; RL 1945, §8753; RL 1955, §193-3; HRS §507-3]

"Dentists, Doctors, Hospitals

§507-4 Liens for services in personal injury cases. Whenever any person recovers judgment for damages for personal injuries to oneself or to another, any hospital which has furnished room, board, supplies, facilities, or accommodations to the injured person in connection with the care, or treatment of such injuries, and any dentist, doctor, physician, or surgeon who has treated the injured person for such injuries, shall have a lien, subject to any common-law lien, on such judgment or the proceeds thereof for the agreed or reasonable value of the services performed or the agreed or reasonable value of the room, board, supplies, facilities, or accommodations furnished, if, before satisfaction of judgment is docketed, the dentist, doctor, physician, surgeon, or hospital files in the office of the chief clerk of the circuit court of the circuit in which the judgment was recovered, or, in the case of a judgment recovered

in a district court, in the office of the clerk of the district court of the circuit in which judgment was recovered, a notice setting forth the agreed or reasonable value of the services performed or the agreed or reasonable value of the room, board, supplies, facilities, or accommodations furnished. In the event the available proceeds of the judgment are insufficient to satisfy in full the liens herein provided, the proceeds shall, after all common-law liens have been satisfied in full, be distributed pro rata between the lienors without any priority among them.

If the judgment debtor so elects the judgment debtor may pay the amount of the judgment to the chief clerk of the circuit or clerk of the district court in which the judgment is rendered and thereby be released from any further obligation to the judgment creditor and to the lienor. In the event the judgment debtor pays the amount of the judgment to the clerk the lien shall attach to the sum so paid.

The liens may be enforced by action of the lienor in the circuit court of the judicial circuit in which judgment was rendered. Jurisdiction is conferred upon the circuit courts to hear and determine all actions brought or instituted to enforce and foreclose the liens, and the proceedings had before the circuit court shall be conducted in the same manner and form as ordinary foreclosure proceedings. [L 1939, c 251, §§1 to 3; RL 1945, §§8757, 8758, 8759; RL 1955, §193-7; HRS §507-4; am L 1970, c 188, §40; am L 1972, c 106, §1(a); gen ch 1985]

Cross References

Deposit in court, see chapter 655.

Rules of Court

Deposit in court, see HRCPC rule 67.

"Bailee

§507-5 Foreclosure by bailee when not otherwise provided.

Whenever any lien has attached to any personal property in the possession of a bailee and is unsatisfied for the period of at least sixty days, and no other procedure is provided by law for the foreclosure of the lien, the bailee shall give public notice by publication for at least four issues of some newspaper published and circulating in the county where the bailee resides, which publication shall not be oftener than once per week. The notice shall particularly describe the personal property to be sold, the date and place of sale, the bailor's

name, if known, and the nature and amount of lien to be satisfied. At the time and place named in the publication the property may be sold and the purchaser shall thereupon succeed to the bailor's title thereto. Out of the proceeds of sale the bailee may retain the amount of the lien, the cost of advertisement and sale, and other expenses incident to the sale. Any balance remaining which is not claimed by the owner of the property sold or the owner's legal representative within thirty days from the date of sale, shall be deposited by the bailee with the director of finance of the State to the credit of the owner and payable at any time to the owner or the owner's legal representatives; provided that the bailee may foreclose the lien in accordance with any written contract with the owner or by a civil action, and the proceedings shall be similar to proceedings to foreclose a mortgage of real property. [L 1919, c 195, §§1, 2; RL 1925, §2912; RL 1935, §4356; RL 1945, §8760; RL 1955, §193-8; am L Sp 1959 2d, c 1, §14; am L 1963, c 114, §1; HRS §507-5; am L 1972, c 106, §1(b); gen ch 1985]

Case Notes

No common law lien for private storage. 25 H. 98, 103.

"Hotels

§§507-6 to 12 REPEALED. L 1978, c 234, §2.

Cross References

For present provisions, see chapter 486K.

"Laundries, Cleaners

§507-13 Lien for laundering, cleaning, dyeing, pressing.

Every person to whom there has been or is delivered any article or lot of articles of wearing apparel or of household use for the purpose of laundering, cleaning, dyeing, or pressing thereof by such person, regardless of the process to be employed, shall have a lien thereon for the amount of all charges incurred for the laundering, cleaning, dyeing, or pressing thereof. This lien shall be prior to all other rights in or to the article or lot of articles of which the holder of the lien is without actual knowledge at the time of delivery thereof to the holder of the lien. [L 1945, c 188, §1; RL 1955, §193-16; HRS §507-13]

" **§507-14 Enforcement; notice; auction.** If any lien has attached to any article or lot of articles under section 507-13

and remains unsatisfied for a period of at least ninety days, the article or lot of articles may be sold in the manner herein provided. All articles received in one lot may be sold as one lot or as separate articles. Any number of articles or lots of articles may be included in the same notice. Notice of the time and place of sale shall be published in a newspaper of general circulation in the county where the articles or lots of articles to be sold have been delivered for laundering, cleaning, dyeing, or pressing, not less than five nor more than ten days prior to the date of sale. The notice shall state the name of each person who delivered an article or lot of articles to be sold, if known, and shall state the amount of lien to be satisfied with respect to the article or lot of articles delivered by the person. As to the nature of the articles or lots of articles to be sold, the notice need merely state, in general terms, with reference to the articles or lots of articles collectively, that they are articles or lots of articles left for the purpose of laundering, cleaning, dyeing, or pressing. At the time and place named in the publication each article or lot of articles may be sold at auction and the purchaser shall succeed to the owner's title thereto. The auction may be conducted by the holder of the lien or any person designated by the holder, and may take place upon the premises of the holder of the lien or other premises as may be designated by the holder. Any person, including the holder of the lien, may bid for and purchase any article or lot of articles offered for sale at the auction. Sections 445-21 to 445-23 and sections 445-25 to 445-36 shall not apply to any auction conducted pursuant to this section. [L 1945, c 188, §2; RL 1955, §193-17; HRS §507-14; gen ch 1985]

" **§507-15 Application of proceeds of sale.** Out of the proceeds of sale pursuant to section 507-14, the holder of the lien may retain the amount of the lien, plus twenty-five per cent thereof to cover expenses incurred in connection with the storage, handling, and sale of the article or lot of articles sold. Any balance remaining of the sale price of each article or lot of articles sold which is not claimed by the owner thereof within thirty days from the date of sale shall be deposited with the director of finance of the State for payment to the owner and shall be disposed of as provided in chapter 523A. [L 1945, c 188, §3; RL 1955, §193-18; am L Sp 1959 2d, c 1, §14; am L 1963, c 114, §1; HRS §507-15; am L 1974, c 75, §9; am L 1985, c 68, §20]

" **§507-16 Redemption prior to sale.** After publication of notice of the time and place of sale of an article or lot of articles pursuant to section 507-14 and prior to the sale

thereof, the article or lot of articles may be redeemed and the lien thereon satisfied only by payment of the amount of all charges incurred for the laundering, cleaning, dyeing, or pressing thereof, plus twenty-five per cent of the amount of the charges to cover all expenses incurred with respect to the article or lot of articles. [L 1945, c 188, §4; RL 1955, §193-19; HRS §507-16]

"Material and Labor Used on Public Works

§507-17 REPEALED. L Sp 1993, c 8, §50.

"Personal Property

§507-18 Lien on personalty for work done and materials furnished. A person who makes, alters, or repairs any article of personal property at the request of the owner of the property, shall have a lien on the property for the reasonable charges for the work done and materials furnished, excluding storage charges, and may retain possession of the property until the charges are paid; provided that the registered owner of a motor vehicle registered pursuant to chapter 286 shall be considered the owner for the purposes of this section. [L 1921, c 131, §1; RL 1925, §2904; am L 1925, c 139, §1; RL 1935, §4371; RL 1945, §8775; am L 1949, c 187, §1; RL 1955, §193-21; am L 1965, c 220, §1; HRS §507-18; am L 1975, c 11, §1; am L 1987, c 151, §1]

Case Notes

A photographer has no lien upon pictures left with photographer from which to make enlarged copies. 11 H. 746.

Loss of lien: Lien dependent upon possession, is not revived by repossession. 25 H. 98.

Installment contract retention of possession by vendor, for repairs on automobile. 32 H. 84.

" **§507-19 Enforcement of lien.** The holder of any lien provided for in section 507-18 may, upon obtaining judgment for the amount due for the repairs, alterations, or improvements, have execution upon the property so held by the holder for the satisfaction of the holder's judgment. The execution shall be issued and returned as in other civil actions. [L 1921, c 131, §2; RL 1925, §2905; RL 1935, §4372; RL 1945, §8776; RL 1955, §193-22; HRS §507-19; gen ch 1985]

" **§507-20 Defense to lien by claimants.** Any person having an interest in the property held by a lienor under section 507-18 may intervene in the action. [L 1921, c 131, §3; RL 1925, §2906; RL 1935, §4373; RL 1945, §8777; RL 1955, §193-23; HRS §507-20; am L 1972, c 106, §1(d)]

Rules of Court

Intervention, see HRCP rule 24.

" **§507-21 [Complaint] in action to enforce lien; allegations.** Where an action is filed under sections 507-18 to 507-22, the plaintiff shall set forth in the plaintiff's complaint that the plaintiff claims a lien upon certain personal property, which the plaintiff shall describe with reasonable particularity. The plaintiff shall also set forth in the complaint the names of all persons known to the plaintiff to have or claim an interest in the property. [L 1921, c 131, §4; RL 1925, §2907; RL 1935, §4374; RL 1945, §8778; RL 1955, §193-24; HRS §507-21; am L 1972, c 106, §1(e); gen ch 1985]

Rules of Court

Pleadings, see HRCP rules 7, 8, 19(c).

" **§507-22 Disputes as to application of proceeds of sale upon execution; jurisdiction of district courts; appeal.** Where a dispute arises as to the application of the proceeds upon the sale under execution of property held by a lienor, the court shall order that the proceeds be paid into court. It shall thereupon determine to or among whom the proceeds shall be paid or divided. Nothing in section 604-5, limiting the jurisdiction of district courts, shall be construed as affecting the adjudication; but an appeal may be taken therefrom as in other civil cases. [L 1921, c 131, §5; RL 1925, §2908; RL 1935, §4375; RL 1945, §8779; RL 1955, §193-25; HRS §507-22; am L 1972, c 106, §1(f)]

Cross References

Deposit in court, see chapter 655.

" **§507-23 Sale of personal property by lien holder.** Notwithstanding sections 507-18 to 507-22, in the event the reasonable charges for the work done and materials furnished do not exceed \$150, the holder of any lien provided for in section 507-18 may, in lieu of obtaining judgment and execution upon the

property so held by the holder, sell the article of personal property upon which the alterations or repairs have been made in the manner hereinafter set forth and apply the proceeds of the sale in satisfaction of the reasonable charges for the work done and materials furnished; provided that the article has been unclaimed for at least three months. The holder of the lien shall give public notice by publication in a newspaper of general circulation in the State, the publication to be not less than ten days prior to the date of sale, and shall notify the owner of the sale by sending a letter by registered mail to the last known address of the owner at least thirty days prior to the sale. The notice shall particularly describe the article to be sold, the name of the owner, the date and place of the sale, and the amount of the reasonable charges. At the time and place so published, the article may be sold and the purchaser shall succeed to the title of the owner. Out of the proceeds of the sale the holder of the lien may retain the amount of the reasonable charges, the cost of publication and other expenses incident to the sale. Any balance remaining unclaimed by the owner of the article within thirty days from the date of the sale shall be deposited with the director of finance and shall be payable to the owner of the article if claimed within one year from the date of the sale. If no claim is made for the balance within that period, the moneys so deposited shall become a government realization. [L 1957, c 311, §1; am L 1959, c 204, §1; am L Sp 1959 2d, c 1, §14; am L 1963, c 114, §1; Supp, §193-26; HRS §507-23; am L 1972, c 85, §1; gen ch 1985]

Cross References

Mailing, see §1-28.

"PART II. MECHANIC'S AND MATERIALMAN'S LIEN

Hawaii Legal Reporter Citations

Held unconstitutional. 78-2 HLR 78-999.

§507-41 Definitions. As used in this part, unless a definite meaning clearly appears from the context:

"Furnishing of materials" includes supplying of: materials incorporated in the improvement or substantially consumed in construction operations or specially fabricated for incorporation in the improvement; building materials used during construction but not remaining in the improvement, diminished by the salvage value of the materials; transportation to bring the materials to the site of the improvement; tools, appliances, or

machinery (but not including hand tools), used during the construction but not in excess of the reasonable rental value for the period of actual use.

The delivery of materials to the site of the improvement or the delivery of materials other than to the site of the improvement, but upon the written statement by the general contractor or the contractor's agents that the materials are for a particular improvement, shall be prima facie evidence of incorporation of the materials in the improvement.

"General contractor" means a person who enters into a contract with the owner for the improvement of real property.

"Improvement" includes the construction, repair, alteration of or addition to any building, structure, road, utility, railroad, or other undertaking or appurtenances thereto, and includes any building, construction, erection, demolition, excavation, grading, paving, filling in, landscaping, seeding, sodding, and planting, or any part thereof existing, built, erected, placed, made, or done on real property, or removed therefrom, for its benefit.

"Labor" includes professional services rendered in furnishing the plans for or in the supervision of the improvement.

"Lien" means the lien provided in section 507-42.

"Owner" means the owner of the real property or of any interest therein who enters into a contract for the improvement thereof and who may be the owner in fee of the real property or of a lesser estate therein, the lessee for a term of years therein, the person having any right, title, or interest in the real property which may be sold under legal process, or a vendee in possession under a contract for the purchase of the real property or of any such right, title or interest therein.

"Person" includes natural persons, partnerships, corporations, firms, unincorporated associations, joint ventures, and any other party recognized at law as a person.

"Visible commencement of operations" means the first actual work of improvement as part of a continuous operation, or the first delivery to the site of materials to be used as part of a continuous operation in the improvement, of such manifest and substantial character as to notify interested persons that the real property is being improved or is about to be improved. [L 1949, c 241, §1; RL 1955, §193-40; HRS §507-41; gen ch 1985]

Revision Note

Definitions rearranged.

Sale of appliances. 77-1 HLR 77-199.

" **§507-42 When allowed; lessees, etc.** Any person or association of persons furnishing labor or material in the improvement of real property shall have a lien upon the improvement as well as upon the interest of the owner of the improvement in the real property upon which the same is situated, or for the benefit of which the same was constructed, for the price agreed to be paid (if the price does not exceed the value of the labor and materials), or if the price exceeds the value thereof or if no price is agreed upon by the contracting parties, for the fair and reasonable value of all labor and materials covered by their contract, express or implied.

Where the terms of a lease, contract of sale, or instrument creating a life tenancy require the improvement of the real property, the interest of the lessor, vendor, or remainderman in the improvement and the land upon which the same is situated shall likewise be subject to the lien, and any provision for forfeiture or other penalty against the lessee, vendee, or life tenant in case of the filing of a mechanic's or materialman's lien or actions to enforce the same, shall not affect the rights of lienors. [L 1888, c 21, §1; RL 1925, §2891; am L 1929, c 207, §1; am L 1933, c 143, §1; RL 1935, §4365; RL 1945, §8769; am L 1949, c 241, §2; am L Sp 1949, c 28, §1; RL 1955, §193-41; HRS §507-42]

Cross References

Condominiums, see §§514A-16 and 514B-43.

Attorney General Opinions

Public works not subject to lien. Att. Gen. Op. 72-13.

Case Notes

Where plaintiff did not provide to homeowners the lien disclosure notices before or upon signing of the contract or prior to the commencement of the work as required by §444-25.5(a), plaintiff's conduct was an unfair or deceptive practice that rendered its contract void and unenforceable at law or in equity under §480-12; thus, plaintiff was not entitled to a lien upon homeowners' property under this section, and trial court did not err in dismissing its lien application. 111 H. 349, 141 P.3d 996 (2006).

Abandonment.

Work by contractor does not work a forfeiture of rights of subcontractor to lien for materials furnished prior to abandonment. 10 H. 151, 157.

Allowed when; nature of lien.

Though the lien is given by statute, and not by contract, it is dependent upon and does not, exist in absence of contract. 14 H. 448, 451; 16 H. 23; 20 H. 693, 696-698; 22 H. 765, 769; 24 H. 181, 188. It is necessary to allege and prove the contractual relation. 16 H. 23.

As §480-12 voided the contract between homeowner and contractor, §480-12 and this section precluded the imposition of a lien under this section upon the homeowner's property by contractor who failed to comply with the requirements of §444-25.5. 96 H. 365 (App.), 31 P.3d 222.

Construction.

Statute strictly construed and all the provisions of the statute must be strictly complied with. 9 H. 23, 25; 10 H. 151, 159; 25 H. 214, 218. But remedial portions should be liberally construed. 22 H. 765; 24 H. 39, 43; 40 H. 325. See 38 H. 372.

Estoppel.

Materialman who is surety on contractor's bond to owner not estopped to assert materialman's lien. 9 H. 364. Materialman's lien cannot be destroyed by provisions in contract between owner and contractor against liens of which he was not a party and had no notice. 20 H. 693. Materialman does not waive lien by charging items on materialman's books to subcontractor. 14 H. 448. Assignment to materialman by the contractor of all moneys payable under the contract, accepted by the owner "subject to all the conditions of the contract," does not estop the materialman from enforcing lien. 10 H. 151.

Materialman who fails to warn homeowner of financial precariousness of contractor, when estopped. 56 H. 251, 535 P.2d 129.

Actual or visible improvements must exist before lien can attach. 62 H. 13, 608 P.2d 405.

Cited: 59 H. 612, 585 P.2d 1265.

Liability of owner.

Not personally liable in assumpsit upon implied promise of subcontractor or materialman for materials furnished the contractor. 16 H. 23. Payment, waiver. 32 H. 913.

Liability of vendor.

Upon breach of covenant to pay by vendee. 40 H. 325.

Lien.

Cannot exist or be enforced against a structure separately from the interest of the owner in the land. 20 H. 180; 21 H. 585, 598. Nor can it exist unless the improvement is authorized by the owner. 20 H. 693, 697-698.

When State is vendor, second paragraph of section making interest of vendor subject to lien is not applicable. 51 H. 87, 451 P.2d 809.

Fact that project site is owned by government in fee simple does not make private leasehold interest thereon immune from lien. 52 H. 298, 475 P.2d 362.

Enforcement by trustees of employee benefit trust fund upheld. 63 H. 566, 633 P.2d 1106.

Preparers of architectural and engineering plans entitled to mechanic's lien to the extent of the value of their services which are incorporated into the final structure. 3 H. App. 58, 641 P.2d 337.

Lien accrues.

In favor of subcontractors and materialmen independently of the original contractor and not by way of subrogation to the rights of the latter. 10 H. 151, 153, 154; 20 H. 693, 695. A person furnishing materials to a subcontractor comes within the statute. 14 H. 448. Lien runs to any person furnishing labor or materials. 20 H. 693, 695. Except a mere trespasser. 16 H. 23; 20 H. 693, 697-698.

Materials.

No lien for materials furnished for but not incorporated in the building. 10 H. 151. Cash advanced is neither labor nor materials. 14 H. 448. Proof that materials were ordered for and delivered to the building is prima facie evidence that they were put into the building. 10 H. 151, 158; 12 H. 356. Lien cannot be enforced for lienable items under entire contract which includes non-lienable items unless price severable. 16 H. 418, 425, rev'd on other grounds, 205 U.S. 340.

Owner.

Includes a lessor whose lease requires the erection of buildings although the lessee contracted for the building. 22 H. 765; 24 H. 181, 188. Lessor and lessee both owners. 22 H. 765; 24 H. 181, 188. Lien attaches to equitable interests. 30 H. 882.

Where a lease requires the construction of improvements by a lessee, the lessor's interest in the property is subject to mechanic's and materialman's liens. 2 H. App. 339, 631 P.2d 1211.

Preemption.

ERISA does not explicitly or implicitly preempt this section; section may thus be used by laborers' trust fund to collect delinquent trust fund contributions. 81 H. 487, 918 P.2d 1143.

Price.

"For the price agreed upon", see 10 H. 151, 154-155. The amount for which the property may be charged with a lien in favor of a subcontractor or materialman is not limited to the amount payable by the owner to the contractor. 10 H. 151, 153-154; 14 H. 448, 452, 453.

Where lien applicant contended that the value of the work exceeded the contract price, there was no merit in applicant's complaint that the court cut short applicant's presentation of evidence on the amount expended in doing the work. 2 H. App. 90, 626 P.2d 204.

Remedy.

Materialman may rely upon lien given by law as well as upon the personal liability of the subcontractor and in absence of any showing to the contrary it is presumed that he intended to avail himself of both remedies so far as necessary. 14 H. 448.

Surety.

Relieved by voluntary payments by owner, when. 32 H. 913.

" **§507-43 Filing notice, contents.** (a) Requirements. Any person claiming a lien shall apply therefor to the circuit court of the circuit where the property is situated. Such "Application For A Lien" shall be accompanied by a written "Notice Of Lien" setting forth the alleged facts by virtue of which the person claims a lien. A copy of the Application and Notice shall be served in the manner prescribed by law for service of summons upon the owner of the property and any person with an interest therein and upon the party or parties who contracted for the improvements if other than the owner of the property or any person with an interest therein. If any person entitled to notice cannot be served as herein provided, notice may be given the person by posting the same on the improvement. The Application shall set forth the amount of the claim, the labor or material furnished, a description of the property sufficient to identify the same, and any other matter necessary

to a clear understanding of the claim. If the claim has been assigned, the name of the assignor shall be stated. The Application shall specify the names of the parties who contracted for the improvement, the name of the general contractor and the names of the owners of the property and any person with an interest therein. The Application may (but need not) specify the names of the mortgagees or other encumbrancers of the property, if any, and the name of the surety of the general contractor, if any.

The Application and Notice shall be returnable not less than three nor more than ten days after service. On the return day, a hearing shall be held by the court to determine whether probable cause exists to permit the lien to attach to the property. Any person to whom notice is required to be given shall be permitted to offer testimony and documentary evidence on the issue of whether probable cause exists to permit the lien to attach. If the person who contracted for the improvement from which the requested lien arises claims a set-off against the lienor or if any person to whom notice is required to be given otherwise disputes the amount of the requested lien, the court shall hear and receive all admissible evidence offered and shall only permit the attachment of a lien in the net amount which the court determines is the reasonable probable outcome of any such dispute. The return day hearing may be continued at the order of the court so that the entire controversy need not be determined on the originally scheduled return day. The lien shall not attach to the property until the court finds probable cause exists and so orders. No such order shall be entered before the Application and Notice have been served on the party contracting for the improvement, the general contractor and the owner of the property, and they were given an opportunity to appear at the hearing.

(b) Time for filing. The Application and Notice shall be filed not later than forty-five days after the date of completion of the improvement against which it is filed. Where title to the property involved, or any portion thereof, is registered in the land court and the lien is not claimed solely against the lessees' interest in one or more leasehold time share interests as described in section 501-20, it shall be incumbent upon the lienor to file a certified copy of the Order Directing Lien To Attach in the office of the assistant registrar of the land court within seven days after the entry thereof in order to preserve the lienor's rights against subsequent encumbrancers and purchasers of the property.

(c) Joint owner. If the fee title to the land involved is held in joint or common ownership or as an estate by the entirety, service upon one of the owners of the Application and

Notice in accordance with this section shall be deemed service upon all of the owners. Likewise, if the parties who contracted for the improvement, if other than the owner of fee title to the property involved, hold their interest in the premises in joint or common ownership, or as an estate by the entirety, service upon one of the parties of the Application and Notice in accordance with this section shall be deemed service upon all of the parties.

(d) Owner acting through attorney-in-fact. In cases where materials have been furnished or labor was performed at the request, or upon the order, of a person acting under a duly executed and acknowledged power of attorney from the owner and (1) the power of attorney has not been revoked, or (2) the power of attorney has been revoked subsequent to the furnishing of materials and labor upon request or order and the owner cannot be found within the State, service of the Application and Notice upon the person acting under the power of attorney shall be deemed service upon the owner.

(e) Duration of lien. The lien shall expire three months after the entry of the Order Directing Lien to Attach unless proceedings are commenced within that time to collect the amount due thereon by enforcing the same.

(f) Date of completion, notice of. The term "date of completion" as used in this section means the time when the owner or the general contractor for the improvement completes the publication of a notice that the improvement has been completed or has been abandoned and an affidavit of the publication, together with a copy of the notice has been filed in the office of the clerk of the circuit court where the property involved is situated; provided that notice of completion shall not be effective for any purpose unless prior to the notice there has been substantial completion of the improvement or the improvement has been actually abandoned; and provided further that the notice shall not be published by the contractor until after the contractor has first made written demand upon the owner to publish the notice and the owner has failed to publish the notice within five days from the date of the demand. The publication of the notice by the contractor or the owner shall not be construed as an admission by either that the improvement has been satisfactorily completed. The notice required herein shall be published twice, seven days apart, in a newspaper of general circulation, printed and published in the county in which the property involved is situated, and the publishing newspaper shall promptly file the affidavit of publication above mentioned in the office of the clerk.

(g) Failure to file or publish notice. If a valid notice of completion is not published and filed within one year after

the actual completion or abandonment of the improvement the "date of completion" shall be deemed to be one year after actual completion or abandonment. [L 1888, c 21, §2; am L 1909, c 97, §1; RL 1925, §2892; RL 1935, §4366; am L 1935, c 150, §1; am L 1939, c 34, §1; am L 1941, c 282, §1; RL 1945, §8770; am L 1949, c 241, §3; RL 1955, §193-42; HRS §507-43; am L 1972, c 106, §1(g), (h); am L 1974, c 113, §3; am L 1975, c 181, §§1 to 5; gen ch 1985; am L 1998, c 219, §10]

Rules of Court

Proof of publication, see RCC rule 11.

Recordation, see RLC rule 62(b).

Service of summons, see HRCF rule 4.

Case Notes

When lien attaches: Lien does not exist until notice thereof is filed. 9 H. 23. Lien does not exist until notice is filed. 12 H. 356. A copy of notice served upon the owner. 24 H. 74, 78; 25 H. 214, 216; 32 H. 913, 915. Lien does not relate back to date materials furnished. 9 H. 23, 25; 24 H. 74.

Notice of lien contents: Should show the class or kind or nature of the materials. 10 H. 151. For sufficiency of description of materials, see 24 H. 181. Must describe the property upon which the lien is claimed. 20 H. 180. Land must be so described that prospective purchasers and creditors may be enabled to identify it. 21 H. 585. Insufficient to describe structures only. 20 H. 180. Description held insufficient. 21 H. 585. Defects in notice cannot be cured by amendment after expiration of period named in the statute. 21 H. 585, 588.

Building deemed completed for purpose of filing notice of lien, when. 12 H. 358; 21 H. 119, 736. Abandonment by contractor does not prevent materialmen from filing lien within statutory period after completion of building. 12 H. 358.

Proceedings have commenced when declaration filed and process issued with intent that service be made promptly. 14 H. 448; 52 H. 298, 475 P.2d 362.

Conveyance by owner to wife for purpose of defeating materialman is void, as against lien, proper notice of which is filed. 23 H. 21.

Failure to file copy of notice in time cured by stipulation, waiver. 38 H. 372, 431.

Legislative policy as to time for filing liens, immaterial in interpreting provision in contractor's bond as to time for suit against surety when bond did not refer to lien statute. 49 H. 578, 599, 426 P.2d 298.

Provision that publication of notice is not an admission of satisfactory completion, referred to. 49 H. 578, 596, 426 P.2d 298.

Filing "not later than forty-five days after the date of completion" construed. 50 H. 540, 445 P.2d 109.

Courts' determinations in an application for mechanic's lien have no effect upon the determination of any issue in action to enforce the lien. 58 H. 104, 565 P.2d 980.

Order granting application for mechanic's lien and directing attachment of such lien is interlocutory. 58 H. 104, 565 P.2d 980.

Notice provision (prior to 1974 amendment) was held directory rather than mandatory and failure to serve certain parties did not invalidate lien as to those served. 59 H. 612, 585 P.2d 1265.

Return date for application and notice is mandatory. 68 H. 228, 708 P.2d 140.

Person claiming set-off against lienor has burden of establishing set-off of a given amount. 2 H. App. 90, 626 P.2d 204.

Intermediate court of appeals is not appropriate body to determine whether particular newspaper is one of general circulation. 3 H. App. 43, 641 P.2d 328.

Cited: 31 H. 446, 451.

Hawaii Legal Reporter Citations

Burden of proof to establish lien. 78-2 HLR 78-993.

Assignment of lien. 79 HLR 79-0901.

" **§507-44 Record in circuit courts.** The clerks at the circuit courts shall keep in their respective offices a book called "Notice of completion record" in which shall be entered a memorandum of each notice of completion filed and the date of filing, arranged alphabetically in the names of the owners. There shall also be kept a "mechanics' lien record" in which a memorandum of each Application and Notice filed shall be entered, arranged alphabetically in the names of the claimants and showing the amount of the lien or claim, the date of filing the Application and Notice, the date of the entry of the Order Directing Lien To Attach, the date of withdrawal, discharge or cancellation of the Application and Notice or of a lien which has been directed to attach, and any other matters deemed necessary. [L 1888, c 21, §3; RL 1925, §2893; RL 1935, §4367; RL 1945, §8771; am L 1949, c 241, §4; RL 1955, §193-43; HRS §507-44; am L 1975, c 181, §6]

Case Notes

Cited: 23 H. 744, 745.

" **§507-45 Discharge of lien.** Any mechanics' and materialmen's lien may be discharged at any time by the owner, lessee, principal contractor or intermediate subcontractor filing with the clerk of the circuit court of the county in which the property is located or with the assistant registrar of the land court (if registered land is affected except when the lien attaches solely to the interest of the lessees in one or more leasehold time share interests as described in section 501-20), cash or a bond for twice the amount of the sum for which the claim for the lien is filed, conditioned for the payment of any sum for which the claimant may obtain judgment upon the claimant's claim. [L 1961, c 179, §1; Supp, §193-43.1; HRS §507-45; am L 1971, c 55, §1; gen ch 1985; am L 1998, c 219, §11]

Case Notes

Applied. 51 H. 242, 456 P.2d 222.

Cash put up under section may be transferred to pending assumpsit action; may be substituted for garnished funds, when. 51 H. 242, 456 P.2d 222.

" **§507-46 Priority, record of; satisfaction.** The lien shall relate to and take effect from the time of the visible commencement of operations for the improvement; it shall rank equally in priority subject to the provisos hereinafter contained with all other mechanics' and materialmen's liens and shall have priority over all other liens of any nature, except liens in favor of any branch of the government and mortgages, liens or judgments recorded or filed prior to the time of the visible commencement of operation; provided that all liens for wages for labor performed in the completion of the improvement, but not exceeding \$300 for each claimant, shall have priority as a class over all other mechanics' and materialmen's liens where claims are filed by:

- (1) The person who actually performed the labor;
- (2) The person's legal representative in the event of death or incapacity; or
- (3) The director of labor and industrial relations pursuant to chapter 371;

and provided further that where a mortgage is recorded prior to the date of completion, and all or a portion of the money advanced under and secured by the mortgage is thereafter used for the purpose of paying for the improvement, the mortgagee

shall be entitled, to the extent of the payments, to priority over liens of mechanics and materialmen, but no such priority shall be allowed unless the mortgage recites that the purpose of the mortgage is to secure the moneys advanced for the purpose of paying for the improvement in whole or in part. Payments made in good faith to the general contractor for such purposes shall be presumed to have been used for the purpose of paying for the improvement. Whenever the lien or claim of lien herein provided is satisfied (other than by the limitations expressed in section 507-43), a written notice thereof shall, at the expense of the lienee, be filed with the clerk of the circuit court, which shall be noted in the mechanics' lien record, and if title to the land involved is registered in the land court and the lien did not attach solely to the interest of the lessee in one or more leasehold time share interests, it shall also be filed in the office of the assistant registrar of the court. [L 1888, c 21, §4; RL 1925, §2894; am L 1933, c 143, §3; RL 1935, §4368; RL 1945, §8772; am L 1949, c 241, §5; am L 1951, c 95, §1; RL 1955, §193-44; HRS §507-46; gen ch 1985; am L 1998, c 219, §12; am L 2005, c 22, §35]

Case Notes

Priority of claim where garnishment and mechanic's lien are involved. 9 H. 23.

Satisfaction of debt occurs in the order of charges accruing whether covered by notice of lien or not. 10 H. 273.

Construction mortgage lien had priority over mechanic's lien to extent of principal indebtedness devoted to construction costs under building and loan agreement, but no priority in payment of interest claim. 66 H. 32, 657 P.2d 1004.

Cited: 12 H. 358; 23 H. 744.

" **§507-47 Demand; enforcement; foreclosure; other attachment.** After demand and refusal of the amount due or upon neglect to pay same upon demand, the lien may be enforced by action filed in the circuit court of the circuit in which the property is situated. The demand may be included in the Application and Notice and when so included it shall not be necessary to make separate demand upon any other person. The complaint, in addition to setting forth a claim in the nature of assumpsit, may pray for the foreclosure of the lien as to which notice has been filed and may pray for any incidental relief according to the usual practice of courts of equity and according to this section in enlargement thereof. The owner or the owner's assigns on whose property the lien has attached may file a third-party action against a licensed contractor whom the

owner has paid for improvements as provided for in section 444-28(g). All proceedings concerning the same improvement shall, unless good reason otherwise appears, be consolidated for trial and the court may order publication of notice of the pendency of the action. Any person having or claiming an interest in any such proceeding or in the property, including other claimants, lienors, encumbrancers, sureties, indemnitors and the contractors license board may be joined as parties, may be interpleaded or may be permitted to intervene, under such orders as the court may enter. Interlocutory and final decrees for the foreclosure of the liens, for deficiency judgments, and relief against the parties liable therefor, and fixing the priority of liens between the mechanics and materialmen as a group and other parties having liens against or interests in the property shall be made and entered as near as may be in accordance with the practice on foreclosure of mortgages. If the property or proceeds realized upon the foreclosure sale are insufficient to satisfy all mechanic's and materialmen's liens filed against the same, the property or proceeds shall, after satisfaction of liens for wages for labor entitled to priority under section 507-46, be divided pro rata among the liens according to the principal amounts of the liens, without regard to the order or priority in which the respective Applications and Notices have been filed or the respective actions or interventions commenced.

The court having jurisdiction of the action to foreclose the lien shall have all of the powers pertaining to courts of equity, and in addition may direct the issuance of a writ of attachment or execution upon the motion of any party against the property of any other party, in the same manner as is provided in chapter 651 provided that the writ shall only issue where the claim upon which the motion therefor is based is upon a contract, express or implied, between the parties. In addition to costs of the action the court may allow any fee or fees for legal services rendered by the attorneys for any of the parties, and apportion the same as costs for payment by and between the parties or any of them, all as to the court seems equitable in the light of the services performed and the benefits derived therefrom by the parties respectively. [L 1888, c 21, §5; RL 1925, §2895; am L 1933, c 143, §4; RL 1935, §4369; RL 1945, §8773; am L 1949, c 241, §6; RL 1955, §193-45; HRS §507-47; am L 1972, c 106, §1(i), (j); am L 1975, c 181, §7; gen ch 1985]

Rules of Court

Claim for relief, see HRCF rule 8(a).

Execution, see HRCF rule 69.

Joinder of parties, interpleader, intervention, consolidation, etc., see HRCF rules 20, 22, 24, 42(a).

Case Notes

Trial court did not abuse discretion in denying defendants' motion for attorneys' fees under §607-14 where lien application was brought pursuant to this section, the mechanic's lien statute, and, as such, was not a common law action, and the action was for the attachment of a mechanic's lien to the subject property, not for damages based upon the underlying contract; thus, the action was not in the nature of assumpsit. 111 H. 349, 141 P.3d 996 (2006).

Actions.

On failure to serve party necessary to foreclosure, action will be viewed as one in assumpsit. 48 H. 306, 402 P.2d 440.

Attorney's fees.

Attorney's fees. 48 H. 306, 402 P.2d 440. Attorney's fee, scope of section in providing for. 49 H. 578, 426 P.2d 298. Section does not authorize award of attorneys' fees generated in arbitration proceedings or in obtaining a judgment confirming arbitrator's award. 5 H. App. 315, 690 P.2d 1310.

Claims.

Third party beneficiary claims not within scope of this section. 49 H. 578, 426 P.2d 298.

Defenses.

Any matter that would constitute a good defense to an action of assumpsit on the account which is the basis of the lien. 25 H. 347. If the account was not due when the foreclosure suit was commenced, there can be no recovery. 25 H. 347. Voluntary conveyance of the lot by owner to wife through intermediary for purpose of defeating rights of materialmen is void and it is not necessary to secure the cancellation of such deed in equity in order to enforce the lien. 23 H. 21. See 24 H. 74, 79.

Demand.

A "demand" is a condition precedent to commencing of proceedings for enforcement of lien. 23 H. 744; 24 H. 39, 181, 191; 25 H. 214, 217; 32 H. 831, 913. Such demand must be alleged and proved. 23 H. 744; 24 H. 39; 25 H. 214. Failure to allege "demand" does not dispense with necessity of proving it and failure to do so may be taken advantage of by non-suit. 24 H. 39. Premature demand. 25 H. 347. Commencement of prior

similar action, subsequently dismissed in which summons and a copy of the petition were served upon the owner, does not constitute a "demand". 32 H. 831. Demand may be waived. 38 H. 372, 381.

Judgments.

Power to vacate judgment. 32 H. 15. Consolidation of proceedings--judge having discretion to consolidate, mandamus is not proper remedy even though there has been an erroneous exercise of discretion. 42 H. 141. Judgment against surety on contractor's bond without foreclosure of lien, improper when. 49 H. 578, 426 P.2d 298.

Jurisdiction.

District court. 24 H. 74.

Parties.

Owner of property necessary party defendant and special execution may issue against the property even though judgment cannot be entered against the owner personally. 12 H. 352. "Owner" includes equitable owner. 30 H. 882. See also, 22 H. 765, "owner" discussed.

" **§507-48 Owner may retain amount due.** Whenever the work or material for which a lien is filed is furnished to any contractor for use as set forth in section 507-42, the owner may retain from the amount payable to the contractor sufficient to cover the amount due or to become due to the person or persons who filed the lien. [L 1888, c 21, §6; RL 1925, §2896; RL 1935, §4370; RL 1945, §8774; RL 1955, §193-46; HRS §507-48]

Case Notes

Retention of money by owner. 10 H. 151; 25 H. 347, 413.

"Owner". 22 H. 765.

Owner and surety relationships. 32 H. 913.

Cited: 21 H. 736, 738; 23 H. 744, 746.

" **§507-49 Exceptions.** (a) Anything contained in this part to the contrary notwithstanding, in connection with any repairs or improvements made or performed on property which before the repairs or improvements was used primarily for dwelling purposes, no lien shall exist either for the furnishing of materials to a general contractor as defined in this chapter or the general contractor's subcontractor either of whom was required to be licensed but was not licensed pursuant to chapter 444 or if unreasonable advancement of credit was given by the

furnisher of materials to the general contractor or subcontractor whether such person is licensed, unlicensed or exempted under chapter 444.

The issue of reasonable advancement of credit shall be decided by the circuit judge at the return day hearing provided for in section 507-43(a); provided that if a party affected by the lien does not appear at the return day hearing, the party may raise the issue of unreasonable advancement of credit at any time prior to the entry of a final or interlocutory decree of foreclosure in the proceeding brought to enforce the lien under section 507-47. For the purposes of this section, if the furnisher of materials has secured a credit application form from the general contractor or the subcontractor to whom the materials were furnished or has reasonably inquired into the credit status of the general contractor or subcontractor, the advancement of credit by the furnisher of materials shall be prima facie reasonable.

The credit application referred to herein shall be current and shall include at least the following information:

A. For all persons:

1. Name
2. Address
3. Type of business (Example - plumbing subcontractor)
4. Date business started
5. Contractor's license number
6. Bonding companies generally used
7. Banks used
8. List of current creditors
9. Balance sheet
10. Total of all outstanding construction contracts
\$.....
11. Incompleted portion of all contracts \$.....

B. In addition, for corporate accounts:

1. Names of officers
2. Authorized capital
3. Paid in capital

C. In addition, for noncorporate accounts:

1. Names of partners, co-venturers, etc.

(b) Anything contained in this chapter to the contrary notwithstanding, no general contractor as defined in this chapter or the general contractor's subcontractor or the subcontractor's subcontractor who is required to be licensed pursuant to chapter 444 shall have lien rights unless the contractor was licensed pursuant to chapter 444 when the improvements to the real property were made or performed, and no subcontractor or subcontractor's subcontractor so licensed shall

have lien rights if the work was subcontracted to them by a general contractor as defined in this chapter or the general contractor's subcontractor who was required to be licensed but was not licensed pursuant to chapter 444. [L 1974, c 113, §2; am L 1975, c 181, §8; am L 1976, c 209, §2; am L 2006, c 38, §21]

"[PART III. SELF-SERVICE STORAGE FACILITIES]"

[§507-61] Definitions. Whenever used in this part, unless the context otherwise requires:

"Last known address" means the address provided by the occupant in the latest rental agreement, or the address provided by the occupant in a subsequent written notice of a change of address.

"Occupant" means a person, or the person's sublessee, successor, or assign, or who is entitled to the use of designated or individual storage space at a self-service storage facility under a rental agreement, to the exclusion of others.

"Owner" means the owner, operator, lessor, or sublessor of a self-service storage facility, an agent thereof, or any other person authorized to manage the facility, or to receive rent from an occupant under a rental agreement, and no real estate license is required.

"Personal property" means movable property not affixed to land, and includes, but is not limited to, goods, merchandise, furniture, household items, motor vehicles, and boats.

"Rental agreement" means any written agreement or lease which establishes or modifies the terms, conditions, rules, or any other provision concerning the use and occupancy of a self-service storage facility.

"Self-service storage facility" means any real property designed and used for the purpose of renting or leasing designated or individual storage space to occupants who are to have access to the space for the purpose of storing and removing personal property, but does not include a garage or other storage area in a private residence. No occupant shall use a self-service storage facility for residential purposes. A self-service storage facility is not a warehouse, nor a public utility. If an owner issues any warehouse receipt, bill of lading, or other document of title for the personal property stored, the owner and the occupant are subject to chapter 490, and this part does not apply. [L 1984, c 239, pt of §1]

Revision Note

Numeric designations deleted.

" **[\$507-62] Owner's lien.** The owner of a self-service storage facility and the owner's heirs, executors, administrators, successors, and assigns have a lien upon all personal property located at a self-service storage facility for rent, labor, or other charges, present or future, incurred pursuant to the rental agreement, and for expenses necessary for the preservation, sale, or disposition of personal property subject to the provisions of this part. The lien may be enforced consistent with this part. However, any lien on a motor vehicle or boat which has attached and is set forth in the documents of title to the motor vehicle or boat shall have priority over any lien created pursuant to this part. [L 1984, c 239, pt of §1]

" **[\$507-63] Rent due; notice of default and lien.** When any part of the rent or other charges due from an occupant remain unpaid for fifteen consecutive days, an owner may deny the right of access to the occupant to the storage space at a self-service storage facility; provided that notice is sent to the occupant's last known address, postage prepaid, containing all of the following:

- (1) A statement of the owner's claim showing the sums due at the time of the notice and the date when the sums became due.
- (2) A statement that the occupant is in default of the rental agreement.
- (3) A statement that the occupant's right to use the storage space will be denied unless and until all sums due are paid by the occupant.
- (4) A notice that the occupant has been denied access to the storage space and that an owner's lien, as provided for in section 507-62, may be imposed if all sums due are not paid within fifteen days of the notice.
- (5) The name, street address, and telephone number of the owner, or a designated agent, whom the occupant may contact to respond to the notice. [L 1984, c 239, pt of §1]

" **[\$507-64] Notice of lien.** If a notice has been sent, as required by section 507-63, and the total sum due has not been paid as specified in the notice, the owner may deny an occupant access to the space, enter the space, and remove any property found in the space to a place of safekeeping; provided that the owner shall send to the occupant, addressed to the occupant's last known address, postage prepaid, a notice of lien which shall state all of the following:

- (1) That the occupant's right to use the storage space has terminated and that the occupant no longer has access to the stored property.
- (2) That the stored property is subject to a lien, and the amount of the lien.
- (3) That the owner will seize and take possession of the property to satisfy the lien after a specified date which is not less than fifteen days from the date of mailing the notice unless the amount of the lien is paid. [L 1984, c 239, pt of §1]

" **§507-65 Final demand and notice of sale.** If both notices have been sent, as required by sections 507-63 and 507-64, and the total sum due has not been paid as specified in the two prior notices, the owner may prepare for the sale of the occupant's property. The owner shall then send to the occupant, addressed to the occupant's last known address, postage prepaid:

- (1) A notice of final demand and sale which shall state all of the following:
 - (A) That the sums due for rent and charges demanded have not been paid.
 - (B) That the occupant's right to use the designated storage space has been terminated.
 - (C) That the occupant no longer has access to the stored property.
 - (D) That the stored property is subject to a lien and the amount of the lien.
 - (E) That the property will be sold to satisfy the lien after a specified date which is not less than thirty days from the date of mailing the notice unless prior to the specified date, the lien is paid in full.
 - (F) That any excess proceeds of the sale over the lien amount of costs of sale will be retained by the owner and may be reclaimed by the occupant, or claimed by another person, at any time for a period of one year from the sale and that thereafter the proceeds will go to the State under chapter 523A.
 - (G) That if the proceeds of sale do not fully cover the amount of lien and costs, the occupant will be held liable for any deficiency.
- (2) An itemized statement of the owner's claim showing all sums due at the time of the notice and the date when sums became due. [L 1984, c 239, pt of §1; am L 1985, c 68, §21]

" **§507-66 Method of sale.** (a) Fifteen days after sending the final demand and notice of sale, pursuant to section 507-65(1), an advertisement of the sale shall be published once a week for two weeks consecutively in a newspaper of general circulation published in the judicial district where the sale is to be held. The advertisement shall include a general description of the goods, the name of the person on whose account they are being stored, the total sums due, and the name and location of the storage facility.

(b) The sale shall be conducted in a commercially reasonable manner; and, after deducting the amount of the lien and costs, the owner shall retain any excess proceeds of the sale on the occupant's behalf. The occupant, or any other person having a court order or other judicial process against the property, may claim the excess proceeds, or a portion thereof sufficient to satisfy the particular claim, at any time within one year of the date of sale. Thereafter, the owner shall pay any remaining excess proceeds to the State as provided in chapter 523A. [L 1984, c 239, pt of §1; am L 1985, c 68, §22]

" **[§507-67] Security interests, rights.** Any person who has a perfected security interest under chapter 490 may claim any personal property subject to the security interest and subject to a lien pursuant to this part by paying the total amount due, as specified in the final demand and notice of sale. Upon payment of the total amount due, the owner shall deliver possession of the particular property subject to the security interest to the person who paid the total amount due. The owner shall not be liable to any person for action taken pursuant to this section if the owner has fully complied with the requirements of sections 507-63, 507-64, and 507-65. [L 1984, c 239, pt of §1]

" **[§507-68] Payment before sale.** Any person claiming a right to the goods must pay the amount necessary to satisfy the lien and the reasonable expenses incurred for particular actions taken pursuant to this part. In that event, the goods shall not be sold, but shall be retained by the owner subject to the terms of this part pending a court order directing disposition of the property. [L 1984, c 239, pt of §1]

" **[§507-69] Good faith purchaser.** A purchaser in good faith of goods sold to enforce a lien in favor of the owner on goods stored at a self-service storage facility takes the goods free of any rights of persons against whom the lien was claimed, despite noncompliance by the owner of the storage facility with the requirements of this part. [L 1984, c 239, pt of §1]

" **[\$507-70] Self-storage contracts.** (a) Each contract for the rental or lease of individual storage space in a self-service storage facility shall be in writing and shall contain, in addition to the provisions otherwise required or permitted by law to be included, a statement that the occupant's property will be subject to a claim of lien and may be sold to satisfy the lien if the rent or other charges due remain unpaid for fifteen consecutive days and that such actions are authorized by this part.

(b) This part shall not apply, and the lien authorized by this part shall not attach, unless the rental agreement or supporting documentation requests, and provides space for, the occupant to give the name and address of another person to whom notices required to be given under this part may be sent. If both an address and an alternative address are provided by the occupant, notices pursuant to sections 507-63 or 507-64 shall be sent to both addresses. If both addresses are provided by the occupant, the owner shall send the final demand and notice of sale, pursuant to section 507-65, to both addresses by certified mail, postage prepaid. Failure of an occupant to provide an alternative address shall not affect an owner's remedies under this part or under any other provision of law. [L 1984, c 239, pt of §1]

" **[\$507-71] Other rights.** Nothing in this part shall be construed to impair or affect the right of the parties to create additional rights, duties, and obligations in and by virtue of the rental agreement. The rights provided by this part shall be in addition to all other rights provided by law to a creditor against the creditor's debtor.[L 1984, c 239, pt of §1]

" **[\$507-72] Applicability.** This part shall only apply to rental agreements entered into, or extended, or renewed after June 4, 1984. [L 1984, c 239, pt of §1]

Revision Note

"June 4, 1984" substituted for "the effective date of this part".

"[PART IV. ATTORNEYS]

§507-81 Attorney's lien upon actions and judgments. (a)
An attorney has a lien upon:

- (1) Actions, suits, and proceedings after commencement of the action or arbitration proceeding;

(2) Judgments, decrees, orders, settlements, and awards entered by the court or an arbitrator in favor of the client; and

(3) Any proceeds paid in satisfaction of the judgment, decree, order, settlement, or award.

(b) The lien shall be for:

(1) The fees and compensation specifically agreed upon with the client;

(2) The reasonable value of the services of the attorney, if there is no fee agreement;

(3) Any costs advanced by the attorney; and

(4) Any fees or commissions taxed or allowed by the court.

(c) Except for tax liens, prior liens of record on the real and personal property subject to the lien created by this section, and as provided in section (d), the attorney's lien is superior to all other liens.

(d) When the attorney's lien attaches to a judgment, decree, order, settlement, or award allowing or enforcing a client's lien, the attorney's lien has the same priority as the client's lien with regard to personal or real property subject to the client's lien.

(e) The attorney's lien on a judgment, decree, order, settlement, or award remains valid as long as the judgment, decree, order, settlement, or award remains valid.

(f) To be enforceable under this section, a notice of claim of the attorney's lien shall be filed with the court or arbitrator, as the case may be.

(g) Except as provided by subsections (i) and (j), the attorney's lien is not affected by a settlement between the parties to the action, suit, or proceeding before or after the judgment, decree, order, or award.

(h) Except as provided by subsections (i) and (j), a party to the action, suit, or proceeding or any other person shall not have the right to discharge or dismiss any judgment, decree, order, settlement, or award entered in the action, suit, or proceeding until the lien and claim of the attorney for fees based thereon is satisfied in full.

(i) A party may pay the full amount of a judgment, decree, order, settlement, or award into court, and the clerk of the court shall thereupon fully satisfy the judgment, decree, order, settlement, or award on the record, and the party shall be thereby released from any further claims thereunder.

(j) If more than one attorney from the same firm appears of record for a party, the satisfaction of the lien created by this section by one of the attorneys is conclusive evidence that the lien is fully satisfied.

(k) Attorneys have the same right and power over actions, suits, proceedings, judgments, decrees, orders, settlements, and awards to enforce their liens as their clients have for the amount due thereon to them. [L 2004, c 48, §2; am L 2011, c 136, §1]

" **[§507-82] Liens on attorneys; certified shorthand reporter services.** (a) Subject to the notice requirements in subsection (b) and the exemptions described in subsection (d), a certified shorthand reporter furnishing a stenographic record of any judicial proceeding, deposition, statement, or interview of a party in a proceeding or a copy of the stenographic record to an attorney at the attorney's request shall create a debt owing to the certified shorthand reporter by the attorney's firm, partnership, corporation, company, or other legal entity pursuant to which the attorney practices law, which may be enforced by the certified shorthand reporter in circuit or district court, as applicable. The amount of the debt shall not exceed the payment agreed to between the attorney and the certified shorthand reporter at the time the stenographic services are requested.

(b) Concurrently with the delivery to the requesting attorney of the completed stenographic record or the final component or part thereof, or as soon as a tally of recoverable costs can be calculated, the certified shorthand reporter shall deliver an invoice listing the amount due for the stenographic services. If the requesting attorney does not pay for the stenographic record within sixty days of the receipt of the completed stenographic record and the invoice, the certified shorthand reporter may send a notice to the attorney that a lien in the amount described in subsection (a) shall be imposed on the assets of the attorney's firm, partnership, corporation, company, or other legal entity pursuant to which the attorney practices law, within fifteen calendar days. Thereafter, if payment is not made to the certified shorthand reporter, the lien may be enforced by the certified shorthand reporter as allowed by law.

(c) The requesting attorney, or the attorney's firm, partnership, corporation, company, or other legal entity pursuant to which the attorney practices law, may dispute the amount due to the stenographic services listed in the invoice or the completeness or accuracy of the stenographic record at any time, and may seek declaratory relief from the circuit court that the debt is not owed. Nothing in this section shall prohibit an attorney or the attorney's firm, partnership, corporation, company, or other legal entity pursuant to which the attorney practices law, from pursuing a third-party claim

against the requesting attorney's client for payment of stenographic services.

- (d) This section shall not apply when:
 - (1) Payment to the certified shorthand reporter is otherwise provided by law; or
 - (2) The attorney expressly disclaims responsibility for payment of the stenographic service or record, in writing, at the time that the attorney orders or requests that a record be made. [L 2011, c 223, §1]