

# MAINE STATE LEGISLATURE

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ONE HUNDRED AND FIRST LEGISLATURE

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Legislative Document

No. 304

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H. P. 236

House of Representatives, January 16, 1963

Referred to Committee on Legal Affairs. Sent up for concurrence and ordered printed.

HARVEY R. PEASE, Clerk

Presented by Mr. Knight of Rockland.

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STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SIXTY-THREE

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AN ACT Revising the Maine Mechanic's Lien Law.

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Be it enacted by the People of the State of Maine, as follows:

**Sec. 1. R. S., c. 178, §§ 34 - 51, repealed.** Section 34 to 51 of chapter 178 of the Revised Statutes, as amended, are repealed.

**Sec. 2. R. S., c. 178, §§ 33-A - 33-H, additional.** Chapter 178 of the Revised Statutes is amended by adding 8 new sections, to be numbered 33-A to 33-H, to read as follows:

**'Mechanic's Lien Law.**

**Sec. 33-A. Mechanic's lien; precedence; rights of subcontractors.** If any person has a claim for more than \$10 for materials furnished or services rendered in the construction, raising, removal or repairs of any building or any of its appurtenances, and such claim is by virtue of an agreement with or by consent of the owner of the land upon which such building is being erected or has been erected or has been moved, or of some person having authority from or rightfully acting for such owner in procuring such labor or materials, such building, with the land on which it stands, shall be subject to the payment of such claim. Such claim shall be a lien on such land, building and appurtenances and shall take precedence over any other encumbrance originating after the commencement of such services, or the furnishing of any such materials, subject to apportionment as provided in section 33-D. If any such liens exist in favor of 2 or more persons for materials furnished or services rendered in connection with the same construction, raising, removal or repairs of any building or any of its appurtenances, no one of such persons shall have any priority over another except as hereinafter provided. If any instrument constituting a valid encumbrance upon such land other than a mechanic's lien is filed for record

while such building is being constructed, raised, removed or repaired, all such mechanic's liens originating prior to the filing of such instrument for record shall take precedence over such encumbrance and no such lien shall have priority over any other such lien, but such encumbrance and all such liens shall take precedence over any mechanic's lien which originates for materials furnished or services rendered after the filing of such instrument for record, but no one of such liens originating after the filing of such instrument for record shall have precedence over another. If any lienor waives or releases his lien or claim of precedence to any such encumbrance, such lien shall be classed with and have no priority over liens originating subsequent to such encumbrance. No mechanic's lien shall attach to any such building or its appurtenances or to the land on which the same stands in favor of any subcontractor to a greater extent in the whole than the amount which the owner has agreed to pay to any person through whom such subcontractor claims subject to section 33-D. Any such subcontractor shall be subrogated to the rights of the person through whom such subcontractor claims, except that such subcontractor shall have such a lien or right to claim such a lien in the event of any default by such person subject to sections 33-B, 33-C and 33-D, provided the total of such lien or liens shall not attach to any building or its appurtenances, or to the land on which the same stands, to a greater amount in the whole than the amount by which the contract price between the owner and such person exceeds the reasonable cost, either estimated or actual, as the case may be, of satisfactory completion of the contract plus any damages resulting from such default for which such person might be held liable to the owner and all bona fide payments, as defined in section 33-D, made by the owner before receiving notice of such lien or liens. In the case of the removal of any building, no such mechanic's lien shall take precedence over any encumbrance upon the land to which such building has been removed which accrued before the building was removed upon the land. Any mechanic's lien may be foreclosed in the same manner as a mortgage.

Sec. 33-B. Certificate of lien to be recorded. No such lien shall be valid, unless the person performing such services or furnishing such materials, within 60 days after he has ceased to do so, lodges with the town clerk of the town in which such building is situated a certificate in writing, describing the premises, the amount claimed as a lien thereon and the date of the commencement of the performance of services or furnishing of materials, stating that the amount claimed is justly due, as nearly as the same can be ascertained, and subscribed and sworn to by the claimant; which certificate shall be recorded by the town clerk. If a party who might have filed such a certificate dies before filing the same, the executor of his will or administrator of his estate may make and lodge such a certificate within 3 months from the time of qualification of such executor or administrator, provided such certificate shall be lodged within 6 months from the decease of the original claimant.

Sec. 33-C. Notice of intent; liens of subcontractors and materialmen. No person other than the original contractor for the construction, raising, removal or repairing of the building, or a subcontractor whose contract with such original contractor is in writing and has been assented to in writing by the other party to such original contract, shall be entitled to claim any such lien, unless, after

commencing, and not later than 60 days after ceasing, to furnish materials or render services for such construction, raising, removal or repairing, he gives written notice to the owner of such building that he has furnished or commenced to furnish materials, or rendered or commenced to render services, and intends to claim a lien therefor on such building; which notice shall be served upon such owner, if he resides in the same town in which such building is being erected, raised, removed or repaired, by any indifferent person, by leaving with him or at his usual place of abode a true and attested copy thereof. If such owner does not reside in such town, but has a known agent therein, such notice may be so served upon such agent, otherwise it may be served by any indifferent person, by mailing a true and attested copy of such notice to such owner at the place where he resides. When there are 2 or more owners, such notice to one of them shall be notice to all. Such notice, with the return of the person who served it endorsed thereon, shall be returned to the original maker thereof within said period of 60 days. No subcontractor, without a written contract complying with this section, and no person who furnishes material or renders services by virtue of a contract with the original contractor or with any subcontractor, shall be required to obtain an agreement with, or the consent of, the owner of the land, as provided in section 33-A, to enable him to claim a lien under this section.

Sec. 33-D. Liens limited; apportionment; payments to original contractor. No such lien shall attach to any building or its appurtenances, or to the land on which the same stands, in favor of any person, to a greater amount in the whole than the price which the owner agreed to pay for such building and its appurtenances. When there are several claimants, and the amount of their united claims exceeds such price, the claimants, other than the original contractor, shall be first paid in full, if the amount of such price is sufficient for that purpose; but, if not, it shall be apportioned among the claimants having such liens, other than the original contractor, in proportion to the amount of the debts due them respectively; and the court having jurisdiction thereof, on application of any person interested, may direct the manner in which such claims shall be paid; but, in determining the amount to which any lien or liens shall attach upon any land or building, the owner of such land or building shall be allowed whatever payments he has made, in good faith, to the original contractor or contractors, before receiving notice of such lien or liens. No payments made in advance of the time stipulated in the original contract shall be considered as made in good faith, unless notice of intention to make such payment has been given in writing to each person known to have furnished materials or rendered services at least 5 days before such payment is made.

Sec. 33-E. Dissolution of mechanic's lien by substitution of bond; joinder of actions on claim and bond. Whenever any mechanic's lien has been placed upon any real estate under sections 33-A, 33-B and 33-C, the owner of such real estate, or any person interested therein, may make an application to any judge of the Superior Court that such lien be dissolved upon the substitution of a bond with surety, and such judge shall order reasonable notice to be given to the lienor of such application. If such lienor is not a resident of the State, such judge may order notice to be given by publication, registered or certified letter or personal service. If such judge is satisfied that the applicant in good

faith intends to contest such lien, he shall, if the applicant offers a bond, with sufficient surety, conditioned to pay to the lienor or his assigns such amount as a court of competent jurisdiction may adjudge to have been secured by such lien, with interest and costs, order such lien to be dissolved and such bond substituted therefor and shall return such application, notice, order and bond to the clerk of the Superior Court for the county wherein such lien is recorded; and, if the applicant, within 10 days from such return, causes a copy of such order, certified by such clerk, to be recorded in the town clerk's office where such lien is recorded, such lien shall be dissolved. Whenever a bond is substituted for any lien after an action for the foreclosure of a lien has been commenced, the plaintiff in such foreclosure may amend his complaint, without costs, so as to make the action one upon such bond with which the plaintiff may join an action to recover upon his claim. Whenever a bond is substituted for any lien before an action for the foreclosure of the lien has been commenced, the plaintiff may join the action upon the bond with an action to recover upon his claim. Whenever a bond has been substituted for any lien, under this section, unless an action is brought to recover upon such bond within 2 years from the date of recording the certificate of lien, such bond shall be void.

Sec. 33-F. Lien on railroad for services or materials in construction. If any person has a claim for materials furnished or services rendered for the construction of any railroad, or any of its appurtenances, under any contract with or approved by the corporation owning or managing it, such railroad shall, with its real estate, right-of-way, material, equipment, rolling stock and franchises, be subject to the payment of such claim; and such claim shall be a lien on such railroad, railroad property and franchises, and such lien shall be asserted, perfected and foreclosed in all respects in accordance with sections 33-B to 33-E, except that the certificates of the lien and of its discharge shall be filed in the office of the Secretary of State, who shall record them in a book kept for that purpose.

Sec. 33-G. Limitation of mechanic's lien. No mechanic's lien shall continue in force for a longer period than 2 years after such lien has been perfected, unless the party claiming such lien, within said period, commences an action to foreclose the same and proceeds therewith to final judgment. Each such lien, after the expiration of 2 years without action commenced, shall be discharged of record by the person claiming the same, upon the request of the owner of the property upon which the lien had been claimed.

Sec. 33-H. Record of discharge of mechanic's liens. In all cases where a mechanic's lien has expired by a provision of the statute of limitations and notice of foreclosure of such lien has been filed with the town clerk of the town in which the lien is filed, or if notice of foreclosure of any such lien has been so filed or recorded and a certificate, issued by the clerk of the court to which such notice referred after the return day of the foreclosure action, indicating that no such foreclosure action remains pending and that no judgment has been entered in such action in such court, shall be filed for record with such town clerk, the town clerk shall, upon request of any person having an interest in the real estate covered by such lien, cause to be entered upon such records a notation that such lien or notice of foreclosure is discharged.'