

## NEW HAMPSHIRE'S MECHANICS' LIEN LAW SUMMARY

NH Law provides that anyone who provides either materials, labor, or supplies has a right under certain circumstances to place a lien on the property that they provided material, labor or supplies. This excerpt summarizes portions of RSA 447; however any questions should be referred to your attorney.

### 1. CREATION OF LIEN - RSA 447:2

If any person shall perform labor or furnish materials for erecting or repairing a house or other building, under contract, he shall have a lien on any material so furnished and on said structure, and on any right of the owner to the lot of land on which it stands.

### 2. SUBCONTRACTORS – RSA 447:5

If a person shall by himself or others perform labor or furnish materials for the erecting or repairing a house or other building, under contract with an agent, contractor or subcontractor of the owner, he shall have the same lien, provided, that he gives notice in writing to the owner or to the person having charge of the property that he shall claim such lien before performing the labor or furnishing the material for which it is claimed.

### 3. DURATION OF LIEN - RSA 447:9

The duration of the lien created by RSA 447:2-7, inclusive, will continue for 120 days after the services are performed, or the materials, supplies or other things are furnished, unless payment therefor is previously made, and shall take precedence of all prior claims except liens on account of taxes.

### 4. ATTACHMENT PRIORITY - RSA 447:12-a

A mechanics' lien secured by an attachment takes priority over a construction mortgage unless:

- The construction mortgagee (lender) shows that the proceeds of the loan were disbursed toward payment of invoices from or claims due subcontractors and suppliers of materials or labor for the work on the project; or
- The mortgagee receives an affidavit from the mortgagor (borrower) or his agent, that the work for which such disbursement is to be made has been completed and that the subcontractors and suppliers of materials or labor have been paid for their share of such work, or will be paid out of such disbursement.
- A mortgagee must not knowingly accept a fraudulent affidavit.
- A mortgagee must encourage and promote the provisions of the law.

### 5. ADDITIONAL RESPONSIBILITIES: CONSTRUCTION MORTGAGES -RSA 447:12-b,I

- The mortgagor or agent must post the name, address, and telephone number of the institution providing the construction funds within 10 business days of the execution of a construction mortgage, including any refinancing.
- The name, address and telephone number of the institution providing construction funds must be posted in a conspicuous place on the job site for which the construction funds were secured.

6. NOTICE TO LENDER - RSA 447:12-b, II

- General contractors, subcontractors, suppliers and others entitled to a lien under RSA 447 must provide written notice to the institution providing the construction funds that such person is furnishing services, materials, supplies or other things.
- The “written notice to lender” must be provided within 15 business days of the construction lender’s identification posting (paragraph 4 above) or of commencing to furnish services, materials, supplies or other things, whichever is later.
- The written notice must include the name and address of the job site.
- Failure to provide this notice will not alone invalidate a lien.

7. POSTING OF ANTICIPATED FUNDING DATE - RSA 447:12-b, III

- At least 48 hours prior to requesting any construction mortgage disbursement (requisition), the mortgagor or his agent must post the anticipated funding date for said disbursement (requisition).
- The anticipated funding date must be posted in a conspicuous place on the job site for which the construction funds were secured.
- The lender must require a copy of the notice which must be “certified” as to its posting by the mortgagor or his agent prior to disbursing any funds.

8. TWO-PARTY CHECKS: DISBURSEMENT FOR COMPLETED WORK - RSA 447:12-b, IV

- If there is a written contract between the mortgagor or his agent and any person furnishing services, materials, supplies or other things, which provides that the disbursement of construction funds must be by a two-party check, the mortgagor or his agent, must give a copy of such agreement to the mortgagee.
- Upon receipt of the agreement, the mortgagee shall subsequently disburse funds intended in part to pay such person, only by a check made payable to the mortgagor or his agent and such person.
- Unless otherwise agreed by the mortgagor and mortgagee, the disbursements must be made only for actual work completed and materials consumed on the job site for which the construction funds were secured.