

TITLE 25. PROPERTY
PART II. MORTGAGES AND OTHER LIENS
CHAPTER 27. **MECHANICS' LIENS**
SUBCHAPTER I. GENERAL PROVISIONS

25 Del. C. § 2702 (2001)

§ 2702. Persons entitled to obtain lien

(a) It shall be lawful for any person having performed or furnished labor or material, or both, to an amount exceeding \$ 25 in or for the erection, alteration or repair of any structure, in pursuance of any contract, express or implied, with the owners of such structure or with the agent of such owner or with any contractor who has contracted for the erection, alteration or repair of the same and for the furnishing of the whole or any part of the materials therefor, including any person who has performed or furnished labor or material, or both, for or at such structure under a contract with or order from any subcontractor to obtain a lien upon such structure and upon the ground upon which the same may be situated or erected.

(b) Liens may also be obtained in connection with: labor performed and materials furnished in plumbing, gas fitting, paper hanging, paving, placing iron works and machinery of every kind in mills and factories, bridge building, the erection, construction and filling in of wharves, piers and docks and all improvements to land by drainage, dredging, filling in, irrigating and erecting banks and the services rendered and labor performed and materials furnished by architects.

HISTORY: 16 Del. Laws, c. 145, §§ 1, 4; 18 Del. Laws, c. 679; Code 1915, §§ 2843, 2846; 29 Del. Laws, c. 225; 29 Del. Laws, c. 226; Code 1935, §§ 3324, 3327; 25 Del. C. 1953, § 2702.

PURPOSE. --The purpose of this section was to protect, by means of a lien on the land and buildings, the interests of persons furnishing materials for the erection or repair of buildings under a contract with the owner or his agent or to a contractor who had contracted with the owner or his agent for the erection or repair of the buildings. *J.G. Justis Co. v. Spicer*, 28 Del. 534, 95 A. 239 (1915).

The materials being furnished for the building and the owner being the one benefited thereby, it is only natural that, in the event of the owner's failure to see that persons furnishing materials used in the building to a contractor who had contracted with the owner for the erection or repair of the building were paid for the materials, the owner should be made liable for such debts and the materialmen given the right to lien the building for the amount of the materials furnished. The General Assembly, therefore, provided in this section that the buildings for which the materials were furnished could be liened for the amount of the materials, and the materialman thereafter would not be compelled to resort to other and often inadequate remedies. *J.G. Justis Co. v. Spicer*, 28 Del. 534, 95 A. 239 (1915).

MECHANICS' LIEN PROCEEDINGS ARE STATUTORY and there is no analogous common-law proceeding. *Iannoti v. Kalmbacher*, 34 Del. 600, 156 A. 366 (1931).

Mechanics' liens are purely statutory remedies. *Silverside Home Mart, Inc. v. Hall*, Del. Super. Ct., 345 A.2d 427 (1975).

MECHANICS' LIEN ACTION HAS AN EQUITABLE CHARACTER arising out of commercial necessity. *Gould, Inc. v. Dynalectric Co.*, Del. Super. Ct., 435 A.2d 730 (1981).

A MECHANIC'S LIEN SUIT IS NOT AN ACTION ON THE WRITTEN CONTRACT between the parties. *Armstrong v. Wilmington Sugar Ref. Co.*, 32 Del. 125, 120 A. 94 (1922).

BUT RATHER IT IS AN ACTION IN THE NATURE OF AN ACTION OF ASSUMPSIT for the price and value of work, labor and materials furnished by the claimant. *Armstrong v. Wilmington Sugar Ref. Co.*, 32 Del. 125, 120 A. 94 (1922).

PROCEEDINGS ARE IN THE NATURE OF PROCEEDINGS IN REM. --Proceedings under the **Mechanics' Lien** Statute are proceedings in the nature of proceedings in rem and certainly to the extent that the ultimate purpose is to subject the designated property to the lien sought to be charged. The fact that the res, the property itself, is sought to be charged with the lien by a process of personal service on certain necessary parties does not destroy the character of the proceedings as in the nature or proceedings in rem. In re Republic Eng'r Co., 33 Del. 81, 130 A. 498 (1925); Iannotti v. Kalmbacher, 34 Del. 600, 156 A. 366 (1931).

THEORY OF RIGHT TO A LIEN. --The right to a lien rests upon the theory that the land has been increased in value by the labor or materials bestowed upon the building or structure erected thereupon as the theory supposes that the labor or materials have gone into and have become an integral part of the realty. Girdler Corp. v. Delaware Compressed Gas Co., 37 Del. 344, 183 A. 480 (1936).

To secure by lien the value of labor and materials furnished in connection with the installation of machinery in a mill or factory, where it loses its identity as personal property and becomes a part of the realty, is consistent with the theory of **Mechanics' Lien** Statutes, which supposes that the labor or materials have gone into and have become an integral part of the realty. Girdler Corp. v. Delaware Compressed Gas Co., 37 Del. 344, 183 A. 480 (1936).

SCOPE OF LIEN. --The lien obtainable upon the structure and ground may be extended, but is limited to labor and materials furnished in connection with those items specifically set forth in subsection (b) of this section, as being necessary to or a component part of the house or building. Pioneer Nat'l Title Ins. Co. v. Exten Assocs., Del. Supr., 403 A.2d 283 (1979).

FEE NOT SUBJECT TO LIEN UNLESS OWNER AUTHORIZED WORK. --Under this section the owner of the premises must authorize the mechanic's work before the fee interest is subject to the lien. Coldiron v. Gaster, Del. Super. Ct., 278 A.2d 328 (1971), modified, Del. Supr., 297 A.2d 384 (1972).

The statutory right to **mechanics' lien** runs directly to each contractor, subcontractor, material supplier or workman who provided material or labor, but it is dependent upon the work having been authorized by the owner of the premises. Steel Suppliers, Inc. v. Ehret, Inc., Del. Super. Ct., 486 A.2d 32 (1984).

IF STRUCTURE IS DESTROYED, THE LIEN THEREBY IS EXTINGUISHED. McHugh Elec. Co. v. Hessler Realty & Dev. Co., 50 Del. 296, 129 A.2d 654 (1957).

BUT LIEN IS NOT AFFECTED BY CHANGE OF OWNERSHIP TO STATE. --A **mechanics' lien**, filed rightly, fixed as of the date work commenced, was not affected by a change of ownership during the progress of the work, where the new owner was the State. Oliphant v. State Bd. of Educ., 32 Del. 486, 126 A. 44 (1924).

"CONTRACTOR" DEFINED. --This section limits and restricts the general meaning of the word "contractor" to such persons only who contract to do the whole or any part of the work in the construction of any building or structure and who also contract to furnish the materials required for such contract, and no other than such a person is a contractor. Mulrine v. Washington Lodge, No. 5, 11 Del. 350 (1881).

A contractor, within the meaning of **mechanics' liens**, is one who furnishes both labor and materials for the erection of any building, house or structure. Breeding v. Melson, 34 Del. 9, 143 A. 23 (1927).

"ERECTION, ALTERATION OR REPAIR." --Demolition work was not "erection, alteration or repair" within the meaning of this section and therefore such work is not lienable under subsection (a). Browning-Ferris, Inc. v. Rockford Enters., Inc., Del. Super. Ct., 642 A.2d 820 (1993).

"ERECTION" DEFINED. --The term erection contemplates and includes the entire construction of any such house, building or structure and whatever is contributed either in labor or materials in the making or finishing of any part of them. France v. Woolston, 9 Del. 557 (1873).

THE STATUTE INCLUDES ALL PERSONS WHO PERFORM LABOR IN CONSTRUCTION OR REPARATION OF A BUILDING, irrespective of the grade of their employment or the particular kind of service. Breeding v. Melson, 34 Del. 9, 143 A. 23 (1927).

AND IT GIVES A LIEN TO ANY PERSON WHO HAS ERECTED, ALTERED OR REPAIRED ANY STRUCTURE ON LAND. Jones v. Julian, 55 Del. 505, 188 A.2d 521 (1963).

NO DISTINCTION IS MADE IN THIS SECTION BETWEEN SKILLED AND UNSKILLED LABOR or between manual labor and the labor of one who supervises and directs. *Breeding v. Melson*, 34 Del. 9, 143 A. 23 (1927).

THIS STATUTORY REMEDY MAY NOT BE EXTENDED TO MATERIALMEN having no direct contact with the owner, the general contractor or a subcontractor. *Gould, Inc. v. Dynalectric Co.*, Del. Super. Ct., 435 A.2d 730 (1981).

EXTENDS TO ARCHITECT. --Provisions of this section extend to services rendered and work and labor performed and furnished by an architect. *May v. Howell*, 32 Del. 221, 121 A. 650 (1923).

AND PAVING WORK, if shown to be an integral part of the general undertaking, may be part of a recovery under **mechanics' lien** proceeding. *Jones v. Julian*, 55 Del. 505, 188 A.2d 521 (1963).