

SENATE BILL NO. 128

1/18 Introduced
1/18 Referred to Judiciary
2/08 Hearing
2/11 Tabled in Committee

1
 2 INTRODUCTION BY *Senate* BILL NO. *128*
 3 *Animal Machinery Blaylock Corp*

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 5 LAW RELATING TO LIENS ARISING FROM CONTRACTS FOR PERFORMING
 6 SERVICES OR FURNISHING MATERIAL FOR REAL ESTATE
 7 IMPROVEMENTS; REPLACING THE MECHANICS' LIEN LAWS WITH THE
 8 UNIFORM LAW ON CONSTRUCTION LIENS; AMENDING SECTIONS
 9 7-4-2619, 70-23-604, 70-23-607, 70-23-608, 71-3-1005,
 10 72-16-477, 76-4-1101, AND 85-8-350, MCA; REPEALING SECTIONS
 11 71-3-501 THROUGH 71-3-505 AND 71-3-511 THROUGH 71-3-519,
 12 MCA; AND PROVIDING A SAVING AND AN APPLICABILITY CLAUSE."

13
 14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15 NEW SECTION. Section 1. Scope. [Sections 1 through
 16 33] create and provide for the attachment and enforceability
 17 of a lien against real estate in favor of a person
 18 furnishing services or materials under a real estate
 19 improvement contract. Except as provided in [sections 1
 20 through 33], no nonconsensual lien arises against real
 21 estate by reason of improvements made thereon.

22 NEW SECTION. Section 2. Definitions. In [sections 1
 23 through 33], unless the context otherwise requires, the
 24 following definitions apply:

25 (1) "Claimant" means a person having a right to a lien

1 under [sections 1 through 33] upon real estate and includes
 2 his successor in interest.

3 (2) "Construction security interest" means a security
 4 interest created by a security agreement that secures an
 5 obligation which the debtor incurred for the purpose of
 6 making an improvement of the real estate in which the
 7 security interest is given, if the instrument recorded to
 8 perfect the interest so states.

9 (3) "Construction lien" or "lien" means a lien arising
 10 under [sections 1 through 33] but does not include a
 11 security interest.

12 (4) "Contract price" means the amount agreed upon by
 13 the contracting parties for performing services and
 14 furnishing materials covered by the contract, increased or
 15 diminished by the price of change orders or extras, amounts
 16 attributable to altered specifications, or breach of
 17 contract, including but not limited to defects in
 18 workmanship or materials. Liquidation of damages between
 19 the owner and a prime contractor does not diminish the
 20 contract price as to other claimants. If no price is agreed
 21 upon by the contracting parties, "contract price" means the
 22 reasonable value of all services or materials covered by the
 23 contract.

24 (5) "Contracting owner" means a person who owns real
 25 estate and who, personally or through an agent, enters into



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1 a contract, express or implied, for the improvement of the
2 real estate.

3 (6) "Good faith" means honesty in fact and the
4 observance of reasonable standards or fair dealing in the
5 conduct or transaction involved.

6 (7) "Judicial proceeding" means action at law or suit
7 in equity and any other proceeding in which rights are
8 judicially determined.

9 (8) "Notice of commencement" means the notice
10 specified in [section 21], whether recorded by an owner or
11 by a claimant.

12 (9) "Notice of termination" means a notice terminating
13 a notice of commencement ([section 22]).

14 (10) "Organization" means a corporation, government,
15 governmental subdivision or agency, business trust, estate,
16 trust, partnership, association, joint venture, or any other
17 legal or commercial entity.

18 (11) "Party", as distinguished from "third party",
19 means a person who engages in a transaction or makes an
20 agreement under [sections 1 through 33].

21 (12) "Person" includes an individual or an
22 organization.

23 (13) "Prime contract" means any real estate improvement
24 contract made between the contracting owner and a prime
25 contractor.

1 (14) "Prime contractor" means any person who makes a
2 real estate improvement contract with a contracting owner.

3 (15) "Real estate" means any estate or interest in,
4 over, or under land, including minerals, structures,
5 fixtures, and other things which by custom, usage, or law
6 pass with a conveyance of land though not described or
7 mentioned in the contract of sale or instrument of
8 conveyance, and, if appropriate to the context, the land in
9 which the interest is claimed. "Real estate" includes
10 rents, the interest of a landlord or tenant, and interests
11 in a condominium unit.

12 (16) To "record" means to present to the recording
13 officer for the place where the land is situated a document
14 that he accepts and either enters in a daily log or notes
15 thereon an identifying number, regardless of whether under
16 applicable law the recording officer is directed to file the
17 document or otherwise to maintain a record of it. "Recorded"
18 and "recording" have corresponding meanings.

19 (17) "Record location" means the location (book and
20 page, document number, electronic retrieval code, or other
21 specific place) of a document in the public records
22 accessible in the same recording office where the document
23 containing the reference to the location is found.

24 (18) "Recording office" means the office of the county
25 clerk and recorder.

1 (19) "Recording officer" means the county clerk and
2 recorder.

3 (20) "Security interest" means a consensual interest in
4 real estate which secures payment or performance of an
5 obligation. If a lease is intended as security to the
6 lessor, the lessor's interest is a security interest. If a
7 seller's retention of legal title to real estate after the
8 buyer enters into possession is intended as security, the
9 seller's interest is a security interest. Whether a
10 transaction is intended as security is to be determined by
11 the facts of each case; however, the inclusion in a lease of
12 an option to purchase at a price not unreasonable in the
13 circumstances at the time of contracting does not of itself
14 indicate the lease is intended for security, and retention
15 of the title to real estate by a seller under a contract
16 right to retain title for not more than 1 year after the
17 buyer enters into possession of the real estate is not a
18 retention for security.

19 (21) "Services" does not include financing or
20 activities in connection with financing.

21 NEW SECTION. Section 3. Presumptions of agency as to
22 contracting owner. For the purpose of determining whether an
23 owner is a contracting owner ([section 2(5)]), agency is
24 presumed, in the absence of clear and convincing evidence to
25 the contrary, between employer and employee, between

1 spouses, between joint tenants, and among tenants in common.

2 NEW SECTION. Section 4. Definitions -- protected
3 party -- residential real estate. In [sections 1 through
4 33], unless the context requires otherwise, the following
5 definitions apply:

6 (1) "Protected party" means:

7 (a) an individual who contracts to give a real estate
8 security interest in, or to buy or to have improved,
9 residential real estate all or a part of which he occupies
10 or intends to occupy as a residence;

11 (b) a person obligated primarily or secondarily on a
12 contract to buy or have improved residential real estate or
13 on an obligation secured by residential real estate if, at
14 the time he becomes obligated, he is related to an
15 individual who occupies or intends to occupy all or a part
16 of the real estate as a residence; or

17 (c) with respect to a security agreement, a person who
18 acquires residential real estate and assumes or takes
19 subject to the obligation of a prior protected party under
20 the real estate security agreement.

21 (2) "Residential real estate" means, in relation to a
22 protected party, real estate, improved or to be improved,
23 containing not more than 15 acres, not more than 4 dwelling
24 units, and no nonresidential uses for which the protected
25 party is a lessor. A condominium unit that is otherwise

1 "residential real estate" remains so even though the common
2 elements of the condominium development include more than 15
3 acres or the condominium development contains more than 4
4 dwelling units or units or common elements, used for
5 nonresidential purposes.

6 NEW SECTION. Section 5. Definition -- person related
7 to. For purposes of giving meaning to the expressions
8 "individual related to" or "person related to" as used in
9 [sections 1 through 33], a person is related to:

- 10 (1) an individual if that person is:
- 11 (a) an organization directly or indirectly controlled
12 by the individual, his spouse, or a relative by blood or
13 marriage who shares the same residence with the individual;
- 14 (b) the spouse of the individual;
- 15 (c) a brother, brother-in-law, sister, or
16 sister-in-law of the individual;
- 17 (d) an ancestor or descendant of the individual or of
18 his spouse; or
- 19 (e) any other relative by blood or by marriage of the
20 individual or of his spouse if the relative shares the same
21 residence with the individual;
- 22 (2) an organization if that person is:
- 23 (a) any other organization controlling, controlled by,
24 or under common control with the organization; or
- 25 (b) a person related to the person controlling the

1 organization.

2 NEW SECTION. Section 6. Definition -- real estate
3 improvement contract. (1) Except as provided in subsection
4 (2), "real estate improvement contract", as used in
5 [sections 1 through 33], means an agreement to perform
6 services, including labor, or to furnish materials for the
7 purpose of producing a change in the physical condition of
8 land or of a structure, including:

- 9 (a) alteration of the surface by excavation, fill,
10 change in grade, or change in a shore, bank, or flood plain
11 of a stream, swamp, or body of water;
- 12 (b) construction or installation on, above, or below
13 the surface of land;
- 14 (c) demolition, repair, remodeling, or removal of a
15 structure previously constructed or installed;
- 16 (d) seeding, sodding, or other landscaping operation;
- 17 (e) surface or subsurface testing, boring, or
18 analyzing; and
- 19 (f) preparation of plans, surveys, or architectural or
20 engineering plans or drawings for any change in the physical
21 condition of land or structures whether or not used incident
22 to producing a change in physical condition of the real
23 estate.
- 24 (2) A contract for the mining or removal of timber,
25 minerals, gravel, soil, sod, or things growing on land or

1 other similar contract in which the activity is primarily
 2 for the purpose of realizing the contract's objective upon
 3 the disposal or removal of the objects removed, or a
 4 contract for the planting, cultivation, or harvesting of
 5 crops or for the preparation of the soil for planting of
 6 crops is not a "real estate improvement contract".

7 NEW SECTION. Section 7. Existence of construction
 8 lien -- amount, priority, and enforcement. (1) A person who
 9 furnishes services or materials pursuant to a real estate
 10 improvement contract has a construction lien, only to the
 11 extent provided in [sections 1 through 33], to secure the
 12 payment of his contract price.

13 (2) A lien arises under [sections 1 through 33] only
 14 if the claimant records a lien ([section 23]) within the
 15 time specified by [section 13] (Attachment of lien).

16 (3) Real estate to which a construction lien attaches
 17 is specified by [section 9] (Real estate subject to
 18 construction lien), and limitations on the existence of a
 19 lien for materials are specified by [section 10] (Limitation
 20 of lien for materials supplied).

21 (4) The amount of a claimant's lien is specified by
 22 [section 12] (Amount of lien). The content of the notice of
 23 lien liability to be given to the owner under [section 12]
 24 is specified by [section 11] (Notice of lien liability).

25 (5) The priority of a claimant's lien as against other

1 construction lien claimants is specified in [section 14]
 2 (Priority among lien claimants), and priority as against
 3 claimants other than construction lien claimants is
 4 specified in [section 15] (Priority of construction liens as
 5 against other claims).

6 (6) Foreclosure of a lien under [sections 1 through
 7 33] is governed by [section 31] (Proceeding to enforce
 8 lien), and the time within which an action to foreclose must
 9 be brought by [section 16] (Duration of lien).

10 NEW SECTION. Section 8. Governmental real estate --
 11 no lien. Notwithstanding the provisions on existence of a
 12 construction lien ([section 7]), no lien attaches under
 13 [sections 1 through 33] to real estate owned by the state, a
 14 county, a municipality, or other governmental agency or
 15 political subdivision.

16 NEW SECTION. Section 9. Real estate subject to
 17 construction lien. (1) If at the time a construction lien is
 18 recorded ([section 23]) there is a recorded notice of
 19 commencement ([section 21]) covering the improvement
 20 pursuant to which the lien arises, the lien is on the
 21 contracting owner's real estate described in the notice of
 22 commencement.

23 (2) Except as provided in subsection (3), if at the
 24 time a construction lien is recorded there is no recorded
 25 notice of commencement covering the improvement pursuant to

1 which the lien arises, the lien is on the contracting
2 owner's real estate being improved or directly benefited.

3 (3) If a claimant who recorded a lien while there was
4 no recorded notice of commencement covering the real estate
5 later records a notice of commencement, his lien is on the
6 contracting owner's real estate described in the notice of
7 commencement.

8 (4) If as a part of an improvement on his real estate
9 or for the purpose of directly benefiting his real estate an
10 owner contracts for improvements on real estate not owned by
11 him, persons who furnish services or materials in connection
12 with that improvement have a lien against the contracting
13 owner's real estate being improved or directly benefited to
14 the same extent as if the improvement had been on the
15 contracting owner's real estate.

16 (5) If a recorded notice of commencement covers more
17 than one lot in a platted subdivision of record, a claimant
18 may apportion his lien to the various lots covered by the
19 notice of commencement in any proportion he chooses and
20 states in his recorded lien, including assigning all his
21 lien to a particular lot.

22 (6) If a recorded lien does not contain an
23 apportionment as provided in subsection (5), the owner may
24 make demand on the claimant to make an apportionment and, if
25 the claimant does not, within 30 days after the demand, make

1 an apportionment by recording an amendment of the recorded
2 lien, the owner may make a good faith apportionment by
3 recording an owner's statement of apportionment ([section
4 29]). Notwithstanding the fact that the owner did not in
5 fact give the notice to apportion referred to in this
6 subsection or for any other reason was not entitled to
7 record a statement of apportionment or did not make a good
8 faith apportionment, the apportionment is conclusive in
9 favor of persons acquiring interests in the real estate
10 after the statement of apportionment is recorded.

11 NEW SECTION. Section 10. Limitation of lien for
12 materials supplied. (1) A lien for furnishing materials
13 arises only if:

14 (a) they are supplied with the intent, shown by the
15 contract of sale, the delivery order, delivery to the site
16 by the claimant or at his direction, or by other evidence,
17 that they be used in the course of construction of or
18 incorporated into the improvement in connection with which
19 the lien arises; and

20 (b) they are either:

21 (i) incorporated in the improvement or consumed as
22 normal wastage in construction operations;

23 (ii) specially fabricated for incorporation in the
24 improvements and not readily resalable in the ordinary
25 course of the fabricator's business even though not actually

1 incorporated in the improvement;

2 (iii) used for the construction or for the operation of
3 machinery or equipment used in the course of construction
4 and not remaining in the improvement, subject to diminution
5 by the salvage value of those materials; or

6 (iv) tools, appliances, or machinery used on the
7 particular improvement, but a lien for supplying tools,
8 appliances, or machinery used on the improvement is limited
9 as provided by subsection (3).

10 (2) The delivery of materials to the site of the
11 improvement, whether or not by the claimant, creates a
12 presumption that they were used in the course of
13 construction or were incorporated into the improvement.

14 (3) A lien arising for the supplying of tools,
15 appliances, or machinery under subsection (1)(b)(iv) is
16 limited as follows:

17 (a) if they are rented, the lien is for the reasonable
18 rental value for the period of actual use and any reasonable
19 periods of nonuse taken into account in the rental contract;
20 and

21 (b) if they are purchased, the lien is for the price
22 but arises only if they were purchased for use in the course
23 of the particular improvement and have no substantial value
24 to the purchaser after the completion of the improvement on
25 which they were used.

1 NEW SECTION. Section 11. Notice of lien liability.

2 (1) At any time after a claimant has entered into the
3 contract under which he may claim a lien under [sections 1
4 through 33], he may give a notice of lien liability to the
5 contracting owner. The notice of lien liability must be in
6 writing, state that it is a notice of a right to assert a
7 lien against real estate for services or materials furnished
8 in connection with improvement of the real estate, and
9 contain:

10 (a) the name of the claimant and the address to which
11 the owner or others may send communications to the claimant;

12 (b) the name and address of the person with whom the
13 claimant contracted;

14 (c) the name of the owner against whom a lien is or
15 may be claimed;

16 (d) a general description of the services or materials
17 provided or to be provided;

18 (e) a description sufficient to identify the real
19 estate against which the lien is or may be claimed;

20 (f) a statement that the claimant has recorded a lien
21 and the date of recording or, if the lien has not been
22 recorded, a statement that the claimant is entitled to
23 record a lien;

24 (g) the amount unpaid to the claimant for services or
25 materials, whether or not due (if no amount is fixed by the

1 contract, a good faith estimate of the amount designated as
2 an estimate); and

3 (h) the following statement in type no smaller than
4 that used in providing the information required by
5 subsections (1)(a) through (1)(g):

6 "Warning. If you did not contract with the person
7 giving this notice, any future payments you make in
8 connection with this project may subject you to double
9 liability."

10 (2) A claimant may notify the contracting owner,
11 either in the notice of lien liability or separately, that
12 the claimant must be notified of the recording of any
13 termination of the notice of commencement. The notice to the
14 owner must be in writing and, if not part of the notice of
15 lien liability, must contain the information specified in
16 subsections (1)(a) through (1)(e). In addition, the notice
17 shall state that a written notice of the recording of any
18 notice of termination must be given to the claimant at least
19 21 days before the effective date of the notice of
20 termination.

21 (3) If the contracting owner has held out another
22 person as contracting owner, either by naming that person in
23 the notice of commencement or otherwise, a notice directed
24 to and received by that person is effective against the
25 contracting owner.

1 (4) If the contracting owner has held out a fictitious
2 or nonexistent person as contracting owner either by naming
3 that person in the notice of commencement or otherwise, a
4 notice to that fictitious or nonexistent person delivered at
5 an address held out by the contracting owner as the address
6 of the fictitious or nonexistent person is effective against
7 the contracting owner.

8 NEW SECTION. Section 12. Amount of lien. (1) Subject
9 to subsections (2) and (3):

10 (a) the lien of a prime contractor is for the unpaid
11 part of his contract price; and

12 (b) the lien of a claimant other than a prime
13 contractor is for the lesser of:

14 (i) the amount unpaid under the claimant's contract;
15 or

16 (ii) the amount unpaid under the prime contract
17 through which the claimant claims at the time the
18 contracting owner receives the claimant's notice of lien
19 liability ([section 11]).

20 (2) The lien of a claimant is reduced by the sum of
21 the liens of claimants who claim through him.

22 (3) If a contracting owner's lien liability under a
23 particular prime contract (subsection (4)) is less than the
24 sum of claims of all claimants claiming through that
25 particular prime contractor:

1 (a) lien claimants whose liens attach at different
2 times have liens in the order of attachment until the
3 owner's lien liability is exhausted; and

4 (b) among claimants whose liens attach, or may attach,
5 at the same time, each claimant's lien is for his pro rata
6 portion of the amount of the contracting owner's lien
7 liability to claimants whose liens attach at that time.

8 (4) A contracting owner's lien liability under a prime
9 contract is the prime contract price less payments properly
10 made thereon. A payment is properly made on a prime contract
11 to the extent that the payment:

12 (a) is made in good faith before the receipt by the
13 contracting owner of a notice of lien liability ([section
14 11]); or

15 (b) if made after receipt by the contracting owner of
16 a notice of lien liability, is made in good faith and leaves
17 unpaid a part of the prime contract price sufficient to
18 satisfy the unpaid claims of all claimants who have given
19 notice of lien liability and whose claims are not being
20 satisfied by the payment.

21 NEW SECTION. Section 13. Attachment of lien --
22 recording required. (1) A claimant's lien does not attach
23 and may not be enforced unless, after entering into the
24 contract under which the lien arises and not later than 90
25 days after his final furnishing of services or materials, he

1 has recorded a lien ([section 23]).

2 (2) If a lien is recorded while a notice of
3 commencement is effective as to the improvement in
4 connection with which the lien arises, the lien attaches as
5 of the time the notice is recorded ([section 21]), even
6 though visible commencement occurred before the notice is
7 recorded. A notice of commencement is not effective until
8 recording and, after recording, is effective until its
9 lapse. A notice of commencement lapses at the earlier of its
10 expiration ([section 21(2)]) or the date it is terminated by
11 a notice of termination ([section 22]).

12 (3) If a lien is recorded while there is no recorded
13 notice of commencement covering the improvement in
14 connection with which the lien arises, the lien attaches at
15 the earlier of visible commencement of the improvement or
16 the recording of the lien. However, if visible commencement
17 has occurred before or within 30 days after the lapse of the
18 last notice of commencement covering the improvement:

19 (a) the lien attaches at the time the lien is recorded
20 if the lien is recorded within 30 days after lapse of the
21 last effective notice of commencement; or

22 (b) the lien relates back to and attaches 31 days
23 after the termination date if the lien is recorded more than
24 30 days after lapse of the last effective notice of
25 commencement.

1 (4) If new construction is the principal improvement
 2 involved and the materials, excavation, preparation of an
 3 existing structure, or other preparation are readily visible
 4 on a reasonable inspection of the real estate, "visible
 5 commencement" occurs when:

6 (a) materials are delivered to the real estate to
 7 which the lien attaches preparatory to construction;

8 (b) excavation on the real estate to which the lien
 9 attaches is begun; or

10 (c) preparation of an existing structure to receive
 11 the new construction, or other preparation of the real
 12 estate to which the lien attaches, is begun.

13 (5) In all cases not covered by subsection (4), the
 14 time visible commencement occurs is to be determined by the
 15 circumstances of the case.

16 NEW SECTION. Section 14. Priority among lien
 17 claimants. (1) All liens attaching at the same time have
 18 equal priority and share the amount received upon
 19 foreclosure of the liens and available for distribution to
 20 construction lien claimants in the same ratio as the ratio
 21 of the particular lien bears to the total of all liens
 22 attaching at the same time.

23 (2) Except as provided by subsection (3), liens
 24 attaching at different times have priority in the order of
 25 attachment.

1 (3) A claimant who records a notice of commencement
 2 after he has recorded a lien has only equal priority with
 3 claimants who record a lien while the notice of commencement
 4 is effective. Any priority which the claimant gained over
 5 third parties by recording his notice of lien ([section 15])
 6 is preserved for the benefit of all claimants having equal
 7 priority under this subsection.

8 NEW SECTION. Section 15. Priority of construction
 9 liens as against other claims. (1) Except as provided in
 10 this section, a construction lien has priority over adverse
 11 claims against the real estate as if the construction lien
 12 claimant were a purchase money mortgage holder, as provided
 13 in 71-3-114, at the time his lien attached.

14 (2) Except as provided in subsection (3), a
 15 construction lien has priority over subsequent advances made
 16 under a prior recorded security interest if the subsequent
 17 advances are made with knowledge that the lien has attached.

18 (3) Notwithstanding knowledge that the construction
 19 lien has attached, or the advance exceeds the maximum amount
 20 stated in the recorded security agreement and whether or not
 21 the advance is made pursuant to a commitment, a subsequent
 22 advance made under a security agreement recorded before the
 23 construction lien attached has priority over the lien if:

24 (a) the subsequent advance is made under a
 25 construction security agreement and is made in payment of

1 the price of the agreed improvements;

2 (b) the subsequent advance is made or incurred for the
3 reasonable protection of the security interest in the real
4 estate, such as payment for real property taxes, hazard
5 insurance premiums, or maintenance charges imposed under a
6 condominium declaration or other covenant; or

7 (c) the subsequent advance was applied to the payment
8 of any lien or encumbrance which was prior to the
9 construction lien.

10 (4) To the extent that a subsequent security interest
11 is given to secure funds used to pay a debt secured by a
12 security interest having priority over a construction lien
13 under this section, the subsequent security interest is also
14 prior to the construction lien.

15 (5) Even though notice of commencement has been
16 recorded, a buyer who is a protected party takes free of all
17 construction liens that are not of record at the time his
18 title document is recorded or, if he is a lessee for 1 year
19 or less, at the beginning of the lease term.

20 NEW SECTION. Section 16. Duration of lien -- statute
21 of limitations. (1) Except as provided in subsections (2)
22 and (3), a lien that has become enforceable as provided in
23 [sections 1 through 33] continues enforceable for 1 year
24 after recording of the lien ([section 23]) or, if an
25 amendment or continuation thereof ([section 24]) has been

1 recorded during the period allowed for recording the
2 original lien ([section 13]), 1 year after that recording.

3 (2) Except as provided in subsection (3), if an owner,
4 holder of a security interest, or other person having an
5 interest in the real estate gives the claimant written
6 demand to institute a judicial proceeding within 30 days,
7 the lien lapses unless within 30 days after receipt of the
8 written demand, the claimant institutes judicial proceedings
9 and records a notice of pending proceeding ([section 28(1)])
10 or records an affidavit ([section 28(2)]) that the total
11 contract price is not yet due under the contract for which
12 he recorded the lien.

13 (3) If a judicial proceeding to enforce a lien is
14 instituted while a lien is effective under subsections (1)
15 or (2), the lien continues during the pendency of the
16 proceeding if a notice of pending proceeding is recorded
17 ([section 28(1)]).

18 NEW SECTION. Section 17. Surety bond -- no lien
19 attaches. (1) A lien does not attach to the real estate on
20 behalf of any claimant claiming through a particular prime
21 contractor if the owner or the prime contractor has procured
22 from a surety company authorized to do business in this
23 state a bond meeting the requirements of this section and
24 has recorded a notice of surety bond ([section 26]).

25 (2) The bond must obligate the surety company, to the

1 extent of the penal sum of the bond, to pay all sums due to
 2 construction lien claimants other than the prime contractor
 3 for services and materials supplied pursuant to the contract
 4 under which the lien would otherwise arise.

5 (3) The penal sum of the bond may be not less than:

6 (a) 50% of the contract price, if the prime contract
 7 price is not more than \$1,000,000;

8 (b) 40% of the contract price, if the prime contract
 9 price is more than \$1,000,000 and not more than \$5,000,000;

10 (c) 25% of the contract price, if the prime contract
 11 price is more than \$5,000,000 and not more than \$25,000,000;

12 or

13 (d) 15% of the contract price if the prime contract
 14 price is more than \$25,000,000.

15 (4) The person procuring the bond shall furnish on
 16 request a true copy at cost of reproduction to any claimant
 17 and is liable to the requesting claimant for any damages
 18 caused by failure, without justification, to furnish a copy.

19 (5) A claimant may not recover under the bond provided
 20 for in this section unless he:

21 (a) institutes suit against the surety within 1 year
 22 after the completion of his performance or within any longer
 23 period of time permitted by the terms of the bond; and

24 (b) if he is a claimant not having a direct contract
 25 relationship with the prime contractor, within 90 days after

1 completion of his performance, gives the prime contractor
 2 written notice of the amount due.

3 (6) A claimant having a claim under the bond may
 4 proceed directly against the surety. A judicial proceeding
 5 on the bond may be maintained separately from and without
 6 bringing a judicial proceeding against the prime contractor
 7 and without complying with the notice and recording
 8 procedures of [sections 1 through 33]. In any judicial
 9 proceeding brought on the bond, the court shall award to the
 10 prevailing party reasonable attorney's fees and court costs.

11 (7) The obligation of a surety under this section is
 12 not affected by any change or modification of the contract
 13 between the prime contractor and the contracting owner, but
 14 the total liability of the surety may not exceed the penal
 15 sum of the bond.

16 NEW SECTION. Section 18. Substitution of collateral
 17 -- release of lien. (1) Any person having an interest in
 18 real estate may release the real estate from liens which
 19 have attached to it by:

20 (a) depositing in the office of the clerk of the
 21 district court for the county in which the real estate is
 22 located a sum of money, in cash, certified check, or other
 23 bank obligation, or a surety bond issued by a surety company
 24 authorized to do business in this state, in an amount
 25 sufficient to pay 1 1/2 times the total of the amounts

1 claimed in the liens being released; and

2 (b) recording, as provided in [section 27], a
3 certificate of the clerk showing that the deposit has been
4 made.

5 (2) The clerk of court has an obligation to accept the
6 deposit and issue the certificate.

7 (3) Upon release of the real estate from a lien under
8 this section, the claimant's rights are transferred from the
9 real estate to the deposit or surety bond and the claimant
10 may establish his claim under [sections 1 through 33], and
11 upon determination of the claim the court shall order the
12 clerk to pay the sums due or render judgment against the
13 surety company on the bond, as the case may be.

14 NEW SECTION. Section 19. Obligation of claimant to
15 furnish information to other lien claimants. (1) A prime
16 contractor, on request, is obligated to furnish accurate
17 information within a reasonable time, not exceeding 10 days,
18 to any person entitled to claim a lien through him as
19 follows:

20 (a) a description of the real estate being improved
21 sufficient to identify it;

22 (b) the name and address of the contracting owner with
23 whom the prime contractor contracted; and

24 (c) whether there is a surety bond and, if so, the
25 name of the surety.

1 (2) At the request of any person who may claim a lien
2 through him, any claimant other than a prime contractor must
3 furnish, within a reasonable time not exceeding 5 days, the
4 name of the person who contracted for the furnishing by the
5 claimant of the materials or services in connection with
6 which the lien claim may arise.

7 (3) A person who fails to furnish information as
8 required by this section is liable to the requesting party
9 for actual damages or \$200, whichever is greater.

10 NEW SECTION. Section 20. Waivers of claimant's
11 rights. (1) A written waiver of construction lien rights
12 signed by a claimant requires no consideration and is valid
13 and binding, whether signed before or after the materials or
14 services were contracted for or furnished. Ambiguities in a
15 written waiver are construed against the claimant.

16 (2) A written waiver waives all construction lien
17 rights of the claimant as to the improvement to which the
18 waiver relates unless the waiver is specifically limited to
19 a particular lien right or a particular portion of the
20 services or materials furnished.

21 (3) A waiver of lien rights does not affect any
22 contract rights of the claimant otherwise existing.

23 (4) Acceptance of a promissory note or other evidence
24 of debt is not a waiver of lien rights unless the note or
25 other instrument expressly so declares.

1 NEW SECTION. Section 21. Notice of commencement --
 2 recording. (1) A notice of commencement must be signed by
 3 the contracting owner, be denominated "notice of
 4 commencement", and state:

5 (a) the real estate being or intended to be improved
 6 or directly benefited, with a description thereof sufficient
 7 for identification;

8 (b) the name and address of the contracting owner, his
 9 interest in the real estate, and the name and address of the
 10 fee simple title holder, if other than the contracting
 11 owner; and

12 (c) that if, after the notice of commencement is
 13 recorded, a lien is recorded as to an improvement covered by
 14 the notice of commencement, the lien has priority from the
 15 time the notice of commencement is recorded.

16 (2) The notice of commencement may state its duration,
 17 but if a duration is stated of less than 6 months from the
 18 time of recording, the duration of the notice is 6 months.
 19 If no duration is stated, the duration of the notice is 2
 20 years, after the recording, except if the notice affects
 21 residential real estate, then as to a protected party the
 22 duration of the notice is 1 year after the recording.

23 (3) The notice of commencement may state that it is
 24 limited to a particular improvement project or portion
 25 thereof on the real estate. The limitation is not effective

1 unless the particular improvement, or portion thereof, to
 2 which it applies is stated with sufficient specificity that
 3 a claimant, by reasonable inquiry, can determine whether his
 4 contract is covered by the notice of commencement.

5 (4) A contracting owner may extend the duration of a
 6 notice of commencement by recording before the lapse thereof
 7 a continuation statement signed by him which refers to the
 8 record location and date of recording of the notice of
 9 commencement and states the date to which the notice of
 10 commencement's duration is extended.

11 (5) If no notice of commencement applies to an
 12 improvement, any claimant who is entitled to record a lien
 13 may record a notice of commencement denominated "notice of
 14 commencement, claimant recording", signed by him, stating:

15 (a) in accordance with subsection (10), the real
 16 estate being or intended to be improved or directly
 17 benefited, with a description thereof sufficient for
 18 identification;

19 (b) the name and address of the contracting owner
 20 against whom the notice of commencement is effective;

21 (c) the name and address of the claimant recording the
 22 notice of commencement;

23 (d) the name and address of the person with whom the
 24 claimant contracted with respect to the improvement;

25 (e) a brief description of the services or materials

1 provided or to be provided by the claimant for the
2 improvement; and

3 (f) that if, after the notice of commencement is
4 recorded, a lien is recorded as to an improvement covered by
5 the notice of commencement, the lien has priority from the
6 time the notice of commencement is recorded.

7 (6) A claimant recording a notice of commencement
8 must, no later than the day it is recorded, send a copy
9 thereof to the contracting owner. The claimant is liable to
10 the contracting owner for any damages caused by failure to
11 comply with this subsection.

12 (7) [Sections 1 through 33] applies equally to all
13 notices of commencement, but as to a notice of commencement
14 recorded by a claimant:

15 (a) notwithstanding any stated duration, the duration
16 is 1 year after the recording; and

17 (b) the limitation under subsection (3) is not
18 effective.

19 (8) Unless a notice of commencement is limited to a
20 particular improvement project or portion thereof, it covers
21 all improvements made on the real estate described therein
22 whether or not they were contemplated at the time of the
23 recording.

24 (9) Unless a notice of commencement provides
25 otherwise, it covers improvements made on real estate not

1 owned by the contracting owner if, under [section 9(4)], a
2 lien arises against the contracting owner's real estate
3 described in the notice of commencement as a result of the
4 improvements.

5 (10) A notice of commencement recorded by a claimant
6 (subsection (5)) may describe all or any part of the
7 contracting owner's real estate being improved or directly
8 benefited.

9 NEW SECTION. Section 22. Termination of notice of
10 commencement. (1) A contracting owner may terminate a notice
11 of commencement as to all or any identified portion of the
12 real estate subject to the notice of commencement by:

13 (a) recording a notice of termination denominated
14 "termination of notice of commencement" and containing:

15 (i) the information required by [section 21(1)(a) and
16 (b)] for a notice of commencement;

17 (ii) a reference to the recorded notice of commencement
18 by its record location and a statement of its date of
19 recording;

20 (iii) a statement of the date as of which the notice of
21 commencement is terminated, which date may not be earlier
22 than 30 days after the notice of termination is recorded;
23 and

24 (iv) if the notice of termination is to apply only to a
25 portion of the real estate subject to the notice of

1 commencement, a statement of that fact and a description of
2 the portion of the real estate to which the notice of
3 termination applies;

4 (b) sending, at least 21 days before the effective
5 date of the notice of termination, a copy of the notice of
6 termination, showing the date it was recorded, to all
7 claimants who have requested ([section 11(2)]) that the
8 owner notify them of the recording of a notice of
9 termination;

10 (c) publishing a notice of the recording of the notice
11 of termination, which notice must comply with the provisions
12 of subsection (2) and be published at least once a week for
13 3 consecutive weeks in a newspaper having general
14 circulation in the county where the recording occurs, the
15 last publication of which must be at least 5 days before the
16 stated termination date; and

17 (d) recording an affidavit stating that notice of the
18 recorded notice of termination has been sent to all
19 claimants who have requested notice and that publication has
20 been made. The affidavit must state the newspaper and dates
21 of publication and include a copy of the published notice.

22 (2) The published notice of the recording of the
23 notice of termination must contain the information required
24 for the notice of termination under subsection (1), a
25 statement of the date on which the notice of termination was

1 recorded, and a statement that all lien claims for which a
2 notice of lien is not recorded by the termination date may
3 be defeated by a transfer of the real estate.

4 (3) A purchaser, judgment creditor, or other person
5 having a lien against the real estate may rely on the
6 affidavit without obligation to inquire as to its accuracy
7 and is not prejudiced by its inaccuracy.

8 NEW SECTION. Section 23. Recording lien. (1) A
9 claimant may record a lien which shall be signed by the
10 claimant and state:

11 (a) the real estate subject to the lien, with a
12 description thereof sufficient for identification;

13 (b) the name of the person against whose interest in
14 the real estate a lien is claimed;

15 (c) the name and address of the claimant;

16 (d) the name and address of the person with whom the
17 claimant contracted;

18 (e) a general description of the services performed or
19 to be performed or materials furnished or to be furnished
20 for the improvement and the contract price thereof;

21 (f) the amount unpaid, whether or not due, to the
22 claimant for the services or materials (if no amount is
23 fixed by the contract a good faith estimate of the amount
24 designated as an estimate); and

25 (g) the time the last services or materials were

1 furnished or if that time has not yet occurred, an estimate
2 of the time.

3 (2) The name given in the lien in accordance with the
4 requirement of subsection (1)(b) may be the name of the
5 contracting owner or the name of the record holder of the
6 contracting owner's interest at the time of recording the
7 lien.

8 NEW SECTION. Section 24. Amendment or continuation of
9 lien. (1) A recorded lien may be amended or continued by an
10 additional recording at any time during the period allowed
11 for recording the original lien, and the amendment or
12 continuation extends the period of enforceability of a
13 recorded lien as stated by the provisions on duration of
14 lien ([section 16]). An amendment adding real estate or
15 increasing the amount of lien claimed is effective as to the
16 additional real estate or increased amount only from the
17 time the amendment is recorded.

18 (2) A recorded lien may be amended after the period
19 allowed for recording the original lien for the purpose of:

- 20 (a) reducing the amount of the lien;
21 (b) reducing the real estate against which the lien is
22 claimed; or
23 (c) making an apportionment of the lien among lots of
24 a platted subdivision of record ([section 9(5)]).

25 (3) An amendment or continuation must state the record

1 location and date of recording of the notice of lien being
2 amended or continued and must state the respects in which it
3 is being amended or that the recording is for the purpose of
4 continuing the period of enforceability of the lien.

5 NEW SECTION. Section 25. Recording assignment of
6 lien. (1) A claimant having a recorded lien or his assignee
7 may record an assignment signed by the claimant which sets
8 forth the name of the claimant, the name and address of the
9 assignee, the person against whom the lien is claimed, the
10 real estate affected with a description thereof sufficient
11 for identification, and the record location and date of the
12 recording of the notice of lien.

13 (2) Even though an assignment has been recorded, an
14 owner may continue to deal with the original claimant as to
15 the claim until the owner receives notice of the assignment
16 and a direction that no arrangements or payments may be made
17 without the assignee's consent. If requested by the owner,
18 the assignee must furnish reasonable proof that an
19 assignment has been made and unless he does so, the owner
20 may pay the assignor.

21 (3) Unless a statement of assignment is recorded, the
22 assignee need not be a party to any judicial proceeding to
23 foreclose a security interest, lien, or other encumbrance.

24 (4) The failure to record an assignment does not
25 otherwise affect its validity.

1 NEW SECTION. Section 26. Recording notice of surety
2 bond. (1) If a prime contractor or owner has secured a
3 surety bond ([section 17]), a notice of surety bond may be
4 recorded.

5 (2) The notice must be signed by the contractor or
6 owner and by the surety company and state:

7 (a) the real estate being improved with a description
8 thereof sufficient for identification;

9 (b) the names and addresses of the owner and the prime
10 contractor;

11 (c) the name and address of the surety company and the
12 name and address of a person on whom service of process may
13 be made;

14 (d) the total sum of the bond and that the bond meets
15 the requirements of [section 17]; and

16 (e) that the bond is for the purpose of relieving the
17 real estate from construction liens arising under the
18 contract between the named prime contractor and contracting
19 owner.

20 NEW SECTION. Section 27. Recording certificate of
21 clerk of court showing surety deposit. (1) A person who has
22 deposited money or a surety bond with the clerk of the
23 district court in substitution of collateral as provided in
24 [section 18] may record a certificate of the clerk showing
25 the deposit.

1 (2) The certificate, which must be signed by the
2 clerk, must state the amount deposited, if money, or if a
3 surety bond, the amount of the bond and the name and address
4 of the surety company.

5 (3) The certificate also must state, on the basis of
6 information supplied by the person making the deposit:

7 (a) the real estate being improved with a description
8 thereof sufficient for identification;

9 (b) the name and address of the person in whose behalf
10 the deposit was made;

11 (c) if a surety bond is deposited, the name and
12 address of a person on whom service of process may be made;
13 and

14 (d) the name of the claimants for whom the deposit is
15 made, the amount of their claims, and the record location of
16 their liens.

17 NEW SECTION. Section 28. Recording concerning
18 judicial proceedings. (1) A person giving a demand ([section
19 16(2)]) to institute judicial proceedings to enforce a lien,
20 after giving the demand, may record a copy of the demand in
21 the office in which the lien was recorded. The demand must
22 refer by record location to the recorded lien under which it
23 was given and state the date demand was given to institute
24 judicial proceedings and the names of the owner and the
25 claimant.

1 (2) A claimant who has received demand to institute
 2 judicial proceedings may record, in the office in which the
 3 lien was recorded, a statement that the total contract price
 4 is not yet due under the contract for which the lien was
 5 recorded. The statement must refer to the recorded lien by
 6 its record location and give the names of the owner and the
 7 claimant.

8 NEW SECTION. Section 29. Owner's statement of
 9 apportionment. An owner who is entitled to apportion a lien
 10 among lots of a platted subdivision of record ([section
 11 9(6)]) may record a statement making the apportionment. The
 12 statement must refer to the record location of the lien
 13 being apportioned, state the name of the owner and the
 14 claimant, state the date on which the demand to apportion
 15 was made on the claimant and that he has not apportioned,
 16 and make the apportionment.

17 NEW SECTION. Section 30. Discharge of lien. (1) A
 18 lien provided by [sections 1 through 33] may be discharged
 19 by:

20 (a) recording a signed statement of the record
 21 claimant stating that the lien is released;

22 (b) failing to record, within the time prescribed in
 23 the provisions on duration of lien ([section 16]), notice of
 24 pending proceeding to enforce the lien or an affidavit that
 25 the total contract price is not yet due;

1 (c) recording the original or certified copy of a
 2 final judgment or decree of a court of competent
 3 jurisdiction so providing; or

4 (d) recording, as provided in [section 27], a
 5 certificate of the clerk of the district court showing the
 6 deposit of substitute collateral.

7 (2) The lien claimant of record by partial release may
 8 reduce the amount of the lien claimed in the notice of lien
 9 or limit the notice of lien to a portion of the real estate
 10 described in the notice of commencement by recording an
 11 amendment to his lien ([section 24]) showing the reduction
 12 in amount or limited portion of the real estate against
 13 which a lien is claimed.

14 (3) A statement under subsection (1)(a) or a judgment
 15 under subsection (1)(c) must refer by record location to the
 16 notice of lien to which it applies.

17 NEW SECTION. Section 31. Proceeding to enforce lien.
 18 (1) Except as otherwise provided in this section, the
 19 provisions of Title 25 apply to a proceeding to foreclose
 20 liens under [sections 1 through 33].

21 (2) In a proceeding to foreclose a lien, all claimants
 22 having recorded liens may join as plaintiffs and those who
 23 do not join as plaintiffs may be joined as defendants. Any
 24 person who records a lien or acquires an interest in real
 25 estate after the commencement of the foreclosure proceeding

1 may be made a defendant before judgment.

2 (3) The court shall determine the amount due or owing
3 to each claimant, including reasonable attorney's fees if
4 specified in the contract, and direct foreclosure of the
5 liens against the real estate. Foreclosure may be by any
6 method available for foreclosure of security interests in
7 real estate or otherwise, as ordered by the court.

8 NEW SECTION. Section 32. Recording of notice of
9 termination before abandonment or completion. (1) If a
10 contracting owner records a notice of termination before
11 abandonment or substantial completion of all the
12 improvements covered by the notice of commencement being
13 terminated, he is personally liable to any lien claimant to
14 the extent that the claimant is unable to realize on a lien
15 because the notice of termination was recorded before
16 abandonment or substantial completion.

17 (2) A notice of termination is effective even though
18 the owner, under subsection (1), may be personally liable to
19 lien claimants by reason of his recording the notice of
20 termination.

21 NEW SECTION. Section 33. Remedies for wrongful
22 conduct. (1) If a person is wrongfully deprived of benefits
23 to which he is entitled under [sections 1 through 33] by
24 conduct other than that described in [section 32] on
25 contracting owner's duties:

1 (a) he is entitled to damages; and

2 (b) the court may make orders restraining the owner or
3 other person or ordering them to proceed on appropriate
4 terms and conditions.

5 (2) If in bad faith a claimant records a lien,
6 overstates the amount for which he is entitled to a lien, or
7 refuses to execute a release of a lien, the court may:

8 (a) declare his lien void; and

9 (b) award damages to the owner or any other person
10 injured thereby.

11 (3) Damages awarded under this section may include the
12 costs of correcting the record and reasonable attorney's
13 fees.

14 Section 34. Section 7-4-2619, MCA, is amended to read:
15 "7-4-2619. Indexes to recorded documents. Every county
16 clerk, as ex officio recorder, must keep:

17 (1) an index of deeds, grants, and transfers and
18 contracts to sell or convey real estate and notices of
19 buyer's interest in real property labeled "Grantors", with
20 each page divided into four columns headed, respectively:
21 "Names of grantors", "Names of grantees", "Date of deeds,
22 grants, transfers, contracts, or notices", and "Where
23 recorded";

24 (2) an index of deeds and notices of buyer's interest
25 in real property labeled "Grantees", with each page divided

1 into four columns headed, respectively: "Names of grantees",
2 "Names of grantors", "Date of deeds, grants, transfers,
3 contracts, or notices", and "Where recorded";

4 (3) an index of mortgages labeled "Mortgages of real
5 property", with each page divided into six columns headed,
6 respectively: "Names of mortgagors", "Names of mortgagees",
7 "Dates of mortgages", "Where recorded", "When filed", and
8 "When canceled";

9 (4) an index of mortgages labeled "Mortgages of real
10 property", with each page divided into six columns headed,
11 respectively: "Names of mortgagees", "Names of mortgagors",
12 "Date of mortgage", "Where recorded", "When filed", and
13 "When canceled";

14 (5) an index of mortgages labeled "Releases of
15 mortgages of real property--Mortgagees", with each page
16 divided into six columns headed, respectively: "Parties
17 whose mortgages are released", "Parties releasing", "Date of
18 release", "Where recorded", "Dates of mortgages released",
19 and "Where mortgages released are recorded";

20 (6) an index of powers of attorney labeled "Powers of
21 attorney", with each page divided into five columns headed,
22 respectively: "Names of parties executing powers", "To whom
23 powers are executed", "Date of powers", "Date of recording",
24 and "To whom powers are executed";

25 (7) an index of leases labeled "Leases", with each

1 page divided into four columns headed, respectively: "Names
2 of lessors", "Names of lessees", "Date of leases", and "When
3 and where recorded";

4 (8) an index of leases labeled "Lessees", with each
5 page divided into four columns headed, respectively: "Names
6 of lessees", "Names of lessors", "Date of leases", and "When
7 and where recorded";

8 (9) an index of marriage certificates labeled
9 "Marriage certificate--Men", with each page divided into six
10 columns headed, respectively: "Men married", "To whom
11 married", "When married", "By whom married", "Where
12 married", and "Where certificates are recorded";

13 (10) an index of marriage certificates labeled
14 "Marriage certificates--Women", with each page divided into
15 six columns headed, respectively: "Women married" (and under
16 this head placing the family names of the women), "To whom
17 married", "When married", "By whom married", "Where
18 married", and "Where certificates are recorded";

19 (11) an index of assignments of mortgages and leases
20 labeled "Assignments of mortgages and leases--Assignors",
21 with each page divided into five columns headed,
22 respectively: "Assignors", "Assignees", "Instruments
23 assigned", "Date of assignment", and "When and where
24 recorded";

25 (12) an index of assignments of mortgages and leases

1 labeled "Assignments of mortgages and leases--Assignees",
 2 with each page divided into five columns headed,
 3 respectively: "Assignees", "Assignors", "Instruments", "Date
 4 of assignment", and "When and where recorded";

5 (13) an index of wills labeled "Wills", with each page
 6 divided into four columns headed, respectively: "Names of
 7 testators", "Date of will", "Date of probate", and "When and
 8 where recorded";

9 (14) an index of official bonds labeled "Official
 10 bonds", with each page divided into five columns headed,
 11 respectively: "Names of officers", "Names of offices", "Date
 12 of bond", "Amount of bond", and "When and where recorded";

13 (15) an index of notices of mechanics' construction
 14 liens labeled "Mechanics' Construction liens", with each
 15 page divided into three columns headed, respectively:
 16 "Parties claiming liens", "Against whom claimed", and
 17 "Notices, when filed";

18 (16) an index to transcripts of judgments labeled
 19 "Transcripts of judgments", with each page divided into
 20 seven columns headed, respectively: "Judgment debtors",
 21 "Judgment creditors", "Amount of judgment", "Where
 22 recovered", "When recovered", "When transcript filed", and
 23 "When judgment satisfied";

24 (17) an index of attachments labeled "Attachments",
 25 with each page divided into six columns headed,

1 respectively: "Parties against whom attachments are issued",
 2 "Parties issuing attachments", "Notices of attachments",
 3 "When filed", and "When attachments discharged";

4 (18) an index of notices of the pendency of actions
 5 labeled "Notices of actions", with each page divided into
 6 three columns headed, respectively: "Parties to actions",
 7 "Notices, when recorded", and "When filed";

8 (19) an index of certificates of sale of real estate
 9 sold under execution or under orders made in any judicial
 10 proceedings labeled "Certificates of sale", with each page
 11 divided into four columns headed, respectively: "Plaintiff",
 12 "Defendant", "Purchaser at sale", and "Date of sale";

13 (20) an index of the individual property of married
 14 persons labeled "Individual property of married persons",
 15 with each page divided into five columns headed,
 16 respectively: "Names of married persons", "Names of their
 17 spouses", "Nature of instruments recorded", "When recorded",
 18 and "Where recorded";

19 (21) an index to affidavits for annual work done on
 20 mining claims labeled "Annual work on mining claims", with
 21 each page divided into four columns headed, respectively:
 22 "Name of the affiant", "Name of the claim", "Where
 23 situated", and "Year when the work was done";

24 (22) an index of mining claims and declaratory
 25 statements labeled "Notices of location of mining claims and

1 declaratory statements", with each page divided into four
 2 columns headed, respectively: "Locators", "Name of claim",
 3 "Notice, when filed", and "Where recorded";

4 (23) an index to the register of births and deaths;

5 (24) an index to notices and declarations of water
 6 rights;

7 (25) an index to the "estrays and lost property book";

8 (26) an index to the record of assignments for the
 9 benefit of creditors, containing names of assignor and
 10 assignee, date and where recorded, and inventory, when
 11 filed;

12 (27) an index to financing statements as provided in
 13 Part 4 of the Uniform Commercial Code--Secured Transactions;

14 (28) an index to filed subdivision plats, containing
 15 number of lots, number of acres, filing date, and the
 16 location of the quarter section of each subdivision;

17 (29) an index to the book of maps and plats, which must
 18 contain the name of the proprietor of the town, village, or
 19 addition platted and a general description of the same;

20 (30) a miscellaneous index, in which must be indexed
 21 papers not hereinbefore stated."

22 Section 35. Section 70-23-604, MCA, is amended to
 23 read:

24 "70-23-604. Mechanic's--or--materialman's Construction
 25 lien -- no effect on nonconsenting owner -- exception. No

1 labor performed or materials furnished with the consent or
 2 at the request of a unit owner, his agent, contractor, or
 3 subcontractor shall be the basis for the filing of a
 4 mechanic's-or-materialman's construction lien against the
 5 unit of any other unit owner not consenting to or requesting
 6 the labor to be performed or the materials to be furnished,
 7 except that consent shall be considered given by the owner
 8 of any unit in the case of emergency repairs thereto
 9 performed or furnished with the consent or at the request of
 10 the manager."

11 Section 36. Section 70-23-607, MCA, is amended to
 12 read:

13 "70-23-607. Claim for common expenses -- priority of
 14 lien -- contents -- recording. (1) Whenever an association
 15 of unit owners acting through its manager furnishes to a
 16 unit any services, labor, or material lawfully chargeable as
 17 common expenses, the association of unit owners, upon
 18 complying with subsection (2) of this section, shall have a
 19 lien upon the individual unit and the undivided interest in
 20 the common elements appertaining to such unit for the
 21 reasonable value of such common expenses, and the lien shall
 22 be prior to all other liens or encumbrances upon the unit
 23 except:

24 (a) tax and assessment liens; and

25 (b) a first mortgage or trust indenture of record.

1 (2) An association of unit owners claiming the
2 benefits of subsection (1) of this section shall record in
3 the county in which the unit or some part thereof is located
4 a claim containing:

5 (a) a true statement of the account due for such
6 common expenses after deducting all just credits and
7 offsets;

8 (b) the name of the owner of the unit or reputed
9 owner, if known;

10 (c) a description of the property where the common
11 expenses were furnished and the designation of the unit,
12 sufficient for identification.

13 (3) The claim shall be verified by the oath of some
14 person having knowledge of the facts and shall be filed with
15 and recorded by the recording officer in the book kept for
16 the purpose of recording liens filed under ~~71-3-501~~
17 [sections 1 through 33]. The record shall be indexed as
18 deeds and other conveyances are required by law to be
19 indexed."

20 Section 37. Section 70-23-608, MCA, is amended to
21 read:

22 "70-23-608. Foreclosure of lien under claim for common
23 expenses -- action without foreclosure. (1) The proceedings
24 to foreclose liens created by 70-23-607 shall conform as
25 nearly as possible to the proceedings to foreclose liens

1 created by ~~71-3-501~~ [sections 1 through 33]. The lien may be
2 enforced by the manager acting on behalf of the association
3 of unit owners.

4 (2) An action to recover a money judgment for unpaid
5 common expenses may be maintained without foreclosing or
6 waiving the lien securing the claim for common expenses."

7 Section 38. Section 71-3-1005, MCA, is amended to
8 read:

9 "71-3-1005. Enforcement of liens -- duty of county
10 clerks. The liens herein created shall be enforced in the
11 same manner and the duty of county clerks with respect to
12 the filing and abstracting of liens shall be the same as now
13 provided by the laws for ~~materialmen's--and--mechanic's~~
14 construction liens."

15 Section 39. Section 72-16-477, MCA, is amended to
16 read:

17 "72-16-477. Filing of lien. The lien imposed by
18 72-16-472 is not valid against a purchaser, holder of a
19 security interest, ~~mechanic's~~ construction lien, or judgment
20 lien creditor until notice that meets the requirements of
21 71-3-204 has been filed by the department."

22 Section 40. Section 76-4-1101, MCA, is amended to
23 read:

24 "76-4-1101. Definitions. Unless the context requires
25 otherwise, in this part the following definitions apply:

1 (1) "Blanket encumbrance" shall be considered to mean
 2 a trust deed or mortgage or any other lien or encumbrance,
 3 mechanics' construction lien or otherwise, securing or
 4 evidencing the payment of money and affecting land to be
 5 subdivided or affecting more than one lot or parcel of
 6 subdivided land or an agreement affecting more than one such
 7 lot or parcel by which the owner or subdivider holds said
 8 subdivision under an option, contract to sell, or trust
 9 agreement.

10 (2) "Board" means the board of realty regulation
 11 provided for in 2-15-1867.

12 (3) "Department" means the department of commerce
 13 provided for in Title 2, chapter 15, part 18.

14 (4) "Subdivision" and "subdivided lands" mean any
 15 tract of land which is hereafter divided into five or more
 16 parcels, a parcel of which is less than 5 acres in size, and
 17 which is offered for sale or lease outside the state of
 18 Montana."

19 Section 41. Section 85-8-350, MCA, is amended to read:

20 "85-8-350. Judgment on dismissal of proceedings --
 21 assessment of costs. (1) In case the petition or proceedings
 22 are dismissed as provided in 85-8-327, a judgment shall be
 23 entered for the costs, expenses, and liabilities incurred in
 24 said proceedings against the petitioners and in favor of the
 25 commissioners, but for the benefit of those who have

1 rendered services or advanced money in the prosecution of
 2 said proceedings or have recovered costs on successful
 3 contests therein.

4 (2) In case the proceedings are dismissed at any time
 5 or the district is discontinued for any cause subsequent to
 6 the time provided in subsections (1) and (2) of 85-8-327, a
 7 judgment shall be entered directing the commissioners of the
 8 district to assess the costs, expenses, and liabilities
 9 incurred in said proceedings, up to and including the time
 10 of such dismissal and discontinuation, on an acreage basis
 11 against the lands in said district, which assessment shall
 12 be a lien upon said lands from the date of said judgment
 13 superior to the lien of any other judgment, mortgage, or
 14 mechanic's construction lien against said lands. Said
 15 assessment shall be verified by the commissioners of the
 16 district the same as assessments to pay costs of
 17 construction. Such assessments shall be spread upon the tax
 18 rolls of the counties in which said district is situated and
 19 shall be collected by the county treasurers of such counties
 20 the same as assessments to pay costs of construction are
 21 collected. Such assessments shall be payable on or before
 22 November 30 following the date upon which they are so spread
 23 upon the assessment roll of such counties. The money so
 24 collected shall be paid out upon warrants issued by the
 25 commissioners of the district to those who have rendered

1 service or advanced money in connection with said district
 2 or have recovered costs on successful contests therein.
 3 Should such assessment, for any cause, be not sufficient for
 4 all such costs, expenses, and liabilities, then additional
 5 assessments shall be made and collected in like manner until
 6 sufficient funds have been raised to pay all such costs,
 7 expenses, and liabilities."

8 NEW SECTION. Section 42. Repealer. Sections 71-3-501
 9 through 71-3-505 and 71-3-511 through 71-3-519, MCA, are
 10 repealed.

11 NEW SECTION. Section 43. Codification instruction.
 12 Sections 1 through 33 are intended to be codified as an
 13 integral part of Title 71, chapter 3, and the provisions of
 14 Title 71, chapter 3, apply to sections 1 through 33.

15 NEW SECTION. Section 44. Saving clause. This act does
 16 not affect rights and duties that matured, penalties that
 17 were incurred, or proceedings that were begun before the
 18 effective date of this act.

19 NEW SECTION. Section 45. Severability. If a part of
 20 this act is invalid, all valid parts that are severable from
 21 the invalid part remain in effect. If a part of this act is
 22 invalid in one or more of its applications, the part remains
 23 in effect in all valid applications that are severable from
 24 the invalid applications.

25 NEW SECTION. Section 46. Applicability. This act

1 applies to all construction liens arising under contracts
 2 entered into on or after October 1, 1985, and any
 3 construction lien arising prior to October 1, 1985, but not
 4 filed or perfected prior to October 1, 1985.

5 NEW SECTION. Section 47. Code commissioner
 6 instruction. In any material enacted during the 49th
 7 legislative session, the term "mechanics' lien" means
 8 "construction lien", and the code commissioner shall change
 9 such terminology accordingly.

-End-