

# **South Carolina Mechanics' Lien Law**

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**SECTION 29-5-10.** Lien of person furnishing labor and materials for buildings or structures; offers of settlement.

(a) A person to whom a debt is due for labor performed or furnished or for materials furnished and actually used in the erection, alteration, or repair of a building or structure upon real estate or the boring and equipping of wells, by virtue of an agreement with, or by consent of, the owner of the building or structure, or a person having authority from, or rightfully acting for, the owner in procuring or furnishing the labor or materials shall have a lien upon the building or structure and upon the interest of the owner of the building or structure in the lot of land upon which it is situated to secure the payment of the debt due to him. The costs which may arise in enforcing or defending against the lien under this chapter, including a reasonable attorney's fee, may be recovered by the prevailing party. The fee must be determined by the court in which the action is brought but the fee and the court costs may not exceed the amount of the lien. As used in this section, labor performed or furnished in the erection, alteration, or repair of any building or structure upon any real estate includes the preparation of plans, specifications, and design drawings and the work of making the real estate suitable as a site for the building or structure. The work is considered to include, but not be limited to, the grading, bulldozing, leveling, excavating, and filling of land (including the furnishing of fill soil), the grading and paving of curbs and sidewalks and all asphalt paving, the construction of ditches and other drainage facilities, and the laying of pipes and conduits for water, gas, electric, sewage, and drainage purposes, and the disposal of any construction and demolition debris, as defined in Section 44-96-40(6), including final disposal by a construction and demolition landfill. Any private security guard services provided by any person at the site of the building or structure during its erection, alteration, or repair is considered to be labor performed or furnished within the meaning of this section. As used in this section, materials furnished and actually used include tools, appliances, machinery, or equipment supplied for use on the building or structure to the extent of their reasonable rental value during their actual use. "Person" as used in this section means any individual, corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, or other entity. For purposes of this section, the term "materials" includes flooring, floor coverings, and wall coverings.

(b) Not less than fifteen days before the first term of court at which the trial is set, either party may file and serve on the other party an offer of settlement, and within ten days thereafter the party served may respond by filing and serving his offer of settlement. The offer shall state that it is made under this section and specify the amount, exclusive of interest and costs, which the party serving the offer is willing to agree constitutes a settlement of the lien. If the action is not reached for trial, then not less than fifteen days before the next term of court and subsequent terms of court at which the trial is set, either party may file and serve on the other party an offer of settlement or an amendment of a prior offer of settlement and, within ten days after that, the party served may respond by filing and serving his offer or amended offer of settlement. The offer or amended offer supersedes any offer previously made under this section by the same party.

An offer of settlement is considered rejected unless an acceptance in writing is filed and served on the party making the offer, five days before the commencement of the term.

If the offer is rejected, it may not be referred to for any purpose at the trial, but may be considered solely for the purpose of awarding costs and litigation expenses under this section.

For purposes of the award of attorney's fees, the determination of the prevailing party is based on one verdict in the action. One verdict assumes some entitlement to the mechanic's lien and the consideration of compulsory counterclaims. The party whose offer is closer to the verdict reached is considered the prevailing party in the action. If the difference between both offers and the verdict is equal, neither party is considered to be the prevailing party for purposes of determining the award of costs and attorney's fees.

If the plaintiff makes no written offer of settlement, the amount prayed for in his complaint is considered to be his final offer of settlement.

If the defendant makes no written offer of settlement, the value of his counterclaim is considered to be his negative offer of settlement. If the defendant has not asserted a counterclaim, his offer of settlement is considered to be zero.

HISTORY: 1962 Code Section 45-251; 1952 Code Section 45-251; 1942 Code Section 8727; 1932 Code Section 8727; Civ. C. '22 Section 5639; Civ. C. '12 Section 4113; Civ. C. '02 Section 3008; G.S. 2350; R. S. 2456; 1816 (6) 32; 1869 (14) 220; 1922 (32) 944; 1973 (58) 80; 1974 (58) 2183; 1976 Act No. 524, Section 1; 1986 Act No. 408, Section 1; 1990 Act No. 374, Section 2; 1999 Act No. 83, Section 1; 2003 Act No. 51, Section 22.

**SECTION 29-5-15.** Filing requirements; penalty for frivolous lien.

(A) To file a mechanics' lien, a contractor must provide the county clerk of court or register of deeds proof that he is licensed or registered if he is required by law to be licensed or registered. As proof of licensure or registration, the contractor must record his contractor license number or registration number on the lien document when the lien document is filed.

(B) A contractor who files a frivolous lien is subject to a fine up to five thousand dollars, the loss of his registration or contractor license, or both.

HISTORY: 2009 Act No. 40, Section 2, eff June 2, 2009.

**SECTION 29-5-20.** Lien of laborer, mechanic, subcontractor or materialman; limits on aggregate amount of liens filed by sub-subcontractor or supplier; limits on total aggregate amount of liens; exceptions; settlement of action to enforce lien.

(A) Every laborer, mechanic, subcontractor, or person furnishing material for the improvement of real estate when the improvement has been authorized by the owner has a lien thereon, subject to existing liens of which he has actual or constructive notice, to the value of the labor or material so furnished, including the costs of the action and a reasonable attorney's fee which must be determined by the court in which the action is brought but only if the party seeking to enforce the lien prevails. If the party defending against the lien prevails, the defending party must be awarded costs of the action and a reasonable attorney's fee as determined by the court. The fee and the court costs may not exceed the amount of the lien. The lien may be enforced as herein provided.

(B) In no event shall the aggregate amount of any liens filed by a sub-subcontractor or supplier exceed the amount due by the contractor to the subcontractor to whom the sub-subcontractor or supplier has supplied labor, material, or services unless the sub-subcontractor or supplier has provided notice of furnishing labor or materials by certified or registered mail to the contractor. Such notice of furnishing labor or materials shall include:

- (1) the name of the sub-subcontractor or supplier who claims payment;
- (2) the name of the person with whom the claimant contracted or by whom he was employed;
- (3) a description of the labor, services, or materials furnished and the contract price or value thereof. Materials specially fabricated by a person other than the one giving notice and the contract price or value thereof shall be separately stated in the notice;
- (4) a description of the project where labor, services, or materials were used sufficient for identification;

- (5) the date when the first and the last item of labor or service or materials was actually furnished or scheduled to be furnished; and
- (6) the amount claimed to be due, if any.

After receiving such notice, no payment by the contractor to the subcontractor will lessen the amount recoverable by the person so giving notice. However, in no event shall the total aggregate amount of liens on the improvement exceed the amount due by the owner.

(C) Not less than fifteen days before the first term of court at which the trial is set, either party may file and serve on the other party an offer of settlement, and within ten days thereafter the party served may respond by filing and serving his offer of settlement. The offer shall state that it is made under this section and specify the amount, exclusive of interest and costs, which the party serving the offer is willing to agree constitutes a settlement of the lien. If the action is not reached for trial, then not less than fifteen days before the next term of court and subsequent terms of court at which the trial is set, either party may file and serve on the other party an offer of settlement or an amendment of a prior offer of settlement and, within ten days after that, the party served may respond by filing and serving his offer or amended offer of settlement. The offer supersedes any offer previously made under this section by the same party.

An offer of settlement is considered rejected unless an acceptance in writing is filed and served on the party making the offer five days before the commencement of the term.

If the offer or amended offer is rejected, it may not be referred to for any purpose at the trial but may be considered solely for the purpose of awarding costs and litigation expenses under this section.

For purposes of the award of attorney's fees, the determination of the prevailing party is based on one verdict in the action. One verdict assumes some entitlement to the mechanic's lien and the consideration of compulsory counterclaims. The party whose offer of settlement is closer to the verdict reached is considered the prevailing party in the action. If the difference between both offers and the verdict is equal, neither party is considered to be the prevailing party for purposes of determining the award of costs and attorney's fees. If the plaintiff makes no written offer of settlement, the amount prayed for in his complaint is considered to be his final offer of settlement.

If the defendant makes no written offer of settlement, the value of his counterclaim is considered to be his negative offer of settlement. If the defendant has not asserted a counterclaim, his offer of settlement is considered to be zero.

(D) Subsection (B) does not apply to individual laborers when the amount of their lien is less than two thousand dollars.

HISTORY: 1962 Code Section 45-252; 1952 Code Section 45-252; 1942 Code Section 8728; 1932 Code Section 8728; Civ. C. '22 Section 5640; Civ. C. '12 Section 4114; Civ. C. '02 Section 3009; R. S. 2466; 1896 (22) 197; 1916 (29) 686; 1973 (58) 80; 1986 Act No. 408, Section 2; 1992 Act No. 368, Section 1; 1995 Act No. 140, Section 1; 1999 Act No. 83, Section 2.

**SECTION 29-5-21.** Services of surveyor and real estate licensee as improving real estate; real estate licensee's liens.

(A) A surveyor who surveys real estate by virtue of an agreement with the owner of such real estate has furnished material for the improvement of real estate within the meaning of Section 29-5-20.

(B) (1) A real estate licensee who, by virtue of a written agreement with the owner, performs professional services for which he is licensed under Title 40 incident to marketing, developing, or improving commercial real estate preparatory to or as a part of a commercial real estate lease or rental transaction involving the commercial real estate, has furnished labor or material for the improvement of commercial real estate within the meaning of Section 29-5-20.

(2) A real estate licensee shall not acquire a lien under this subsection unless:

- (a) the owner of the commercial real estate or the owner's authorized agent authorizes the real estate licensee, under the terms of a written agreement, to lease an interest in the commercial real estate; and
- (b) the real estate licensee or the real estate licensee's affiliated licensees provide licensed services that result, during the term of a written agreement described in item (1) of this subsection, in the procuring of a person or entity that rents or leases the commercial real estate or rents or leases an interest in the commercial real estate upon terms contained in a written agreement described in item (1) of this subsection.

(3) A real estate licensee shall not acquire a lien under this subsection upon residential real estate.

(4) Prior recorded liens shall have priority over a real estate licensee's lien. A prior recorded lien shall include, without limitation:

- (i) a valid mechanic's lien claim that is recorded subsequent to the real estate licensee's lien notice of lien but which relates back to a date prior to the recording date of the real estate licensee's lien notice of lien; and
- (ii) prior recorded liens securing revolving credit and future advance of construction loans as described in Section 29-3-50.

HISTORY: 1978 Act No. 465, Section 1; 2006 Act No. 263, Section 1, eff May 2, 2006.

**SECTION 29-5-22.** Reasonable rental value of tools, appliances, machinery, and equipment.

A person who supplies tools, appliances, machinery, or equipment used as provided in Section 29-5-10(a) is considered to have furnished material for the improvement of real estate within the meaning of Sections 29-5-20 and 29-5-40 to the extent of the reasonable rental value of the tools, appliances, machinery, or equipment for the period of actual use.

HISTORY: 1990 Act No. 374, Section 1.

**SECTION 29-5-23.** Notice of Project Commencement; location notice; failure to file notice.

Any person entering into a direct agreement with, or with the consent of, an owner for the improvement of real property may file with the clerk of court or register of deeds in the county or counties where the real property is situate a notice of project commencement. The notice of project commencement shall contain the following information:

- (1) the name and address of the person filing the notice of commencement;
- (2) the name and address of the owner or developer;
- (3) a general description of the improvement; and
- (4) the location of the project.

The notice must be filed within fifteen days of the commencement of work and must be accompanied by a filing fee of fifteen dollars to be deposited in that county's general fund. The name and address of the contractor must be posted at the job site. A location notice also must be posted at the job site. The location notice must contain the following statement: "The contractor on the project has filed a notice of project commencement at the county courthouse. Sub-subcontractors and suppliers to subcontractors shall comply with Section 29-5-20 when filing liens in connection with this project." The failure to file a notice of project commencement shall render the provisions of Sections 29-5-20(B) and 29-5-60(B) inapplicable. The failure to file a notice of project commencement shall also render the provisions of Sections 29-5-440, 11-35-3030(2)(c), 57-5-1660(b), and 11-1-120, relating to the requirement of a notice of providing labor, materials, or rental equipment inapplicable for a claim against a payment bond furnished by a contractor holding a direct contractual agreement with an owner. The filing of a notice of project commencement shall not constitute a cloud, lien, or encumbrance upon, or defect to, the title of the real property described in the notice, nor shall it alter the aggregate amounts of liens allowable

under Section 29-5-40, nor shall it affect the priority of any mortgage filed before or after the notice, nor shall it affect any future advances under any mortgage. The clerk of court or register of deeds in each county shall maintain a separate book and index of all notices of project commencements.

HISTORY: 1992 Act No. 368, Section 3; 1997 Act No. 34, Section 1; 2000 Act No. 240, Section 5.

**SECTION 29-5-25.** Private security guard services at site of real estate improvement.

Any person providing private security guard services at the site of the real estate during its improvement shall be deemed to be a laborer within the meaning of Sections 29-5-20 and 29-5-40. "Person" as used in this section shall mean any individual, corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization or other such entity.

HISTORY: 1976 Act No. 524, Section 2.

**SECTION 29-5-26.** Landscape services.

(A) A person who provides a landscape service on a parcel of real estate, which service exceeds five thousand dollars, by virtue of a written agreement with the owner of the real estate and to whom a debt is due for his performance of the landscaping service has a mechanics' lien on the real estate to secure payment of debt due to him as provided by Section 29-5-10 and Section 29-5-20. The lien attaches to the land and a building, structure, or other improvement on the land.

(B) As used in this chapter, a landscape service includes:

- (1) land clearing, grading, filling, plant removal, natural obstruction removal, or other preparation of land;
- (2) provision or installation, or both of them, of a landscaping item including plant material, mulch, paving, walkway, swimming pool, fountain, retaining wall, bulkhead, deck, patio, lightscaping system, irrigation system, drainage structure, drainage system, underground utility, or other feature incidental and necessary to a landscape plan or site design; or
- (3) both.

(C) A landscaping service does not depend on whether the service is related to the construction, erection, alteration, or repair of a building or other structure.

HISTORY: 2009 Act No. 40, Section 1, June 2, 2009.

**SECTION 29-5-27.** Laborer and person defined.

Any person providing construction and demolition debris disposal services, as defined in Section 44-96-40(6), including, but not limited to, final disposal services provided by a construction and demolition landfill, is a laborer within the meaning of Sections 29-5-20 and 29-5-40. "Person" as used in this section means any individual, corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, or another entity.

HISTORY: 2003 Act No. 51, Section 23.

**SECTION 29-5-30.** Lien against debtor with life estate or whose estate is less than fee simple.

If the person for whom the work is done or materials are furnished has an estate for life or any other estate less than a fee simple in the land or if the property, at the time of recording the statement, is mortgaged or under any other encumbrance, the lien before provided for shall bind his whole estate and interest therein in like manner as a mortgage would have done and the creditor may cause the right of redemption or whatever other right or estate the owner had in the property to be sold and applied to the discharge of his debt, according to the provisions of this chapter.

HISTORY: 1962 Code Section 45-253; 1952 Code Section 45-253; 1942 Code Section 8762; 1932 Code Section 8762; Civ. C. '22 Section 5674; Civ. C. '12 Section 4144; Civ. C. '02 Section 3039; G. S. 2381; R. S. 2496; 1869 (14) 223.

**SECTION 29-5-40.** Notice to owner before lien attaches when laborer was employed by someone other than owner.

Whenever work is done or material is furnished for the improvement of real estate upon the employment of a contractor or some other person than the owner and such laborer, mechanic, contractor or materialman shall in writing notify the owner of the furnishing of such labor or material and the amount or value thereof, the lien given by Section 29-5-20 shall attach upon the real estate improved as against the true owner for the amount of the work done or material furnished. But in no event shall the aggregate amount of liens set up hereby exceed the amount due by the owner on the contract price of the improvement made.

HISTORY: 1962 Code Section 45-254; 1952 Code Section 45-254; 1942 Code Section 8729; 1932 Code Section 8729; Civ. C. '22 Section 5641; Civ. C. '12 Section 4114; Civ. C. '02 Section 3009; R. S. 2466; 1896 (22) 197; 1916 (29) 686.

**SECTION 29-5-50.** Lienor's preference over contractor.

Any person claiming a lien under the provisions of this chapter who shall have given the notice provided for herein shall be entitled to be paid in preference to the contractor at whose instance the labor was performed or material furnished and no payment by the owner to the contractor thereafter shall operate to lessen the amount recoverable by the person so giving the notice.

HISTORY: 1962 Code Section 45-255; 1952 Code Section 45-255; 1942 Code Section 8730; 1932 Code Section 8730; Civ. C. '22 Section 5642; 1916 (19) 686.

**SECTION 29-5-60.** Proration of payments among lienors.

(A) In the event the amount due the contractor by the owner is insufficient to pay all the lienors acquiring liens as herein provided it is the duty of the owner to prorate among all just claims the amount due the contractor.

(B) In the event the amount due a subcontractor by the contractor is insufficient to pay all the lienors acquiring liens under Section 29-5-20 as a result of supplying labor, materials, or services to that subcontractor, all just liens must be prorated by the contractor among sub-subcontractors and suppliers to that subcontractor.

HISTORY: 1962 Code Section 45-256; 1952 Code Section 45-256; 1942 Code Section 8731; 1932 Code Section 8731; Civ. C. '22 Section 5643; 1916 (29) 686; 1992 Act No. 368, Section 2.

**SECTION 29-5-70.** Force of lien against existing recorded mortgage.

Except as otherwise provided in Section 29-3-50, a lien claimed by any mechanic or materialman furnishing labor, services, or material is not enforceable against any mortgage recorded before the filing of the notice pursuant to Section 29-5-90 setting forth the statement of account upon which the lien is based.

HISTORY: 1962 Code Section 45-257; 1952 Code Section 45-257; 1942 Code Section 8733; 1932 Code Section 8733; Civ. C. '22 Section 5645; Civ. C. '12 Section 4515; Civ. C. '02 Section 3010; G. S. 2352; R. S. 2467; 1869 (14) 220; 1988 Act No. 635, Section 2.

**SECTION 29-5-80.** Notice of nonresponsibility by owner of building or structure.

The owner of any such building or structure in process of erection or being altered or repaired, other than the person by whom or in whose behalf a contract for labor or materials has been made, may prevent the attaching of any lien for labor thereon not at the time performed or materials not then furnished by giving notice, in writing, to the person performing or furnishing such labor or furnishing such materials that he will not be responsible therefor.

HISTORY: 1962 Code Section 45-258; 1952 Code Section 45-258; 1942 Code Section 8734; 1932 Code Section 8734; Civ. C. '22 Section 5646; Civ. C. '12 Section 4116; Civ. C. '02 Section 3011; G. S. 2356; R. S. 2468; 1869 (14) 220.

**SECTION 29-5-90.** Dissolution of lien for failure to serve and file statement; contents of statement.

Such a lien shall be dissolved unless the person desiring to avail himself thereof, within ninety days after he ceases to labor on or furnish labor or materials for such building or structure, serves upon the owner or, in the event the owner cannot be found, upon the person in possession and files in the office of the register of deeds or clerk of court of the county in which the building or structure is situated a statement of a just and true account of the amount due him, with all just credits given, together with a description of the property intended to be covered by the lien sufficiently accurate for identification, with the name of the owner of the property, if known, which certificate shall be subscribed and sworn to by the person claiming the lien or by someone in his behalf and shall be recorded in a book kept for the purpose by the register or clerk who shall be entitled to the same fees therefor as for recording mortgages of equal length. Provided, that in the event neither the owner nor the person in possession can be located after diligent search, and this fact is verified by affidavit of the sheriff or his deputy, the lien may be preserved by filing the statement together with the affidavit. The delivery on the register or clerk for filing, as provided in this section, shall be and constitute the delivery contemplated with regard to such liens in Title 30 of this Code.

HISTORY: 1962 Code Section 45-259; 1952 Code Section 45-259; 1942 Code Section 8735; 1932 Code Section 8735; Civ. C. '22 Section 5647; Civ. C. '12 Section 4117; Civ. C. '02 Section 3012; G. S. 2354; R. S. 2469; 1869 (14) 220; 1873 (15) 350; 1884 (18) 822; 1950 (46) 2294; 1957 (50) 180.

**SECTION 29-5-100.** Proceedings not invalidated by inaccuracy of statement of account.

No inaccuracy in such statement relating to the property to be covered by the lien, if the property can be reasonably recognized, or in stating the amount due for labor or materials shall invalidate the proceedings, unless it appear that the person filing the certificate has wilfully and knowingly claimed more than is his due.

HISTORY: 1962 Code Section 45-260; 1952 Code Section 45-260; 1942 Code Section 8736; 1932 Code Section 8736; Civ. C. '22 Section 5648; Civ. C. '12 Section 4118; Civ. C. '02 Section 3013; G. S. 2355; R. S. 2470; 1869 (14) 220.

**SECTION 29-5-110.** Release of lien upon filing written undertaking and security.

At any time after service and filing of the statement required under Section 29-5-90 the owner or any other person having an interest in or lien upon the property involved may secure the discharge of such property from such lien by filing in the office of clerk of court or register of deeds where such lien is filed his written undertaking, in an amount equal to one and one-third times the amount claimed in such statement, secured by the pledge of United States or State of South Carolina securities, by cash or by a surety bond executed by a surety company licensed to do business in this State, and upon the filing of such undertaking so secured the lien shall be discharged and the cash, securities or surety bond deposited shall take the place of the property upon which the lien existed and shall be subject to the lien. In the event of judgment for the person filing such statement in a suit brought pursuant to the provisions of this chapter, such judgment shall be paid out of the cash deposited or, in event of pledge of securities, it shall be paid from the proceeds of a sale of so much of the pledged securities as shall be necessary to satisfy such judgment or, in event of the filing of a surety bond, the surety company issuing such bond shall pay such amount found due, not to exceed the amount of the bond. Unless suit for enforcement of the lien is commenced as required by Section 29-5-120, the undertaking herein required shall be null and void and the principal therein shall have the right to have it canceled and such cash or securities deposited or pledged or surety bond filed shall be released from the lien herein provided.

HISTORY: 1962 Code Section 45-261; 1952 Code Section 45-261; 1950 (46) 2294; 1976 Act No. 635, Section 1.

**SECTION 29-5-120.** Time for bringing suit to enforce lien; dissolution and release of lien.

(A) Unless a suit for enforcing the lien is commenced and notice of pendency of the action is filed within six months after the person desiring to avail himself of it ceases to labor on or furnish labor or material for the building or structure, the lien must be dissolved.

(B) A mechanics' lien and associated bonds may be released by a court order, a written affidavit of the bond holder's attorney, or by a written affidavit from the defendant's attorney stating:

- (1) six months has passed since the lien was attached and no suit or notice of pendency has been filed; or
- (2) the failure of the filing party to take some other timely action required by this chapter. This affidavit must be in the form approved by the appropriate local office where the mechanics' lien was filed and must reference the lien's recording information.

HISTORY: 1962 Code Section 45-262; 1952 Code Section 45-262; 1942 Code Section 8737; 1932 Code Section 8737; Civ. C. '22 Section 5649; Civ. C. '12 Section 4119; Civ. C. '02 Section 3014; G. S. 2356; R. S. 2471; 1869 (14) 220; 1873 (15) 350; 1957 (50) 181; 2009 Act No. 40, Section 3, eff June 2, 2009.

**SECTION 29-5-130.** Enforcement of certain liens before magistrate's court.

When the amount of the claim does not exceed one hundred dollars the lien may be enforced by a petition to a magistrate. And such magistrate shall have like power and authority within his jurisdiction as herein conferred upon the court of common pleas, with like rights of appeal to the parties as exist in other civil cases.

HISTORY: 1962 Code Section 45-263; 1952 Code Section 45-263; 1942 Code Section 8739; 1932 Code Section 8739; Civ. C. '22 Section 5651; Civ. C. '12 Section 4121; Civ. C. '02 Section 3016; G. S. 2358; R. S. 2473; 1869 (14) 221.

**SECTION 29-5-140.** Enforcement of lien by petition to court of common pleas.

The lien may be enforced by petition to the court of common pleas for the county in which the building or structure is situated. The petition may be filed in term or in the clerk's office in vacation and the date of the filing shall be deemed the commencement of the suit.

HISTORY: 1962 Code Section 45-264; 1952 Code Section 45-264; 1942 Code Section 8738; 1932 Code Section 8738; Civ. C. '22 Section 5650; Civ. C. '12 Section 4120; Civ. C. '02 Section 3015; G. S. 2357; R. S. 2472; 1869 (14) 220.

**SECTION 29-5-150.** Service of petition.

The petition may be served with the summons or filed with the clerk and shall be returned and entered as other civil cases.

HISTORY: 1962 Code Section 45-265; 1952 Code Section 45-265; 1942 Code Section 8740; 1932 Code Section 8740; Civ. C. '22 Section 5652; Civ. C. '12 Section 4122; Civ. C. '02 Section 3017; G. S. 2359; R. S. 2474; 1869 (14) 221.

**SECTION 29-5-160.** Contents of petition.

The petition shall contain a brief statement of the contract on which it is founded and of the amount due thereon, with a description of the premises subject to the lien and all other material facts and circumstances, and shall pray that the premises may be sold and the proceeds of the sale applied to the discharge of the demand.

HISTORY: 1962 Code Section 45-266; 1952 Code Section 45-266; 1942 Code Section 8741; 1932 Code Section 8741; Civ. C. '22 Section 5653; Civ. C. '12 Section 4123; Civ. C. '02 Section 3018; G. S. 2360; R. S. 2475; 1869 (14) 220.

**SECTION 29-5-170.** Petition filed by multiple lienors.

Any number of persons who have actually performed labor or furnished labor or materials on one or more buildings or structures upon different lots of land, when the labor was performed for the same owner, contractor or other person, may join in the same petition for their respective liens and the same proceedings shall be had in

regard to the rights of each petitioner and the respondent may defend as to each petitioner in the same manner as if he had severally petitioned for his individual lien.

HISTORY: 1962 Code Section 45-267; 1952 Code Section 45-267; 1942 Code Section 8743; 1932 Code Section 8743; Civ. C. '22 Section 5655; Civ. C. '12 Section 4125; Civ. C. '02 Section 3020; G. S. 2362; R. S. 2477; 1869 (14) 220.

**SECTION 29-5-180.** Amendments of pleadings.

The court may at any time allow either party to amend his pleadings as in other civil actions.

HISTORY: 1962 Code Section 45-268; 1952 Code Section 45-268; 1942 Code Section 8742; 1932 Code Section 8742; Civ. C. '22 Section 5654; Civ. C. '12 Section 4124; Civ. C. '02 Section 3019; G. S. 2361; R. S. 2476; 1869 (14) 220.

**SECTION 29-5-190.** Notice to owner and other creditors.

The court in which the petition is entered shall order notice to be given to the owner of the building or structure, that he may appear and answer thereto at a certain day in the same term or at the next term, by serving him with an attested copy of the petition, with the order of the court thereon, fourteen days at least before the time assigned for the hearing. And the court shall also order notice of the filing of the petition to be given to all other creditors who have a lien of the same kind upon the same estate by serving them with a copy of the last-mentioned order in like manner.

HISTORY: 1962 Code Section 45-269; 1952 Code Section 45-269; 1942 Code Section 8744; 1932 Code Section 8744; Civ. C. '22 Section 5656; Civ. C. '12 Section 4126; Civ. C. '02 Section 3021; G. S. 2363; R. S. 2478; 1869 (14) 220.

**SECTION 29-5-200.** Notice by publication or other than personal service.

If it appears to the court that any of the parties entitled to notice are absent or that they cannot probably be found or be served with the notice, the court may, instead of the personal notice before mentioned or in addition thereto, order notice given to all persons interested by publishing in some newspaper the substance of the petition with the order of the court thereon assigning the time and place for a hearing or may order such other notice to be given as may, under the circumstances of the case, be considered most proper and effectual.

HISTORY: 1962 Code Section 45-270; 1952 Code Section 45-270; 1942 Code Section 8745; 1932 Code Section 8745; Civ. C. '22 Section 5657; Civ. C. '12 Section 4127; Civ. C. '02 Section 3022; G. S. 2364; R. S. 2479; 1869 (14) 220.

**SECTION 29-5-210.** Further notice of suit.

If at the time assigned for the hearing it appears to the court that any of the persons interested had not had a sufficient notice of the suit, the court may order further notice to them in such manner as may be considered most proper and effectual.

HISTORY: 1962 Code Section 45-271; 1952 Code Section 45-271; 1942 Code Section 8746; 1932 Code Section 8746; Civ. C. '22 Section 5658; Civ. C. '12 Section 4128; Civ. C. '02 Section 3023; G. S. 2365; R. S. 2480; 1869 (14) 220.

**SECTION 29-5-220.** Hearing on claims of lienors.

At the time assigned for the hearing, or within such further time as the court allows for that purpose, every creditor having a lien of the kind before mentioned upon the same property may appear and prove his claim and the owner and each of the creditors may contest the several claims of every other creditor and the court shall hear and determine them in a summary manner, either with or without a jury, as the case may require.

HISTORY: 1962 Code Section 45-272; 1952 Code Section 45-272; 1942 Code Section 8747; 1932 Code Section 8747; Civ. C. '22 Section 5659; Civ. C. '12 Section 4129; Civ. C. '02 Section 3024; G. S. 2366; R. S. 2481; 1869 (14) 220.

**SECTION 29-5-230.** Questions for jury.

Every material question of fact arising in the case shall be submitted to a jury, if required by either party or deemed proper by the court, and the trial shall be had upon a question stated or an issue framed or otherwise, as the court may order. A jury shall be had before a magistrate only as in other civil cases.

HISTORY: 1962 Code Section 45-273; 1952 Code Section 45-273; 1942 Code Section 8748; 1932 Code Section 8748; Civ. C. '22 Section 5660; Civ. C. '12 Section 4130; Civ. C. '02 Section 3025; G. S. 2367; R. S. 2482; 1869 (14) 220.

**SECTION 29-5-240.** Determination of claims due but not yet payable.

The court shall ascertain and determine the amount due to each creditor who has a lien of the kind before mentioned upon the property in question and every such claim due, absolutely and without any condition, although not then payable, shall be allowed with a rebate of interest to the time when it would become payable.

HISTORY: 1962 Code Section 45-274; 1952 Code Section 45-274; 1942 Code Section 8749; 1932 Code Section 8749; Civ. C. '22 Section 5661; Civ. C. '12 Section 4131; Civ. C. '02 Section 3026; G. S. 2368; R. S. 2483; 1869 (14) 222.

**SECTION 29-5-250.** Recovery for part performance.

When the owner fails to perform his part of the contract and by reason thereof the other party, without his own default, is prevented from completely performing his part, he shall be entitled to a reasonable compensation for as much as he has performed in proportion to the price stipulated for the whole and the court shall adjust his claim accordingly.

HISTORY: 1962 Code Section 45-275; 1952 Code Section 45-275; 1942 Code Section 8750; 1932 Code Section 8750; Civ. C. '22 Section 5662; Civ. C. '12 Section 4132; Civ. C. '02 Section 3027; G. S. 2369; R. S. 2484; 1869 (14) 222.

**SECTION 29-5-260.** Sale of premises if lien established.

If the lien is established in favor of any of the creditors whose claims are presented the court shall order a sale of the property to be made by such officer as may be authorized by law to make sales of property.

HISTORY: 1962 Code Section 45-276; 1952 Code Section 45-276; 1942 Code Section 8751; 1932 Code Section 8751; Civ. C. '22 Section 5663; Civ. C. '12 Section 4133; Civ. C. '02 Section 3028; G. S. 2370; R. S. 2485; 1869 (14) 222.

**SECTION 29-5-270.** Sale of part of property.

If part of the property can be separated from the residue and sold without damage to the whole and if the value thereof is sufficient to satisfy all debts proved in the case, the court may order a sale of that part, if it appears to be most for the interest of all parties concerned.

HISTORY: 1962 Code Section 45-277; 1952 Code Section 45-277; 1942 Code Section 8752; 1932 Code Section 8752; Civ. C. '22 Section 5664; Civ. C. '12 Section 4134; Civ. C. '02 Section 3029; G. S. 2371; R. S. 2486; 1869 (14) 222.

**SECTION 29-5-280.** Notice of sale.

The officer who makes the sale shall give notice of the time and place in the manner prescribed in relation to the sale of mortgaged lands under foreclosure, unless the court orders a different notice to be given.

HISTORY: 1962 Code Section 45-278; 1952 Code Section 45-278; 1942 Code Section 8753; 1932 Code Section 8753; Civ. C. '22 Section 5665; Civ. C. '12 Section 4135; Civ. C. '02 Section 3030; G. S. 2372; R. S. 2487; 1869 (14) 222.

**SECTION 29-5-290.** Distribution of proceeds of sale.

If all the claims against the property covered by the lien are ascertained at the time of ordering the sale, the court may order the officer to pay over and distribute the proceeds of the sale, after deducting all lawful charges and expenses, to and among the several creditors to the amount of their respective debts, if there is sufficient therefor, and if there is not sufficient, then to divide and distribute such proceeds among the creditors in proportion to the amount due to each of them.

HISTORY: 1962 Code Section 45-279; 1952 Code Section 45-279; 1942 Code Section 8754; 1932 Code Section 8754; Civ. C. '22 Section 5666; Civ. C. '12 Section 4136; Civ. C. '02 Section 3031; G. S. 2373; R. S. 2488; 1869 (14) 222.

**SECTION 29-5-300.** Distribution of proceeds by court.

If all the claims are not ascertained when the sale is ordered or if for any other reason the court finds it necessary or proper to postpone the order of distribution, it may direct the officer to bring the proceeds of the sale into court, there to be disposed of according to the decree of the court, and if, by reason of the claims of attaching creditors or for any other cause, the whole cannot be conveniently distributed at once the court may make two or more successive orders of distribution, as the circumstances may require.

HISTORY: 1962 Code Section 45-280; 1952 Code Section 45-280; 1942 Code Section 8755; 1932 Code Section 8755; Civ. C. '22 Section 5667; Civ. C. '12 Section 4137; Civ. C. '02 Section 3032; G. S. 2374; R. S. 2489; 1869 (14) 222.

**SECTION 29-5-310.** Distribution of surplus.

If there remain any surplus of the proceeds of the sale, after making all the payments before mentioned, it shall be forthwith paid over to the owner of the property, but such surplus, before it is so paid over, shall be liable to be attached or taken on execution in like manner as if it proceeded from a sale made by the officer on an execution.

HISTORY: 1962 Code Section 45-281; 1952 Code Section 45-281; 1942 Code Section 8756; 1932 Code Section 8756; Civ. C. '22 Section 5668; Civ. C. '12 Section 4138; Civ. C. '02 Section 3033; G. S. 2375; R. S. 2490; 1869 (14) 222.

**SECTION 29-5-320.** Prior attaching creditor is preferred.

If the interest of the owner in the building, structure or land is under attachment at the time of filing and recording the statement of the account, the attaching creditor shall be preferred to the extent of the value of the buildings and land as they were when the statement was recorded and the court shall ascertain, by a jury or otherwise as the case may require, what proportion of the proceeds of the sale shall be held subject to the attachment as derived from the value of the property when the statement was recorded.

HISTORY: 1962 Code Section 45-282; 1952 Code Section 45-282; 1942 Code Section 8757; 1932 Code Section 8757; Civ. C. '22 Section 5669; Civ. C. '12 Section 4139; Civ. C. '02 Section 3034; G. S. 2376; R. S. 2491; 1869 (14) 223.

**SECTION 29-5-330.** Distribution of proceeds where there is attaching creditor.

If the attaching creditor recovers judgment he shall be entitled to receive on his execution the proportion of the proceeds held subject to his attachment, or so much thereof as may be necessary to satisfy his execution, and the residue of the proceeds shall be applied in the same manner as if there had been no such attachment.

HISTORY: 1962 Code Section 45-283; 1952 Code Section 45-283; 1942 Code Section 8758; 1932 Code Section 8758; Civ. C. '22 Section 5670; Civ. C. '12 Section 4140; Civ. C. '02 Section 3035; G. S. 2377; R. S. 2492; 1869 (14) 223.

**SECTION 29-5-340.** Subsequent attachments.

If the interest of the owner of the property is attached after the recording of the statement, the proceeds, after discharging all prior liens and claims, shall be applied to satisfy the execution of such attaching creditor.

HISTORY: 1962 Code Section 45-284; 1952 Code Section 45-284; 1942 Code Section 8759; 1932 Code Section 8759; Civ. C. '22 Section 5671; Civ. C. '12 Section 4141; Civ. C. '02 Section 3036; G. S. 2378; R. S. 2493; 1869 (14) 223.

**SECTION 29-5-350.** Attachments intervening between two liens.

If an attachment is made after the recording of such statement and if, after the attachment, another like statement is recorded, the creditor in the latter statement shall be entitled to be paid only out of the residue of the proceeds remaining after paying all that is due on the demand a statement of which was recorded before the attachment and satisfying the attaching creditor.

HISTORY: 1962 Code Section 45-285; 1952 Code Section 45-285; 1942 Code Section 8760; 1932 Code Section 8760; Civ. C. '22 Section 5672; Civ. C. '12 Section 4142; Civ. C. '02 Section 3037; G. S. 2379; R. S. 2494; 1869 (14) 223.

**SECTION 29-5-360.** Rights of creditors among themselves.

When there are several attaching creditors, they shall, as between themselves, be entitled to be paid according to the order of their attachments. But when several creditors who are entitled to the lien provided for in this chapter have equal rights as between themselves and the fund is insufficient to pay the whole, they shall share it equally in proportion to their respective debts.

HISTORY: 1962 Code Section 45-286; 1952 Code Section 45-286; 1942 Code Section 8761; 1932 Code Section 8761; Civ. C. '22 Section 5673; Civ. C. '12 Section 4143; Civ. C. '02 Section 3038; G. S. 2380; R. S. 2495; 1869 (14) 223.

**SECTION 29-5-370.** Persons against whom lien may be enforced when debtor dies or conveys his interest.

If the person indebted dies or conveys away his estate or interest before the commencement of a suit on the contract, the suit may be commenced and prosecuted against his heirs or whoever holds the estate or interest which he had in the premises at the time the labor or materials were performed or furnished. Or, if a suit is commenced in his lifetime, it may be prosecuted against his executors, administrators, heirs or assigns in like manner as if the estate or interest had been mortgaged to secure the debt.

HISTORY: 1962 Code Section 45-287; 1952 Code Section 45-287; 1942 Code Section 8763; 1932 Code Section 8763; Civ. C. '22 Section 5675; Civ. C. '12 Section 4145; Civ. C. '02 Section 3040; G. S. 2382; R. S. 2497; 1869 (14) 223.

**SECTION 29-5-380.** Executor or administrator may enforce creditor's lien.

If a creditor dies before the commencement of the suit, the suit may be commenced and prosecuted by his executor or administrator or, if commenced in his lifetime, it may be prosecuted by them as it might have been by the deceased, if living.

HISTORY: 1962 Code Section 45-288; 1952 Code Section 45-288; 1942 Code Section 8764; 1932 Code Section 8764; Civ. C. '22 Section 5676; Civ. C. '12 Section 4146; Civ. C. '02 Section 3041; G. S. 2383; R. S. 2498; 1869 (14) 223.

**SECTION 29-5-390.** Suits begun by one creditor may be prosecuted by another.

If it appears in any stage of the proceedings that the suit was commenced by the petitioning creditor before his right of action accrued or after it was barred or if he becomes nonsuited or fails to establish his claims the suit may be prosecuted by any other creditor having such lien in the same manner as if it had been originally commenced

by him, if the circumstances of the case are such that he might then or at any time after the commencement of the original suit have commenced a like suit on his own claim.

HISTORY: 1962 Code Section 45-289; 1952 Code Section 45-289; 1942 Code Section 8765; 1932 Code Section 8765; Civ. C. '22 Section 5677; Civ. C. '12 Section 4147; Civ. C. '02 Section 3042; G. S. 2384; R. S. 2499; 1869 (14) 223.

**SECTION 29-5-400.** Allowance of claim and costs of petitioning creditor.

If the suit is commenced by the petitioning creditor before his right of action accrues, his claim may nevertheless be allowed if the suit is carried on by any other creditor, as provided in Section 29-5-390, but he shall not in such case be entitled to costs and he may be required to pay the costs incurred by the debtor or such part thereof as the court may deem reasonable.

HISTORY: 1962 Code Section 45-290; 1952 Code Section 45-290; 1942 Code Section 8766; 1932 Code Section 8766; Civ. C. '22 Section 5678; Civ. C. '12 Section 4148; Civ. C. '02 Section 3043; G. S. 2385; R. S. 2500; 1869 (14) 224.

**SECTION 29-5-410.** Costs.

The costs, in all other respects, shall be subject to the discretion of the court and shall be paid from the proceeds of the sale or by any of the parties to the suit, as justice and equity require.

HISTORY: 1962 Code Section 45-291; 1952 Code Section 45-291; 1942 Code Section 8767; 1932 Code Section 8767; Civ. C. '22 Section 5679; Civ. C. '12 Section 4149; Civ. C. '02 Section 3044; G. S. 2386; R. S. 2501; 1869 (14) 224.

**SECTION 29-5-420.** Civil action not barred.

Nothing contained in this chapter shall be construed to prevent a creditor in such contract from maintaining an action thereon in like manner as if he had no such lien for the security of his debt.

HISTORY: 1962 Code Section 45-292; 1952 Code Section 45-292; 1942 Code Section 8768; 1932 Code Section 8768; Civ. C. '22 Section 5680; Civ. C. '12 Section 4150; Civ. C. '02 Section 3045; G. S. 2387; R. S. 2502; 1869 (14) 224.

**SECTION 29-5-430.** Recording discharge or release of lien.

When a debt secured by such a lien is fully paid, the creditor, at the expense of the debtor, shall enter on the margin of the registry where the statement is recorded a discharge of his lien or shall execute a release thereof, which may be recorded where the statement is recorded.

HISTORY: 1962 Code Section 45-293; 1952 Code Section 45-293; 1942 Code Section 8769; 1932 Code Section 8769; Civ. C. '22 Section 5681; Civ. C. '12 Section 4151; Civ. C. '02 Section 3046; G. S. 2388; R. S. 2503; 1869 (14) 224.

**SECTION 29-5-440.** Suit on payment bond.

Every person who has furnished labor, material, or rental equipment to a bonded contractor or its subcontractors in the prosecution of work provided for in any contract for construction, and who has not been paid in full therefor before the expiration of a period of ninety days after the day on which the last of the labor was done or performed by him or material or rental equipment was furnished or supplied by him for which such claim is made, shall have the right to sue on the payment bond for the amount, or the balance thereof, unpaid at the time of the institution of such suit and to prosecute such action to final execution and judgment for the sum or sums justly due him.

A remote claimant shall have a right of action on the payment bond only upon giving written notice by certified or registered mail to the bonded contractor within ninety days from the date on which such person did or performed the last of the labor or furnished or supplied the last of the material or rental equipment upon which

such claim is made. However, in no event shall the aggregate amount of any claim against such payment bond by a remote claimant exceed the amount due by the bonded contractor to the person to whom the remote claimant has supplied labor, materials, rental equipment, or services, unless the remote claimant has provided notice of furnishing labor, materials, or rental equipment to the bonded contractor. Such written notice to the bonded contractor must generally conform to the requirements of Section 29-5-20(B) and sent by certified or registered mail to the bonded contractor at any place the bonded contractor maintains a permanent office for the conduct of its business, or at the current address as shown on the records of the Department of Labor, Licensing and Regulation. After receiving the notice of furnishing labor, materials, or rental equipment, no payment by the bonded contractor shall lessen the amount recoverable by the remote claimant. However, in no event shall the aggregate amount of claims on the payment bond exceed the penal sum of the bond.

No suit under this section shall be commenced after the expiration of one year after the last date of furnishing or providing labor, services, materials, or rental equipment.

For purposes of this section, "bonded contractor" means a contractor or subcontractor furnishing a payment bond, and "remote claimant" means a person having a direct contractual relationship with a subcontractor or supplier of a bonded contractor, but no contractual relationship expressed or implied with the bonded contractor. Any payment bond surety for the bonded contractor must have the same rights and defenses of the bonded contractor as provided in this section.

This section shall apply to any payment bond, whether statutory, public, common law, or private in nature, that is issued in connection with a construction project or other improvements to real property within South Carolina when such payment bonds are not otherwise required or governed by any other applicable section of the South Carolina Code of Laws.

For the purposes of this section:

(1) "Statutory bonds" or "public bonds" means bonds that are either:

- (a) provided because required by statute and in accordance with the minimum guidelines set forth in this section; or
- (b) contain either express or implied reference to the provisions of this section.

(2) "Common law bonds" or "private bonds" means bonds that are either:

- (a) not required by statute, such as a bond voluntarily provided to meet a contractual agreement between parties; or
- (b) required by statute but that specifically deviates from the statutory requirements to provide broader protection.

HISTORY: 2000 Act No. 240, Section 1; 2014 Act No. 264 (S.1026), Section 1, eff June 6, 2014.