

HOUSE BILL NO. 1187

Introduced by

Representatives Louser, Fisher, Klemin, Ostlie, Warrey

Senators Burckhard, Roers, Sickler, Weber

1 A BILL for an Act to create and enact a new section to chapter 35-27 of the North Dakota
2 Century Code, relating to a debris removal lien.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** A new section to chapter 35-27 of the North Dakota Century Code is created
5 and enacted as follows:

6 **Debris removal lien - Limitations - Notice of insurance proceeds - Release of lien.**

7 1. Notwithstanding any other provision of law, a receipt by an insurance company of a
8 claim under a fire insurance policy for a total loss to real property creates a lien on the
9 insurance proceeds payable for the claim in favor of the city in which the property is
10 located, or if the property is located outside a city, the county in which the property is
11 located. The amount of the lien under this subsection is the greater of:

12 a. Five thousand dollars; or

13 b. Ten percent of the policy limits for loss to the real property, including any
14 coverage for debris removal.

15 2. A lien created under this section may not exceed the policy limits of coverage for the
16 real property plus debris removal. The lien does not apply to proceeds payable under
17 the policy for any losses other than those to the real property insured, including loss of
18 personal property and payments for temporary housing and related living expenses.

19 3. Within ten days of a determination by the insurer that a covered claim constitutes a
20 total loss, the insurance company shall send a certified letter to the insured and to the
21 auditor of the city in which the property is located or, if the property is located outside a
22 city, to the auditor of the county in which the property is located. The letter must state:

23 a. Any amount claimed;

24 b. The limits and conditions of coverage;

- 1 c. The location of the property;
2 d. The terms and limits of coverage designated by the insurance policy for securing,
3 remediation, and debris removal;
4 e. Any time limitation imposed on the insured for securing or remediating the
5 property and removing debris; and
6 f. The policyholder's name and mailing address.
- 7 4. The lien must be discharged unless the city or county perfects and preserves the lien
8 by filing a notice of the lien with the county recorder of the county in which property is
9 located within thirty days of the receipt of the letter sent under subsection 3. If a city or
10 a county fails to file a notice under this subsection, the city or county is not precluded
11 from seeking other remedies provided by law regarding the property or the liability of
12 the property owner.
- 13 5. A notice of lien filed must include the estimated remediation costs.
- 14 6. A notice of lien filed under this section must be notarized and contain the following
15 statement in at least sixteen-point type:
- 16 Notice of Lien for Debris Removal
- 17 To (name of insurance company):
- 18 Take notice that the undersigned, on behalf of the (city or county), North Dakota,
- 19 has estimated the cost of removing debris and otherwise remediating (a certain
- 20 building or other structure or improvement) on real estate known as (an adequate
- 21 and ascertainable description of the real estate) would be (estimated remediation
- 22 cost).
- 23 You are further notified that, to secure the payment of the amount allowed under
- 24 law, the undersigned, on behalf of the (city or county) claims a lien in the amount
- 25 upon the interest of (policyholder's name) in a fire insurance policy (the policy
- 26 number or other identifying information) issued by (the insurance company's
- 27 name and address).
- 28 (Signature of city auditor or county auditor).
- 29 (Title)
- 30 7. Upon the filing of the notice, the county recorder shall index the notice in a system as
31 a lien against the insurance proceeds in favor of the city or county and shall send a

- 1 copy of the notice to the insurer. A property owner subject to a lien under this section
2 must be given the opportunity to satisfy the claim as provided under subsection 3.
- 3 8. The lien must be released if the:
- 4 a. City or county determines the property has been satisfactorily remediated or
5 repaired;
- 6 b. City or county determines satisfactory measures have been taken to assure the
7 property will be repaired or remediated within a reasonable time; or
- 8 c. Insurance company has paid the amount of the lien to the city or county or the
9 person designated to receive the moneys.
- 10 9. If the insurer has paid the amount of the lien to the city or county auditor and the
11 subsequent cost of remediation is less than that amount, the difference must be
12 returned to the insurer.
- 13 10. Upon the satisfaction of a lien under subsection 9, the city or county auditor shall sign
14 a release and cause it to be recorded by the county recorder. Upon recordation, the
15 county recorder shall send a certified copy of the lien release to the insurance
16 company.
- 17 11. If a lien has been paid or otherwise satisfied and the city or county auditor refuses to
18 release the lien, the insurance company or policyholder may apply to the appropriate
19 district court for an order compelling the county recorder to record a release. The
20 prevailing party in an action commenced under this subsection must be awarded the
21 full amount of costs and attorney's fees incurred by the prevailing party associated
22 with the action.