

TITLE 45
LIENS, MORTGAGES AND PLEDGES

CHAPTER 1
LIENS IN GENERAL

45-101. LIENS DEFINED. A lien is a charge imposed in some mode other than by a transfer in trust upon specific property by which it is made security for the performance of an act.

[(45-101) R.S., sec. 3325; reen. R.C. & C.L., sec. 3373; C.S., sec. 6340; I.C.A., sec. 44-101.]

45-102. GENERAL AND SPECIAL LIENS. Liens are either general or special.

[(45-102) R.S., sec. 3326; reen. R.C. & C.L., sec. 3374; C.S., sec. 6341; I.C.A., sec. 44-102.]

45-103. GENERAL LIEN DEFINED. A general lien is one which the holder thereof is entitled to enforce as a security for the performance of all the obligations, or all of a particular class of obligations, which exist in his favor against the owner of the property.

[(45-103) R.S., sec. 3327; reen. R.C. & C.L., sec. 3375; C.S., sec. 6342; I.C.A., sec. 44-103.]

45-104. SPECIAL LIEN DEFINED. A special lien is one which the holder thereof can enforce only as security for the performance of a particular act or obligation, and of such obligations as may be incidental thereto.

[(45-104) R.S., sec. 3328; reen. R.C. & C.L., sec. 3376; C.S., sec. 6343; I.C.A., sec. 44-104.]

45-105. SATISFACTION OF PRIOR LIEN. Where the holder of a special lien is compelled to satisfy a prior lien for his own protection, he may enforce payment of the amount so paid by him, as a part of the claim for which his own lien exists.

[(45-105) R.S., sec. 3329; reen. R.C. & C.L., sec. 3377; C.S., sec. 6344; I.C.A., sec. 44-105.]

45-106. CONTRACTS SUBJECT TO THIS CHAPTER. Contracts of mortgage of real property are subject to all the provisions of this chapter.

[(45-106) R.S., sec. 3330; reen. R.C. & C.L., sec. 3378; C.S., sec. 6345; I.C.A., sec. 44-106; am. 1967, ch. 272, sec. 9, p. 745.]

45-107. LIEN ON FUTURE INTEREST. An agreement may be made to create a lien upon property not yet acquired by the party agreeing to give the lien, or not yet in existence. In such case the lien agreed for attaches from the time when the party agreeing to give it acquires an interest in the thing, to the extent of said interest.

[(45-107) R.S., sec. 3331; reen. R.C. & C.L., sec. 3379; C.S., sec. 6346; I.C.A., sec. 44-107.]

45-108. LIEN FOR PERFORMANCE OF FUTURE OBLIGATIONS -- VALIDITY -- PRIORITY. (1) A lien may be created by contract, to take immediate effect, as security for the performance of obligations not then in existence, which lien, if not invalid on other grounds, shall be valid as against all persons.

(2) The validity of such contracts and liens as security for any obligation is not affected as against any person by the fact that the contract does not specify, describe or limit the obligations to be secured as to purpose, nature, time, or amount of the obligations to be secured.

(3) All such liens, if otherwise valid, are valid against and prior and superior to all rights, liens and claims acquired by other persons in the property subject thereto after the contract creating such liens was made, except in cases where the person in whose favor the obligation secured by such lien was created had actual notice of the existence of such subsequent right, lien or claim at the time such obligation was created, and are prior and superior to such subsequent rights, liens or claims irrespective of such or any notice in the following cases:

(a) Where the person, in whose favor the obligation secured thereby was created, was legally bound to make the advance or give the consideration resulting in such obligation.

(b) Where the consideration for such obligation was necessarily and actually applied to the maintenance and/or preservation of the property subject to the lien.

(4) Making the advance or giving the consideration to result in an obligation not in existence at the time such a contract creating a lien to secure the same is made, is optional with the person making the advance or giving the consideration unless he is bound by an express contract to the contrary which shall not be implied from the fact that the contract to secure such obligation was made.

(5) Obligations otherwise within the limits and description of those specified in any contract creating a lien to secure the performance of obligations not then in existence, but created in favor of any person to whom the original party to be secured by the lien created by such contract has transferred such contract, and obligations secured by deeds of trust, shall also be secured thereby in like manner as similar obligations between the original parties thereto.

(6) Contracts of mortgage of real property and those secured by deeds of trust are subject to all the provisions of this section as amended.

[(45-108) R.S., sec. 3332; reen. R.C. & C.L., sec. 3380; C.S., sec. 6347; am. 1929, ch. 255, sec. 1, p. 520; I.C.A., sec. 44-108; am. 1955, ch. 145, sec. 1, p. 286; am. 1967, ch. 272, sec. 10, p. 745; am. 2024, ch. 151, sec. 1, p. 598.]

45-109. LIEN TRANSFERS NO TITLE. Notwithstanding an agreement to the contrary, a lien, or a contract for a lien, transfers no title to the property subject to the lien.

[(45-109) R.S., sec. 3333; reen. R.C. & C.L., sec. 3381; C.S., sec. 6348; I.C.A., sec. 44-109.]

45-110. CONTRACTS FOR FORFEITURE VOID. All contracts for the forfeiture of property subject to a lien, in satisfaction of the obligation secured thereby, and all contracts in restraint of the right of redemption from a lien, are void.

[(45-110) R.S., sec. 3334; reen. R.C. & C.L., sec. 3382; C.S., sec. 6349; I.C.A., sec. 44-110.]

45-111. PERSONAL OBLIGATION NOT IMPLIED. The creation of a lien does not of itself imply that any person is bound to perform the act for which the lien is a security.

[(45-111) R.S., sec. 3335; reen. R.C. & C.L., sec. 3383; C.S., sec. 6350; I.C.A., sec. 44-111.]

45-112. PRIORITY OF PURCHASE MONEY MORTGAGE. A mortgage given for the price of real property, at the time of its conveyance, has priority over all other liens created against the purchaser, subject to the operation of the recording laws.

[(45-112) R.S., sec. 3336; reen. R.C. & C.L., sec. 3384; C.S., sec. 6351; I.C.A., sec. 44-112.]

45-113. RIGHT TO REDEEM FROM LIEN. Every person, having an interest in property subject to a lien, has a right to redeem it from the lien, at any time after the claim is due, and before his right of redemption is foreclosed.

[(45-113) R.S., sec. 3337; reen. R.C. & C.L., sec. 3385; C.S., sec. 6352; I.C.A., sec. 44-113.]

45-114. RIGHTS OF JUNIOR LIENOR. One who has a lien inferior to another, upon the same property, has a right:

1. To redeem the property in the same manner as its owner might, from the superior lien; and,
2. To be subrogated to all the benefits of the superior lien, when necessary for the protection of his interests upon satisfying the claim secured thereby.

[(45-114) R.S., sec. 3338; reen. R.C. & C.L., sec. 3386; C.S., sec. 6353; I.C.A., sec. 44-114.]

45-115. RESTORATION EXTINGUISHES LIEN. The voluntary restoration of property to its owner by the holder of a lien thereon, dependent upon possession, extinguishes the lien as to such property, unless otherwise agreed by the parties, and extinguishes it notwithstanding any such agreement, as to creditors of the owner and persons subsequently acquiring a title to the property, or a lien thereon, in good faith and for a good consideration.

[(45-115) R.S., sec. 3339; reen. R.C. & C.L., sec. 3387; C.S., sec. 6354; I.C.A., sec. 44-115.]

45-116. EFFECT OF MODIFICATION ON PRIORITY OF LIEN. (1) The lien of a mortgage and its priority shall not be affected by provisions in the mortgage instrument or in the note or other agreement evidencing the obligation that the mortgage secures, or by the exercise of such provisions by the mortgagee:

- (a) which provide for the renegotiation or adjustment of the interest rate at designated intervals, the effect of which may be to increase or decrease the number of periodic payments to be made, or extend or shorten the terms of payment, or both; or

(b) which results in an increase in the underlying mortgage obligation during a portion of the designated term of the mortgage because of deferment of all or a portion of interest payments and the addition of such payments to the outstanding principal balance of the mortgage.

The mortgagee may issue new notes at designated intervals during the term of the mortgage to reflect the modifications described herein.

(2) The provisions of subsection (1) of this section shall apply where the terms of the obligation provide that the interest rate, payment terms, or balance due on the loan may be indexed, adjusted, renewed or renegotiated and the mortgage instrument received for recordation discloses that fact.

(3) As used in this section, the term "mortgage" includes deed of trust.

[45-116, added 1982, ch. 245, sec. 1, p. 632.]

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CHAPTER 2
UNIFORM FEDERAL LIEN REGISTRATIONS

45-201. SCOPE. This chapter applies only to federal tax liens and to other federal liens notices of which under any act of congress or any regulation adopted pursuant thereto are required or permitted to be filed in the same manner as notices of federal tax liens.

[45-201, added 1979, ch. 226, sec. 2, p. 622.]

45-202. PLACE OF FILING. (a) Notices of liens, certificates, and other notices affecting federal tax liens or other federal liens must be filed in accordance with this chapter.

(b) Notices of liens upon real property for obligations payable to the United States and certificates and notices affecting the liens shall be recorded in the office of the county recorder of the county in which the real property subject to the liens is situated.

(c) Notices of federal liens upon personal property, whether tangible or intangible, for obligations payable to the United States and certificates and notices affecting the liens shall be filed or recorded as follows:

(1) If the person against whose interest the lien applies is a corporation or a partnership whose principal executive office is in this state, as these entities are defined in the internal revenue laws of the United States, in the office of the secretary of state;

(2) If the person against whose interest the lien applies is a trust that is not covered by paragraph (1) of this subsection, in the office of the secretary of state;

(3) If the person against whose interest the lien applies is the estate of a decedent, in the office of the secretary of state;

(4) In all other cases, in the office of the county recorder of the county where the person against whose interest the lien applies resides at the time of filing of the notice of lien.

[45-202, added 1979, ch. 226, sec. 2, p. 622; am. 1992, ch. 156, sec. 1, p. 510.]

45-203. EXECUTION OF NOTICES AND CERTIFICATES. Certification of notices of liens, certificates, or other notices affecting federal liens by the secretary of the treasury of the United States or his delegate, or by any official or entity of the United States responsible for filing or certifying of notice of any other lien, entitles them to be filed and no other attestation, certification, or acknowledgement is necessary.

[45-203, added 1979, ch. 226, sec. 2, p. 622.]

45-204. DUTIES OF FILING OFFICER. (a) If a notice of federal lien, certificate or other notice affecting a federal lien is presented to the secretary of state, he shall file it in the same manner as if it were an equivalent document filed under part 4, [chapter 9, title 28](#), Idaho Code.

(b) For purposes of the foregoing subsection (a), the following equivalencies between notices filed under this chapter and documents filed under part 4, [chapter 9, title 28](#), Idaho Code, shall apply:

- (1) Notice of federal lien: financing statement;
- (2) Refiling of notice of federal lien: continuation statement;
- (3) Certificate of discharge or subordination: release; and
- (4) Certificate of release or nonattachment: termination statement.

(c) If a notice of federal lien, certificate or other notice affecting a federal lien is presented to the county recorder, he shall record it in the general lien records.

(d) Upon the request of any person, the filing officer shall issue his certificate showing whether there is on file, on the date and hour stated therein, any notice of lien or certificate or notice affecting any lien filed under this chapter for which the refiling period established by federal law has not passed without a refiling of notice, naming a particular person, and if a notice or certificate is on file, giving the date and hour of filing of each notice or certificate. Upon request, the filing officer shall furnish a copy of any notice of federal lien, or notice or certificate affecting a federal lien. If the filing officer is the secretary of state, the fees for such certificate and copies shall be fixed by administrative rule. If the filing officer is the county recorder, the fees shall be as set forth in section [31-3205](#), Idaho Code.

(e) The secretary of state may by administrative rule provide for publication of a list of those notices of federal lien filed in his office which the filing federal agency has identified as relating to agricultural crops.

[45-204, added 1992, ch. 156, sec. 3, p. 510.]

45-205. FEES. (a) If the filing officer is the secretary of state, the fee for filing each notice of lien or certificate or notice affecting the lien is six dollars (\$6.00), except that there shall be no fee for a certificate of release or nonattachment.

(b) If the filing officer is the county recorder, the fee for recording each notice of lien or certificate or notice affecting the lien is the standard recording fee in section [31-3205](#), Idaho Code.

(c) The filing officer may bill the district directors of internal revenue or other appropriate federal officials on a monthly basis for fees for documents filed by them.

[45-205, added 1992, ch. 156, sec. 4, p. 511.]

45-206. UNIFORMITY OF APPLICATION AND CONSTRUCTION. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

[45-206, added 1979, ch. 226, sec. 2, p. 623.]

45-207. SHORT TITLE. This chapter may be cited as the "Uniform Federal Lien Registration Law."

[45-207, added 1979, ch. 226, sec. 2, p. 623.]

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CHAPTER 3
LIENS IN CROPS

45-301. PURPOSE AND SCOPE. (1) The purpose of this chapter is to provide a unified system for creation of liens and to provide notice of claims of liens in farm crops.

(2) The scope of this chapter is limited to liens in the crops of producers, and such liens are limited in amount to the value of the seeds or labor used in the production of the crops, plus expenses incurred in obtaining recovery pursuant to this chapter.

[45-301, added 1989, ch. 359, sec. 2, p. 901.]

45-302. DEFINITIONS. For the purposes of this chapter:

(1) "Buyer" means a person who purchases, on his own behalf or as an agent for others, a crop from a producer.

(2) "Claimant" means a provider of seed or farm labor who files a notice of claim of lien in a crop.

(3) "Crop year" means the calendar year in which a crop would normally be harvested.

(4) "Crops" means products of the soil. As it relates to liens for seed, the term "crops" shall be limited to annual crops. As it relates to liens for farm labor, it shall include annual crops as well as fruits, berries, grapes and nursery products.

(5) "Person" means an individual, partnership, corporation, or association.

(6) "Producer" means a farm operator to whom a claimant has provided seed or farm labor.

(7) "Written notice" means information communicated to a person in writing by an authorized person or entity and may include electronic, facsimile, computer or equivalent media.

[45-302, added 1989, ch. 359, sec. 2, p. 901; am. 1996, ch. 262, sec. 1, p. 863.]

45-303. FARM LABORER'S LIEN. (1) Any person who performs farm labor on a farm in furtherance of production of a crop shall have a lien in the crop for the agreed or reasonable value of the labor.

(2) The farm laborer's lien shall have priority over any security interest in the same crop.

(3) A landlord's interest in a crop produced on premises which are leased in consideration of a share of the crop is not subject to a farm laborer's lien.

[45-303, added 1989, ch. 359, sec. 2, p. 901.]

45-304. SEED LIEN. (1) Any person who furnishes seed to a producer to be sown or planted on lands owned, rented or otherwise lawfully occupied by the producer, shall have a lien in the crop or crops produced from the seed for the purchase price of the seed.

(2) The seed lien shall have priority over any security interest in the same crop, but shall be subordinate to a farm laborer's lien in the same crop.

(3) A landlord's interest in a crop produced on premises which are leased in consideration of a share of the crop is not subject to a seed lien.

[45-304, added 1989, ch. 359, sec. 2, p. 901.]

45-307. ATTACHMENT OF LIEN. (1) A lien in a crop attaches when a claimant files a notice of claim of lien with the secretary of state.

(2) A lien attaches to the crop subject to the lien, to any right or claim arising from any loss or damage to the crop, and to any payment to the producer for the crop from any purchaser thereof.

[45-307, added 1989, ch. 359, sec. 2, p. 902; am. 1991, ch. 217, sec. 1, p. 521.]

45-308. NOTICE OF CLAIM OF LIEN. (1) A claimant must file with the secretary of state a notice of claim of lien between thirty (30) days before and one hundred twenty (120) days after completion of his labor for or providing seed to the producer. If a notice of claim of lien is filed before completion of the labor or delivery of the seed, there must exist a written or verbal contract for such labor or seed.

(2) The notice of claim of lien must include:

- (a) The nature of the lien (farm laborer's or seed);
- (b) The name and address of the producer;
- (c) The name and address of the claimant;
- (d) The county or counties where the crop or crops covered by the lien are grown;
- (e) The type(s) of crop (name of commodity) to which the lien applies;
- (f) The crop year of the crop(s) to which the lien applies;
- (g) Such other information as the secretary of state shall by administrative rule require; and
- (h) The amount of claim exclusive of interest.

(3) The notice of claim of lien shall be signed by the claimant, his agent, or his attorney-in-fact, and the signer shall certify to the truth of the claim. Notarization is not required.

(4) The notice of claim of lien shall be filed on a standard form prescribed by the secretary of state. The form must satisfy the requirements of a farm products financing statement under section [28-9-502](#)(e), Idaho Code, except that:

- (a) The debtor may be identified as the producer;
 - (b) The secured party may be identified as the claimant;
 - (c) The debtor's social security number, taxpayer identification number or other number unique to the debtor need not be included; and
 - (d) The debtor's signature need not be included.
- (5) A claimant shall give written notice of the claim to the producer.

[45-308, added 1989, ch. 359, sec. 2, p. 902; am. 1996, ch. 262, sec. 2, p. 863; am. 2000, ch. 338, sec. 1, p. 1131; am. 2016, ch. 202, sec. 1, p. 572.]

45-308A. AMENDMENT OR ASSIGNMENT OF NOTICE. (1) A claimant may amend a notice of claim of lien to disclose a change of the name or address of a

claimant or producer by filing a notice of amendment with the secretary of state. The notice of amendment shall include:

- (a) The file number assigned by the secretary of state to the notice of claim of lien to be amended by the notice of amendment;
- (b) The date of filing of the notice of claim of lien to be amended;
- (c) The name of the claimant on the notice of claim of lien to be amended; and
- (d) The information to be amended.

(2) A claimant may assign his rights under a lien and may give notice of the assignment by filing a notice of assignment with the secretary of state. The notice of assignment shall include:

- (a) The file number assigned by the secretary of state to the notice of claim of lien to which the assignment pertains;
- (b) The date of filing of the notice of claim of lien to which the assignment pertains;
- (c) The name of the claimant on the notice of claim of lien to which the assignment pertains; and
- (d) The name and address of the assignee.

(3) A notice of amendment or a notice of assignment shall be filed on a standard form prescribed by the secretary of state, and upon the same execution and fee conditions as apply to a notice of claim of lien.

[45-308A, added 1997, ch. 35, sec. 1, p. 62.]

45-309. CIVIL PENALTY FOR FALSE CLAIM. (1) Any person who signs and files a notice of claim of lien which he knows or has reason to believe is false shall be liable to the producer in the amount of the actual damages caused by the false claim or five hundred dollars (\$500), whichever is greater, plus reasonable attorney's fees and costs. If the claimant has failed to give written notice of a claim which is found to be false, to the producer as required by subsection (5) of section [45-308](#), Idaho Code, the claimant shall be liable for an additional penalty of five hundred dollars (\$500).

(2) If the notice of claim of lien is signed by a person other than the claimant, and the claimant knows or has reason to believe the claim is false, the claimant and the person who signed the claim shall be jointly and severally liable for the amount described in subsection (1) of this section.

[45-309, added 1989, ch. 359, sec. 2, p. 902; am. 1996, ch. 262, sec. 3, p. 864.]

45-310. DURATION OF LIEN. (1) A notice of claim of lien for farm labor remains in effect for twelve (12) months from the date of filing. The notice of claim of lien may be extended for six (6) months by filing a notice of extension of claim of lien. The notice of extension shall contain such information as the form prescribed by the secretary of state shall require, and shall be filed within sixty (60) days prior to the lapse of the original twelve (12) month period.

(2) A notice of claim of lien for seed remains in effect for sixteen (16) months from the date of filing. If a crop subject to a lien for seed is not harvested within ten (10) months after the date of filing, the notice of claim of lien may be extended for six (6) months by filing a notice of extension of claim of lien. The notice of extension shall contain such information as the form prescribed by the secretary of state shall require, and

shall be filed within sixty (60) days prior to the lapse of the original sixteen (16) month period.

(3) Civil action to enforce a lien on crops shall be commenced within the periods set forth in subsections (1) and (2) of this section.

[45-310, added 1989, ch. 359, sec. 2, p. 902; am. 2000, ch. 338, sec. 2, p. 1132.]

45-311. DUTY TO RELEASE UPON SATISFACTION. (1) When a claimant's lien has been satisfied, the claimant shall, within thirty (30) days after satisfaction, file with the secretary of state a notice of release of lien.

(2) The notice of release shall be signed by the claimant, his agent, or his attorney-in-fact.

(3) The notice of release shall be filed on a standard form prescribed by the secretary of state.

[45-311, added 1989, ch. 359, sec. 2, p. 903.]

45-312. LIST OF LIENS IN FARM CROPS. (1) The secretary of state shall publish a list of all presently effective notices of claim of lien in farm crops. The list shall be distributed to all persons who register therefor, on a schedule to be set by administrative rule of the secretary of state, but not less frequently than semimonthly.

(2) The list shall be published in a format established by administrative rule of the secretary of state, and may be in either complete form or in cumulative supplements to a complete list.

[45-312, added 1989, ch. 359, sec. 2, p. 903.]

45-313. LIEN SEARCH. (1) Upon request the secretary of state shall issue a certificate listing all liens in crops of a particular producer for which notices of claim are on file in his office. The requesting party may additionally request copies of all relevant notices of claim of lien.

(2) Upon the request of any person, the secretary of state shall provide, within twenty-four (24) hours (excluding weekends and holidays), a verbal listing of liens in crops as described in subsection (1) of this section, followed by the certificate.

(3) The secretary of state shall, by administrative rule, prescribe the standards and forms for the lien searches described in this section.

[45-313, added 1989, ch. 359, sec. 2, p. 903.]

45-314. WHEN BUYER TAKES FREE OF LIEN. (1) A buyer takes free of a lien in crops if he purchases and pays for a crop before a notice of claim of lien is filed with the secretary of state.

(2) A buyer who has registered for, and has received, the list of liens described in section [45-312](#), Idaho Code, takes free of a lien in crops if:

(a) When he purchases and pays for a crop, there is no notice of claim of lien in that crop on the current list of liens published under section [45-312](#), Idaho Code; and

(b) He has no actual notice of the existence of the lien.

As against buyers, a list is current until the third day after publication of the next list, or if mail is not delivered on that day, on the next day thereafter on which mail is delivered.

[45-314, added 1989, ch. 359, sec. 2, p. 903.]

45-315. DUTY OF BUYER. A buyer who does not take free of a lien under section [45-314](#), Idaho Code, is obligated to secure permission of the claimant to pay the producer in full or to insure payment of the claimant from the purchase price.

[45-315, added 1989, ch. 359, sec. 2, p. 903.]

45-316. ADMINISTRATIVE RULEMAKING. The secretary of state shall promulgate such administrative rules as are necessary to implement the provisions of this chapter and to set fees for all services provided for in this chapter.

[45-316, added 1989, ch. 359, sec. 2, p. 904.]

45-317. EFFECTIVE DATE AND TRANSITION. (1) This chapter shall be effective as to all notices of claim of lien in crops filed on or after January 1, 1990.

(2) Notices of claim of farm laborer's lien, and notices of claim of seed lien recorded in the appropriate county recorders' offices under the prior law shall remain effective until the date they would normally expire under the prior law.

[45-317, added 1989, ch. 359, sec. 2, p. 904.]

45-318. APPLICABILITY OF UNIFORM COMMERCIAL CODE. The liens provided for by this chapter are "agricultural liens" as defined in section [28-9-102](#), Idaho Code. The perfection and effect of perfection or nonperfection of the liens provided by this chapter are governed by uniform commercial code article 9, secured transactions ([chapter 9, title 28](#), Idaho Code). In the event of any conflict between the provisions of this chapter relating to perfection and the effect of perfection or nonperfection of any lien provided by this chapter and the provisions of [chapter 9, title 28](#), Idaho Code, relating to those same issues, the provisions of [chapter 9, title 28](#), Idaho Code, shall prevail, except that a claim of lien under this chapter will be deemed by the secretary of state to meet the requirements of a farm products financing statement under [chapter 9, title 28](#), Idaho Code.

[45-318, added 2001, ch. 208, sec. 25, p. 824; am. 2016, ch. 202, sec. 2, p. 572.]

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CHAPTER 4
LOGGERS' LIENS

45-401. LIENS UPON SAW LOGS. Every person performing labor upon, or who shall assist in obtaining or securing, saw logs, spars, piles, cord wood, or other timber, has a lien upon the same for the work or labor done upon, or in obtaining or securing the same, whether such work or labor was done at the instance of the owner of the same or his agent. The cook shall be regarded as a person who assists in obtaining or securing the timber herein mentioned.

[(45-401) 1893, p. 49, ch. 2, sec. 1; reen. 1899, p. 147, ch. 2, sec. 1; reen. R.C. & C.L., sec. 5125; C.S., sec. 7356; I.C.A., sec. 44-401.]

45-402. LIEN ON LUMBER MADE FROM SAW LOGS. Every person performing labor upon, or who shall assist in manufacturing saw logs into lumber, has a lien upon such lumber while the same remains at the mill where manufactured, whether such work or labor was done at the instance of the owner of such logs or of his agents.

[(45-402) 1893, p. 49, ch. 2, sec. 2; reen. 1899, p. 147, ch. 2, sec. 2; reen. R.C. & C.L., sec. 5126; C.S., sec. 7357; I.C.A., sec. 44-402.]

45-403. LIEN FOR PURCHASE PRICE UPON LOGS. Any person who shall permit another to go upon his timber land and cut thereon saw logs, spars, piles, cord wood or other timber, has a lien upon such logs, spars, piles, cord wood and timber, for the price agreed to be paid for such privilege, or for the price such privilege would be reasonably worth in case there was no express agreement fixing the price.

[(45-403) 1893, p. 49, ch. 2, sec. 3; reen. 1899, p. 147, ch. 2, sec. 3; reen. R.C. & C.L., sec. 5127; C.S., sec. 7358; I.C.A., sec. 44-403.]

45-404. LIENS PREFERRED TO OTHER LIENS. The liens provided for in this chapter are prior to any other liens, and no sale or transfer of any saw logs, spars, piles, cord wood or other timber or manufactured lumber shall divest the lien thereon as herein provided, and such lien shall follow such property into any county in this state into which the same may be removed: provided, notice of such lien shall have been filed in such county.

[(45-404) 1893, p. 49, ch. 2, sec. 4; reen. 1899, p. 147, ch. 2, sec. 4; reen. R.C. & C.L., sec. 5128; C.S., sec. 7359; I.C.A., sec. 44-404.]

45-405. TIME FOR FILING LIEN FOR WORK OR LABOR. The person rendering the service or doing the work or labor named in sections [45-401](#) and [45-402](#)[, Idaho Code,] is only entitled to the liens as provided herein for services, work or labor, for the period of eight (8) calendar months next preceding the filing of the claim, as provided in section [45-407](#)[, Idaho Code].

[(45-405) 1893, p. 49, ch. 2, sec. 5; reen. 1899, p. 147, ch. 2, sec. 5; reen. R.C. & C.L., sec. 5129; C.S., sec. 7360; I.C.A., sec. 44-405.]

45-406. TIME FOR FILING LIENS FOR PURCHASE PRICE. The person granting the privilege mentioned in section [45-403](#)[, Idaho Code,] is entitled to the lien as provided therein for saw logs, spars, piles, cord wood and other timber, cut during the eight (8) months next preceding the filing of the claim, as provided in the next succeeding section.

[(45-406) 1893, p. 49, ch. 2, sec. 6; reen. 1899, p. 147, ch. 2, sec. 6; reen. R.C. & C.L., sec. 5130; C.S., sec. 7361; I.C.A., sec. 44-406.]

45-407. CLAIM OF LIEN FOR WORK OR LABOR. Every person, within sixty (60) days after the close of the rendition of the services, or after the close of the work or labor mentioned in sections [45-401](#) and [45-402](#), Idaho Code, claiming the benefit hereof, must file for record with the county recorder of the county in which such saw logs, spars, piles, cordwood or other timber was cut, or in which such lumber was manufactured, or, if removed to another county, then in such county, a notice of claim containing a statement of his demand, and the amount thereof, after deducting, as near as possible, all just credits and offsets, with the name of the person by whom he was employed. The notice of claim shall state what such service, work or labor is reasonably worth; and it shall also contain a description of the property to be charged with the lien, sufficient for identification, with reasonable certainty, which notice of claim must be verified by the oath of himself, his agent or attorney, to the effect that the affiant believes the same to be true. Such notice of claim shall be substantially in the following form:

.... claimant, vs.

Notice is hereby given that of county, state of Idaho, claims a lien upon a of being about in quantity, which were cut in county, state of Idaho, are marked thus, and are now lying in for labor performed upon and assistance rendered in said; that the name of the owner or reputed owner is; that employed said to perform such labor and render such assistance upon the following terms, to wit: The said agreed to pay the said for such labor and assistance; that said contract has been faithfully performed and fully complied with on the part of said, who performed labor upon and assisted in said for the period of that said labor and assistance were so performed and rendered upon said between the day of and the day of, and the rendition of said services was closed on the day of and days have not elapsed since that time; that the amount of claimant's demand for said services is; that no part thereof has been paid except, and there is now due and unpaid thereon, after deducting all just credits and offsets, the sum of, in which amount he claims a lien upon said

State of Idaho, county, ss.
, being first duly sworn, on oath says that he is named in the foregoing claim, has heard the same read and knows the contents thereof, and believes the same to be true

Subscribed and sworn to before me this day of,

[(45-407) 1893, p. 49, ch. 2, sec. 7; reen. 1899, p. 147, ch. 2, sec. 7; reen. R.C. & C.L., sec. 5131; C.S., sec. 7362; I.C.A., sec. 44-407; am. 2002, ch. 32, sec. 17, p. 55.]

45-408. CLAIM OF LIEN FOR PURCHASE PRICE. Every person mentioned in section [45-403](#)[, Idaho Code,] claiming the benefit hereof, must, within

ninety (90) days after such cutting, file for record with the county recorder of the county in which such saw logs, spars, piles, cord wood or other timber was cut, a claim in substance the same as provided in the next preceding section, and verified as therein provided.

[(45-408) 1893, p. 49, ch. 2, sec. 8; reen. 1899, p. 147, ch. 2, sec. 8; reen. R.C. & C.L., sec. 5132; C.S., sec. 7363; I.C.A., sec. 44-408.]

45-409. RECORD OF CLAIMS. The county recorder must record any claim filed under this chapter in a book kept by him for that purpose, which record must be indexed as deeds and other conveyances are required by law to be indexed, and for which he may receive the same fees as are allowed by law for recording deeds or other instruments.

[(45-409) 1893, p. 49, ch. 2, sec. 9; reen. 1899, p. 147, ch. 2, sec. 9; reen. R.C. & C.L., sec. 5133; C.S., sec. 7364; I.C.A., sec. 44-409.]

45-410. DURATION OF LIEN. No lien provided for in this chapter binds any saw logs, spars, piles, cord wood or other timber, or any lumber, for a longer period than six (6) calendar months after the claim as herein provided has been filed, unless a civil action be commenced in a proper court within that time to enforce the same.

[(45-410) 1893, p. 49, ch. 2, sec. 10; reen. 1899, p. 147, ch. 2, sec. 10; reen. R.C. & C.L., sec. 5134; C.S., sec. 7365; I.C.A., sec. 44-410.]

45-411. RULES OF PRACTICE AND APPEALS. Except as otherwise provided in this chapter the provisions of this code relating to civil actions, new trials and appeals are applicable to, and constitute the rules of practice in the proceedings mentioned in this chapter.

[(45-411) 1893, p. 49, ch. 2, sec. 11; reen. 1899, p. 147, ch. 2, sec. 11; reen. R.C. & C.L., sec. 5135; C.S., sec. 7366; I.C.A., sec. 44-411.]

45-412. ENFORCEMENT AGAINST WHOLE OR PART OF PROPERTY. Any person who shall bring a civil action to enforce the lien as herein provided for, or any person having a lien as herein provided for, who shall be made a party to any such civil action, has a right to demand that such lien be enforced against the whole or any part of the saw logs, spars, piles, cord wood or other timber or manufactured lumber, upon which he has performed labor or which he has assisted in obtaining or securing, or which has been cut on his timber land during the eight (8) months mentioned in sections [45-405](#) and [45-406](#)[, Idaho Code], for all his labor upon, or for all his assistance in obtaining or securing, said logs, spars, piles, cord wood or other timber, or in manufacturing said lumber during the whole or any part of the eight (8) months mentioned in section [45-405](#)[, Idaho Code], or for timber cut during the whole or any part of the eight (8) months mentioned in section [45-406](#)[, Idaho Code].

[(45-412) 1893, p. 49, ch. 2, sec. 12; reen. 1899, p. 147, ch. 2, sec. 12; reen. R.C. & C.L., sec. 5136; C.S., sec. 7367; I.C.A., sec. 44-412.]

45-413. JOINDER OF ACTIONS -- FILING FEES AS COSTS -- ATTORNEY'S FEES. Any number of persons claiming liens against the same property under this chapter may join in the same action, and when separate actions are

commenced, the court may consolidate them. The court shall also, as part of the cost, allow the moneys paid for filing and recording the claim, and a reasonable attorney's fee for each person claiming a lien.

[(45-413) 1893, p. 49, ch. 2, sec. 13; reen. 1899, p. 147, ch. 2, sec. 13; reen. R.C. & C.L., sec. 5137; C.S., sec. 7368; I.C.A., sec. 44-413.]

45-414. ENFORCEMENT OF JUDGMENTS -- APPORTIONMENT OF PROCEEDS. In such civil action judgments must be rendered in favor of each person having a lien for the amount due to him, and the court or judge thereof shall order any property subject to the lien herein provided for, to be sold by the sheriff of the proper county in the same manner that personal property is sold on execution, and the court or judge shall apportion the proceeds of such sale for the payment of each judgment pro rata, according to the amount of such judgment.

[(45-414) 1893, p. 49, ch. 2, sec. 14; reen. 1899, p. 147, ch. 2, sec. 14; reen. R.C. & C.L., sec. 5138; C.S., sec. 7369; I.C.A., sec. 44-414.]

45-415. PROPERTY MAY BE SOLD AS PERSONALTY. The court or judge may order any property subject to a lien as in this chapter provided, to be sold by the sheriff as personal property is sold on execution, either before or at the time judgment is rendered as provided in the section next preceding, and the proceeds of such sale must be paid into court to be applied as in such section directed.

[(45-415) 1893, p. 49, ch. 2, sec. 15; reen. 1899, p. 147, ch. 2, sec. 15; reen. R.C. & C.L., sec. 5139; C.S., sec. 7370; I.C.A., sec. 44-415.]

45-416. INTERFERENCE WITH PROPERTY SUBJECT TO LIEN -- LIABILITY TO LIENHOLDER. Any person who shall injure, impair or destroy, or who shall render difficult, uncertain or impossible of identification, any saw logs, spars, piles, cord wood or other timber, upon which there is a lien as herein provided, without the express consent of the person entitled to such lien, shall be liable to the lienholder for the damages to the amount secured by his lien, plus reasonable attorney's fees to be fixed by the court, which may be recovered by civil action against such person.

[(45-416) 1893, p. 49, ch. 2, sec. 16; reen. 1899, p. 147, ch. 2, sec. 16; reen. R.C. & C.L., sec. 5140; C.S., sec. 7371; am. 1923, ch. 156, sec. 1, p. 227; I.C.A., sec. 44-416.]

45-417. INTERFERENCE WITH PROPERTY SUBJECT TO LIEN -- PENALTY -- BOND. Any person or persons who shall, after the filing for record in the county recorder's office in the county of which said labor was performed, or in which said logs, spars, piles, cord wood or other timber are located, of a claim of lien as in this chapter provided, remove, dispose of, injure, impair or destroy or who shall render difficult, uncertain or impossible of identification any such saw logs, spars, piles, cord wood, or other timber products upon which there is a lien as herein provided, or any person or persons who shall aid or assist in doing any of the acts above prohibited shall be guilty of a misdemeanor and upon conviction may be imprisoned in the county jail for not more than six (6) months or shall be fined not less than \$100 nor more than \$300, or shall suffer both such fine and imprisonment in

the discretion of the court, unless prior to such removing, disposing of, injuring, impairing, or destroying, or rendering uncertain or impossible of identification, a bond in double the amount of the lien claim, said bond to be approved by the clerk of the district court and running to the lien claimant or claimants, the condition of said bond being that the owner of said logs or other timber products liened upon will pay any judgment, including costs and reasonable attorney fees to be assessed by the court, rendered in favor of such lien claimant or claimants, shall be filed with the county auditor of the county where said lien is filed or in lieu of said bond, as the case may be, deposit with said auditor a sum equal to double the amount claimed in said lien.

[(45-417) C.S., sec. 7371A, as added by 1923, ch. 156, sec. 2, p. 227; I.C.A., sec. 44-417.]

TITLE 45
LIENS, MORTGAGES AND PLEDGES

CHAPTER 5
LIENS OF MECHANICS AND MATERIALMEN

45-501. RIGHT TO LIEN. Every person performing labor upon, or furnishing materials to be used in the construction, alteration or repair of any mining claim, building, wharf, bridge, ditch, dike, flume, tunnel, fence, machinery, railroad, wagon road, aqueduct to create hydraulic power, or any other structure, or who grades, fills in, levels, surfaces or otherwise improves any land, or who performs labor in any mine or mining claim, and every professional engineer or licensed surveyor under contract who prepares or furnishes designs, plans, plats, maps, specifications, drawings, surveys, estimates of cost, on-site observation or supervision, or who renders any other professional service whatsoever for which he is legally authorized to perform in connection with any land or building development or improvement, or to establish boundaries, has a lien upon the same for the work or labor done or professional services or materials furnished, whether done or furnished at the instance of the owner of the building or other improvement or his agent; and every contractor, subcontractor, architect, builder or any person having charge of any mining claim, or of the construction, alteration or repair, either in whole or in part, of any building or other improvement, as aforesaid, shall be held to be the agent of the owner for the purpose of this chapter: provided, that the lessee or lessees of any mining claim shall not be considered as the agent or agents of the owner under the provisions of this chapter.

For purposes of this chapter the term "furnishing material" shall also include, notwithstanding any other provision of law to the contrary, supplying, renting or leasing equipment, materials or fixtures as defined in section [28-12-309](#), Idaho Code.

"Furnishing material" shall also include renting, leasing or otherwise supplying any equipment, materials, fixtures or machinery to any mine or mining claim.

[(45-501) 1893, p. 49, ch. 1, sec. 1; reen. 1899, p. 147, ch. 1, sec. 1; reen. R.C. & C.L., sec. 5110; C.S., sec. 7339; I.C.A., sec. 44-501; am. 1951, ch. 199, sec. 1, p. 422; am. 1971, ch. 91, sec. 1, p. 196; am. 1998, ch. 269, sec. 1, p. 898; am. 2001, ch. 152, sec. 1, p. 550.]

45-504. LIEN FOR IMPROVING LOTS. Any person who, at the request of the owner of any lot in any incorporated city or town, surveys, grades, fills in, or otherwise improves the same, or who rents, leases or otherwise supplies equipment, materials or fixtures as defined in section [28-12-309](#), Idaho Code, to such person for the improvement of any lot, or the street in front of or adjoining the same, has a lien upon such lot for his work done or material furnished or equipment, materials or fixtures as defined in section [28-12-309](#), Idaho Code, rented, leased or otherwise supplied.

[(45-504) 1893, p. 49, ch. 1, sec. 3; reen. 1899, p. 147, ch. 1, sec. 3; reen. R.C. & C.L., sec. 5112; C.S., sec. 7343; I.C.A., sec. 44-504; am. 1971, ch. 91, sec. 2, p. 196; am. 2001, ch. 152, sec. 2, p. 551.]

45-505. LAND SUBJECT TO LIEN. The land upon which or in connection with which any professional services are performed or any building, improvement or structure is constructed, together with a convenient space about the same, or so much as may be required for the convenient use and occupation thereof, to be determined by the court on rendering judgment, is also subject to the lien, if, at the commencement of the furnishing of professional services or other work, the furnishing of the material, or the renting, leasing or otherwise supplying of equipment, materials or fixtures as defined in section [28-12-309](#), Idaho Code, for the same, the land belonged to the person who caused said professional services to be performed or said building, improvement or structure to be constructed, altered or repaired, or such person was acting as the agent of the owner, but if such person owns less than a fee simple estate in such land, then only the interest of the person or persons causing the services or improvement therein is subject to such lien.

[(45-505) 1893, p. 49, ch. 1, sec. 4; reen. 1899, p. 147, ch. 1, sec. 4; reen. R.C. & C.L., sec. 5113, C.S., sec. 7344; I.C.A., sec. 44-505; am. 1971, ch. 91, sec. 3, p. 196; am. 2001, ch. 152, sec. 3, p. 551.]

45-506. LIENS PREFERRED CLAIMS. The liens provided for in this chapter shall be on equal footing with those liens within the same class of liens, without reference to the date of the filing of the lien claim or claims and are preferred to any lien, mortgage or other encumbrance, which may have attached subsequent to the time when the building, improvement or structure was commenced, work done, equipment, materials or fixtures were rented or leased, or materials or professional services were commenced to be furnished; also to any lien, mortgage, or other encumbrance of which the lienholder had no notice, and which was unrecorded at the time the building, improvement or structure was commenced, work done, equipment, materials or fixtures were rented or leased, or materials or professional services were commenced to be furnished.

[(45-506) 1893, p. 49, ch. 1, sec. 5; reen. 1899, p. 147, ch. 1, sec. 5; reen. R.C. & C.L., sec. 5114; C.S., sec. 7345; I.C.A., sec. 44-506; am. 1971, ch. 91, sec. 4, p. 196; am. 2001, ch. 152, sec. 4, p. 552.]

45-507. CLAIM OF LIEN. (1) Any person claiming a lien pursuant to the provisions of this chapter must file a claim for record with the county recorder for the county in which such property or some part thereof is situated.

(2) The claim shall be filed within ninety (90) days after the completion of the labor or services, or furnishing of materials.

(3) The claim shall contain:

(a) A statement of his demand, after deducting all just credits and offsets;

(b) The name of the owner, or reputed owner, if known;

(c) The name of the person by whom he was employed or to whom he furnished the materials;

(d) A description of the property to be charged with the lien, sufficient for identification; and

(e) For work or materials subject to the provisions of section [45-525](#), Idaho Code, the required proof of disclosure and acknowledgment of receipt.

(4) Such claim must be verified by the oath of the claimant, his agent, or his attorney to the effect that the affiant believes the same to be just.

(5) A true and correct copy of the claim of lien shall be served on the owner or reputed owner of the property either by an officer authorized by law to serve process delivering a copy thereof to the owner or reputed owner personally or by mailing a copy thereof by certified mail to the owner or reputed owner at his last known address. Such delivery or mailing shall be made no later than five (5) business days following the filing of said claim of lien.

(6) For purposes of this chapter, owner or reputed owner does not include a trustee of a deed of trust as defined and required by [chapter 15, title 45](#), Idaho Code.

(7) In any court proceeding regarding a lien filed pursuant to this section, the prevailing party shall be entitled to recover reasonable attorney's fees and costs.

[(45-507) 1893, p. 49, ch. 1, sec. 6; am. 1895, p. 48, ch. 1, sec. 6; reen. 1899, p. 147, ch. 1, sec. 6; reen. R.C. & C.L., sec. 5115; C.S., sec. 7346; I.C.A., sec. 44-507; am. 1971, ch. 91, sec. 5, p. 196; am. 1983, ch. 127, sec. 1, p. 324; am. 1993, ch. 378, sec. 1, p. 1387; am. 2001, ch. 152, sec. 5, p. 552; am. 2002, ch. 307, sec. 1, p. 876; am. 2015, ch. 339, sec. 1, p. 1271; am. 2022, ch. 66, sec. 1, p. 202.]

45-508. CLAIMS AGAINST TWO BUILDINGS. In every case in which one (1) claim is filed against two (2) or more buildings, mines, mining claims, or other improvements, owned by the same person, the person filing such claim must, at the same time, designate the amount due him on each of said buildings, mines, mining claims, or other improvement; otherwise the lien of such claim is postponed to other liens. The lien of such claim does not extend beyond the amount designated as against other creditors having liens by judgment, mortgage, or otherwise, upon either of such buildings, or other improvements, or upon the land upon which the same are situated.

[(45-508) 1893, p. 49, ch. 1, sec. 7; reen. 1899, p. 147, ch. 1, sec. 7; reen. C.L., sec. 5116; C.S., sec. 7347; I.C.A., sec. 44-508.]

45-509. RECORD OF LIEN CLAIMS. The county recorder must record the claims mentioned in this chapter in a book kept by him for that purpose, which record must be indexed, as deeds and other conveyances are required by law to be indexed, and for which he may receive the same fees as are allowed by law for recording deeds or other instruments.

[(45-509) 1893, p. 49, ch. 1, sec. 8; reen. 1899, p. 147, ch. 1, sec. 8; reen. R.C. & C.L., sec. 5117; C.S., sec. 7348; I.C.A., sec. 44-509.]

45-510. DURATION OF LIEN. (1) No lien provided for in this chapter binds any building, mining claim, improvement or structure for a longer period than six (6) months after the claim has been filed, unless proceedings be commenced in a proper court within that time to enforce such lien; or unless a payment on account is made, or extension of credit given with expiration date thereof, and such payment or credit and expiration date, is endorsed on the record of the lien, then six (6) months after the date of such payment or expiration of extension. The lien of a final judgment obtained on any lien provided for in this chapter shall cease ten (10) years from the date the judgment becomes final.

(2) Nothing in this chapter requires that a trustee of a deed of trust as defined and required by section [45-1502](#) et seq., Idaho Code, be included in a claim of lien or foreclosure or judgment under this chapter.

[(45-510) 1893, p. 49, ch. 1, sec. 9; reen. 1899, p. 147, ch. 1, sec. 9; reen. R.C. & C.L., sec. 5118; C.S., sec. 7349; I.C.A., sec. 44-510; am. 1947, ch. 125, sec. 1, p. 292; am. 2015, ch. 278, sec. 5, p. 1138; am. 2015, ch. 339, sec. 2, p. 1272.]

45-511. RECOVERY BY CONTRACTOR -- DEDUCTION OF DEBTS TO SUBCONTRACTORS. The original or subcontractor shall be entitled to recover, upon the claim filed by him, only such amount as may be due to him according to the terms of his contract, and, if applicable, such other amounts as may be found due to the lien claimant by the court pursuant to section [45-522](#), Idaho Code, after deducting all claims of other parties for work done and materials furnished to him as aforesaid, of which claim of lien shall have been filed as required by this chapter, and in all cases where a claim shall be filed under this chapter for work done or materials furnished to any subcontractor, he shall defend any action brought thereupon at his own expense; and during the pendency of such action, the person indebted to the contractor may withhold from such contractor the amount of money for which claim is filed; and in case of judgment upon the lien, the person indebted in the contract shall be entitled to deduct from any amount due or to become due by him to such contractor, the amount of such judgment and costs; and if the amount of such judgment and costs shall exceed the amount due from him to such contractor, if the person indebted in the contract shall have settled with such contractor in full, he shall be entitled to recover back from such contractor any amount so paid by him in excess of the contract price, and for which such contractor was originally the party liable.

[(45-511) 1893, p. 49, ch. 1, sec. 10; reen. 1899, p. 147, ch. 1, sec. 10; reen. R.C. & C.L., sec. 5119; C.S., sec. 7350; I.C.A., sec. 44-511; am. 1993, ch. 378, sec. 2, p. 1387.]

45-512. JUDGMENT TO DECLARE PRIORITY. In every case in which different liens are asserted against any property, the court in the judgment must declare the rank of each lien or class of liens which shall be in the following order:

1. All laborers, other than contractors or subcontractors.
2. All materialmen including persons furnishing, renting or leasing equipment, materials or fixtures as defined in section [28-12-309](#), Idaho Code, other than contractors or subcontractors.

3. Subcontractors.

4. The original contractor.

5. All professional engineers and licensed surveyors.

And in case the proceeds of sale under this chapter shall be insufficient to pay all lienholders under it:

1. The liens of all laborers, other than the original contractor and subcontractor, shall first be paid in full, or pro rata if the proceeds be insufficient to pay them in full.

2. The lien of materialmen including persons furnishing, renting or leasing equipment, materials or fixtures as defined in section [28-12-309](#), Idaho Code, other than the original contractor or subcontractor, shall be paid in full, or pro rata if the proceeds be insufficient to pay them in full.

3. Out of the remainder, if any, the subcontractors shall be paid in full, or pro rata if the remainder be insufficient to pay them in full, and the remainder, if any, shall be paid pro rata to the original contractor and the professional engineers and licensed surveyors; and each claimant shall be entitled to execution for any balance due him after such distribution; such execution to be issued by the clerk of the court upon demand, at the return of the sheriff or other officer making the sale, showing such balance due.

[(45-512) 1893, p. 49, ch. 1, sec. 11; reen. 1899, p. 147, ch. 1, sec. 11; reen. R.C. & C.L., sec. 5120; C.S., sec. 7351; I.C.A., sec. 44-512; am. 1971, ch. 91, sec. 6, p. 196; am. 2001, ch. 152, sec. 6, p. 552.]

45-513. JOINDER OF ACTIONS -- FILING FEES AS COSTS -- ATTORNEY'S FEES. Any number of persons claiming liens against the same property may join in the same action, and when separate actions are commenced the court may consolidate them. The court shall also allow as part of the costs the moneys paid for filing and recording the claim, and reasonable attorney's fees.

[(45-513) 1893, p. 49, ch. 1, sec. 12; reen. 1899, p. 147, ch. 1, sec. 12; reen. R.C. & C.L., sec. 5121; C.S., sec. 7352; I.C.A., sec. 44-513.]

45-514. EXEMPTION OF MATERIALS FROM EXECUTION. Whenever materials shall have been furnished for use in the construction, alteration or repair of any buildings, or other improvement, such materials shall not be subject to attachment, execution or other legal process, to enforce any debt due by the purchaser of such materials, except a debt due for the purchase money thereof, so long as, in good faith, the same are being applied to the construction, alteration or repair of such building, mining claim or other improvement.

[(45-514) 1893, p. 49, ch. 1, sec. 13; reen. 1899, p. 147, ch. 1, sec. 13; reen. R.C. & C.L., sec. 5122; C.S., sec. 7353; I.C.A., sec. 44-514.]

45-515. ACTION TO RECOVER DEBT. Nothing contained in this chapter shall be construed to impair or affect the right of any person to whom any debt may be due for work done, equipment, materials or fixtures rented or leased or materials furnished, to maintain a personal action to recover such debt against the person liable therefor.

[(45-515) 1893, p. 49, ch. 1, sec. 14; reen. 1899, p. 147, ch. 1, sec. 14; reen. R.C. & C.L., sec. 5123; C.S., sec. 7354; I.C.A., sec. 44-515; am. 2001, ch. 152, sec. 7, p. 553.]

45-516. RULES OF PRACTICE AND APPEALS. Except as otherwise provided in this chapter, the provisions of this code relating to civil actions, new trials and appeals are applicable to, and constitute the rules of practice in, the proceedings mentioned in this chapter: provided, that the district courts shall have jurisdiction of all actions brought under this chapter.

[(45-516) 1893, p. 49, ch. 1, sec. 15; reen. 1899, p. 147, ch. 1, sec. 15; reen. R.C. & C.L., sec. 5124; C.S., sec. 7355; I.C.A., sec. 44-516.]

45-517. LIEN FOR WORKER'S COMPENSATION SECURITY. The term "labor" as used in this title shall include the cost of worker's compensation and occupational disease compensation security required by the provisions of sections [72-301](#) through [72-304](#), Idaho Code, and amendments thereto, payment for which security has not been made.

[45-517, added 1951, ch. 234, sec. 1, p. 471; am. 2015, ch. 244, sec. 26, p. 1022.]

45-518. RELEASE OF LIEN ON REAL PROPERTY BY POSTING SURETY BOND -- MANNER. A mechanic's lien of record upon real property may be released upon the posting of a surety bond in the manner provided in sections [45-519](#) through [45-524](#), Idaho Code.

[45-518, added 1993, ch. 378, sec. 3, p. 1388.]

45-519. RELEASE OF LIEN ON REAL PROPERTY BY POSTING SURETY BOND -- FORM OF BOND. The debtor of the lien claimant or a party in interest in the premises subject to the lien must obtain a surety bond executed by the debtor of the lien claimant or a party in interest in the premises subject to the lien, as principal, and executed by a corporation authorized to transact surety business in this state, as surety, in substantially the following form:

(Title of court and cause, if action has been commenced)

WHEREAS, (name of owner, contractor, or other person disputing the lien) desires to give a bond for releasing the following described real property from that certain claim of mechanic's lien in the sum of \$, recorded,, in the office of the recorder in (name of county where the real property is situated):

(legal description)

NOW, THEREFORE, the undersigned principal and surety do hereby obligate themselves to, (name of claimant) the claimant named in the mechanic's lien, under the conditions prescribed by sections [45-518](#) through [45-524](#), Idaho Code, inclusive, in the sum of \$ (1-1/2 x claim), from which sum they will pay the claimant such amount as a court of competent jurisdiction may adjudge to have been secured by his lien, with interest, costs and attorney's fees.

IN WITNESS WHEREOF, the principal and surety have executed this bond at, Idaho, on the day of,

.....

(Signature of Principal)

(SURETY CORPORATION)

BY

(Its Attorney in Fact)

State of Idaho)
) ss.
County of)

On,, before me, the undersigned, a notary public of this county and state, personally appeared

who acknowledged that he executed the foregoing instrument as principal for the purposes therein mentioned and also personally appeared known (or satisfactorily proved) to me to be the attorney in fact of the corporation that executed the foregoing instrument and known to me to be the person who executed that instrument on behalf of the corporation therein named, and he acknowledged to me that that corporation executed the foregoing instrument.

.....
(Notary Public in and for the
County and State)

[45-519, added 1993, ch. 378, sec. 4, p. 1388; am. 2002, ch. 32, sec. 18, p. 56.]

45-520. RELEASE OF LIEN ON REAL PROPERTY BY POSTING SURETY BOND -- PETITION FOR RELEASE -- SERVICE OF COPY OF PETITION. (1) A petition for the release of a mechanic's lien by posting a surety bond must be filed in the district court of the county wherein the property is located and shall set forth:

(a) The title of the cause, thus: "In the matter of the petition of (name of petitioner) for release of mechanic's lien of (name of mechanic's lien claimant) upon posting surety bond."

(b) An allegation of the purchase of and payment of the premium for the bond, and the dates of purchase and payment.

(c) An allegation incorporating by reference a true copy of the bond, which copy must be attached to the petition.

(d) The name or names of the owner or reputed owners of the land subject to the lien.

(e) A description of the real property subject to the lien, and the instrument number of the lien as given by the recorder's office.

(f) A prayer for an order releasing the lien.

(2) The petitioner shall obtain an order from the district court setting forth the time and date of the hearing on the petition, which time and date must be at least five (5) days after the date of the order and not more than ten (10) days after the date of the order.

(3) A copy of the petition and a copy of the order must be served on the lien claimant at least two (2) days before the date set for the hearing and served in the manner provided by law for service of summons.

[45-520, added 1993, ch. 378, sec. 5, p. 1389.]

45-521. RELEASE OF LIEN ON REAL PROPERTY BY POSTING SURETY BOND -- HEARING ON PETITION -- CONTENTS AND EFFECT OF ORDER RELEASING LIEN. (1) Upon the hearing, the court shall enter its order releasing the mechanic's lien upon the petitioner's filing in open court the original bond, and introducing into evidence a receipt for payment of the premium.

(2) The entry of the order by the court must refer to the property which is the subject of the lien and the lien itself, by instrument number, and must recite that the lien is released of record to the same extent as if released of record by the lienor.

(3) Upon entry of the order, the lien is released of record and the real property, the subject of the lien, is released from the encumbrances of the lien.

(4) There is no appeal from the entry of an order pursuant to the provisions of this section and upon entry the order is final for all purposes.

[45-521, added 1993, ch. 378, sec. 6, p. 1390; am. 2024, ch. 150, sec. 1, p. 597.]

45-522. RELEASE OF LIEN ON REAL PROPERTY BY POSTING SURETY BOND -- ACTION AGAINST DEBTOR AND SURETY -- PREFERENTIAL SETTINGS. (1) The lien claimant is entitled to bring an action against the lien claimant's debtor and to join therein the surety on the bond. The rights of the lien claimant under the bond are conditioned on the validity and enforceability of the lien pursuant to this chapter, and the court may award up to the penal sum of the bond an amount that may consist of the following components:

- (a) The amount found due to the lien claimant by the court;
- (b) The cost of preparing and filing the lien claim, including attorney's fees, if any;
- (c) The costs of the proceedings;
- (d) Attorney's fees for representation of the lien claimant in the proceedings; and
- (e) Interest at the rate of seven percent (7%) per annum on the amount found due to the lien claimant and from the date found by the court that the sum was due and payable.

(2) Proceedings under subsection (1) of this section are entitled to priority of hearing second only to criminal hearings. The plaintiff in the action may serve upon the adverse party a "demand for thirty (30) day setting" in the proper form, and file the demand with the clerk of the court. Upon filing, the clerk of the court shall, before Friday next, vacate a case or cases as necessary and set the lien claimant's case for hearing, on a day or days certain, to be heard within thirty (30) days of the filing of the "demand for thirty (30) day setting." Only one (1) such preferential setting need be given by the court, unless the hearing date is vacated without stipulation of counsel for the plaintiff in writing. If the hearing date is vacated without that stipulation, upon service and filing of a "demand for thirty (30) day setting," a new preferential setting must be given.

[45-522, added 1993, ch. 378, sec. 7, p. 1390; am. 2024, ch. 150, sec. 2, p. 597.]

45-523. RELEASE OF LIEN ON REAL PROPERTY BY POSTING SURETY BOND -- MOTION TO ENFORCE LIABILITY OF SURETY. (1) By entering into a bond given pursuant to section [45-519](#), Idaho Code, the surety submits himself to the jurisdiction of the court in which the bond is filed in the proceeding for release of the lien, and the surety irrevocably appoints the clerk of that court as its agent upon whom any papers affecting its liability on the bond may be served. Its liability may be enforced on motion without the necessity of an independent action. The motion and such notice of motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail copies to the surety if his address is known.

(2) The motion described in subsection (1) of this section must not be instituted until the lapse of thirty (30) days following the giving of notice of entry of judgment in the action against the lien claimant's debtor, if no

notice of appeal from the judgment is filed, nor may the motion be instituted until the lapse of thirty (30) days following the filing of the remittitur from the court of appeals or the supreme court, if an appeal has been taken from the judgment.

[45-523, added 1993, ch. 378, sec. 8, p. 1391.]

45-524. RELEASE OF LIEN ON REAL PROPERTY BY POSTING SURETY BOND -- EXCEPTION TO SUFFICIENCY OF SURETY. (1) The lien claimant may, within two (2) days after the service of a copy of the petition for release of the lien with a copy of the bond attached thereto pursuant to section [45-520](#), Idaho Code, file with the clerk of the court in the action a notice excepting to the sufficiency of the surety on the bond, and shall, at the same time and together with that notice, file an affidavit setting forth the grounds and basis of the exceptions to the surety, and shall serve a copy of the notice and a copy of the affidavit upon the attorney or the petitioner on the same date as the date of filing of the notice and affidavit. A hearing must be had upon the justification of the surety at the same time as that set for the hearing on the petition for an order to release the lien.

(2) If the lien claimant fails to file and serve the notice and affidavit within two (2) days after the service of the petition for release of the lien, he shall be deemed to have waived all objection to the justification and sufficiency of the surety.

[45-524, added 1993, ch. 378, sec. 9, p. 1391.]

45-525. GENERAL CONTRACTORS -- RESIDENTIAL PROPERTY -- DISCLOSURES. (1) Legislative intent. This section is intended to protect owners and purchasers of residential real property by requiring that general contractors provide adequate disclosure of potential liens.

(2) General contractor information. Prior to entering into any contract in an amount exceeding two thousand dollars (\$2,000) with a homeowner or residential real property purchaser to construct, alter or repair any improvements on residential real property, or with a residential real property purchaser for the purchase and sale of newly constructed property, the general contractor shall provide to the homeowner a disclosure statement setting forth the information specified in this subsection. The statement shall contain an acknowledgment of receipt to be executed by the homeowner or residential real property purchaser. The general contractor shall retain proof of receipt and shall provide a copy to the homeowner or residential real property purchaser. The disclosure shall include the following:

(a) The homeowner or residential real property purchaser shall have the right at the reasonable expense of the homeowner or residential real property purchaser to require that the general contractor obtain lien waivers from any subcontractors providing services or materials to the general contractor;

(b) The homeowner or residential real property purchaser shall have the right to receive from the general contractor proof that the general contractor has a general liability insurance policy including completed operations in effect and proof that the general contractor has worker's compensation insurance for his employees as required by Idaho law;

(c) The homeowner or residential real property purchaser shall be informed of the opportunity to purchase an extended policy of title insurance covering certain unfiled or unrecorded liens; and

(d) The homeowner or residential real property purchaser shall have the right to require, at the homeowner's or residential real property purchaser's expense, a surety bond in an amount up to the value of the construction project.

(3) Subcontractor, materialmen and rental equipment information.

(a) A general contractor shall provide to a prospective residential real property purchaser or homeowner a written disclosure statement, which shall be signed by the general contractor listing the business names, addresses and telephone numbers of all subcontractors, materialmen and rental equipment providers having a direct contractual relationship with the general contractor and who have supplied materials or performed work on the residential property of a value in excess of five hundred dollars (\$500). A general contractor is not required under this subsection to disclose subcontractors, materialmen or rental equipment providers not directly hired by or directly working for the general contractor. Such information shall be provided within a reasonable time prior to:

(i) The closing on any purchase and sales agreement with a prospective residential real property purchaser; or

(ii) The final payment to the general contractor by a homeowner or residential real property purchaser for construction, alteration, or repair of any improvement of residential real property.

(b) All subcontractors, materialmen and rental equipment providers listed in the disclosure statement are authorized to disclose balances owed to the prospective real property purchasers or homeowners and to the agents of such purchasers or homeowners.

(c) The general contractor shall not be liable for any error, inaccuracy or omission of any information delivered pursuant to this section if the error, inaccuracy or omission was not within the personal knowledge of the general contractor.

(4) Failure to disclose. Failure to provide complete disclosures as required by this section to the homeowner or prospective residential real property purchaser shall constitute an unlawful and deceptive act or practice in trade or commerce under the provisions of the Idaho consumer protection act, [chapter 6, title 48](#), Idaho Code.

(5) Definitions. For purposes of this section:

(a) "General contractor" means a person who enters into an agreement in excess of two thousand dollars (\$2,000) with:

(i) A homeowner or prospective residential real property purchaser for the construction, alteration or repair of residential real property; or

(ii) A prospective residential real property purchaser for the purchase and sale of newly constructed property.

The term "general contractor" does not include subcontractors, materialmen or rental equipment providers who do not have a direct contractual relationship with the homeowner or residential real property purchaser.

(b) "Residential real property" shall include owner and nonowner occupied real property consisting of not less than one (1) nor more than four (4) dwelling units.

(6) This section shall not apply to instances in which a homeowner or the agent of the homeowner initiates the contact with the general contractor for purposes of providing repairs necessary to meet a bona fide emergency of

the homeowner or to make necessary repairs to an electrical, plumbing or water system of the homeowner.

[45-525, added 2002, ch. 307, sec. 2, p. 876; am. 2004, ch. 225, sec. 1, p. 667.]

TITLE 45
LIENS, MORTGAGES AND PLEDGES

CHAPTER 6
CLAIMS FOR WAGES

45-601. DEFINITIONS. Whenever used in this chapter:

- (1) "Claimant" means an employee who filed a wage claim with the department in accordance with this chapter and as the director may prescribe.
- (2) "Department" means the department of labor.
- (3) "Director" means the director of the department of labor.
- (4) "Employee" means any person suffered or permitted to work by an employer.
- (5) "Employer" means any individual, partnership, association, joint stock company, trust, corporation, the administrator or executor of the estate of a deceased individual, or the receiver, trustee, or successor of any of the same, employing any person.
- (6) "Wage claim" means an employee's claim against an employer for compensation for the employee's own personal services, and includes any wages, penalties, or damages provided by law to employees with a claim for unpaid wages.
- (7) "Wages" means compensation for labor or services rendered by an employee, whether the amount is determined on a time, task, piece or commission basis.

[(45-601) I.C., sec. 45-609, as added by 1967, ch. 436, sec. 1, p. 1469; am. 1974, ch. 39, sec. 72, p. 1023; am. and redesignated 45-601, 1989, ch. 280, sec. 1, p. 678; am. 1996, ch. 421, sec. 34, p. 1429; am. 1999, ch. 51, sec. 2, p. 116.]

45-602. WAGES OF EMPLOYEES PREFERRED. In all assignments of property made by any person to trustees or assignees, or in proceedings in insolvency, an employee's wages for services rendered within sixty (60) days preceding such assignment, not exceeding five hundred dollars (\$500), is a preferred claim, and must be paid by such trustees or assignees before any creditor or creditors of the assignor or insolvent debtor; provided, that whenever any such employee has filed a notice of lien against any property of the assignor, the employee may elect between the provisions of this section and the employee's lien.

[(45-602) 1893, p. 49, ch. 4, sec. 1; reen. 1899, p. 147, ch. 4, sec. 1; reen. R.C. & C.L., sec. 5145; C.S., sec. 7376; I.C.A., sec. 44-601; am. and redesignated 45-602, 1989, ch. 280, sec. 2, p. 678; am. 1999, ch. 51, sec. 3, p. 116.]

45-603. PREFERENCE OF WAGES -- DEATH OF EMPLOYER. In case of the death of any employer, the wages of each employee for services rendered within the sixty (60) days preceding the death of the employer, not exceeding five hundred dollars (\$500), rank in priority next after the funeral expenses, expenses of the last sickness, the charges and expenses of administering the estate, and the allowance of the surviving spouse and minor children, and must be paid before any other claims against the estate of the deceased person.

[(45-603) 1893, p. 49, ch. 4, sec. 2; reen. 1899, p. 147, ch. 4, sec. 2; reen. R.C. & C.L., sec. 5146; C.S., sec. 7377; I.C.A., sec. 44-602; am. and redesignated 45-603, 1989, ch. 280, sec. 3, p. 678; am. 1999, ch. 51, sec. 4, p. 117.]

45-604. PREFERENCE OF WAGES ON EXECUTION AND ATTACHMENT. In cases of executions, attachments and writs of similar nature, issued against any person or his property, except for claims for labor done, any employee who has claims against the defendant for labor done upon the property levied on, may give notice of their claim and the amount thereof, sworn to by the person making the claim, to the creditor or the creditor's agent or attorney and to the officer executing any of such writs, at any time before the actual sale of the property levied upon; and, unless such claim is disputed by the debtor or creditor, such officer must pay to such person out of the proceeds of the sale of any property on which such person has bestowed labor, the amount such person is entitled to receive for his services rendered within the sixty (60) days preceding the levy of the writ. If any or all other claims so presented and claiming preference under this section are disputed by either the debtor or a creditor, the person presenting the same must commence an action within ten (10) days for the recovery thereof, and must prosecute the action with due diligence or be forever barred from any claim of priority of payment thereof, and the officer shall retain possession of so much of the proceeds of the sale as may be necessary to satisfy such claim until the determination of such action, and in case judgment be had for the claim or any part thereof, carrying costs, the costs taxable therein shall likewise be a preferred claim with the same rank as the original claim.

[(45-604) 1893, p. 49, ch. 4, sec. 3; reen. 1899, p. 147, ch. 4, sec. 3; reen. R.C. & C.L., sec. 5147; C.S., sec. 7378; I.C.A., sec. 44-603; redesignated 45-604, 1989, ch. 280, sec. 4, p. 678; am. 1999, ch. 51, sec. 5, p. 117.]

45-605. DEBTOR OR CREDITOR MAY DISPUTE CLAIM. The debtor or creditor intending to dispute a claim presented under the provisions of section [45-604](#), Idaho Code, shall, within ten (10) days after receiving notice of such claim, serve upon the claimant and the officer executing the writ, a statement in writing, verified by the oath of the debtor, or his agent or attorney, or the oath of the person disputing such claim, or his agent or attorney, setting forth that no part of said claim, or not exceeding a sum specified, is justly due from the debtor to the claimant for services rendered within the sixty (60) days preceding the levy of the writ. If the claimant brings suit on a claim which is disputed in part only, and fails to recover a sum exceeding that which was admitted to be due, the claimant shall not recover costs, but costs shall be adjudged against the claimant.

[(45-605) 1893, p. 49, ch. 4, sec. 4; reen. 1899, p. 147, ch. 4, sec. 4; reen. R.C. & C.L., sec. 5148; C.S., sec. 7379; I.C.A., sec. 44-604; redesignated 45-605, 1989, ch. 280, sec. 5, p. 679; am. 1999, ch. 51, sec. 6, p. 118.]

45-606. PAYMENT OF WAGES UPON SEPARATION FROM EMPLOYMENT. (1) Upon lay-off, or upon termination of employment by either the employer or employee, the employer shall pay or make available at the usual place of payment all wages then due the employee by the earlier of the next regularly scheduled

payday or within ten (10) days of such layoff or termination, weekends and holidays excluded. However, if the employee makes written request upon the employer for earlier payment of wages, all wages then due the employee shall be paid within forty-eight (48) hours of the receipt of such request, weekends and holidays excluded.

(2) Unless exempt from the minimum wage requirements of [chapter 15, title 44](#), Idaho Code, employees who are not being paid on an hourly or salary basis must be paid at least the applicable minimum wage for all hours worked in the pay period immediately preceding layoff or termination from employment. The minimum wage payment shall be made within the same time limitations provided for in subsection (1) of this section. Any additional wages owed to employees shall be paid by the next regularly schedule payday.

(3) The director may, upon application showing good and sufficient reasons, grant an employer a temporary extension to any time limitation provided in this section.

[45-606, added 1989, ch. 280, sec. 7, p. 679; am. 1996, ch. 421, sec. 35, p. 1429; am. 1999, ch. 51, sec. 7, p. 118.]

45-607. PENALTY FOR FAILURE TO PAY. Whenever an employer fails to pay all wages then due an employee at the times due under section [45-606](#), Idaho Code, then the employee's wages shall continue at the same rate as if services had been rendered in the manner as last employed until paid in full or for fifteen (15) days, whichever is less. However, in no event can the maximum penalty exceed seven hundred fifty dollars (\$750), and if the full amount of the wages are paid prior to the filing of a lien pursuant to section [45-620](#), Idaho Code, the maximum penalty shall not exceed five hundred dollars (\$500).

Any employee who secretes or absents himself to avoid payment, or refuses to receive payment when made available as provided for in section [45-606](#), Idaho Code, shall not be entitled to any penalty under this chapter.

[(45-607) 1911, ch. 170, sec. 2, p. 565; reen. C.L., sec. 5148c; C.S., sec. 7382; I.C.A., sec. 44-607; am. 1989, ch. 280, sec. 8, p. 680; am. 1996, ch. 165, sec. 1, p. 547; am. 1999, ch. 51, sec. 8, p. 118.]

45-608. PAY PERIODS -- PENALTY. (1) Employers shall pay all wages due to their employees at least once during each calendar month, on regular paydays designated in advance by the employer, in lawful money of the United States or with checks on banks where suitable arrangements are made for the cashing of such checks without charge to the employee. Nothing contained herein shall prohibit an employer from depositing wages due or to become due or an advance of wages to be earned in an account in a bank, savings and loan association or credit union of the employee's choice, provided that the employee has voluntarily authorized such deposit. If the employee revokes such authorization for deposit, it shall be deemed terminated and the provisions herein relating to the payment of wages shall apply.

(2) The end of the pay period for which payment is made on a regular payday shall be not more than fifteen (15) days before such regular payday; provided that if the regular payday falls on a nonworkday payment shall be made on a preceding workday.

(3) The director may, upon application showing good and sufficient reasons, permit an employer to withhold payment of wages more than the fifteen (15) day period as specified in subsection (2) of this section.

(4) The director may, pursuant to his authority, levy a civil penalty upon any employer who has failed to obtain the exemption provided in subsection (3) of this section and who has been determined to have undertaken a consistent pattern of untimely payment of wages to his employees. Such penalty shall not exceed five hundred dollars (\$500) for such employer per pay period.

[(45-608) I.C., sec. 45-610, as added by 1967, ch. 436, sec. 2, p. 1469; am. 1974, ch. 39, sec. 73, p. 1023; am. 1985, ch. 132, sec. 1, p. 326; am. and redesignated 45-608, 1989, ch. 280, sec. 9, p. 680; am. 1999, ch. 51, sec. 9, p. 119.]

45-609. WITHHOLDING OF WAGES. (1) No employer may withhold or divert any portion of an employee's wages unless:

(a) The employer is required or empowered to do so by state or federal law; or

(b) The employer has a written authorization from the employee for deductions for a lawful purpose.

(2) An employer shall furnish each employee with a statement of deductions made from the employee's wages for each pay period such deductions are made. The willful failure of any employer to comply with the provisions of this subsection shall constitute a misdemeanor.

[(45-609) I.C., sec. 45-611, as added by 1967, ch. 436, sec. 3, p. 1469; am. and redesignated 45-609, 1989, ch. 280, sec. 10, p. 681; am. 1999, ch. 51, sec. 10, p. 119.]

45-610. RECORDS TO BE KEPT BY EMPLOYER -- NOTICE TO EMPLOYEES. (1) Employment records must be maintained for a minimum period of three (3) years from the last date of the employee's service.

(2) Every employer shall give notice to its employees at the time of hiring of the rate of pay and the usual day of payment, and shall provide such information in writing to the employee upon the employee's request.

(3) Every employer shall give notice to its employees of any reduction in wages prior to the work being performed and shall provide such information in writing to the employee upon the employee's request.

[45-610, added 1989, ch. 280, sec. 11, p. 681; am. 1999, ch. 51, sec. 11, p. 120.]

45-611. WAGES THAT ARE IN DISPUTE. (1) In case of a dispute as to the amount of wages due an employee, the employer shall pay, without condition and within the time set by this chapter, all wages, or parts thereof, conceded by the employer to be due, leaving to the employee all remedies the employee might otherwise be entitled to, including those provided under this chapter, as to any balance claimed. Whenever an employer pays all wages not in dispute within the time limits set forth in section [45-606](#), Idaho Code, no penalties may be assessed under this chapter, unless it can be shown that the remaining balance of wages due were withheld willfully, arbitrarily and without just cause.

(2) The acceptance by an employee of a check with any restrictive endorsement as payment under this section shall not constitute a release or accord and satisfaction with respect to the disputed amount.

[45-611, added 1989, ch. 280, sec. 12, p. 681; am. 1999, ch. 51, sec. 12, p. 120.]

45-612. FILING FALSE CLAIM -- PENALTY. (1) Any person making a false claim for wages or other compensation under this chapter, knowing the same to be false, shall be guilty of a misdemeanor and shall be punishable by confinement in the county jail for a period not to exceed six (6) months, or by a fine, not to exceed one thousand dollars (\$1,000), or both.

(2) Any employee initiating a civil proceeding to collect unpaid wages or other compensation, which is based in whole or in part on a false claim which the employee knew to be false at the time the employee brought the action, shall be liable for attorney's fees and costs incurred by the employer in defending against the false claim. Proof of a criminal conviction under subsection (1) of this section shall not be required for recovery of the fees and costs provided for in this subsection.

[45-612, added 1996, ch. 89, sec. 1, p. 270; am. 1999, ch. 51, sec. 13, p. 120.]

45-613. DISCHARGING OR RETALIATING AGAINST EMPLOYEES ASSERTING RIGHTS UNDER THIS CHAPTER. No employer shall discharge or in any other manner retaliate against any employee because that employee has made a complaint to the employer, or to the department, or filed suit alleging that the employee has not been paid in accordance with the provisions of this chapter, or because the employee has testified or may be about to testify in an investigation or hearing undertaken by the department. The provisions of this section shall not be construed to otherwise restrict the discipline or termination of an employee.

[45-613, added 1989, ch. 280, sec. 14, p. 682; am. 1996, ch. 421, sec. 36, p. 1429; am. 1999, ch. 51, sec. 14, p. 121.]

45-614. COLLECTION OF WAGES -- LIMITATIONS. Any person shall have the right to collect wages, penalties and liquidated damages provided by any law or pursuant to a contract of employment, but any action thereon shall be filed either with the department or commenced in a court of competent jurisdiction within two (2) years after the cause of action accrued, provided, however, that in the event salary or wages have been paid to any employee and such employee claims additional salary, wages, penalties or liquidated damages, because of work done or services performed during his employment for the pay period covered by said payment, any action therefor shall be commenced within twelve (12) months from the accrual of the cause of action. It is further provided that if any such cause of action has accrued prior to the effective date of this act, and is not barred by existing law, action thereon may be commenced within six (6) months from the effective date of this act. In the event an action is not commenced as herein provided, any remedy on the cause of action shall be forever barred.

[(45-614) I.C.A., sec. 44-608, added 1947, ch. 36, sec. 1, p. 36; am. and redesig. 45-614, 1989, ch. 280, sec. 15, p. 682; am. 1999, ch. 51, sec. 15, p. 121; am. 2019, ch. 93, sec. 1, p. 338.]

45-615. COLLECTION OF WAGE CLAIMS BY SUIT -- ATTORNEY'S FEES AND COSTS. (1) As an alternative to filing a wage claim with the department, any

person may assert a wage claim arising under this chapter in any court of competent jurisdiction or pursue any other remedy provided by law.

(2) Any judgment rendered by a court of competent jurisdiction for the plaintiff in a suit filed pursuant to this section may include all costs and attorney's fees reasonably incurred in connection with the proceedings and the plaintiff shall be entitled to recover from the defendant either the unpaid wages plus the penalties provided for in section [45-607](#), Idaho Code; or damages in the amount of three (3) times the unpaid wages found due and owing, whichever is greater.

[45-615, added 1999, ch. 51, sec. 17, p. 122.]

45-616. ENFORCEMENT. (1) The director shall enforce and administer the provisions of this chapter. The director is empowered to hold hearings and otherwise investigate violations or alleged violations of this chapter and any rules promulgated pursuant thereto, and to issue orders for administrative remedies as authorized.

(2) The director is empowered to enter and inspect places, question employees, and investigate facts, conditions, or matters as the director may deem appropriate to determine whether any person has violated any provision of this chapter or any rule promulgated thereunder or which may aid in the enforcement of the provisions of this chapter.

(3) The director shall have the power to administer oaths and examine witnesses under oath or otherwise, and issue subpoenas to compel the attendance of witnesses and the production of any evidence deemed necessary in the administration of this chapter.

(4) If any person fails to comply with any subpoena lawfully issued, it shall be the duty of the district court, on application by the director, to compel compliance by citation for contempt.

(5) An employer shall furnish to the department the information the department is authorized to acquire under this section when the request is submitted in writing.

(6) The department shall attempt for a period of not less than two (2) years from the date of collection, to make payment of wages collected under this chapter to the person entitled thereto. Wage claims collected by the department that remain unclaimed for a period of more than two (2) years from the date collected shall on June 30th of each year be forfeited and retained in the department's account and used for the administration of this chapter.

[(45-616) I.C., sec. 45-613, as added by 1967, ch. 436, sec. 5, p. 1469; am. 1974, ch. 39, sec. 74, p. 1023; am. and redesignated 45-616, 1989, ch. 280, sec. 17, p. 683; am. 1999, ch. 51, sec. 18, p. 122.]

45-617. ADMINISTRATIVE PROCEEDINGS FOR WAGE CLAIMS. (1) Wage claims filed with the department, excluding potential penalties, are limited by the same dollar amount that limits actions before the small claims department of the magistrate division of the district court.

(2) The contested case provisions of the Idaho administrative procedure act, [chapter 52, title 67](#), Idaho Code, are inapplicable to proceedings involving wage claims under this chapter.

(3) Once a wage claim has been properly filed with the department, the provisions of this section shall provide the exclusive remedy for resolving the wage claim. If at any time after the filing of the wage claim the department determines that it lacks jurisdiction over the wage claim, the depart-

ment shall provide written notification of its determination to the claimant and the employer. The claimant may then assert the wage claim in any court of competent jurisdiction. In the event the department determines that it lacks jurisdiction over the wage claim, the limitation periods provided for in section [45-614](#), Idaho Code, shall be tolled from the date the wage claim was filed with the department until the date notice that the department lacks jurisdiction is mailed to the claimant, as provided in subsection (5) of this section.

(4) A department compliance officer shall examine wage claims filed with the department and, on the basis of the facts found, shall determine whether the wage claimant is entitled to an award for unpaid wages and penalties. If the compliance officer is unable to determine whether wages and penalties are owed, the claim may be referred to a hearing officer for a determination. The department may adjust the amount of penalties awarded for an employer's failure to comply with the requirements of section [45-606](#), Idaho Code. The department may award no penalty or may award a penalty in any amount up to the maximum amount allowed under section [45-607](#), Idaho Code. No penalty shall be awarded by the department unless a specific finding is made that wages were withheld willfully, arbitrarily and without just cause. The department's determination shall include findings of fact and conclusions of law. Before the determination becomes final or an appeal is filed, the compliance or hearing officer that issued the determination may, on his own motion, issue a revised determination. The determination or revised determination shall become a final determination unless, within fourteen (14) days after notice, as provided in subsection (5) of this section, an appeal is filed by the claimant or the employer in accordance with the department's rules. If an appeal is not timely filed, the amount awarded by a final determination shall become immediately due and payable to the department. A final determination may be enforced by the department in accordance with section [45-618](#), Idaho Code.

(5) The claimant and the employer shall be entitled to prompt service of notice of determinations and decisions. Notice shall be deemed served if delivered to the person being served, if mailed to the person's last known address, or if electronically transmitted to the claimant at the claimant's request and with the department's approval. Service by electronic transmission shall be deemed complete on the date notice is electronically transmitted. The date indicated on determinations or decisions as the "date of service" or "date of mailing" shall be presumed to be the date of service unless otherwise shown by a preponderance of competent evidence.

(6) An appeal from a wage claim determination shall be in writing, signed by the appellant or the appellant's representative and shall contain words that, by fair interpretation, request the appeal process for a specific determination of the department. The appeal may be filed by personal delivery, by mail, by electronic transmission, or by fax to the wage and hour section of the department at the address indicated on the wage claim determination. The date of personal delivery shall be noted on the appeal and shall be deemed the date of filing. If mailed, the appeal shall be deemed to be filed on the date of mailing as determined by the postmark. A faxed or electronically transmitted appeal shall be deemed filed on the date received by the wage and hour section. A faxed or electronically transmitted appeal received by the wage and hour section on a weekend or holiday shall be deemed filed on the next business day.

(7) To hear and decide appeals from determinations, the director shall appoint appeals examiners who have been specifically trained to hear wage claims. Unless the appeal is withdrawn, the appeals examiner shall affirm, modify, set aside or reverse the determination involved, after affording the claimant and the employer reasonable opportunity for a fair hearing, or may refer a matter back to the compliance or hearing officer for further action. The appeals examiner shall notify the claimant and the employer of his decision by serving notice in the same manner as provided in subsection (5) of this section. The decision shall set forth findings of fact and conclusions of law. The appeals examiner may, upon application for rehearing by the claimant, the employer, or on his own motion, rehear, affirm, modify, set aside or reverse any prior decision on the basis of the evidence previously submitted or on the basis of additional evidence; provided, that such application or motion be made within ten (10) days after the date of service of the decision. A complete record shall be kept of all proceedings in connection with an appealed wage claim. All testimony at any hearing shall be recorded. Witnesses subpoenaed by the appeals examiner shall be allowed fees at a rate prescribed by the director. If the claimant or the employer formally requests the appeals examiner to issue a subpoena for a witness whose evidence is deemed necessary, the appeals examiner shall promptly issue the subpoena, unless such request is determined to be unreasonable. Unless the claimant or the employer, within fourteen (14) days after service of the decision of the appeals examiner, seeks judicial review pursuant to section [45-619](#), Idaho Code, or unless an application or motion is made for a rehearing of such decision, the decision of the appeals examiner shall become final and the amount awarded by the decision shall become immediately due and payable to the department. A decision that has become final may be enforced by the department according to section [45-618](#), Idaho Code.

(8) No person acting on behalf of the director shall participate in any case in which he has a direct or indirect personal interest.

(9) (a) Any right, fact, or matter in issue, directly based upon or necessarily involved in a determination or decision of the appeals examiner that has become final, shall be conclusive for all the purposes of this chapter as between the claimant and the employer who had notice of such determination or decision. Subject to judicial review as set forth in this chapter, any determination or decision shall be conclusive for all purposes of this chapter and shall not be subject to collateral attack irrespective of notice.

(b) No finding of fact or conclusion of law contained in a determination or decision rendered pursuant to this chapter by an appeals examiner, a court, or any other person authorized to make such determinations shall have preclusive effect in any other action or proceeding, except proceedings that are brought:

- (i) Pursuant to this chapter;
- (ii) To collect wage claims; or
- (iii) To challenge the constitutionality of provisions of this chapter or administrative proceedings under this chapter.

[45-617, added 1999, ch. 51, sec. 20, p. 123; am. 2021, ch. 66, sec. 1, p. 204.]

45-618. ADMINISTRATIVE ENFORCEMENT AND COLLECTION OF WAGE CLAIMS. (1) A department determination, if not appealed to an appeals examiner; or a decision of the appeals examiner, if judicial review is not sought; or a court

order following judicial review, may be enforced by the department according to section [45-620](#), Idaho Code.

(2) If at any time the department determines, in its sole discretion, that a wage claim upon which a lien was filed pursuant to section [45-620](#), Idaho Code, is no longer collectable, the department shall:

(a) Transfer the state lien from the central lien filing system of the secretary of state to the district court in the county of the debtor's last known address. A lien transferred pursuant to this subsection shall be entered in the judgment docket of the district court and recorded as a transferred lien with the effective date of the lien being the date it was initially filed with the secretary of state.

(b) Notify the claimant in writing, at the claimant's last known address, that the lien has been transferred and advise the claimant that no further action will be maintained by the department on the wage claim, and that from the date of the transfer, it shall be the claimant's sole responsibility to maintain and enforce the lien.

(3) A lien transferred pursuant to this section shall be enforceable by the claimant in the same manner and with the same effect as if the lien had been a judgment of the district court.

[45-618, added 1999, ch. 51, sec. 21, p. 125.]

45-619. JUDICIAL REVIEW. (1) A claimant or employer aggrieved by a final decision of the appeals examiner may obtain judicial review of the decision pursuant to the provisions of [chapter 52, title 67](#), Idaho Code, and the provisions of this section.

(2) If the employer files a petition for judicial review in a court of competent jurisdiction contesting the appeals examiner's decision, the employer, not later than the twenty-eighth day after the date the appeals examiner's decision became final, shall either:

(a) Deposit the full amount awarded to the claimant with the department, to be placed by the department in an interest-bearing escrow account of a fully insured financial institution; or

(b) Post a bond, written by a fidelity, surety, guaranty, title or trust company authorized to do business in the state of Idaho. The bond must be in the full amount of the appeals examiner's decision and shall state that the company issuing or executing the bond agrees to pay to the department on behalf of the employer all sums found to be due and owing by the employer by reason of the outcome of the appeal, within thirty (30) days of the filing of the court's decision. A copy of the bond shall be served upon the department and the claimant; or

(c) File an affidavit of inability to either post a bond or send to the department the amount awarded to the claimant.

(3) The employer's failure to timely post a bond or send the amount required by subsection (2) of this section shall constitute a waiver of the right to judicial review.

(4) If, after judicial review, it is determined that some or all of the wages are not owed or the penalty is reduced or is not assessed, the department shall remit the appropriate amount to the employer, plus the interest accrued on the escrowed amount, or collect from the bond only the amount awarded by the court on appeal, up to the maximum amount of the bond.

[45-619, added 1999, ch. 51, sec. 22, p. 126.]

45-620. LIENS. (1) Upon the failure of any person to pay any amount when due pursuant to section [45-617](#), Idaho Code, the department may file with the office of the secretary of state, as provided in [chapter 19, title 45](#), Idaho Code, a notice of lien.

(2) Upon delivery to the secretary of state, the notice of lien shall be filed and maintained in accordance with [chapter 19, title 45](#), Idaho Code. When such notice is duly filed, all amounts due shall constitute a lien upon the entire interest, legal or equitable, in any property of such person, real or personal, tangible or intangible, not exempt from execution, situated in the state. Such lien may be enforced by the director or by any sheriff of the various counties in the same manner as a judgment of the district court duly docketed and the amount secured by the lien shall bear interest at the rate of the state statutory legal limit on judgments. The foregoing remedy shall be in addition to all other remedies provided by law.

(3) In any suit or action involving the title to real or personal property against which the state has a perfected lien, the state shall be made a party to such suit or action.

[45-620, added 1999, ch. 51, sec. 23, p. 126.]

45-621. COLLECTION OF LIEN AMOUNTS. (1) In addition to all other remedies or actions provided by this chapter, it shall be lawful for the director or his agent to collect any amounts secured by liens created pursuant to this chapter by seizure and sale of the property of any person liable for such amounts who fails to pay the same within thirty (30) days from the mailing of notice and demand for payment thereof.

(2) Property exempt from seizure shall be the same property that is exempt from execution as otherwise allowed by law.

(3) In exercising his authority under subsection (1) of this section, the director may levy, or by his warrant, authorize any of his representatives, a sheriff or deputy to levy upon, seize and sell any nonexempt property belonging to any person liable for the amounts secured by the lien.

(4) When a warrant is issued by the department for the collection of any amount due pursuant to a lien authorized by this chapter, it shall be directed to any authorized representative of the department, or to any sheriff or deputy, and any such warrant shall have the same force and effect as a writ of execution. It may be levied and sale made pursuant to it in the same manner and with the same force and effect as a levy and sale pursuant to a writ of execution. Upon the completion of his services pursuant to said warrant, the sheriff or deputy shall receive the same fees and expenses as are provided by law for services related to a writ of execution. All such fees and expenses shall be an obligation of the person liable for the amounts due and shall be collected from such person by virtue of the warrant. Any warrant issued by the director shall contain, at a minimum, the name and address of the liable person; the nature of the underlying liability; the date the liability was incurred; the amount of the liability secured by the lien; the amount of any penalty, interest or other amount due under the lien; and the interest rate on the lien.

(5) Whenever any property that is seized and sold by virtue of the foregoing provisions is not sufficient to satisfy the claim of the state for which seizure is made, any other property subject to seizure shall be seized and sold until the amount due from such person, together with all expenses, is fully paid.

(6) All persons are required, on demand of a representative of the department, a sheriff or deputy acting pursuant to this chapter, to produce all documentary evidence and statements relating to the property or rights in the property subject to seizure.

(7) Upon the filing of a state lien pursuant to section [45-620](#), Idaho Code, the department may collect on the lien in the same manner and to the same extent as the department collects tax liabilities and overpayment of benefits as provided by section [63-3077A](#), Idaho Code.

[45-621, added 1999, ch. 51, sec. 24, p. 127.]

TITLE 45
LIENS, MORTGAGES AND PLEDGES

CHAPTER 7
HOSPITAL AND NURSING CARE LIENS

45-701. RIGHT TO LIEN CONFERRED. Every individual, partnership, firm, association, corporation, institution or any governmental unit or combination or parts thereof maintaining and operating a hospital in this state shall be entitled to a lien for the reasonable charges for hospital care, treatment and maintenance of an injured person upon any and all causes of action, suits, claims, counterclaims, or demands accruing to the person to whom such care, treatment, or maintenance was furnished, or to the legal representatives of such person, on account of injuries giving rise to such causes of action and which necessitated such hospital care, treatment and maintenance.

[45-701, added 1941, ch. 118, sec. 1, p. 238.]

45-702. PERFECTING LIEN -- STATEMENT OF CLAIM -- CONTENTS -- FILING. (1) In order to perfect such lien, an officer or agent of such hospital shall file in the office of the recorder of the county in which such hospital is located a verified statement in writing setting forth the name and address of such patient as it appears on the records of such hospital, the name and location of such hospital, the name and address of the officer or agent of such hospital filing the lien, the dates of admission to the hospital and discharge of such patient therefrom, the amount claimed to be due for such hospital care, and, to the best of claimant's knowledge, the names and addresses of all persons, firms, or corporations claimed by such injured person or the legal representative of such person to be liable for damages arising from such injuries. The claimant shall also, within one (1) day after the filing of such claim or lien, mail a copy thereof by certified mail, return receipt requested, to each person, firm, or corporation claimed to be liable for such damages, at the address given in such statement.

(2) (a) In the case of a patient who has no third-party payor, as defined in section [48-303](#), Idaho Code, a lien authorized by this chapter must be filed before or within ninety (90) days after either the date the patient was discharged from the hospital or the last day services were provided to the patient as a result of the injury, whichever is later.

(b) In the case of a patient who has a third-party payor, as defined in section [48-303](#), Idaho Code, a lien authorized by this chapter may be filed during the ninety (90) day period after either the date the patient was discharged from the hospital or the last day services were provided to the patient as a result of the injury but only after all contracted billing adjustments for the services as ordinarily used with that third-party payor are made, provided that such lien may additionally be filed during the thirty (30) days after the hospital has received payment from the third-party payor.

(3) The filing of such claim or lien shall be notice thereof to all persons, firms, or corporations liable for such damages, whether or not they are named in such claim or lien.

[45-702, added 1941, ch. 118, sec. 2, p. 238; am. 1967, ch. 65, sec. 1, p. 147; am. 2024, ch. 236, sec. 1, p. 819; am. 2024, ch. 242, sec. 1, p. 862.]

45-703. RECORDING AND INDEXING LIEN. The recorder shall endorse thereon the date and hour of recording and, at the expense of the county, shall provide a hospital lien book with proper index in which he shall enter the date and hour of such recording, the name and address of such hospital and of such patient, the amount claimed and the names and addresses of those claimed to be liable for damage. Such recorder shall be paid the sum as provided by section [31-3205](#), Idaho Code.

[45-703, added 1941, ch. 118, sec. 3, p. 238; am. 1984, ch. 30, sec. 1, p. 51.]

45-704. RELEASE OF LIEN -- ACTION TO ENFORCE LIEN. No release of such causes of action, or any of them, or of any judgment thereon, shall be valid or effectual as against such lien unless such lien holder shall join therein, or execute a release of such lien, and the claimant, or assignee of such lien may enforce such lien by an action against the person, firm or corporation liable for such damage, which action shall be commenced and tried in the county in which such lien shall be filed, unless ordered removed to another county by the court for cause. If the claimant shall prevail in such action, the court may allow reasonable attorney's fees and disbursements. Such action shall be commenced within two (2) years after the filing of such lien.

[45-704, added 1941, ch. 118, sec. 4, p. 238.]

45-704A. LIENS FOR NURSING CARE. Every person licensed under the laws of the state of Idaho to render nursing care shall be entitled to a lien for the reasonable charges for nursing care and treatment rendered an injured person upon any and all causes of action, suits, claims, counterclaims, or demands accruing to the person to whom such care and treatment was furnished, or to the legal representatives of such person, on account of injuries giving rise to such causes of action and that necessitate such nursing care and treatment. Such a lien shall be perfected within the time prescribed and in the form and manner provided in section [45-702](#), Idaho Code, and shall be recorded and indexed in the manner provided in section [45-703](#), Idaho Code. The lien shall be enforced or released in the manner provided in section [45-704](#), Idaho Code. If the claimant of said lien shall prevail in an action to enforce said lien, the court may allow reasonable attorney's fees and disbursements.

[45-704A, added 1961, ch. 21, sec. 1, p. 23; am. 2024, ch. 236, sec. 2, p. 820.]

45-704B. LIENS FOR MEDICAL CARE. Every individual or association licensed or incorporated under the laws of the state of Idaho to practice medicine and surgery (hereinafter "physician") shall be entitled to a lien for the reasonable charges for medical care and treatment rendered an injured person upon any and all causes of action, suits, claims, counterclaims, or demands accruing to the person to whom such care and treatment was furnished, or to the legal representatives of such person, on account of injuries giving rise to such causes of action and that necessitate such

medical care and treatment. In order to perfect the lien, the physician or his agent shall file the lien within the time prescribed and in the same general form and manner as provided in section [45-702](#), Idaho Code, in the office of the recorder of the county in which the physician rendered the services. The lien shall be recorded and indexed in the manner provided in section [45-703](#), Idaho Code. The lien shall be enforced or released in the manner provided in section [45-704](#), Idaho Code. If the claimant of the lien prevails in an action to enforce the lien, the court may allow reasonable attorney's fees and disbursements.

[45-704B, added 1979, ch. 302, sec. 1, p. 822; am. 2024, ch. 236, sec. 3, p. 820.]

45-705. WORKMEN'S COMPENSATION CASES EXCEPTED FROM ACT. The provisions of this act shall not be applicable to accidents or injuries within the purview of the Workmen's Compensation Law of this state.

[45-705, added 1941, ch. 118, sec. 5, p. 238.]

TITLE 45
LIENS, MORTGAGES AND PLEDGES

CHAPTER 8
MISCELLANEOUS LIENS

45-801. VENDOR'S LIEN. One who sells real property has a vendor's lien thereon, independent of possession, for so much of the price as remains unpaid and unsecured otherwise than by the personal obligation of the buyer.

[(45-801) R.S., sec. 3440; reen. R.C. & C.L., sec. 3441; C.S., sec. 6408; I.C.A., sec. 44-701.]

45-802. VENDOR'S LIEN -- WAIVER. Where a buyer of real property gives to the seller a written contract for payment of all or part of the price, an absolute transfer of such contract by the seller waives his lien to the extent of the sum payable under the contract, but a transfer of such contract, in trust to pay debts, and return the surplus, is not a waiver of the lien.

[(45-802) R.S., sec. 3441; reen. R.C. & C.L., sec. 3442; C.S., sec. 6409; I.C.A., sec. 44-702.]

45-803. VENDOR'S LIEN -- EXTENT. The liens of vendors and purchasers of real property are valid against every one claiming under the debtor, except a purchaser or encumbrancer in good faith and for value.

[(45-803) R.S., sec. 3442; reen. R.C. & C.L., sec. 3443; C.S., sec. 6410; I.C.A., sec. 44-703.]

45-804. LIEN OF PURCHASER OF REAL PROPERTY. One who pays to the owner any part of the price of real property, under an agreement for the sale thereof, has a special lien upon the property, independent of possession, for such part of the amount paid as he may be entitled to recover back, in case of a failure of consideration.

[(45-804) R.S., sec. 3444; reen. R.C. & C.L., sec. 3445; C.S., sec. 6411; I.C.A., sec. 44-704.]

45-805. LIENS FOR SERVICES ON OR CARING FOR PROPERTY. (a) Every person who, while lawfully in possession of an article of personal property, renders any service to the owner thereof, by labor, or skill, employed for the protection, improvement, safekeeping, or carriage thereof, has a special lien thereon, dependent on possession, for the compensation, if any, which is due him from the owner, for such service. If the liens as herein provided are not paid within sixty (60) days after the work is done, service rendered or materials supplied, the person in whose favor such special lien is created may proceed to sell the property at a public auction after giving ten (10) days' public notice of the sale by advertising in some newspaper published in the county where the property is situated, or if there is no newspaper published in the county then by posting notices of the sale in three (3) of the most public places in the county for ten (10) days previous to such sale. The person shall also send the notice of auction to the owner or owners of the property and to the holder or holders of a perfected security interest in the property as provided in subsection (c) of this section. The person who is

about to render any service to the owner of an article of personal property by labor or skill employed for the protection, improvement, safekeeping or carriage thereof may take priority over a prior perfected security interest by, before commencing any such service, giving notice of the intention to render such service to any holder of a prior perfected security interest at least three (3) days before rendering such service. If the holder of the security interest does not notify said person, within three (3) days that it does not consent to the performance of such services, then the person rendering such service may proceed and the lien provided for herein shall attach to the property as a superior lien. The provisions of this section shall not apply to a motor vehicle subject to the provisions of sections [49-1809](#) through [49-1818](#), Idaho Code.

(b) Livery or boarding or feed stable proprietors, and persons pasturing livestock of any kind, have a lien, dependent on possession, for their compensation in caring for, boarding, feeding or pasturing such livestock. If the liens as herein provided are not paid within sixty (60) days after the work is done, service rendered, or feed or pasturing supplied, the person in whose favor such special lien is created may proceed to sell the property at a licensed public livestock auction market, or if the lien is on equines, to sell the animals at a sale offered to the public, after giving ten (10) days' notice to the owner or owners of the livestock and the state brand inspector. The information contained in such notice shall be verified and contain the following:

- (1) The time, place and date of the licensed public livestock auction market, or in the case of equines, the time, place and date of the sale offered to the public;
- (2) The name, address and phone number of the person claiming the lien;
- (3) The name, address and phone number of the owner or owners of the livestock upon which the lien has been placed;
- (4) The number, breed and current brand of the livestock upon which the lien has been placed; and
- (5) A statement by the lienor that the requirements of this section have been met.

(c) Notices provided in subsections (a) and (b) of this section shall be made by personal service or by certified or registered mail to the last known address of the owner or owners and any holder of a prior perfected security interest. The proceeds of the sale must be applied to the discharge of any prior perfected security interest, the lien created by this section and costs; the remainder, if any, must be paid over to the owner.

[(45-805) R.S., sec. 3445; am. 1893, p. 67, sec. 1; reen. 1899, p. 181, sec. 1; reen. R.C. & C.L., sec. 3446; C.S., sec. 6412; I.C.A., sec. 44-705; am. 1982, ch. 262, sec. 1, p. 673; am. 1990, ch. 236, sec. 1, p. 672; am. 2012, ch. 341, sec. 1, p. 952; am. 2013, ch. 86, sec. 1, p. 208.]

45-806. LIEN FOR MAKING, ALTERING, OR REPAIRING PERSONAL PROPERTY. Any person, firm or corporation, who makes, alters or repairs any article of personal property, at the request of the owner or person in legal possession thereof, has a lien, which said lien shall be superior and prior to any security interest in the same for his reasonable charges for work done and materials furnished, and may retain possession of the same until the charges are paid. If not paid within two (2) months after the work is done, the person, firm or corporation may proceed to sell the property at public auction, by giving ten (10) days' public notice of the sale by advertising in some news-

paper published in the county in which the work was done; or, if there be no newspaper published in the county, then by posting up notices of the sale in three (3) public places in the town where the work was done, for ten (10) days previous to the sale. The proceeds of the sale must be applied to the discharge of the lien and the cost of keeping and selling the property; the remainder, if any, must be paid over to the owner thereof. Provided that the said person, firm or corporation who is about to make, alter or repair the said property, in order to derive the benefits of this section, must, before commencing said making, altering or repairing, give notice of the intention to so make, alter or repair said property, by registered mail, to any holder of a security interest which is of record in the county where said property is located, or in the office of the secretary of state, and, if a motor vehicle, to any holder of a security interest which may appear on the certificate of title of said vehicle, at least three (3) days before commencing said making, altering or repairing and if notice in writing within said three (3) days be not given by such holder of a security interest notifying said firm or corporation not to perform said services then the said making, altering or repairing may proceed and the prior lien provided for herein attaches to said property.

[(45-806) R.S., sec. 3446; reen. R.C. & C.L., sec. 3447; C.S., sec. 6413; I.C.A., sec. 44-706; am. 1935, ch. 87, sec. 1, p. 152; am. 1967, ch. 272, sec. 12, p. 745; am. 1995, ch. 157, sec. 1, p. 635.]

45-807. LIEN OF FACTOR. A factor has a general lien, dependent on possession, for all that is due to him as such, upon all articles of commercial value that are entrusted to him by the same principal.

[(45-807) R.S., sec. 3447; reen. R.C. & C.L., sec. 3448; C.S., sec. 6414; I.C.A., sec. 44-707.]

45-808. LIEN OF BANKER. A banker has a general lien, dependent on possession, upon all property in his hands, belonging to a customer, for the balance due to him from such customer in the course of the business.

[(45-808) R.S., sec. 3448; reen. R.C. & C.L., sec. 3449; C.S., sec. 6415; I.C.A., sec. 44-708.]

45-809. LIEN FOR COOPERATIVE CORPORATIONS OR ASSOCIATIONS. Any cooperative corporation, as defined by Idaho Code, which provides goods or services to any person, firm or corporation, may set off any equity interest owned by such person, firm or corporation in the cooperative as a means of collecting obligations owed to it for such goods or services. Equity shall include, but not be limited to, membership stock, capital credits, accounts representing capital credits, capital stock or patronage credits. The cooperative shall have a lien on and a continuing perfected security interest in such equity to secure payment of any indebtedness, whenever incurred, owed to the cooperative by the person, firm or corporation receiving goods or services. Such lien and continuing perfected security interest may be enforced by right of offset when it becomes due and payable under the articles or bylaws of the cooperative. The cooperative's right of offset shall not entitle the debtor to set off its obligations against equity interest it owns in the cooperative which are not yet an obligation of the cooperative payable under the article or bylaws of the cooperative.

[45-809, added 1996, ch. 344, sec. 1, p. 1154.]

45-811. NONCONSENSUAL COMMON LAW LIENS PROHIBITED. (1) For purposes of this section, "nonconsensual common law lien" means a lien that:

- (a) Is not provided for by a specific state or federal statute;
- (b) Does not depend upon the consent of the owner of the property affected for its existence;
- (c) Is not a court-imposed equitable, judgment or constructive lien; and
- (d) Is not of a kind commonly used in legitimate commercial transactions.

(2) Nonconsensual common law liens are hereby prohibited. The state of Idaho shall not recognize or enforce nonconsensual common law liens. Provided however, that if a county clerk or other recording officer accepts for filing or recording a claim of a nonconsensual common law lien, the clerk or officer shall not be penalized or be liable for such filing or recording.

(3) Petition to release and complaint for penalties.

(a) A person whose real or personal property is subject to a recorded claim of a nonconsensual common law lien may at any time petition the district court of the county in which the claim has been recorded for an order releasing the claim. The petition, which may be heard ex parte, shall be heard as soon as practicable by the court. If it appears from the content of the lien that the lien is a nonconsensual common law lien, the court shall issue an order to the lienor to appear at a date not sooner than fifteen (15) days after the order is made, nor later than thirty (30) days, at which time the lienor must show cause why the claim of lien should not be released. If the lienor does not appear or if the showing of cause is insufficient, the court shall issue an order releasing the claim of lien. If good cause is shown by the lienor that the lien is not a nonconsensual common law lien and has a valid basis, the matter shall be set for further proceedings to determine the validity of the lien.

(b) A complaint for penalties and other relief awarded pursuant to subsection (4) of this section may be filed separately or in conjunction with a petition filed under paragraph (a) of this subsection, but such complaint may not be filed any later than ninety (90) days after the hearing on the court's order to show cause as provided in paragraph (a) of this subsection.

(c) The filing fee for a petition filed pursuant to paragraph (a) of this subsection shall be thirty-five dollars (\$35.00). The filing fee for a complaint filed pursuant to paragraph (b) of this subsection shall be prescribed by court rule.

(4) Penalties.

(a) Any person who files or records in the office of a county clerk or recorder, or with the secretary of state, any document attempting to create a nonconsensual common law lien against real or personal property, and who has refused or failed to withdraw such document upon written request by the owner of the property, shall be liable to the owner for the sum of not less than five thousand dollars (\$5,000) or for actual damage caused thereby, whichever is greater, together with any court costs and reasonable attorney's fees.

(b) Any lienor or other person claiming interest in property under a recorded nonconsensual common law lien against real or personal prop-

erty who has refused or failed to record a release or disclaimer of interest in such property upon written request by the owner of the property shall be liable to the owner for the damages, court costs and attorney's fees provided in paragraph (a) of this subsection.

[45-811, added 2016, ch. 170, sec. 2, p. 471.]

TITLE 45
LIENS, MORTGAGES AND PLEDGES

CHAPTER 9
MORTGAGES IN GENERAL

45-901. MORTGAGE DEFINED. Mortgage is a contract excepting a trust deed or transfer in trust by which specific property is hypothecated for the performance of an act without the necessity of a change of possession.

[(45-901) R.S., sec. 3350; reen. R.C. & C.L., sec. 3388; C.S., sec. 6355; I.C.A., sec. 44-801; am. 1957, ch. 181, sec. 16, p. 345.]

45-902. MORTGAGE MUST BE IN WRITING. A mortgage, deed of trust or transfer in trust can be created, renewed or extended only by writing, executed with the formalities required in the case of a grant or conveyance of real property.

[(45-902) R.S., sec. 3351; reen. R.C. & C.L., sec. 3389; C.S., sec. 6356; I.C.A., sec. 44-802; am. 1957, ch. 181, sec. 17, p. 345.]

45-903. LIEN OF MORTGAGE IS SPECIAL. The lien of a mortgage is special, unless otherwise expressly agreed, and is independent of possession.

[(45-903) R.S., sec. 3352; reen. R.C. & C.L., sec. 3390; C.S., sec. 6357; I.C.A., sec. 44-803.]

45-904. TRANSFERS DEEMED MORTGAGES. Every transfer of an interest in property other than in trust to secure the performance of any obligation of the trustor or other person named in the trust instrument, made only as a security for the performance of another act, is to be deemed a mortgage.

[(45-904) R.S., sec. 3353; reen. R.C. & C.L., sec. 3391; C.S., sec. 6358; I.C.A., sec. 44-804; am. 1957, ch. 181, sec. 18, p. 345; am. 1967, ch. 272, sec. 13, p. 745.]

45-905. DEFEASANCE MAY BE SHOWN BY PAROL. The fact that a transfer was made subject to defeasance on a condition may, for the purpose of showing such transfer to be a mortgage, be proved (except as against a trustee under any trust deed or transfer in trust, or a subsequent purchaser or encumbrancer for value and without notice), though the fact does not appear by the terms of the instrument.

[(45-905) R.S., sec. 3354; reen. R.C. & C.L., sec. 3392; C.S., sec. 6359; I.C.A., sec. 44-805; am. 1957, ch. 181, sec. 19, p. 345.]

45-906. EXTENT OF MORTGAGE LIEN. A mortgage is a lien upon everything that would pass by a grant or conveyance of the property.

[(45-906) R.S., sec. 3355; reen. R.C. & C.L., sec. 3393; C.S., sec. 6360; I.C.A., sec. 44-806.]

45-907. SUBSEQUENT TITLE INURES TO MORTGAGEE. Title acquired by a mortgagor subsequent to the execution of the mortgage or by a grantor subsequent

to the execution of the trust deed inures to the mortgagee or trustee in like manner as if acquired before the execution.

[(45-907) R.S., sec. 3356; R.C. & C.L., sec. 3394; C.S., sec. 6361; I.C.A., sec. 44-807; am. 1957, ch. 181, sec. 20, p. 345.]

45-908. POWER OF ATTORNEY TO MORTGAGE. A power of attorney to execute a mortgage, or deed of trust must be in writing, subscribed, acknowledged, or proved, certified and recorded in like manner as powers of attorney for grants of real property.

[(45-908) R.S., sec. 3357; reen. R.C. & C.L., sec. 3395; C.S., sec. 6362; I.C.A., sec. 44-808; am. 1957, ch. 181, sec. 21, p. 345.]

45-909. RECORDING ASSIGNMENT OF MORTGAGE. An assignment of a mortgage may be recorded in like manner as a mortgage and such record operates as notice to all persons subsequently deriving title to the mortgage from the assignor.

[(45-909) R.S., sec. 3358; reen. R.C. & C.L., sec. 3396; C.S., sec. 6363; I.C.A., sec. 44-809; am. 1935, ch. 19, sec. 1, p. 37; am. 1967, ch. 272, sec. 14, p. 745.]

45-910. RECORD OF ASSIGNMENT NOT NOTICE TO MORTGAGOR. The record of the assignment of a mortgage is not of itself notice to a mortgagor, his heirs or personal representatives, so as to invalidate any payment made by them, or either of them, to the mortgagee.

[(45-910) R.S., sec. 3359; reen. R.C. & C.L., sec. 3397; C.S., sec. 6364; I.C.A., sec. 44-810.]

45-911. ASSIGNMENT OF DEBT CARRIES SECURITY. The assignment of a debt secured by mortgage carries with it the security.

[(45-911) R.S., sec. 3360; reen. R.C. & C.L., sec. 3398; C.S., sec. 6365; I.C.A., sec. 44-811.]

45-912. MARGINAL DISCHARGE OF MORTGAGE. A recorded mortgage may be discharged by an entry in the margin of the record thereof, signed by the mortgagee, or his personal representative or assignee, acknowledging the satisfaction of the mortgage in the presence of the recorder, who must certify the acknowledgement in form substantially as follows:

"Signed and acknowledged before me this day of in the year of

"A.B., Recorder."

[(45-912) 1863, p. 528, sec. 36; R.S., sec. 3361; am. 1895, p. 54, sec. 1; reen. 1899, p. 249, sec. 1; reen. R.C. & C.L., sec. 3399; C.S., sec. 6366; I.C.A., sec. 44-812; am. 1967, ch. 272, sec. 15, p. 745.]

45-913. DISCHARGE OF MORTGAGE ON CERTIFICATE. A recorded mortgage if not discharged as provided in the preceding section, must be discharged upon the record by the officer having custody thereof, on the presentation to him of a certificate signed by the mortgagee, his personal representative or assigns, acknowledged or proved and certified as prescribed by the chapter on

recording transfers, stating that the mortgage has been paid, satisfied or discharged: provided, that whenever a bank or the person appointed to liquidate the affairs of a bank as provided in section [26-908](#), has failed or neglected to issue a certificate showing the release, discharge or satisfaction of a real mortgage, the director of the department of finance, or his successor in office, may, upon the request of the owner, or any subsequent owner, or party in interest, issue to such party his certificate showing such mortgage to have been paid, discharged or satisfied even though the affairs of said bank have been completely liquidated.

[(45-913) 1863, p. 528, sec. 37; R.S., sec. 3362; am. 1895, p. 54, sec. 2; reen. 1899, p. 249, sec. 2; reen. R.C. & C.L., sec. 3400; C.S., sec. 6367; I.C.A., sec. 44-813; am. 1945, ch. 91, sec. 1, p. 140; am. 1967, ch. 272, sec. 16, p. 745.]]

45-914. RECORD OF DISCHARGE. A certificate of the discharge of a real estate mortgage must be recorded, and a reference made in the record book to the book and page where the mortgage is recorded and in the minute of the discharge made upon the record of the mortgage to the book and page where the discharge is recorded.

[(45-914) 1863, p. 528, sec. 38; R.S., sec. 3363; reen. R.C. & C.L., sec. 3401; C.S., sec. 6368; am. 1927, ch. 128, sec. 1, p. 171; I.C.A., sec. 44-814; am. 1951, ch. 251, sec. 4, p. 540; am. 1959, ch. 72, sec. 4, p. 157; am. 1967, ch. 272, sec. 17, p. 745.]

45-915. MORTGAGE -- SATISFACTION -- FAILURE TO RELEASE OF RECORD -- PENALTY. When any mortgage, affecting the title to real property, has been satisfied, the holder thereof or his assignee must immediately, on the demand of the mortgagor, purchaser, or the successor in interest of either, execute, acknowledge, and deliver to him a certificate of the discharge thereof so as to entitle it to be recorded, or he must enter satisfaction or cause satisfaction of such mortgage or affecting the title to real property, to be entered of record; and any holder, or assignee of such holder, who refuses to execute, acknowledge, and deliver to the mortgagor, purchaser, or the successor in interest of either, the certificate of discharge, or to enter satisfaction, or cause satisfaction of the mortgage to be entered, as provided in this chapter, is liable to the mortgagor, purchaser, or his grantee or heirs, for all damages which he or they may sustain by reason of such refusal, and shall also forfeit to him or them the sum of \$100.

[(45-915) 1863, p. 528, sec. 39; R.S., sec. 3364; reen. R.C. & C.L., sec. 3402; C.S., sec. 6369; I.C.A., sec. 44-815; am. 1943, ch. 100, sec. 1, p. 194; am. 1967, ch. 272, sec. 18, p. 745.]

45-916. APPLICATION TO REAL PROPERTY ONLY. The provisions of this chapter shall apply to mortgages of real property only.

[45-916, added 1967, ch. 272, sec. 19, p. 745.]

TITLE 45
LIENS, MORTGAGES AND PLEDGES

CHAPTER 10
MORTGAGE OF REAL PROPERTY

45-1001. WHAT MAY BE MORTGAGED. Any interest in real property which is capable of being transferred may be mortgaged.

[(45-1001) R.S., sec. 3375; reen. R.C. & C.L., sec. 3403; C.S., sec. 6370; I.C.A., sec. 44-901.]

45-1002. INDEPENDENT DEFEASANCE TO BE RECORDED. When a grant of real property purports to be an absolute conveyance, but is intended to be defeasible on the performance of certain conditions, such grant is not defeated or affected as against any person other than the grantee or his heirs or devisees, or persons having actual notice, unless an instrument of defeasance, duly executed and acknowledged, is recorded in the office of the county recorder of the county where the property is situated.

[(45-1002) R.S., sec. 3376; reen. R.C. & C.L., sec. 3404; C.S., sec. 6371; I.C.A., sec. 44-902.]

45-1003. ACKNOWLEDGMENT AND RECORDATION. Mortgages, and deeds of trust or transfers in trust of real property may be acknowledged or proved, certified and recorded, in like manner and with like effect as grants and conveyances thereof.

[(45-1003) R.S., sec. 3377; reen. R.C. & C.L., sec. 3405; C.S., sec. 6372; I.C.A., sec. 44-903; am. 1957, ch. 181, sec. 22, p. 345.]

45-1004. RECORDING MASTER FORMS -- INCORPORATION OF PROVISIONS INTO MORTGAGES BY REFERENCE -- RECORDING FEES. (1) An instrument containing a form or forms of covenants, conditions, obligations, powers, and other clauses of a mortgage or deed of trust may be recorded in the office of the county recorder of any county, and the recorder of such county, upon the request of any person, on tender of the lawful fees therefor, shall record the same. Every such instrument shall be entitled on the face thereof as a "Master form recorded by ... (name of person causing the instrument to be recorded)." Such instrument need not be acknowledged or proved or certified to be entitled to record.

(2) When any such instrument is recorded, the recorder shall index it under the name of the person causing it to be recorded in the manner provided for miscellaneous instruments relating to real property.

(3) Thereafter any of the provisions of such master form instrument may be incorporated by reference in any mortgage or deed of trust of real property situated within this state, if such reference in the mortgage or deed of trust states that the master form instrument was recorded in the county in which the mortgage or deed of trust is offered for record, the date when and the book and page where such master form instrument was recorded, and that a copy of such master form instrument was furnished to the person executing the mortgage or deed of trust. The recording of any mortgage or deed of trust which has so incorporated by reference therein any of the provisions of a master form instrument recorded as provided in this section shall have like

effect as if such provisions of the master form so incorporated by reference had been set forth fully in the mortgage or deed of trust.

(4) Whenever a mortgage or deed of trust is presented for recording on which is set forth matter purporting to be a copy or reproduction of such master form instrument or part thereof, identified by its title as hereinabove provided and stating the date when it was recorded and the book and page where it was recorded, preceded by the words "do not record" or "not to be recorded," and plainly separated from the matter to be recorded as a part of the mortgage or deed of trust in such manner that it will not appear from a photographic reproduction of any page containing any part of the mortgage or deed of trust, such matter shall not be recorded; in such case the recorder shall record only the mortgage or deed of trust apart from such matter and shall not be liable for so doing, any other provisions of law to the contrary notwithstanding.

(5) For the purpose of any provision of law relating to fees for recording, entering or indexing, or relating to searches, furnishing of certified copies, reproduction, or destruction of records, or to any other matter pertaining to the powers and duties of recorders, except the manner of indexing thereof, the master form instrument herein provided for shall be deemed a conveyance.

[45-1004, added 1967, ch. 97, sec. 1, p. 206.]

TITLE 45
LIENS, MORTGAGES AND PLEDGES

CHAPTER 11
AIRCRAFT IMPROVEMENT LIENS

45-1101. AIRCRAFT IMPROVEMENT LIEN -- SPECIAL LIEN DEPENDENT UPON POSSESSION. (1) Any person, firm, or corporation who expends labor, skill, or materials upon an aircraft, aircraft engines, propellers, appliances, spare parts, or related equipment, at the request of its owner, reputed owner, authorized agent of the owner, or lawful possessor of the aircraft, has a special lien, dependent upon possession, on the aircraft for the just and reasonable charges for the labor performed and material furnished up to the amount of the written estimate or subsequent oral or written modifications thereto.

(2) Provided however, a person, firm, or corporation expending labor, skill or materials pursuant to the provisions of subsection (1) of this section shall not have a special lien on the aircraft unless the person, firm, or corporation delivers a written estimate regarding the nature and cost of repair work to the owner, reputed owner, authorized agent of the owner or lawful possessor of the aircraft prior to expending labor, skill or materials on the aircraft.

(3) If not paid within two (2) months after the work is done, the person, firm or corporation may proceed to sell the property at public auction after first providing written notice of the impending sale to the owner, reputed owner, authorized agent of the owner, or lawful possessor of the aircraft, as well as any known secured parties or lienholders, by United States mail, certified, return receipt requested, or equivalent private courier service that provides evidence of date of delivery of mail. The person, firm or corporation shall give ten (10) days' public notice of the sale by advertising in some newspaper published in the county in which the work was done; or, if there be no newspaper published in the county, then by posting notices of the sale in three (3) public places in the town where the work was done, for ten (10) days previous to the sale. The proceeds of the sale must be applied to the discharge of the lien and the cost of keeping and selling the property; the remainder, if any, must be paid over to the other secured parties or lienholders, if any, and the owner. Provided however, that the person, firm or corporation who is about to make, alter or repair the aircraft or related equipment, in order to derive the benefits of this section, must, before commencing such making, altering or repairing, give notice of the intention to so make, alter or repair the aircraft or related equipment, by registered mail, to any holder of a security interest which is of record at the FAA, at least three (3) days before commencing the making, altering or repairing, and if notice in writing within the three (3) days is not given by the holder of a security interest notifying such person, firm or corporation not to perform such services, then the making, altering or repairing may proceed and the prior lien provided for herein attaches to the aircraft or related equipment.

[45-1101, added 2002, ch. 371, sec. 1, p. 1042.]

45-1102. SURRENDER OF POSSESSION -- STATUTORY LIEN. (1) Any person, firm, or corporation who expends labor, skill, or materials upon an aircraft, aircraft engines, propellers, appliances, or spare parts, at the

request of its owner, reputed owner, or authorized agent of the owner, or lawful possessor of the aircraft, has a lien upon the aircraft, or related equipment, for the contract price of the expenditure, or in the absence of a contract price, for the reasonable value of the expenditure.

(2) The statutory lien created pursuant to this section:

(a) Is applicable to any civil aircraft engine, aircraft propeller, or aircraft appliance which is capable of having the ownership, or an interest in the ownership, affected by a conveyance, recorded at the federal aviation administration (FAA) aircraft registry;

(b) Is not dependent upon possession by the repairperson of the property which is subject to the lien;

(c) Is dependent upon the recordation of the lien at the FAA aircraft registry in accordance with section [45-1103](#), Idaho Code;

(d) Must be created by written contract between the parties, and any subsequent oral or written modifications thereto. The written contract must be signed by the customer, and predate the commencement of work for which the lien is applicable.

[45-1102, added 2002, ch. 371, sec. 1, p. 1043.]

45-1103. NOTICE OF LIEN -- RECORDATION. The statutory lien created pursuant to section [45-1102](#), Idaho Code:

(1) Is not valid unless and until it is recorded with the FAA aircraft registry in the manner and in the form generally required for the "Recording of Aircraft Titles and Security Documents" pursuant to 14 CFR 49.

(2) Is valid upon recordation by the FAA aircraft registry of a written document entitled "NOTICE OF AIRCRAFT LIEN." This document shall:

(a) Be signed by the repairperson or by a duly authorized agent or attorney of the repairperson; and

(b) Be verified by the person signing the notice of lien upon that person's personal knowledge of the matters stated in the notice of lien, and which shall affirmatively state: "I declare under penalty of perjury, in accordance with the laws of the state of Idaho and of the laws of the United States of America, that the matters stated herein are true and correct upon my information and belief."

(c) Contain the date and place of signing of the notice of lien.

(3) The notice of lien referred to in subsection (2) of this section shall contain the following information:

(a) The United States registration number, make, model and serial number of the aircraft subject to the lien;

(b) The name of the manufacturer, the model, and the serial number of all applicable engines, propellers or appliances subject to the lien, to the extent they are not otherwise identifiable merely by reference to the aircraft registration number;

(c) The name, address and business telephone number of the repairperson asserting the lien;

(d) The name, address and business telephone number of the registered owner of the civil aircraft or other property subject to the lien;

(e) The name, address and business telephone number of the person consenting to the performance of the work giving rise to the lien;

(f) The amount of the lien, exclusive of prospective storage costs;

(g) A narrative statement describing the nature of the work accomplished;

(h) The affirmative statement that a copy of the notice of lien is concurrently being sent by United States mail, certified, return receipt requested, or equivalent private courier service that provides evidence of date of delivery of mail, to both the registered owner and to the person consenting to the work;

(i) The date of last services or materials provided.

(4) No notice of lien pursuant to subsection (2) of this section is valid unless it is presented for recording at the FAA registry within one hundred eighty (180) days of the completion of the work giving rise to the lien.

[45-1103, added 2002, ch. 371, sec. 1, p. 1043.]

45-1104. PERSONS CONSIDERED OWNER OF AIRCRAFT OR RELATED EQUIPMENT, OR AUTHORIZED AGENT OF OWNER. The following persons are considered the owner of an aircraft or related equipment, or the authorized agent of the owner, for the purposes of this chapter:

(1) A person in possession of the aircraft or related equipment under an agreement to purchase it, whether title to the aircraft or related equipment is in the possession of the person or the vendor;

(2) A person in lawful possession of the aircraft or related equipment.

[45-1104, added 2002, ch. 371, sec. 1, p. 1044.]

45-1105. PRIORITY. A lien under section [45-1102](#), Idaho Code, when recorded in accordance with section [45-1103](#), Idaho Code, is superior to and preferred to:

(1) A lien, mortgage or encumbrance that attaches to the aircraft, or related equipment, after recording of the notice of lien under section [45-1103](#), Idaho Code.

(2) A prior lien, mortgage or other encumbrance, when the person furnishing the materials or performing the services did not have actual or constructive notice of the prior lien, mortgage or encumbrance, or the prior lien, mortgage or encumbrance was not recorded or filed in the manner provided by law.

(3) A lien that attaches to the aircraft or equipment on the basis of a security interest, if, prior to the expenditure of labor, skill or materials upon the aircraft or equipment, the person planning to make the expenditure gives notice of that intention by United States mail, certified, return receipt requested, or equivalent private courier service that provides evidence of date of delivery of mail, to any holder of a security interest of record at the FAA prior to commencing such expenditure by sending such notice to the address of the holder of the security interest listed in the FAA record of lien, and the holder of the security interest does not respond within three (3) days of receipt of notice noting its opposition to the making of such an expenditure of labor, skill or materials.

[45-1105, added 2002, ch. 371, sec. 1, p. 1044.]

45-1106. ENFORCEMENT OF LIEN. (1) A suit to enforce a lien described in section [45-1102](#), Idaho Code, must be brought within twelve (12) months after the lien is recorded.

(2) The practice and procedure to enforce a lien shall be governed by the law applicable to the foreclosure of mechanics' and materialmen's liens

provided however, that notice requirements shall also extend to secured parties or lienholders of record with the federal aviation administration.

(3) Any judgment entered by the court shall be deemed to be a "conveyance" within the meaning of subsection (a) (19) of 49 U.S.C. section 40102, and shall be recordable at the FAA aircraft registry pursuant to 14 CFR 49.17.

[45-1106, added 2002, ch. 371, sec. 1, p. 1045.]

45-1107. RELEASE OR DISCHARGE OF LIEN. A lien under this chapter shall be released and discharged by the lien claimant or the agent of the lien claimant in accordance with the regulations of the federal aviation administration.

[45-1107, added 2002, ch. 371, sec. 1, p. 1045.]

TITLE 45
LIENS, MORTGAGES AND PLEDGES

CHAPTER 12
RECONVEYANCE

45-1201. DEFINITIONS. As used in this chapter:

- (1) "Beneficiary" means both the record owner of the beneficiary's interest under a trust deed, including successors in interest.
- (2) "Reconveyance" or "reconvey" means a reconveyance of a trust deed.
- (3) "Satisfactory evidence" of the full payment of an obligation secured by a trust deed means a payoff letter, the original cancelled check or a copy, including a voucher copy, of a check, payable to the beneficiary or a servicer, and reasonable documentary evidence that the check was intended to effect full payment under the trust deed or an encumbrance upon the property covered by the trust deed.
- (4) "Servicer" means a person or entity that collects loan payments on behalf of a beneficiary.
- (5) "Title agent" means a title insurance agent duly licensed as an organization under [chapter 27, title 41](#), Idaho Code.
- (6) "Title insurer" means a title insurer duly authorized to conduct business in the state of Idaho under [title 41](#), Idaho Code.
- (7) "Trust deed" means a trust deed as defined in section [45-1502](#), Idaho Code.

[45-1201, added 1995, ch. 326, sec. 1, p. 1092.]

45-1202. CONDITIONS TO RECONVEYANCE. A title insurer or title agent may reconvey a trust deed pursuant to the procedure prescribed in section [45-1203](#), Idaho Code, if the obligation secured by the trust deed shall have been fully paid by the title insurer or title agent that is permitted to reconvey the trust deed pursuant to section [45-1203](#), Idaho Code, or such title insurer or title agent shall possess satisfactory evidence of such payment in full. A title insurer or title agent may provide a reconveyance under section [45-1203](#), Idaho Code, whether or not it is then named as trustee under a trust deed.

[45-1202, added 1995, ch. 326, sec. 1, p. 1093.]

45-1203. PROCEDURE FOR RECONVEYANCE. A title insurer or title agent may execute and record a reconveyance of a trust deed upon compliance with the following procedure:

- (1) Not less than thirty (30) days after payment in full of the obligation secured by the trust deed and receipt of satisfactory evidence of payment in full has been effected, the title insurer or title agent may either:
 - (a) mail a notice by certified mail with postage prepaid, return receipt requested, to the beneficiary or a servicer at its address set forth in the trust deed, and at any address for the beneficiary or servicer specified in the last recorded assignment of the trust deed, if any, and at any address for a beneficiary or servicer shown in any request for notice duly recorded pursuant to section [45-1511](#), Idaho Code; or
 - (b) hand deliver a notice to the beneficiary or servicer. The notice shall be in substantially the following form and shall be accompanied by a copy of the reconveyance to be recorded:

NOTICE OF INTENT

TO RELEASE OR RECONVEY

TO: [Beneficiary] or [Servicer for Beneficiary]

FROM: [Title insurer or Title agent]

DATE:

Notice is hereby given to you as follows:

1. This notice concerns the trust deed described as follows:

Trustor:

Beneficiary:

Recording information:

Entry No.:

Book No.:

Page No.:

2. The undersigned claims to have fully paid or received satisfactory evidence of the payment in full of the obligation secured by the trust deed described above.

3. Unless, within sixty (60) days following the date stated above, the undersigned has received by certified mail, return receipt requested, directed to the address noted below a notice stating that you have not received payment in full of all obligations secured by the trust deed or that you otherwise object to reconveyance of the trust deed, the undersigned will fully release and reconvey the trust deed pursuant to [chapter 12, title 45](#), Idaho Code.

4. A copy of the reconveyance or release of the trust deed is enclosed with this notice.

[Title insurer/Title agent] [Address]

(2) Sixty (60) days shall elapse following the mailing, in the case of certified mail, or delivery, in the case of hand delivery, of the notice prescribed in subsection (1) of this section.

(3) If the title insurer or title agent has not upon expiration of that sixty (60) day period received any objection under section [45-1204](#), Idaho Code, the title insurer or title agent may then execute, acknowledge, and record a reconveyance of the trust deed in substantially the following form:

RECONVEYANCE OF TRUST DEED

[To be used concerning trust deeds as defined in section [45-1502](#), Idaho Code]

....., a [Title insurer/Title agent] authorized to act in the State of Idaho does hereby, pursuant to [chapter 27, title 41](#), Idaho Code, reconvey, without warranty, to the person or persons legally entitled thereto, the following trust property covered by a Trust Deed naming, as trustor, and, as beneficiary, which was recorded on in Book at Page as Entry No. :

The following described property located in
 . County, State of Idaho:

[Property Description]

The undersigned title insurer/title agent hereby certifies as follows:

1. The undersigned title insurer/title agent has fully paid or received satisfactory evidence of the payment in full of the obligation secured by said Trust Deed.

2. Not less than thirty (30) days following the payment in full of said Trust Deed, the undersigned hand delivered or mailed by certified mail, return receipt requested, to the record beneficiary or a servicer for the record beneficiary under said Trust Deed at its record address a notice as required in section [45-1203](#)(1), Idaho Code.

3. In excess of sixty (60) days elapsed after the mailing of said notice and no objection to said reconveyance has been received by the undersigned.

Dated

.....
[Title insurer/Title agent]

[acknowledgment]

(4) A reconveyance of a trust deed, when executed and acknowledged in substantially the form prescribed in subsection (3) of this section shall be entitled to recordation and, when recorded, shall constitute a reconveyance of the trust deed identified therein, irrespective of any deficiency in the reconveyance procedure not disclosed in the release or reconveyance that is recorded other than forgery of the title insurer or title agent's signature. The reconveyance of a trust deed pursuant to this chapter shall not itself discharge any personal obligation that was secured by the trust deed at the time of its reconveyance.

[45-1203, added 1995, ch. 326, sec. 1, p. 1093.]

45-1204. OBJECTIONS TO RECONVEYANCES. The title insurer or title agent shall not record a reconveyance of a trust deed if, prior to the expiration of the sixty (60) day period specified in section [45-1203](#)(2), Idaho Code, the title insurer or title agent receives a notice on behalf of the beneficiary or servicer stating that the trust deed continues to secure an obligation or otherwise objecting to reconveyance of the trust deed.

[45-1204, added 1995, ch. 326, sec. 1, p. 1095.]

45-1205. LIABILITY OF TITLE INSURANCE AGENT OR UNDERWRITER. In the event that a trust deed is reconveyed by a title insurer or title agent purporting to act under the provisions of this chapter, but the obligation secured by the trust deed has not been fully paid, the title insurer or title agent effecting such reconveyance shall be liable to the beneficiary of the trust deed for the damages suffered as a result of such improper reconveyance only if the title insurer or title agent failed to substantially comply with the provisions of section [45-1203](#) or [45-1204](#), Idaho Code, or acted with negligence or in bad faith in reconveying the trust deed.

[45-1205, added 1995, ch. 326, sec. 1, p. 1095.]

45-1206. PAYOFFS PRIOR TO EFFECTIVE DATE. The reconveyance procedure prescribed in sections [45-1201](#) through [45-1205](#), Idaho Code, shall apply to obligations secured by trust deeds that were paid either prior to or following the effective date of this section.

[45-1206, added 1995, ch. 326, sec. 1, p. 1095.]

TITLE 45
LIENS, MORTGAGES AND PLEDGES

CHAPTER 13
GENERAL PROVISIONS RELATING TO ENFORCEMENT OF LIENS AND MORTGAGES

45-1302. DETERMINATION OF ALL RIGHTS UPON FORECLOSURE PROCEEDINGS. In any suit brought to foreclose a mortgage or lien upon real property or a lien on or security interest in personal property, the plaintiff, cross-complainant or plaintiff in intervention may make as party defendant in the same cause of action, any person having, claiming or appearing to have or to claim any title, estate, or interest in or to any part of the real or personal property involved therein, and the court shall, in addition to granting relief in the foreclosure action, determine the title, estate or interest of all parties thereto in the same manner and to the same extent and effect as in the action to quiet title.

[45-1302, added 1929, ch. 113, sec. 1, p. 182; I.C.A., sec. 44-1104; am. 1937, ch. 21, sec. 1, p. 32; am. 1967, ch. 272, sec. 21, p. 745; am. 2010, ch. 79, sec. 16, p. 145.]

45-1303. VALIDATION OF FORMER PROCEEDINGS TO QUIET TITLE. All proceedings heretofore taken in any suit for the foreclosure of a mortgage or lien upon real property, and all judgments and decrees made, filed and docketed under such proceedings, and wherein the plaintiff, cross-complainant or plaintiff in intervention has quieted the title in such action or proceeding in conformity to the intent of section [45-1302](#), are hereby validated.

[45-1303, added 1929, ch. 113, sec. 2, p. 182; I.C.A., sec. 44-1105.]

CHAPTER 14
PLEDGES -- [REPEALED]

TITLE 45
LIENS, MORTGAGES AND PLEDGES

CHAPTER 15
TRUST DEEDS

45-1502. DEFINITIONS -- TRUSTEE'S CHARGE. As used in this act:

(1) "Beneficiary" means the person named or otherwise designated in a trust deed as the person for whose benefit a trust deed is given, or his successor in interest, and who shall not be the trustee.

(2) "Grantor" means the person conveying real property by a trust deed as security for the performance of an obligation.

(3) "Trust deed" means a deed executed in conformity with this act and conveying real property to a trustee in trust to secure the performance of an obligation of the grantor or other person named in the deed to a beneficiary.

(4) "Trustee" means a person to whom title to real property is conveyed by trust deed, or his successor in interest for the limited purpose of the power of sale contained in this chapter upon the occurrence of certain contingencies set forth in such trust deed, and the obligation to reconvey the deed of trust pursuant to section [45-1514](#), Idaho Code. All other incidents of ownership of such real property shall remain with the grantor. For the purpose of section [45-1506](#)(2)(c), Idaho Code, a trustee is not a party requiring notice of sale.

(5) "Real property" means any right, title, interest and claim in and to real property owned by the grantor at the date of execution of the deed of trust or acquired thereafter by said grantor or his successors in interest. Provided, nevertheless, real property as so defined which may be transferred in trust under this act shall be limited to: (a) any real property located within an incorporated city or village at the time of the transfer; (b) any real property not exceeding eighty (80) acres, regardless of its location, provided that such real property is not principally used for the agricultural production of crops, livestock, dairy or aquatic goods; or (c) any real property not exceeding forty (40) acres regardless of its use or location.

(6) The trustee shall be entitled to a reasonable charge for duties or services performed pursuant to the trust deed and this chapter, including compensation for reconveyance services notwithstanding any provision of a deed of trust prohibiting payment of a reconveyance fee by the grantor or beneficiary, or any provision of a deed of trust which limits or otherwise restricts the amount of a reconveyance fee to be charged and collected by the trustee. A trustee shall be entitled to refuse to reconvey a deed of trust until the trustee's reconveyance fees and recording costs for recording the reconveyance instruments are paid in full. The trustee shall not be entitled to a foreclosure fee in the event of judicial foreclosure or work done prior to the recording of a notice of default. If the default is cured prior to the time of the last newspaper publication of the notice of sale, the trustee shall be paid a reasonable fee.

[45-1502, added 1957, ch. 181, sec. 2, p. 345; am. 1967, ch. 118, sec. 2, p. 251; am. 1970, ch. 42, sec. 1, p. 89; am. 1983, ch. 190, sec. 1, p. 515; am. 1995, ch. 326, sec. 2, p. 1095; am. 1996, ch. 248, sec. 1, p. 783; am. 1997, ch. 387, sec. 1, p. 1242; am. 2008, ch. 365, sec. 1, p. 1000; am. 2016, ch. 227, sec. 1, p. 624.]

45-1503. TRANSFERS IN TRUST TO SECURE OBLIGATION -- FORECLOSURE. (1) Transfers in trust of any estate in real property as defined in section [45-1502](#) (5), Idaho Code, may hereafter be made to secure the performance of an obligation of the grantor or any other person named in the deed to a beneficiary. Where any transfer in trust of any estate in real property is hereafter made to secure the performance of such an obligation, a power of sale is hereby conferred upon the trustee to be exercised after a breach of the obligation for which such transfer is security, and a deed of trust executed in conformity with this act may be foreclosed by advertisement and sale in the manner hereinafter provided, or, at the option of beneficiary, by foreclosure as provided by law for the foreclosure of mortgages on real property. If any obligation secured by a trust deed is breached, the beneficiary may not institute a judicial action against the grantor or his successor in interest to enforce an obligation owed by the grantor or his successor in interest unless:

(a) The trust deed has been foreclosed by advertisement and sale in the manner provided in this chapter and the judicial action is brought pursuant to section [45-1512](#), Idaho Code; or

(b) The action is one for foreclosure as provided by law for the foreclosure of mortgages on real property; or

(c) The beneficiary's interest in the property covered by the trust deed is substantially valueless as defined in subsection (2) of this section, in which case the beneficiary may bring an action against the grantor or his successor in interest to enforce the obligation owed by grantor or his successor in interest without first resorting to the security; or

(d) The action is one excluded from the meaning of "action" under the provisions of section [6-101](#) (3), Idaho Code.

(2) As used in this section, "substantially valueless" means that the beneficiary's interest in the property covered by the trust deed has become valueless through no fault of the beneficiary, or that the beneficiary's interest in such property has little or no practical value to the beneficiary after taking into account factors such as the nature and extent of the estate in real property which was transferred in trust; the existence of senior liens against the property; the cost to the beneficiary of satisfying or making current payments on senior liens; the time and expense of marketing the property covered by the deed of trust; the existence of liabilities in connection with the property for clean up of hazardous substances, pollutants or contaminants; and such other factors as the court may deem relevant in determining the practical value to the beneficiary of the beneficiary's interest in the real property covered by the trust deed.

(3) The beneficiary may bring an action to enforce an obligation owed by grantor or his successor in interest alleging that the beneficiary's interest in the property covered by the trust deed is substantially valueless without affecting the priority of the lien of the trust deed and without waiving his right to require the trust deed to be foreclosed by advertisement and sale and the beneficiary may, but shall not be required to, plead an alternative claim for foreclosure of the trust deed as a mortgage in the same action. If the court finds that the property is not substantially valueless, the beneficiary may seek judicial foreclosure of the trust deed, or he may dismiss the action and foreclose the trust deed by advertisement and sale in the manner provided in this chapter. If the court finds that the beneficiary's interest in the property covered by the trust deed is substantially

valueless and enters a judgment upon the obligation, when that judgment becomes final the beneficiary shall execute a written request to the trustee to reconvey to the grantor or his successor in interest the estate in real property described in the trust deed. If the beneficiary obtains judgment on an obligation secured by a trust deed pursuant to subsection (1)(c) of this section, the lien of the judgment shall not relate back to the date of the lien of the trust deed.

[45-1503, added 1957, ch. 181, sec. 3, p. 345; am. 1967, ch. 118, sec. 3, p. 251; am. 1989, ch. 340, sec. 1, p. 861; am. 1993, ch. 281, sec. 2, p. 951.]

45-1504. TRUSTEE OF TRUST DEED -- WHO MAY SERVE -- SUCCESSORS. (1) The trustee of a trust deed under this act shall be:

- (a) Any member of the Idaho state bar;
- (b) Any bank or savings and loan association authorized to do business under the laws of Idaho or the United States;
- (c) An authorized trust institution having a charter under [chapter 32, title 26](#), Idaho Code, or any corporation authorized to conduct a trust business under the laws of the United States; or
- (d) A licensed title insurance agent or title insurance company authorized to transact business under the laws of the state of Idaho.

(2) The trustee may resign at its own election or be replaced by the beneficiary. The trustee shall give prompt written notice of its resignation to the beneficiary. The resignation of the trustee shall become effective upon the recording of the notice of resignation in each county in which the deed of trust is recorded. If a trustee is not appointed in the deed of trust, or upon the resignation, incapacity, disability, absence, or death of the trustee, or the election of the beneficiary to replace the trustee, the beneficiary shall appoint a trustee or a successor trustee. Upon recording the appointment of a successor trustee in each county in which the deed of trust is recorded, the successor trustee shall be vested with all powers of an original trustee.

[45-1504, added 1957, ch. 181, sec. 4, p. 345; am. 1969, ch. 155, sec. 1, p. 482; am. 1983, ch. 190, sec. 2, p. 515; am. 2005, ch. 236, sec. 3, p. 726.]

45-1505. FORECLOSURE OF TRUST DEED, WHEN. The trustee may foreclose a trust deed by advertisement and sale under this act if:

(1) The trust deed, any assignments of the trust deed by the trustee or the beneficiary and any appointment of a successor trustee are recorded in mortgage records in the counties in which the property described in the deed is situated; and

(2) There is a default by the grantor or other person owing an obligation the performance of which is secured by the trust deed or by their successors in interest with respect to any provision in the deed which authorizes sale in the event of default of such provision; and

(3) The trustee or beneficiary shall have (a) filed for record in the office of the recorder in each county wherein the trust property, or some part or parcel, is situated, a notice of default identifying the deed of trust by stating the name or names of the trustor or trustors and giving the book and page where the same is recorded, or a description of the trust property, and containing a statement that a breach of the obligation for which

the transfer in trust is security has occurred, and setting forth the nature of such breach and his election to sell or cause to be sold such property to satisfy such obligation; and (b) mailed a copy of such notice by registered or certified mail, return receipt requested, to any person requesting such notice of record as provided in section [45-1511](#), Idaho Code. Service by mail in accordance with this subsection (3) shall be deemed effective at the time of mailing. In addition, the trustee shall mail the notice required in this section to any individual who owns an interest in property which is the subject of this section. Such notice shall be accompanied by and affixed to the following notice in twelve (12) point boldface type, on a separate sheet of paper, no smaller than eight and one-half (8 1/2) inches by eleven (11) inches:

"NOTICE REQUIRED BY IDAHO LAW

Mortgage foreclosure is a legal proceeding where a lender terminates a borrower's interest in property to satisfy unpaid debt secured by the property. This can mean that when a homeowner gets behind on his or her mortgage payments, the lender forces a sale of the home on which the mortgage loan is based. Some individuals or businesses may say they can "save" your home from foreclosure. You should be cautious about such claims. It is important that you understand all the terms of a plan to "rescue" you from mortgage foreclosure and how it will affect you. It may result in your losing valuable equity that you may have in your home. If possible, you should consult with an attorney or financial professional to find out what other options you may have. Do not delay seeking advice, because the longer you wait, the fewer options you may have. Under Idaho law, you have five (5) days to rescind or undo certain contracts or agreements that relate to transferring interests in property or money in a foreclosure situation. An attorney or financial professional can tell you more about this option."

If the trust deed, or any assignments of the trust deed, are in the Spanish language, the written notice set forth in this section shall be in the Spanish language on a form to be prepared and made available by the office of the attorney general.

(4) No action, suit or proceeding has been instituted to recover the debt then remaining secured by the trust deed, or any part thereof, or if such action or proceeding has been instituted, the action or proceeding has been dismissed.

[45-1505, added 1957, ch. 181, sec. 5, p. 345; am. 1990, ch. 401, sec. 1, p. 1123; am. 2008, ch. 192, sec. 2, p. 603; am. 2009, ch. 136, sec. 1, p. 417.]

45-1506. MANNER OF FORECLOSURE -- NOTICE -- SALE. (1) A trust deed may be foreclosed in the manner provided in this section.

(2) Subsequent to recording notice of default as hereinbefore provided, and at least one hundred twenty (120) days before the day fixed by the trustee for the trustee's sale, notice of such sale shall be given by registered or certified mail, return receipt requested, to the last known address of the following persons or their legal representatives, if any:

(a) The grantor in the trust deed and any person requesting notice of record as provided in section [45-1511](#), Idaho Code.

(b) Any successor in interest of the grantor including, but not limited to, a grantee, transferee or lessee, whose interest appears of record prior to the recording of the notice of default, or where the trustee or the beneficiary has actual notice of such interest.

(c) Any person having a lien or interest subsequent to the interest of the trustee in the trust deed where such lien or interest appears of record prior to the recording of the notice of default, or where the trustee or the beneficiary has actual notice of such lien or interest.

(3) The disability, insanity or death of any person to whom notice of sale is to be given under subsection (2) of this section shall not delay or impair in any way the trustee's right under a trust deed to proceed with a sale under such deed, provided the notice of sale required under subsection (2) of this section has been mailed as provided by law for service of summons upon incompetents or to the administrator or executor of the estate of such person.

(4) The notice of sale shall set forth:

(a) The names of the grantor, trustee and beneficiary in the trust deed.

(b) A description of the property covered by the trust deed.

(c) The book and page of the mortgage records or the recorder's instrument number where the trust deed is recorded.

(d) The default for which the foreclosure is made.

(e) The sum owing on the obligation secured by the trust deed.

(f) The date, time and place of the sale which shall be held at a designated time after 9:00 a.m. and before 4:00 p.m., standard time, and at a designated place in the county or one (1) of the counties where the property is located.

(5) At least three (3) good faith attempts shall be made on different days over a period of not less than seven (7) days, each of which attempts must be made at least thirty (30) days prior to the day of the sale, to serve a copy of the notice of sale upon an adult occupant of the real property in the manner in which a summons is served. At the time of each such attempt, a copy of the notice of sale shall be posted in a conspicuous place on the real property unless the copy of the notice of sale previously posted remains conspicuously posted. Provided, however, that if during such an attempt personal service is made upon an adult occupant and a copy of the notice is posted, then no further attempt at personal service and no further posting shall be required. Provided, further, that if the adult occupant personally served is a person to whom the notice of sale was required to be mailed, and was mailed, pursuant to the foregoing subsections of this section, then no posting of the notice of sale shall be required.

(6) A copy of the notice of sale shall be published in a newspaper of general circulation in each of the counties in which the property is situated once a week for four (4) successive weeks, making four (4) publishings in all, with the last publication to be at least thirty (30) days prior to the day of sale. It shall be unlawful for the trustee for the trustee's sale to have a financial interest in a newspaper publishing such notice or to profit, directly or indirectly, based on the publication of such notice of sale and such conduct shall constitute a misdemeanor, punishable by imprisonment in the county jail for a term not to exceed one (1) year, or by a fine not to exceed one thousand dollars (\$1,000), or by both such fine and imprisonment.

(7) An affidavit of mailing notice of sale and an affidavit of posting, when required, and publication of notice of sale as required by subsection (6) of this section shall be recorded in the mortgage records in the counties in which the property described in the deed is situated at least twenty (20) days prior to the date of sale.

(8) The sale shall be held on the date and at the time and place designated in the notice of sale or notice of rescheduled sale as provided in section [45-1506A](#), Idaho Code, unless the sale is postponed as provided in this subsection or as provided in section [45-1506B](#), Idaho Code, respecting the effect of an intervening stay or injunctive relief order. The trustee shall sell the property in one (1) parcel or in separate parcels at auction to the highest bidder. Any person, including the beneficiary under the trust deed, may bid at the trustee's sale. The attorney for such trustee may conduct the sale and act in such sale as the auctioneer of trustee. The trustee may postpone the sale of the property upon request of the beneficiary by publicly announcing at the time and place originally fixed for the sale the postponement to a stated subsequent date and hour. No sale may be postponed to a date more than thirty (30) days subsequent to the date from which the sale is postponed. A postponed sale may itself be postponed in the same manner and within the same time limitations as provided in this subsection. For any loan made by a state or federally regulated beneficiary, which loan is secured by a deed of trust encumbering the borrower's primary residence as determined pursuant to section [45-1506C](#)(1), Idaho Code, the trustee, prior to conducting any trustee's sale previously postponed pursuant to this section, shall mail notice of such trustee sale at least fourteen (14) days prior to conducting such sale by the same means and to the same persons as provided in subsection (2) of this section. The trustee or beneficiary shall, prior to conducting the trustee's sale, record an affidavit of mailing confirming that such notice has been mailed as required by this section. The filing of such affidavit of mailing is conclusive evidence of compliance with this section as to any party relying on said affidavit of mailing.

(9) The purchaser at the sale shall forthwith pay the price bid and upon receipt of payment the trustee shall execute and deliver the trustee's deed to such purchaser, provided that in the event of any refusal to pay purchase money, the officer making such sale shall have the right to resell or reject any subsequent bid as provided by law in the case of sales under execution.

(10) The trustee's deed shall convey to the purchaser the interest in the property which the grantor had, or had the power to convey, at the time of the execution by him of the trust deed together with any interest the grantor or his successors in interest acquired after the execution of such trust deed.

(11) The purchaser at the trustee's sale shall be entitled to possession of the property on the tenth day following the sale, and any persons remaining in possession thereafter under any interest except one prior to the deed of trust shall be deemed to be tenants at sufferance.

(12) Whenever all or a portion of any obligation secured by a deed of trust which has become due by reason of a default of any part of that obligation, including taxes, assessments, premiums for insurance or advances made by a beneficiary in accordance with the terms of the deed of trust, the grantor or his successor in interest in the trust property or any part thereof, or any beneficiary under a subordinate deed of trust or any person having a subordinate lien or encumbrance of record thereon, at any time within one hundred fifteen (115) days of the recording of the notice of

default under such deed of trust, if the power of sale therein is to be exercised, or otherwise at any time prior to the entry of a decree of foreclosure, may pay to the beneficiary or their successors in interest, respectively, the entire amount then due under the terms of the deed of trust and the obligation secured thereby, including costs and expenses actually incurred in enforcing the terms of such obligation and a reasonable trustee's fee subject to the limitations imposed by subsection (6) of section [45-1502](#), Idaho Code, and attorney's fees as may be provided in the promissory note, other than such portion of the principal as would not then be due had no default occurred, and thereby cure the default theretofore existing, and thereupon, all proceedings theretofore had or instituted shall be dismissed or discontinued and the obligation and deed of trust shall be reinstated and shall be and remain in force and effect, the same as if no acceleration had occurred.

(13) Any mailing to persons outside the United States and its territories required by this chapter may be made by ordinary first class mail if certified or registered mail service is unavailable.

(14) Service by mail in accordance with the provisions of this section shall be deemed effective at the time of mailing.

(15) On or after the tenth day, as provided in subsection (11) of this section, if the property is reasonably determined by the purchaser to be unoccupied, the purchaser may:

(a) Dispose of any titled personal property remaining on the premises in the manner described by applicable law; and

(b) Remove any nontitled personal property from the premises and place it in suitable storage. The purchaser may dispose of the nontitled personal property only after providing ninety (90) days' written notice as follows:

(i) First class mail to the last known address of the last known occupant of the property; and

(ii) Posting a notice in a conspicuous place on the premises that such nontitled personal property may be disposed of following such ninety (90) day period, and providing a name, address and phone number to contact regarding further information as to the location and disposition of such nontitled personal property; and

(iii) The notice shall generally describe the nontitled personal property that was left on the premises and that the purchaser intends to dispose of the property and the anticipated method of disposition.

(c) If the owner of the nontitled personal property fails to claim the nontitled personal property within ninety (90) days of the date that written notice was provided under paragraph (b) of this subsection, then any and all of his rights in said property shall extinguish, and the purchaser shall have no further liability regarding said property or to any potential claimants of said property.

[45-1506, added 1957, ch. 181, sec. 6, p. 345; am. 1967, ch. 74, sec. 1, p. 170; am. 1983, ch. 190, sec. 3, p. 516; am. 1990, ch. 401, sec. 2, p. 1123; am. 2011, ch. 323, sec. 1, p. 939; am. 2012, ch. 326, sec. 1, p. 905; am. 2016, ch. 364, sec. 1, p. 1071.]

45-1506A. RESCHEDULED SALE -- ORIGINAL SALE BARRED BY STAY -- NOTICE OF RESCHEDULED SALE. (1) In the event a sale cannot be held at the time scheduled by reason of automatic stay provisions of the U.S. bankruptcy code (11 U.S.C.

362), or a stay order issued by any court of competent jurisdiction, then the sale may be rescheduled and conducted following expiration or termination of the effect of the stay in the manner provided in this section.

(2) Notice of the rescheduled sale shall be given at least thirty (30) days before the day of the rescheduled sale by registered or certified mail to the last known address of all persons who were entitled to notice by mail of the original sale and to any person who shall have recorded a request for notice of sale at least forty-five (45) days prior to the rescheduled sale date in the form and manner required by section [45-1511](#), Idaho Code, provided that recording the request prior to notice of default is, for the purposes of this section only, waived.

(3) Notice of the rescheduled sale shall be published in the newspaper of original publication once a week for three (3) successive weeks, making three (3) publishings in all, with the last publication to be at least ten (10) days prior to the day of sale.

(4) The trustee shall make an affidavit stating that he or she has complied with subsections (2) and (3) of this section. The trustee shall make the above affidavit available for inspection at the time of the rescheduled sale together with any affidavit of mailing and posting, when required, which was not of record as required by subsection (7) of section [45-1506](#), Idaho Code, when the stay became effective. The affidavit or affidavits shall be attached to or incorporated in the trustee's deed.

[45-1506A, added 1983, ch. 190, sec. 4, p. 518; am. 1987, ch. 166, sec. 1, p. 327.]

45-1506B. POSTPONEMENT OF SALE -- INTERVENTION OF STAY. (1) If a stay as set out in subsection (1) of section [45-1506A](#), Idaho Code, which would otherwise have stopped a foreclosure sale is terminated or lifted prior to the date of sale, then any person having a right to reinstate the deed of trust pursuant to subsection (12) of section [45-1506](#), Idaho Code, may request the trustee to postpone the sale for a period of time which shall allow at least one hundred fifteen (115) days to elapse from the recording of the notice of default to the rescheduled date of sale exclusive of the period of time during which such stay was in effect.

(2) Written request for postponement must be served upon the trustee prior to the time set for the original sale.

(3) If the foreclosure has proceeded in compliance with all requirements of subsections (2) through and including (6), of section [45-1506](#), Idaho Code, prior to the intervention of the stay, then at the time appointed for the original sale, the trustee shall announce the date and time of the rescheduled sale to be conducted at the place originally scheduled and no further or additional notice of any kind shall be required.

(4) If the foreclosure has proceeded in compliance with subsections (2) through and including (5), of section [45-1506](#), Idaho Code, prior to the intervention of the stay, then the foreclosure process may be resumed if timely compliance can be had with publication of the original notice of sale under subsection (6) of section [45-1506](#), Idaho Code. If timely compliance under subsection (6) of section [45-1506](#), Idaho Code, is not possible, the partially completed foreclosure process shall be discontinued and any further sale proceeding shall require new compliance with all notice of sale procedures as provided in section [45-1506](#), Idaho Code.

(5) Nothing in this section shall be construed to create a right to cure the default and reinstate the deed of trust under subsection (12) of section

[45-1506](#), Idaho Code, for a period of time longer than one hundred fifteen (115) days from the recording of the notice of default exclusive of the time during which a stay is in effect and if no request is made to postpone the sale under the circumstances provided in this section, the computation of time under this chapter shall be deemed unaffected by any intervening stay.

[45-1506B, added 1983, ch. 190, sec. 5, p. 519.]

45-1506C. SUPPLEMENTAL NOTICE -- OPPORTUNITY TO REQUEST LOAN MODIFICATION. (1) In the case of a loan made by a state or federally regulated beneficiary, which loan is secured by a deed of trust encumbering a borrower's primary residential property for any noncommercial loan, the notice provided in this section shall accompany the notice of default provided to the grantor. The beneficiary or its agent shall determine whether the subject real property is a borrower's primary residence by searching the county assessor's tax rolls prior to recording a notice of default to confirm whether such real property has been granted a homeowner's property tax exemption pursuant to section [63-602G](#), Idaho Code. Any property for which a homeowner's property tax exemption has been granted for the year in which the notice of default is recorded shall be deemed to be a borrower's primary residential dwelling. If no homeowner's property tax exemption has been granted for the year in which the notice of default is recorded, the provisions of this section shall not apply. The notice, if required, shall be printed in at least 14-point type and substantially conform to the following form:

IMPORTANT NOTICE:
YOU ARE IN DANGER OF LOSING YOUR PROPERTY
IF YOU DO NOT TAKE ACTION IMMEDIATELY

This notice concerns the mortgage loan for your property at (enter the complete address).

You have not fulfilled your contractual obligations under the terms of your mortgage loan. Under Idaho law, the holder of your loan, "the beneficiary," can sell your property to satisfy your obligation.

As of (enter the date), you needed to pay \$(enter the amount owed) to bring your mortgage loan current. That amount may have increased since that date and may include additional costs and fees described in the loan documents.

The beneficiary can provide you with the exact amount that you owe, but you have to ask. Call (enter the toll-free telephone number) to find out the exact amount you must pay to bring your mortgage loan current and to obtain other details about your loan. You also can send a written request for this information by certified mail to: (enter the complete address).

LOAN MODIFICATION ASSISTANCE

If you want to save your home from foreclosure but you cannot afford your current loan payments, you need to contact the beneficiary immediately to ask about any available loss mitigation programs. You may or may not qualify for a loan modification or other alternative to foreclosure.

You may request to meet with the beneficiary to discuss options for modifying your loan.

IF YOU WANT TO APPLY FOR A MODIFICATION OF YOUR LOAN, YOU MUST COMPLETE AND RETURN THE ENCLOSED "MODIFICATION REQUEST FORM" BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED. THE BENEFICIARY MUST RECEIVE THE FORM ON OR BEFORE (enter the date), WHICH IS THIRTY (30) DAYS AFTER THE DATE BELOW.

WARNING: You may get offers from people who tell you they can help you keep your property. Never pay someone to help you obtain a loan modification. Help is available for free from housing counselors who are certified through the department of housing and urban development (HUD). Visit the HUD website for a current list of certified housing counselors in Idaho.

DATED: (enter the date)

Beneficiary name: (print name)

Beneficiary or beneficiary's agent's signature: (sign name)

Beneficiary's telephone number: (enter the toll-free telephone number)

(2) (a) The notice required under subsection (1) of this section must be accompanied by a form to request a loan modification. The form must include the address to which and state the date by which the grantor must return the form. The form may state that the grantor must disclose current information about the grantor's income and expenses, the grantor's address, phone number and electronic mail address and other facts that may affect the grantor's eligibility for a loan modification.

(b) If the trust deed, or any assignments of the trust deed, is in the Spanish language, the notice required under subsection (1) of this section and the form identified in paragraph (a) of this subsection shall be in the Spanish language.

(3) If a grantor returns the form identified in subsection (2) of this section to the beneficiary by the date specified on the form, the beneficiary or the beneficiary's agent shall review the information the grantor provided in the form and shall evaluate the grantor's request. The beneficiary or the beneficiary's agent, as soon as reasonably practicable but not later than forty-five (45) days after receiving the form, shall notify the grantor in writing whether the beneficiary approves or denies the request or requires additional information. A trustee's sale for the property subject to the loan may not occur until after the beneficiary or the beneficiary's agent timely responds to the grantor. During the forty-five (45) day period, the beneficiary or the beneficiary's agent may request the grantor to provide additional information required to determine whether the loan can be modified.

(4) (a) Except as provided in paragraph (b) of this subsection, if the grantor timely requests a meeting with the beneficiary, the beneficiary or the beneficiary's agent shall either meet with the grantor in person or speak to the grantor by telephone before the beneficiary or the beneficiary's agent responds to the grantor's request to modify the loan. If the grantor requests the meeting, the beneficiary or the beneficiary's agent shall schedule the meeting by contacting the grantor at the grantor's last known address or telephone number or at the grantor's electronic mail address, if the grantor indicates on the loan modification form that the beneficiary or the beneficiary's agent can contact the grantor at the electronic mail address.

(b) A beneficiary or the beneficiary's agent complies with the provisions of paragraph (a) of this subsection even if the beneficiary

or the beneficiary's agent does not speak to or meet with the grantor if, within seven (7) business days after the beneficiary or the beneficiary's agent attempts to contact the grantor, the grantor does not schedule a meeting, or fails to attend a scheduled meeting or telephone call.

(c) The beneficiary or the beneficiary's agent that meets with the grantor shall have or be able to obtain authority to modify the loan.

(5) At least twenty (20) days prior to the date of sale, the trustee shall file for record in the office of the recorder in each county wherein the trust property, or some part or parcel, is situated an affidavit substantially in the following form from the beneficiary or the beneficiary's agent which states that the beneficiary or the beneficiary's agent has complied with the provisions of this section. The filing of the following affidavit of compliance is conclusive evidence of compliance with this section as to any party relying on said affidavit of compliance:

AFFIDAVIT OF COMPLIANCE WITH IDAHO CODE /SECTION [45-1506C](#)

COMES NOW....., being first duly sworn, deposes and says:

1. I am the (title -- officer or agent) of (name of beneficiary), the beneficiary of the Deed of Trust recorded as instrument number (recorder's instrument number), County of (County), Idaho, the "Deed of Trust."

2. Beneficiary or Beneficiary's agent has complied with section [45-1506C](#), Idaho Code, in by: (a) providing the notice required in section [45-1506C](#)(1), Idaho Code; (b) providing the loan modification request form required in section [45-1506C](#)(2), Idaho Code; (c) evaluating the request for modification and providing a written response to the request as required in section [45-1506C](#)(3), Idaho Code; and (d) scheduling, and if attended by the grantor of the Deed of Trust, attending, in person or by telephone, the meeting required in section [45-1506C](#)(4), Idaho Code.

.....
SIGNATURE

(INSERT NOTARY SUBSCRIPTION FOR STATE IN WHICH AFFIDAVIT IS EXECUTED; IDAHO FORM OF SUBSCRIPTION IS SET OUT BELOW)

STATE OF IDAHO)
)
County of.....)

On this..... day of (month), 20..., before me,....., a Notary Public in and for said state, personally appeared....., known or identified to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that such officer or agent executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

.....

Notary Public for Idaho

Residing at.....
My Commission expires.....

(6) Whenever the attorney general has reason to believe that any person has failed to follow the requirements of this section and that proceedings would be in the public interest, he may bring an action in the name of the state against such person for enforcement of the provisions of this section with the same procedure and in the same manner as granted the attorney general and district court pursuant to section [48-606](#)(1) (a), (b), (d), (e) and (f) and subsections (2) through (5), Idaho Code, of the Idaho consumer protection act, [chapter 6, title 48](#), Idaho Code.

(7) All penalties, costs and fees received or recovered by the attorney general shall be remitted to the consumer protection fund and expended pursuant to section [48-606](#)(5), Idaho Code.

[45-1506C, added 2011, ch. 323, sec. 2, p. 941; am. 2023, ch. 266, sec. 1, p. 793.]

45-1507. PROCEEDS OF SALE -- DISPOSITION. The trustee shall apply the proceeds of the trustee's sale as follows:

(1) To the expenses of the sale, including a reasonable charge by the trustee and a reasonable attorney's fee.

(2) To the obligation secured by the trust deed.

(3) To any persons having recorded liens subsequent to the interest of the trustee in the trust deed as their interests may appear.

(4) The surplus, if any, to the grantor of the trust deed or to his successor in interest entitled to such surplus.

[45-1507, added 1957, ch. 181, sec. 7, p. 345.]

45-1508. FINALITY OF SALE. A sale made by a trustee under this act shall foreclose and terminate all interest in the property covered by the trust deed of all persons to whom notice is given under section [45-1506](#), Idaho Code, and of any other person claiming by, through or under such persons and such persons shall have no right to redeem the property from the purchaser at the trustee's sale. The failure to give notice to any of such persons by mailing, personal service, posting or publication in accordance with section [45-1506](#), Idaho Code, shall not affect the validity of the sale as to persons so notified nor as to any such persons having actual knowledge of the sale. Furthermore, any failure to comply with the provisions of section [45-1506](#), Idaho Code, shall not affect the validity of a sale in favor of a purchaser in good faith for value at or after such sale, or any successor in interest thereof.

[45-1508, added 1957, ch. 181, sec. 8, p. 345; am. 1990, ch. 401, sec. 3, p. 1126.]

45-1509. TRUSTEE'S DEED -- FORM AND CONTENTS. (1) The trustee's deed to the purchaser at the trustee's sale under this act shall conform to the requirements of subsection (2) of this section.

(2) The trustee's deed shall contain, in addition to a description of the property conveyed, a recital of the facts concerning the default, the

mailing and the publication of the notice of sale, the conduct of the sale and the receipt of the purchase money from the purchaser.

[45-1509, added 1957, ch. 181, sec. 9, p. 345.]

45-1510. TRUSTEE'S DEED -- RECORDING -- EFFECT. (1) When the trustee's deed is recorded in the deed records of the county where the property described in the deed is located, the recitals contained in the deed and in the affidavits required under section [45-1506](#)(7), Idaho Code, shall be prima facie evidence in any court of the truth of the recitals and the affidavits. However, the recitals and affidavits are conclusive in favor of a purchaser in good faith for value or any successor in interest thereof. For purposes of this section, the trustee's deed shall be deemed effective as of the date and time on which the sale was held if such deed is recorded within fifteen (15) days after the date of sale or the first business day following the fifteenth day if the county recorder of the county in which the property is located is closed on the fifteenth day.

(2) Where a trustee's sale held pursuant to section [45-1506](#), Idaho Code, is invalid by reason of automatic stay provisions of the U.S. bankruptcy code, or a stay order issued by any court of competent jurisdiction or otherwise, recordation of a notice of rescission of the trustee's deed shall restore the condition of record title to the real property described in the trustee's deed and the existence and priority of all lienholders to the status quo prior to the trustee's sale. Only the trustee or beneficiary who caused the trustee's deed to be recorded, or his/its successor in interest, may record a notice of rescission. The notice of rescission shall accurately identify the deed of trust, the recording instrument numbers used by the county recorder or the book and pages at which the trustee's deed and deed of trust are recorded, the names of all grantors, trustors and beneficiaries, the location of the property subject to the deed of trust and the reason for rescission. Such notice of rescission shall be in substantially the following form:

NOTICE OF RESCISSION OF TRUSTEE'S DEED UPON SALE

This Notice of Rescission is made this day.... with respect to the following:

1. THAT.... is the duly appointed Trustee under the certain Deed of Trust dated.... and recorded.... as instrument number.... in book...., page...., wherein.... and.... are named as Trustors,.... is named as Trustee,.... is named as Beneficiary;
2. THAT.... is the Beneficiary of record under said Deed of Trust;
3. THAT THE DEED OF TRUST encumbers real property located in the County of...., State of Idaho, described as follows:

Property Description

4. THAT BY VIRTUE OF a default under the terms of the Deed of Trust, the Beneficiary did declare a default, as set forth in a Notice of Default recorded.... as instrument number.... in book...., page...., in the office of the Recorder of.... County, State of Idaho;
5. THAT THE TRUSTEE has been informed by the Beneficiary that the Beneficiary desires to rescind the Trustee's Deed recorded upon the foreclosure sale that was conducted in error due to a failure to

communicate timely, notice of conditions that would have warranted a cancellation of the foreclosure that did occur on....;

6. THAT THE EXPRESS PURPOSE of this Notice of Rescission is to return the priority and existence of all title and lienholders to the status quo ante as existed prior to the Trustee's sale.

NOW THEREFORE, THE UNDERSIGNED HEREBY RESCINDS THE TRUSTEE'S SALE AND PURPORTED TRUSTEE'S DEED UPON SALE AND HEREBY ADVISES ALL PERSONS THAT THE TRUSTEE'S DEED UPON SALE DATED.... AND RECORDED.... AS.... INSTRUMENT NUMBER.... IN THE COUNTY OF...., STATE OF IDAHO, FROM.... (TRUSTEE) TO.... (GRANTEE) IS HEREBY RESCINDED, AND IS AND SHALL BE OF NO FORCE AND EFFECT WHATSOEVER. THE DEED OF TRUST DATED...., RECORDED.... AS INSTRUMENT NUMBER.... IN BOOK...., PAGE...., IS IN FULL FORCE AND EFFECT.

.....
Authorized Signatory

Acknowledgment

[45-1510, added 1957, ch. 181, sec. 10, p. 345; am. 1990, ch. 401, sec. 4, p. 1126; am. 2010, ch. 249, sec. 1, p. 639; am. 2013, ch. 174, sec. 1, p. 403.]

45-1511. REQUEST FOR COPY OF NOTICE OF DEFAULT OR NOTICE OF SALE -- MARGINAL RECORDATION THEREOF. Any person desiring a copy of any notice of default or any notice of sale under a deed of trust, as hereinbefore provided, at any time subsequent to the recordation of such deed of trust and prior to the recording of notice of default thereunder, may cause to be filed for record in the office of the recorder of the county or counties in which any part or parcel of the real property is situated a duly acknowledged request for a copy of any such notice of sale or default showing service upon such trustee. The request shall set forth the name and address of the person requesting copies of such notice or notices and shall identify the deed of trust by stating the names of the parties thereto, the date of recordation and the book and page where the same is recorded and the recorder's instrument number. The recorder shall immediately enter on the margin of the record of the deed of trust therein referred to that such request is recorded at a certain book and page in the records of his office; no request or any statement therein contained or the record thereof shall affect the title to said property or be deemed notice to any person that any person so recording such request has any right, title or interest in or lien or charge upon the property in the deed of trust referred to therein.

[45-1511, added 1957, ch. 181, sec. 11, p. 345.]

45-1512. MONEY JUDGMENT -- ACTION SEEKING BALANCE DUE ON OBLIGATION. At any time within 3 months after any sale under a deed of trust, as hereinbefore provided, a money judgment may be sought for the balance due upon the obligation for which such deed of trust was given as security, and in such action the plaintiff shall set forth in his complaint the entire amount of indebtedness which was secured by such deed of trust and the amount for which the same was sold and the fair market value at the date of sale, together with interest from such date of sale, costs of sale and attorney's fees. Before render-

ing judgment the court shall find the fair market value of the real property sold at the time of sale. The court may not render judgment for more than the amount by which the entire amount of indebtedness due at the time of sale exceeds the fair market value at that time, with interest from date of sale, but in no event may the judgment exceed the difference between the amount for which such property was sold and the entire amount of the indebtedness secured by the deed of trust.

[45-1512, added 1957, ch. 181, sec. 12, p. 345.]

45-1513. TRANSFERS AND TRUSTS ARE CONVEYANCES. A deed of trust or transfer of any interest in real property in trust to secure the performance of any obligation shall be a conveyance of real property.

[45-1513, added 1957, ch. 181, sec. 13, p. 345.]

45-1514. RECONVEYANCE UPON SATISFACTION OF OBLIGATION. Upon performance of the obligation secured by the deed of trust, the trustee upon written request of the beneficiary shall reconvey the estate of real property described in the deed of trust to the grantor; providing that in the event of such performance and the refusal of any beneficiary to so request or the trustee to so reconvey, as above provided, such beneficiary or trustee shall be liable as provided by law in the case of refusal to execute a discharge or satisfaction of a mortgage on real property.

[45-1514, added 1957, ch. 181, sec. 14, p. 345.]

45-1515. TIME LIMITS FOR FORECLOSURE. The foreclosure of a trust deed by advertisement and sale shall be made and the foreclosure of a trust deed by judicial procedure shall be commenced within the time limited by the same period and according to the same provisions including extensions as provided by law for the foreclosure of a mortgage on real property.

[45-1515, added 1957, ch. 181, sec. 15, p. 345.]

TITLE 45
LIENS, MORTGAGES AND PLEDGES

CHAPTER 16
CONSUMER FORECLOSURE PROTECTION ACT

45-1601. LEGISLATIVE FINDINGS. The legislature finds that some persons and businesses are engaging in patterns of conduct that defraud innocent homeowners of their title, equity interest, or other value in residential dwellings under the guise of stopping or postponing a foreclosure sale. The legislature also finds this activity to be contrary to the public policy of this state and therefore establishes notice requirements governing contracts or agreements entered into during the foreclosure period. The legislature further finds that the provisions of this chapter shall be construed in such a manner that it does not inhibit transactions with legitimate lenders and investors.

[45-1601, added 2008, ch. 192, sec. 1, p. 601.]

45-1602. CONTRACT NOTICE. (1) During the foreclosure period described in section [45-1506](#), Idaho Code, any contract or agreement with the owner or owners of record that involves the transfer of any interest in residential real property, as defined in section [45-525](#)(5)(b), Idaho Code, subject to foreclosure must be in writing and must be accompanied by the following notice in at least 12-point boldface type:

NOTICE REQUIRED BY IDAHO LAW

Mortgage foreclosure is a legal proceeding where a lender terminates a borrower's interest in property to satisfy unpaid debt secured by the property. This can mean that when a homeowner gets behind on his or her mortgage payments, the lender forces a sale of the home on which the mortgage loan is based. Some individuals or businesses may say they can "save" your home from foreclosure. You should be cautious about such claims. It is important that you understand all the terms of a plan to "rescue" you from mortgage foreclosure and how it will affect you. It may result in your losing valuable equity that you may have in your home. If possible, you should consult with an attorney or financial professional to find out what other options you may have. Do not delay seeking advice, because the longer you wait, the fewer options you may have.

You may find helpful information online. One excellent source is the Department of Housing and Urban Development (HUD) website. HUD maintains on its website a list of approved housing counselors who can provide free information to assist homeowners with financial problems. Another good source of information is found at the Office of the Idaho Attorney General's website.

Under Idaho law, you have five (5) days to rescind or undo certain contracts or agreements that relate to transferring interests in property or money in a foreclosure situation. An attorney or financial professional can tell you more about this option.

(2) If during the foreclosure period described in section [45-1506](#), Idaho Code, any contract or agreement that involves the transfer of any interest in residential real property, as defined in section [45-525](#) (5) (b), Idaho Code, was solicited, negotiated, or represented to the consumer in the Spanish language, the written notice to be provided to the consumer and set forth in this section shall be in the Spanish language on a form to be prepared and made available by the office of the attorney general.

[45-1602, added 2008, ch. 192, sec. 1, p. 601; am. 2009, ch. 136, sec. 2, p. 418; am. 2023, ch. 266, sec. 2, p. 796.]

45-1603. RIGHT OF RESCISSION OF CONTRACT. (1) In addition to any other legal right to cancel or rescind a contract, any person whose property is in foreclosure as described in section [45-1505](#), Idaho Code, has the right to cancel or rescind any and all contracts or agreements relating to such property entered into during the foreclosure period within five (5) business days of entering into such contract or agreement. Neither funds nor an interest in the property shall be transferred or transferable until the five (5) days have passed.

(2) Cancellation occurs when such person gives written notice of cancellation to all other parties to the contract. Notice of cancellation need not take any particular form and, however expressed, is effective if it indicates the intention not to be bound by the contract.

(3) Notice of cancellation, if given by mail, is effective when deposited in the mail properly addressed with postage prepaid. Notice by certified mail, return receipt requested, addressed to the address specified in the contract or agreement, shall be conclusive proof of notice of service.

[45-1603, added 2008, ch. 192, sec. 1, p. 602.]

45-1604. EXCLUSIONS. The provisions of this chapter shall not apply to:

(1) Regulated lenders, as defined in section [28-41-301](#), Idaho Code;

(2) Any person licensed or chartered under the laws of any state or of the United States as a bank, trust company, savings and loan association, credit union, or industrial loan company. The terms "bank," "trust company," "savings and loan association," "credit union" and "industrial loan company" shall include affiliates or wholly owned subsidiaries of such organizations, provided that the affiliate or subsidiary is regularly examined by the chartering state or federal agency for consumer compliance purposes;

(3) Mortgage lenders and mortgage brokers licensed under the Idaho residential mortgage practices act, sections [26-31-101](#) et seq., Idaho Code;

(4) Employees and agents of the organizations specified in subsections (1), (2) and (3) of this section, when acting within the scope of such employment or agency; and

(5) Family member or members of the owner or owners of record of any interest in residential real property subject to foreclosure. For purposes of this chapter, "family member or members" means a natural person or the spouse of a natural person who is related to such owner or owners of record by blood, adoption or marriage within the second degree of consanguinity or a grandchild or the spouse of a grandchild.

[45-1604, added 2008, ch. 192, sec. 1, p. 602; am. 2013, ch. 54, sec. 15, p. 122; am. 2015, ch. 244, sec. 27, p. 1022.]

45-1605. PENALTIES. In addition to any other penalty provided by law, any person who violates the provisions of this chapter shall be liable for penalties and damages in accordance with [chapter 6, title 48](#), Idaho Code.

[45-1605, added 2008, ch. 192, sec. 1, p. 603.]

CHAPTER 17
NONCONSENSUAL COMMON LAW LIENS-- [REPEALED]

TITLE 45
LIENS, MORTGAGES AND PLEDGES

CHAPTER 18
AGRICULTURAL COMMODITY DEALER LIENS

45-1801. DEFINITIONS. As used in this chapter:

(1) "Agricultural product" means wheat, corn, oats, barley, rye, lentils, soybeans, grain sorghum, dry beans and peas, beans, safflower, sunflower seeds, tame mustards, rapeseed, flaxseed, leguminous seed or other small seed, or any other agricultural commodity, including any of the foregoing, whether cleaned, processed, treated, reconditioned or whether mixed, rolled or combined in any fashion or by any means to create a product used as animal, poultry or fish feed.

(2) "Agricultural commodity dealer" means any person who contracts for or solicits any agricultural product from an agricultural producer or negotiates the consignment or purchase of any agricultural product, or receives for sale, resale or shipment for storage, processing, cleaning or reconditioning, any agricultural product, or who buys during any calendar year, at least ten thousand dollars (\$10,000) worth of agricultural products from the producer or producers of the commodity. Agricultural commodity dealer shall not mean a person who purchases agricultural products for his own use as seed or feed.

(3) "Agricultural commodity producer" means the owner, tenant or operator of land who receives all or part of the proceeds from the sale, under contract, bailment or otherwise, or delivery under contract or bailment, of agricultural products produced on that land.

(4) "Person" means an individual, trust, partnership, limited liability company, corporation, or unincorporated association or any other legal or commercial entity.

[45-1801, added 1983, ch. 202, sec. 1, p. 549; am. 1989, ch. 265, sec. 1, p. 644; am. 2001, ch. 363, sec. 1, p. 1279; am. 2002, ch. 308, sec. 1, p. 878.]

45-1802. LIEN CREATED -- WHO MAY HAVE. An agricultural commodity producer or an agricultural commodity dealer who sells, or delivers under contract or bailment, an agricultural product has a lien on the agricultural product or the proceeds of the sale of the agricultural product as provided in section [45-1804](#), Idaho Code. The lien created in this chapter may attach regardless of whether the purchaser uses the agricultural product purchased to increase the value of his livestock or whether he uses the agricultural product purchased to maintain the value, health or status of his livestock without actually increasing the value of his agricultural product.

[45-1802, added 1983, ch. 202, sec. 1, p. 550; am. 1989, ch. 299, sec. 1, p. 746; am. 2000, ch. 339, sec. 1, p. 1133; am. 2001, ch. 363, sec. 2, p. 1279.]

45-1803. WHEN LIEN ATTACHES. The lien created by section [45-1802](#), Idaho Code, attaches to the agricultural product and to the proceeds of the subsequent sale of the agricultural product on the date the agricultural product is physically delivered to the purchaser or on the date any final payment is

due, and unpaid, to the agricultural commodity producer or agricultural commodity dealer under any contract or bailment, whichever occurs last.

[45-1803, added 1983, ch. 202, sec. 1, p. 550; am. 2002, ch. 308, sec. 2, p. 879.]

45-1804. DURATION OF LIEN -- NOTICE OF LIEN. (1) The lien provided for by section [45-1802](#), Idaho Code, remains in effect for a period of one hundred eighty (180) days after the date of attachment, except as provided in subsection (2) of this section.

(2) The lien provided for by section [45-1802](#), Idaho Code, is continued for a period of one (1) year from the date of filing if a written notice of lien, on a form prescribed by the secretary of state, is filed with the secretary of state by the agricultural commodity producer or the agricultural commodity dealer within one hundred eighty (180) days after the date of attachment. The form for the notice of lien shall require the following information:

- (a) A statement of the amount claimed by the agricultural commodity producer or agricultural commodity dealer after deducting all credits and offsets;
- (b) The name, address and signature of the agricultural commodity producer or agricultural commodity dealer claiming the lien;
- (c) The name and address of the person who purchased the agricultural product from the agricultural commodity producer or agricultural commodity dealer;
- (d) A description of the agricultural product charged with the lien including crop year; and
- (e) Such other information as the form prescribed by the secretary of state may require.

(3) The notice of lien shall be entered in a searchable database maintained by the secretary of state.

[45-1804, added 1983, ch. 202, sec. 1, p. 550; am. 1989, ch. 4, sec. 1, p. 5; am. 1989, ch. 265, sec. 2, 645; am. 2000, ch. 339, sec. 2, p. 1133; am. 2001, ch. 363, sec. 3, p. 1280; am. 2002, ch. 308, sec. 3, p. 879.]

45-1805. PRIORITY OF LIEN. The lien created by section [45-1802](#), Idaho Code, is preferred to a lien or security interest in favor of a creditor of the purchaser, regardless of whether the creditor's lien or security interest attaches to the agricultural product or proceeds of the sale of the agricultural product before or after the date on which the lien created by section [45-1802](#), Idaho Code, attaches.

[45-1805, added 1983, ch. 202, sec. 1, p. 550.]

45-1806. DISCHARGE OF LIEN. The lien created by section [45-1802](#), Idaho Code, is discharged when the lienholder receives full payment for the agricultural product. If payment is received in the form of a negotiable instrument, full payment is received when the negotiable instrument clears banking channels.

[45-1806, added 1983, ch. 202, sec. 1, p. 551.]

45-1807. FILING NOTICE OF DISCHARGE. (1) If a notice of lien is filed pursuant to section [45-1804](#), Idaho Code, and the lienholder subsequently receives full payment, the lienholder shall file with the secretary of state a notice of discharge, signed by the lienholder, declaring that full payment has been received and that the lien is discharged.

(2) Upon receiving the notice, the secretary of state shall enter it in a searchable database kept to record such liens.

(3) If a lienholder, after receiving full payment, fails to file a notice of discharge of the lien within thirty (30) days after being requested in writing to do so, he is liable to the purchaser of the agricultural product for damages in the amount of three hundred dollars (\$300).

[45-1807, added 1983, ch. 202, sec. 1, p. 551; am. 2000, ch. 339, sec. 3, p. 1134.]

45-1808. FORM OF FILING WITH SECRETARY OF STATE -- FEES. The secretary of state shall prescribe the form of the filing provided for by sections [45-1804](#) and [45-1807](#), Idaho Code. The fee for the filing provided for by section [45-1804](#), Idaho Code shall be five dollars (\$5.00). The fee for searching the database maintained by the secretary of state pursuant to this chapter shall be five dollars (\$5.00). There shall be no fee for filing a notice of discharge pursuant to section [45-1807](#), Idaho Code.

[45-1808, added 1983, ch. 202, sec. 1, p. 551; am. 1984, ch. 43, sec. 1, p. 71; am. 2000, ch. 339, sec. 4, p. 1134.]

45-1809. JOINDER OF ACTIONS -- FILING FEES AS COSTS -- ATTORNEY'S FEES. Any number of persons claiming liens against the same property under this chapter may join in the same action, and when separate actions are commenced, the court may consolidate them. The court shall also, as part of the cost, allow the moneys paid for filing and recording the claim, and a reasonable attorney's fee for each person claiming a lien.

[45-1809, added 1989, ch. 4, sec. 2, p. 6; 1989, ch. 265, sec. 3, p. 646.]

45-1810. TRANSITION FROM COUNTY FILING TO FILING WITH THE SECRETARY OF STATE. All liens created by this chapter on and after July 1, 2000, shall be filed with the secretary of state. All rights and duties obtained by secured parties pursuant to this chapter before July 1, 2000, shall remain in effect; provided, that liens created by this chapter before July 1, 2000, that are properly filed in the office of the county recorder before that date shall remain in effect and may be extended or renewed in the county beyond July 1, 2000.

[45-1810, added 2000, ch. 339, sec. 5, p. 1134.]

TITLE 45
LIENS, MORTGAGES AND PLEDGES

CHAPTER 19
STATE LIENS

45-1901. PURPOSE AND SCOPE. (1) The purpose of this chapter is to provide a system for filing notices of liens in favor of or enforced by the state of Idaho with the office of the secretary of state.

(2) The scope of this chapter is limited to liens in the real and personal property of:

(a) Taxpayers or other persons against whom the state tax commission has liens pursuant to [title 63](#), Idaho Code, for unpaid personal or corporation income tax, sales tax, employee withholding taxes, fuel tax, or any other amounts due under statutes administered by the commission, plus interest, penalties and additional amounts;

(b) Persons against whom the department of labor has liens pursuant to [chapter 13, title 72](#), Idaho Code, for unpaid employment security contributions, plus interest and penalties;

(c) Persons liable for overpayment of benefits against whom the department of labor has liens pursuant to [chapter 13, title 72](#), Idaho Code, for overpayment of benefits, plus interest;

(d) Persons against whom the department of labor has liens for wage claims pursuant to [chapter 6, title 45](#), Idaho Code;

(e) Individuals who are subject to liens for child support delinquency pursuant to [chapter 12, title 7](#), Idaho Code; and

(f) Individuals who are subject to liens pursuant to [chapter 2, title 56](#), Idaho Code, for medical assistance, or the estates of such individuals.

[45-1901, added 1997, ch. 205, sec. 1, p. 607; am. 1999, ch. 51, sec. 25, p. 128.]

45-1902. DEFINITIONS. (1) "Debtor" means a taxpayer or other person against whom there is a final unpaid tax assessment collectible by the state tax commission, a person against whom the department of labor has a lien for a wage claim, unpaid contributions or overpayment of benefits, an individual who is subject to a lien for child support delinquency, or an individual who is subject to a lien for medical assistance.

(2) "Delivered" means transmission to and receipt by the secretary of state of a notice of lien or other notice in any medium to which the filing agency and the secretary of state have agreed.

(3) "Filing agency" means the state tax commission, the department of labor or the department of health and welfare.

(4) "Person" means an individual, organization or legal entity.

[45-1902, added 1997, ch. 205, sec. 1, p. 608; am. 1999, ch. 51, sec. 26, p. 128.]

45-1903. CREATION OF LIEN -- ATTACHMENT. Creation and attachment of liens for which notices are filed pursuant to this chapter are governed by the provisions of chapter 6 of [title 45](#), [title 63](#), chapter 13 of [title 72](#), chapter 12 of [title 7](#), and chapter 2 of [title 56](#), Idaho Code.

[45-1903, added 1997, ch. 205, sec. 1, p. 608; am. 1999, ch. 51, sec. 27, p. 129.]

45-1904. NOTICE OF LIEN -- CONTENT -- DELIVERY. (1) The notice of lien shall include:

- (a) The name and last known address of the debtor;
- (b) The name and address of the filing agency;
- (c) The basis for the lien, including, but not limited to, income tax, sales tax, employment security contributions, payments in lieu of contributions, overpayment of benefits, wage claims, a child support delinquency or medical assistance;
- (d) Such other information as may be required by the relevant provisions under which the lien was created and attached, or as may be agreed by the filing agency and the secretary of state.

(2) The notice of lien will be delivered to and receipt will be acknowledged by the secretary of state in a medium and format to which the filing agency and the secretary of state have agreed.

(3) Each notice of lien shall be authenticated by the filing agency in a manner to which the filing agency and the secretary of state have agreed.

(4) A notice of lien is filed when it complies with subsection (1) of this section and has been delivered to and receipt acknowledged by the secretary of state.

[45-1904, added 1997, ch. 205, sec. 1, p. 608; am. 1999, ch. 51, sec. 28, p. 129.]

45-1905. EFFECT OF NOTICE -- PRIORITY. (1) When a notice of lien is filed, the state lien is perfected in all of the existing and after-acquired property of the debtor, both real and personal, tangible and intangible, to which the lien attaches pursuant to the relevant provisions of chapter 6 of [title 45](#), [title 63](#), chapter 13 of [title 72](#), chapter 12 of [title 7](#), or chapter 2 of [title 56](#), Idaho Code.

(2) As to personal property, the perfected lien shall have the same priority as a security interest which becomes perfected under [chapter 9, title 28](#), Idaho Code, at the same time the notice of lien is filed.

(3) As to real property, the perfected lien shall have the same priority as a mortgage which is recorded at the same time the notice of lien is filed.

(4) Nothing herein limits the authority of the state tax commission to subordinate its lien to another lien in the manner provided by section [63-3055](#), Idaho Code.

[45-1905, added 1997, ch. 205, sec. 1, p. 609; am. 1999, ch. 51, sec. 29, p. 129.]

45-1906. DURATION OF NOTICE -- LAPSE -- CONTINUATION. (1) Except as provided in subsection (2) of this section, a notice of lien is effective for a period of five (5) years from the date of filing, unless sooner released by the filing agency. Effectiveness of the notice of lien lapses on the expiration of the five (5) year period unless a notice of continuation is filed prior to the lapse.

(2) A notice of lien for child support delinquency is effective until a notice of release of lien is filed by the department of health and welfare.

(3) Upon release or lapse of the notice's effectiveness, the state lien becomes unperfected. In that case, the lien is deemed to have been unper-

fects as against a person who became a purchaser or lien creditor before the release or lapse.

(4) Except as to notices of lien filed pursuant to subsection (2) of this section, a notice of continuation of effectiveness of the notice of lien may be filed by the filing agency within six (6) months prior to the expiration of the five (5) year period specified in subsection (1) of this section. The notice of continuation will be delivered to and receipt acknowledged by the secretary of state in a medium and format to which the filing agency and the secretary of state have agreed, and shall be authenticated by the filing agency in a manner to which the filing agency and the secretary of state have agreed. Upon filing of the notice of continuation, the effectiveness of the original notice of lien is continued for five (5) years after the last date to which the notice of lien was effective, whereupon it lapses unless another notice of continuation is filed prior to such lapse.

[45-1906, added 1997, ch. 205, sec. 1, p. 609.]

45-1907. AMENDMENT OF NOTICE OF LIEN. (1) The filing agency may amend a notice of lien in any respect by filing a notice of amendment with the secretary of state.

(2) The notice of amendment shall identify the notice of lien to which it relates, and it shall include such information and be in such medium and format as agreed by the filing agency and the secretary of state.

(3) The requirements for delivery, acknowledgment of receipt and authentication of a notice of amendment shall be the same as those prescribed for a notice of lien in section [45-1904](#), Idaho Code.

(4) The filing of a notice of amendment does not extend the period of effectiveness of the notice of lien to which it relates.

[45-1907, added 1997, ch. 205, sec. 1, p. 609.]

45-1908. DUTY OF FILING AGENCY TO RELEASE UPON SATISFACTION. (1) Except as to a state lien for child support delinquency, when a state lien has been satisfied, the filing agency shall, within thirty (30) days after satisfaction, file with the secretary of state a notice of release of lien.

(2) As to a state lien for child support delinquency, the department of health and welfare shall file a notice of release of lien within thirty (30) days after:

(a) The delinquency has been satisfied; or

(b) The underlying lien is no longer valid.

(3) The notice of release will be delivered to and receipt acknowledged by the secretary of state in a medium and format to which the filing agency and the secretary of state have agreed, and shall be authenticated by the filing agency in a manner to which the filing agency and the secretary of state have agreed.

[45-1908, added 1997, ch. 205, sec. 1, p. 610.]

45-1909. DUTIES OF SECRETARY OF STATE. (1) The secretary of state shall maintain notices of state lien in his information management system in a form that permits them to be reduced to written form.

(2) The secretary of state will provide information concerning state liens on the same conditions and in the same form as he provides information on financing statements pursuant to section [28-9-523](#), Idaho Code.

(3) The secretary of state will compile and publish a list of all effective notices of state lien which the filing agencies have identified as pertaining to debtors who are agricultural producers. The list will be published on the same schedule and conditions as the list of liens in farm crops which is published pursuant to section [45-312](#), Idaho Code. The list of notices of state lien may be appended to the list of liens in farm crops, and no fee shall be charged in addition to the fee for the list of liens in farm crops. Failure of a filing agency to identify a debtor as an agricultural producer shall not adversely affect perfection of a state lien for any purpose.

[45-1909, added 1997, ch. 205, sec. 1, p. 610; am. 2001, ch. 208, sec. 28, p. 827.]

45-1910. EFFECTIVE DATE AND TRANSITION. (1) This chapter shall be in full force and effect for all notices of state lien which are filed on or after July 1, 1998.

(2) Except for notices of state lien for child support delinquency, the transition period for filing notices of state lien shall begin on January 1, 1998, and end on June 30, 1998. The following conditions shall apply to notices which were filed or recorded before January 1, 1998, and to notices filed during the transition period:

(a) A notice of state lien which was recorded with a county recorder between January 1, 1993, and June 30, 1993, shall lapse on the fifth anniversary of the recording date, unless the filing agency records a notice of renewal with the recorder prior to the lapse and files a notice of transition and continuation with the secretary of state before July 1, 1998. A notice of transition and continuation shall include all of the information required by section [45-1904](#), Idaho Code, the date of the recording of the original notice with the county recorder, and a statement that the effectiveness of the notice is to be continued for another five (5) year period. In the event the filing agency files a notice of transition and continuation, the effectiveness of the notice of state lien shall lapse on the tenth anniversary of the original recording date, unless the filing agency files a further notice of continuation as required by section [45-1906](#)(4), Idaho Code.

(b) A notice of state lien which was recorded with a county recorder between July 1, 1993, and December 31, 1997, will remain effective beyond June 30, 1998, only if a filing agency files a notice of transition with the secretary of state during the transition period. A notice of transition shall include all of the information required by section [45-1904](#), Idaho Code, and the date of the recording of the original notice with the county recorder. After a notice of transition has been filed, the effectiveness of the notice of state lien shall lapse on the fifth anniversary of the date of the recording with the county recorder, unless the filing agency files a notice of continuation as required by section [45-1906](#)(4), Idaho Code.

(c) A notice of state lien which is first filed during the transition period shall be fully effective during the transition period only if the filing agency has filed a notice with the secretary of state and recorded a notice with the appropriate county recorder. A notice of state lien which is filed with the secretary of state during the transition period, and which is not recorded with the county recorder, shall be fully effective on and after July 1, 1998, and shall be effective

before that date against any party with actual notice after the date of filing. A notice of state lien which is recorded with a county recorder during the transition period, but not filed with the secretary of state, shall be fully effective through June 30, 1998. A notice of state lien first filed during the transition period shall lapse on the fifth anniversary of the date of filing with the secretary of state, unless the filing agency files a notice of continuation as required by section [45-1906](#) (4), Idaho Code.

(3) The effectiveness of a notice of state lien for child support delinquency which was recorded with a county recorder shall lapse on July 1, 1998, unless a notice of transition is filed with the secretary of state on or before July 1, 1998. If a notice of transition is filed, the notice of state lien will remain effective until a notice of release is filed pursuant to section [45-1908](#) (2), Idaho Code.

(4) A notice of state lien on record with a county recorder before July 1, 1998, and not previously lapsed or released, shall be deemed to have lapsed on July 1, 1998, and shall be null, void and of no further force and effect.

(5) A notice of state lien transitioned to the secretary of state will remain in effect on the records of the secretary of state pursuant to the procedures of section [45-1906](#), Idaho Code, despite having lapsed with the county recorder under the preceding section [subsection].

(6) Notwithstanding the provisions of section [45-1905](#), Idaho Code, a state lien which was perfected under a prior law and transitioned to perfection under this chapter without a break in perfection shall have priority as if it had been filed under this chapter on the date of its original perfection under the prior law.

[45-1910, added 1997, ch. 205, sec. 1, p. 610; am. 2012, ch. 183, sec. 1, p. 485.]