Chapter 15

Mechanics' Liens in the Oil Patch: An Illusory Remedy

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§ 15.01. Introduction.

Mechanics' liens usually provide a satisfactory means for ensuring that contractors and others are paid so
long as the liens arise in the context for which they were created: construction. Because these liens are
designed to protect persons improving property by contributions of labor and goods, their characteristics
favor contractors and parties working for or supplying them. The liens typically have priority over other
claims relating back to the commencement of the work; subcontractors and laborers are protected in that the
attached property secures their debt; and the lien arises on performance of the work.

A mechanic's lien, when perfected, prevents conveyance of the attached property until the underlying debt is
satisfied. If the debt continues unsatisfied, the lien can be foreclosed, the property sold, and the proceeds
will be disbursed to the lienholders. Hence, this security device is properly called a "lien," having its origin
in Old French, meaning to tie together or to bind.\(^1\)

Oil and gas development, however, introduces complexities to the creation of mechanics' liens not found in
the normal construction setting. These complexities cause the knot a lien ties on oil and gas properties to
look less like a simple square knot and more like a Gordian knot. The denouement may not meet
expectations of any of the parties.

Extracting oil and gas or other minerals typically involves a large cast. Geologists, engineers, suppliers,
laborers, managers, and investors are all necessary to drill and operate a producing well. Compounding the
number of players are the legal relationships that prime the necessary exploratory, drilling, and production
activities: partnerships, joint ventures, farmout agreements, unit and operating agreements, and drilling and
supply contracts. The diversity of property or mineral interests involved makes the relationships even more
complicated.

These varying interests and parties are amalgamated by the frenetic pace of mineral development, which
discourages the use of typical security arrangements. Oil and gas leases may be close to expiration; quick
investment decisions must be made. Parties often rely on proceeds from the development of oil and gas
properties to pay the costs of development. When proceeds do not reach anticipated levels, creditors must
look elsewhere to satisfy their debts. Consequently, mechanics' type liens may become the central, and even
sole, security device for contractors and suppliers.

Since general mechanics' and materialmen's liens do not fit neatly into oil and gas development, state
legislatures have responded differently to provide a lien more suitable to oil and gas development. The result
is that a particular state's lien statutes will ordinarily follow one of three patterns: (1) the state has only a
general mechanics' lien;\(^2\) (2) the state has separate mineral lien statutes;\(^3\) or (3) the state incorporates oil
and gas specific statutes into its general mechanic's lien act.\(^4\) Some states also have separate lien
provisions granting operators a lien against interest holders in a unitized area.\(^5\)

The result of this effort to accommodate contractor, subcontractor, and supplier interests in oil and gas
development, at first, may appear to be an impressive arsenal of remedies in case of nonpayment. There are
four types of liens that are applicable to oil and gas development, which can often be invoked conjunctively.
These are (1) the simple common law lien, which creates the right to retain possession of property of
another until a debt is paid; (2) the equitable lien, which arises out of a contract stating an intention to create
a lien or out of the general relation of the parties; (3) the usual, general statutory mechanics' and
materialmen's liens; and (4) statutory mineral liens, which specifically apply to oil and gas development.

The advantage of the typical mechanic's lien is its simple effectiveness. In the oil and gas context, however,
a party may find this lien's requirements bothersome or even troubling. Too often a simple missed step or
deadline will prove fatal. Additionally, judging the interaction between the statutes of a general mechanic's
lien and those of oil and gas liens is uncertain. If the state has only a general mechanic's lien, adapting these
statutes to the oil and gas context can pose significant uncertainties. Finally, there lurks the all-important
question of whether the lien may attach to any of the valuable oil and gas interests.

Consequently, the result of applying a mechanic's lien in the oil patch may be that its simple effectiveness in other areas disappears. Worse, because of the complexities, a contractor or subcontractor who must rely on the lien may discover that the lien is elusive at best. At its worst, it is illusory.

The mechanic's lien may also be, at the least, annoying to holders of oil and gas interests. Property rights normally take priority from the time of their recordation. However, the priority of a mechanic's lien will relate back to the time that work was first performed or materials were first supplied. Further, certain oil and gas interests may be subject to a lien even though the holders of these interests did not expressly agree to the work performed by the contractor. Consequently, mechanics' liens are troublesome for holders of oil and gas interests. They may be difficult to prevent. They inhibit property transfers and reduce property values. The cloud a lien creates on an interest may be especially annoying because it may arise unexpectedly.

The four types of liens are not equally useful. For example, the common law lien requires possession of the liened property by the creditor, so its use is limited in oil and gas development. It may apply where an operator retains possession of proceeds pending a working interest owner's payment of its share of development costs. Equitable liens are more important in oil and gas developments because they are based on the general relationships of the parties, and these relationships, although prevalent in the oil and gas context, are not always reduced to writing in a timely manner. An equitable lien may also prove valuable because the statutory procedures necessary for establishing and foreclosing mechanics' liens need not always be followed. Foreclosure simply involves initiating legal action for a collection of the debt and asserting a lien against specific property.

The statutory mineral or mechanics' liens are the more important liens because they arise automatically on the performance of a broad scope of lienable activities. Consequently, they are more frequently encountered. Because of their importance, this Chapter will concentrate on these liens and discusses the particularities of their use in the oil patch. By better understanding the operation of these liens in oil and gas development, one can prevent the potentially unsavory experience of holding illusory expectations of these liens.


[1]-Statutory Creation.

Mechanics' liens are purely a statutory creation. Oil and gas liens have been upheld as a constitutionally reasonable classification that does not violate substantive due process or equal protection standards. Although a court can liberally construe provisions of the lien statute, it cannot disregard the steps essential to a lien's creation or extend the statute beyond its reasonable confines. The precise language of a particular mechanic's or mineral lien statute, therefore, must be carefully examined. While this Chapter summarizes the more significant provisions of several Eastern states' lien statutes, this summary is not a comprehensive review of all aspects of these lien laws. Care must be taken to examine carefully the relevant statutory provisions, the most current court decisions, and any subsequent legislative revisions.

In a state that has adopted both general mechanics' and mineral liens, it may be unclear whether the mineral lien provisions were intended to exclude the general mechanic lien. Some states expressly provide that mineral liens are conjunctive with other liens and remedies. In the absence of such provisions, some courts have still held that the two liens are cumulative. One court, however, has held that where the procedures of the two liens conflict, the mineral lien excludes the general mechanic's lien even though a party may have complied with the requirements of the general mechanic's lien. Prudence dictates that a party comply with the procedures of both statutes, but if compliance with only one is possible, the specific
In applying the mineral lien statute, the weight which case law under the general mechanic's lien carries may also be unclear, in states with both types of liens. For example, Michigan has had a statutory mineral lien since 1937, but there are no reported cases under the act. Michigan's current general mechanic's lien was passed in 1980, and there are now several reported cases dealing with it. The most substantial body of Michigan lien case law, however, was decided under a previous lien act. It is uncertain to what extent any of those earlier cases constitute authority for the mineral lien statutes.

Illinois, on the other hand, revised its statutory oil and gas lien, which had existed since 1939, with the Oil and Gas Lien Act of 1989. Because it was only recently adopted, the new act has no reported cases. The new act was passed to improve areas of uncertainty under the old act; consequently, it is again uncertain what weight of authority the previous cases will carry under Illinois' new act.

Another important consideration is the nature of the remedy for nonpayment. An oil and gas contractor not paid for work or materials can always pursue a personal claim against the non-paying party. If the non-paying party does not satisfy the judgment, the contractor can then enforce the judgment against property of that party. However, when nonpayment is caused by insolvency, a personal judgment may be of no use. The debtor may have no property with which to satisfy a judgment, and what property the debtor does own is likely to be subject to other security interests. A personal judgment may be even more difficult to enforce in the context of oil and gas development because the contracting party who incurred the debts may own a very small or no interest in the property itself. If the debtor files for bankruptcy, the contractor may find itself one of a large number of unsecured creditors.

Foreclosure of a mechanic's or mineral lien, on the other hand, is a proceeding in rem. The lien is not enforced against the assets of the nonpaying party but against the oil and gas interests or properties underlying the work. The in rem nature avoids the disadvantages of a personal action. The creditor does not need to wait for a judgment lien to gain priority. Also, because the debt arises from work that benefits property, there is usually property to satisfy the lien.

§ 15.03. Persons and Activities Eligible to Establish a Lien.

The first step in analyzing the creation of mineral liens is to decide who can claim a lien for what type of activity. The question is not particularly difficult when only construction activities and a general mechanic's lien are at issue. If a statutory mineral lien exists, one can conclude with substantial certainty which basic oil and gas activities will give rise to the lien. When only a general mechanic's lien statute exists, however, a party may face more significant uncertainty in answering these questions.

Mechanics' liens were created as an equitable solution to avoiding unjust enrichment-type situations. Without these liens, there exists the substantial threat that persons who have improved property with their labor or material will not be properly compensated, while the owner of the property will enjoy its enhanced value at no cost. Because the statutes are designed to protect persons who would suffer from the unjust enrichment scenario, a court may look closely at the status of the lien claimant to make sure the claimant is the kind of party the statute is intended to protect. Some states, such as West Virginia, specifically describe a class of persons who may claim a mechanic's lien. In these states, it is crucial for a lien claimant to make certain it is a member of one of the classes. The notice procedures of filing and foreclosing a lien will sometimes vary depending on a party's classification.
[a]--Individuals, Partnerships, and Corporations.

Most lien statutes allow a lien to be claimed by any "person," a term which includes individuals, corporations, and partnerships. The only ambiguity may be whether the term encompasses an unpaid employee where, as is usually the case, the claimant's employer was the contracting party. Most states allow such a claim. Some states also have statutes specifically allowing individual laborers to claim liens on property even though they are employees.

[b]--Laborers.

In lien law, laborers are a favored class. Some states grant priority to claims of a laborer over other liens. Typically, a lien statute grants a lien to every person who performs labor on a construction or improvement to real property. This type of provision usually encompasses an individual claim by a laborer/employee of the contracting party. This is not always the case, however. Pennsylvania does not grant a mechanic's lien to a laborer or employee not independently holding contractor or subcontractor status. Oil and gas interest holders who contract for work need to ascertain the extent to which an individual laborer can claim a mechanic's lien; if the state allows the claim, the interest holder should take steps to ensure that all contractors pay their employees.

Some states have specific provisions allowing employees to establish liens in case of nonpayment of wages. West Virginia permits an employee of a corporation to claim a lien on all of the corporation's real and personal property to "the extent and value of one month's such work or labor." Similar liens in Minnesota and South Carolina are tailored to cover claims of those laboring in "mines." However, these states' statutes do not indicate whether a "mine" would include oil and gas development.

Not all work performed by laborers can give rise to a lien. A laborer's work has traditionally encompassed only manual labor or ordinary physical toil, so managers and supervisors may be excluded. A distinction may also be made between developmental or drilling work and continuing operational work, and work that is performed offsite as opposed to onsite. Some states, though, have enacted provisions to settle the offsite/onsite question.

[c]--Materialmen.

Most states specifically allow materialmen to claim liens for materials supplied for improvements to real property. Some states do this by defining "materialman" and expressly providing a lien, while other states may simply describe the supplying of materials as a lienable activity. However, parties supplying materialmen are probably too far removed to be considered a materialman.

[d]--Subcontractors.

Lien statutes include subcontractors as parties who are eligible to claim mechanics' liens. Although liens usually are allowed only for work done "under contract" with an owner, an owner's contract with the general contractor will normally be considered to include subcontractors in one way or another. For example, Pennsylvania requires no direct contractual relationship between the owner and subcontractors for a lien to arise in favor of the subcontractor. Others may consider the contractor to be the owner's agent. Most often, the state's statute will simply allow subcontractors to claim a lien where the contractor has a contract with the interest owner.
Lien statutes also typically allow only subcontractor work done onsite to be lienable. This requirement eliminates the problem of an infinite regression of parties claiming a lien. Several states also have a provision that limits the total amount recoverable by subcontractors on a lien to the amount of the contract between the owner and the contractor.\(^\text{(36)}\) If the total debt exceeds the amount of the original contract, the sub-contractors share pro rata in the proceeds of any foreclosure sale.\(^\text{(37)}\) In the absence of such a statute, however, a subcontractor's lien may exceed the actual amount of the contractor's and owner's agreement.\(^\text{(38)}\)

Some states require that subcontractors furnish additional notice to the owner as part of the procedure to perfect a lien. Since an owner has a work agreement with a contractor, the owner necessarily knows of the contractor's potential mechanic's lien; however, the owner may have no notice of liens claimed by subcontractors arising from their work under the contractor. Without notice, the owner may simply pay the general contractor in full, whereas with notice, he can withhold payment to ensure the subcontractors are paid. Consequently, some states require a subcontractor to give notice to the owner before a lien becomes perfected.\(^\text{(39)}\)

An owner and a contractor may stipulate in a written contract that the contractor will not claim a mechanic's lien. In this situation, at least one state charges a subcontractor with knowledge of the stipulation if the written agreement was properly recorded.\(^\text{(40)}\) Contractors and subcontractors should check for a similar provision in their state, for operating agreements commonly include this stipulation.

[2]--Activities Giving Rise to Mechanics' or Mineral Liens.

Liens arise automatically once a party commences an eligible activity. Consequently, ascertaining which oil and gas activities are lienable is of prime importance. Because a variety of activities is necessary to bring an oil and gas property to production, the owner must have a good idea which of these activities can encumber the property with a lien. Investors will also need to know which activities can create a lien so that they may avoid having their investments become completely subject to liens, particularly if they will be taking security interests that attach after work commences or materials are supplied.

[a]--Improvements.

The central idea of a lienable activity is that it "improves" or enhances the value of a property. Many statutes, particularly those of general mechanics' liens, describe lienable activities in terms of improvement to property.\(^\text{(41)}\) Improvements generally must be permanently incorporated into the property.\(^\text{(42)}\) The "improvement" requirement derives from the underlying rationale of mechanics' liens to avoid unjust enrichment. This requirement poses problems, however, in the oil and gas context. Unlike construction activities, work on mineral properties does not necessarily enhance the value of the properties. Production extracts the property's marketable minerals, and exploratory work may result in the property being shown to be unproductive. In either case, the property's value may decrease, notwithstanding the activities that are expected to improve the property or benefit the property owner.

Whether a general mechanic's lien would exist where labor or supplies have not enhanced property values has not been significantly addressed in case law. If improvement is taken only to mean construction of a building or structure of some type, a lien probably would exist.\(^\text{(43)}\) If the state, however, requires permanent enhancement of property value, the validity of a lien is doubtful if oil and gas activities do not increase the value of the land.

Oil and gas lien statutes often list lienable activities and avoid the enhancement of value problem.\(^\text{(44)}\) Oil and gas activities, consequently, will create a lien regardless of whether they ultimately do not increase the
value of the property. The lists of lienable activities can be inordinately long and descriptive in an attempt to be all-inclusive.\(^{(46)}\)

[b]--Contract.

Lien statutes usually require that the activities be performed under contract with the owner.\(^{(47)}\) The owner's contract with the general contractor will usually be deemed to cover work and supplies of a subcontractor.\(^{(48)}\) The contractor may also be considered to be the owner's agent for establishment of the contract.

Louisiana's statute is a notable exception to this general rule.\(^{(49)}\) This statute does not expressly include the requirement that lienable work be done under contract with the owner. Consequently, questions have arisen as to whether Louisiana requires work to be done under contract for a lien to attach.\(^{(50)}\) In *Ogden Oil Co., Inc. v. Venture Oil Corp.*,\(^{(51)}\) the court allowed a privilege (lien) to attach to a workover rig that was leased by a contractor with whom the claimant had no contractual or debtor/creditor relationship. Consequently, Louisiana does not require a contractual relationship with the owner of an oil or gas interest before developmental or operational activities can create a lien on the interest.

[c]--Labor.

Since laborers are a preferred class of lienholders, the activities that qualify as labor may be liberally construed. One qualification is that labor must usually be performed on, or be specific to, the site of the oil and gas property. Sometimes, however, a state's statutes may allow a lien for work done offsite; the work cannot be general but must have some direct connection with the property.\(^{(52)}\)

Manual labor associated with drilling operations gives rise to mineral liens and general mechanics' liens. In mineral lien states, manual labor associated with ongoing production is also usually expressly included as a lienable activity. In states with only a general mechanic's lien statute, however, operational activities may not create a lien. Although production is undoubtedly profitable, it does not add improvements or structures to the land; nor does it, strictly speaking, enhance the value of the land since production severs the oil and gas from the land.\(^{(53)}\) A court may consider that production enhances the value of the oil and gas interests. Nevertheless, laborers and contractors conducting production activities in states with only a general mechanic's lien should examine their jurisdiction's case law for guidance in assessing whether their labor will create a lien.

[d]--Supplying Materials.

The furnishing of materials by materialmen to oil and gas projects also creates both mineral and general mechanics' liens. The rationale for including materialman is that the materialman's supplies are incorporated into and enhance the value of the property. This may raise a question as to the status of materials consumed in drilling activities or used for ongoing production but not incorporated into a permanent improvement. Once again, mineral lien statutes usually expressly include the supplying of materials for drilling activities as lienable.\(^{(54)}\) A mineral lien also extends to and often expressly includes consumables, such as fuel, drilling muds, and drilling bits.\(^{(55)}\)

General mechanics' liens, however, may be confusing on this issue. For example, Michigan's general mechanic's lien statute requires actual physical improvement to property; mere delivery of supplies is insufficient, and supplies for production operations probably will not qualify.\(^{(56)}\) In the absence of a contrary statutory provision, materials must at least be actually delivered to the site to be lienable, even if
they are specially manufactured.

Under some mineral lien statutes, use or even delivery of the materials may not be required. The determining element is the intent or agreement under which the creditor produces or supplies materials. If the agreement or understanding, express or implied, is that the materials are to be used for a particular site or improvement, that will be sufficient to support a lien. If there is no such agreement or understanding, however, no lien will be created.

[e]--Surveyors, Engineers, Architects – Professional and Other Supervisory Services.

The work of surveyors, supervisors, and professionals has often been excluded from the traditional lienable category of "labor" because it did not involve physical or manual labor typically associated with the term. This view is beginning to change, but it is probably the state legislatures who need to initiate the change if these activities are to constitute lienable work. The Illinois legislature, for example, in its 1989 revision of the state's oil and gas lien, expanded the definition of "labor" to include "legal, geological, engineering, abstracting, and title services."

Even without specific statutory inclusion, surveying is usually considered lienable. Surveying done for other portions of development (e.g., pipeline routes) may not support a lien on individual wells. On the other hand, work done on gathering lines may be sufficiently connected to the lease to warrant a lien.

The status of the work of engineers and architects is uncertain. Some states categorically deny liens for these activities, while others specifically allow liens. In still other states, the deciding factor may be how closely the activities are connected to the specific oil and gas well or property. In one state, work on preliminary plans can create a lien if they are actually used in developing the property. If the plans ultimately are not used, however, the work should not create a lien under general mechanic's lien laws because of the lack of any improvement. In Pennsylvania, on the other hand, architects and engineers with a direct contractual relationship with the owner can claim a lien for supervisory work on a project; preparatory drawings, however, are not lienable.

Since many lien statutes allow liens for only manual labor, professional and supervisory expenses under these statutes may not be lienable. Nevertheless, some statutes allow liens to be created in favor of "any person" whose work improves property. Arguably, professionals and supervisors may be entitled to liens under this type of language.

[f]--Drilling Contractor.

All costs of erecting and operating a drilling rig will create a statutory mineral lien. The costs of transporting rigs and reusable tools, however, may not be lienable. Some statutes specifically allow liens for those hauling equipment and materials. On the other hand, some western states' statutes specifically exclude liens for drilling rigs or hoists or their integral component parts, except wirelines.

In Stanton Transportation Co. v. Davis, the Utah court rejected a claim for a mineral lien for costs of transporting a drilling rig to the drill site. Although the costs of renting drill bits were subject to the lien, the court thought the transportation costs were too far removed from the lien's purpose of protecting those who add value to property. Consequently, transportation costs probably do not create a lien unless a state statute specifically includes them.
[g]--Equipment Rental.

The lienability of the costs of equipment rental is specific to a state's lien statutes and case law. A court may be reluctant to allow equipment rental costs to create general mechanics' liens because the lien statute often requires that materials or equipment be used or consumed on the site. For example, in Stanton Transportation, the court allowed a lien on costs for rental of drilling shaft bits. The court, however, construed the rented bits to be consumed since they had to be reconditioned on return. Similarly, standby costs probably are not lienable because they do not directly contribute to the improvement of the property. Equipment rental costs have also been held nonlienable for other reasons. A New York court held that rented equipment is neither labor nor material. Another rationale for excluding costs of rented equipment is mitigation of damages. If rent is not being paid, the lessor need only terminate the lease rather than allow the unpaid rent to accrue and so that a lien is filed. One state court has held that the lienability of rental equipment depends on the type of equipment. If the equipment should be part of a contractor's regular equipment, its rental costs are not lienable; if rented equipment is not regular equipment, its rental costs are lienable.

[h]--Attorneys' Fees.

Legal work associated with establishing oil and gas operations is not normally thought to be encompassed in the traditional notion of "labor" and so does not give rise to a lien. Legal fees, however, are recoverable to the extent a statute specifically includes legal work as a lienable activity. Attorneys also may become involved in the filing of lien statements and will inevitably be involved when a lien must be foreclosed. Certain states allow these attorneys' fees to be recovered. However, if an owner is forced to defend the lien claim of a subcontractor, one state allows the owner to recover costs and attorneys' fees from the contractor. Although this legal work is not a lienable activity by itself, it may represent a significant cost accompanying a lien.

Attorneys who have expended time and effort in preparing title opinions, abstracts, or other paperwork may want to consider the common law lien. If the attorney has not yet been paid and has not yet turned over the paperwork or files, the attorney can possibly retain them until payment is made.

§ 15.04. Property Interests Subject to Lien.

The mechanic's lien must be able to attach to marketable property to be of any value. This can cause uncertainty for oil and gas liens as several property interests usually underlie oil and gas development. Usually, however, a contractor works under agreement with only one or even none of these holders of oil and gas interests. Except in Louisiana, a lien can attach to a property interest only if the claimant has performed under contract with the owner of the interest. Consequently, the contract requirement prevents most oil and gas interests from becoming subject to a lien. A court may infer that a property owner has impliedly agreed to the work. A court also may hold the contracting party to have been the interest owner's agent, particularly where joint interests are at issue. These possibilities require an oil and gas interest owner to examine carefully its participation before concluding its interest will not be subject to a lien. If the contracting party holds no interest in the property, the lien statute may still grant the contractor a lien in the improvement itself.

[1]--Oil and Gas Leases.
Where a contractor has performed under agreement with the lessee, the entire lease is subject to the lien. For example, in Moran v. Johnson, a contractor drilled a well on a leasehold that already had one producing well. The new well turned out to be nonproducing. The contractor asserted a lien against the entire lease and the producing well, but the property owner argued that the lien should only attach to the nonproducing well. The court held that the lien attached to the entire lease, including the producing well.

An entire lease is subject to a lien even if the lease encompasses noncontiguous lands and treats them as separate tracts. If smaller tracts are carved out of a base lease and subleased to other parties, the entire lease will not be subject to lien for activities performed on an individual tract. Some states, however, have statutes limiting the lien to portions of the leases designated in the well permit as the spacing unit; if there is no designation, a court may make that determination in a lien foreclosure proceeding.

The extent to which a lease is subject to a lien becomes more difficult to determine when leases are pooled or leased acreage is unitized. Some statutes specifically address unit situations. Arkansas grants an operator's lien on "all of the property owned by each owner within the unit area to secure the payment of his proportionate part of the expenses of unit operation." Missouri, although it has no separate mineral lien, grants a lien to unit operators that attaches to unit production. However, the lien only attaches to the interest of a party indebted to the operator, presupposing that a leaseholder which has not contracted with the operator will not have its interest subject to the lien.

It would seem only equitable, however, that the interests of leaseholders in units should be subject to lien, since their interests are equally benefitted by lienable work. Some cases may suggest that this approach is legitimate. A contractor or operator should ascertain the status of the lands with regard to spacing and unitization in preparing a lien statement to insure that the maximum lands available are included.

A difficult question arises where a contractor performs under contract with a lessee, but the lessee subsequently loses its interest in the lease. Illinois' lien statute protects against impairment of the lien as to proceeds of production, material, equipment, fixtures, and appurtenances in case the leasehold estate is forfeited by a judicial finding or by abandonment. Some jurisdictions will continue the lease to the improvements and possibly the interests represented by the lost leasehold to avoid unjust enrichment and inequity.

[b]--Working Interests.

Where the holder of a fractional working interest is not the operator, questions arise as to the extent to which the interest will be subjected to liens for oil and gas activities. In some states, mere co-ownership of fractional working interests does not create a partnership so as to subject the nonoperating interest to a lien. The prudent presumption from the working interest owner's standpoint, however, is that its interest is lienable, particularly where some statutes presume that a co-owner or co-lessee consents to improvements giving rise to a lien.

This presumption is reinforced by a recent trend of cases holding non-operating working interest owners subject to lien. For example, in John Carey Oil Co., Inc. v. W.C.P. Investments, an Illinois court rejected a previous Illinois decision and held that the fractional interest of a nonoperating working interest owner was subject to a mineral lien. The court reasoned that since a non-participating owner benefits directly from lienable work performed on the leasehold, its interest should be subject to the lien.
A key consideration is the intent of the nonoperating interest owner to advance the development of the mineral property. Formal operating agreements or the supplying of money by a nonoperating working interest holder have been taken as participation sufficient to render the interest subject to lien. However, a minority of states view that including typical language in an operating agreement that disclaims the existence of a mining partnership does not subject the interest to a lien.

Another factor affecting the attachment of working interests is the extent to which an interest holder has exercised control in an operating agreement. For example, an operating agreement that limited expenses, set standards for drilling, provided free access to all drilling information, and required consent to abandonment reflected sufficient control by the non-operator to subject its interest to a mineral lien.

Beyond the active involvement of a working interest owner, some states will allow mechanics' liens to attach to a joint interest where the interest owner consented to work or improvements made on the property. Consent can be inferred from the agreements among the joint interest holders or the assent of an interest owner to an improvement in the expectation it will benefit that owner.

[c]--Farmor/farmee Interests.

In farmout agreements, the extent to which the farmor's interest is lienable depends on whether the farmee can be construed to be the farmor's agent. If the farmout agreement obligates the farmee to drill a well, and payment for the acreage will be made out of proceeds from the well, the farmor may be construed to have retained sufficient interest and to be benefited so that its interest will be subject to a lien.

Accordingly, if a farmor is to be paid out of production made possible by the farmee's activities, a court may very well construe the farmor's interest to be lienable, for it is directly benefited by the work creating the lien, and that work sprung indirectly from the farmout agreement. Ordinarily, in the absence of the farmor's control over the drilling of a well, the farmor's interest should not be lienable, even though it has knowledge of the drilling of the well.

[d]--Drill Site.

Since the entire leasehold is usually subject to a lien, it is not surprising that the drill site or wells themselves are subject to the lien. This is true even for operating agreements and units, where the operating party is not necessarily the owner of the leasehold covering the surface area of the drill site. Some state statutes explicitly include liens on the well. Additionally, some states allow liens on improvements themselves even where there is no agreement with the property owner. Since a well is an improvement, it would necessarily be subject to a lien.

Louisiana's statute grants a broad lien that affects everything at a drill site. The lien will attach to oil, gas, or water well or wells . . . and on all drilling rigs, standard rigs, machinery, pipelines, flow lines, gathering lines, and other related equipment, including, but not limited to, monitoring, measuring, metering, and control equipment, appurtenances, appliances, equipment, buildings, tanks, and other structures thereto attached or located on the lease.

In *Ogden Oil Co. v. Servco*, a lien attached to a workover rig that was furnished several months after both the lien had arisen and the lien claimant had finished its activities, even though the claimant had no contractual relationship with the owner of the rig.
Even in the absence of express statutory provisions, drill sites are likely to be subject to lien. For example, in the case of *Showalter v. Lowndes*,(108) a materialman supplied lumber for construction of a derrick on an oil well. The court held that the materialman's lien attached to the derrick and leasehold. Even though these were considered personal property for other purposes, they constituted "an interest in land" under the mechanics' lien statute.(109) Another court, however, held that a derrick was not an "appurtenance" to the property and so was not lienable.(110) Consequently, care should be taken in assessing what structures or equipment at a drill site may be lienable.

[2]--Royalties.

Royalties are generally not subject to mechanics' liens.(111) However, if the operator or owner who contracted with the lien claimant owns a royalty, it usually will be subject to the lien.(112) A royalty owner can also subject its interest to a possible lien by participating in drilling and production operations.

Lien statutes often list the types of property to which a lien can attach. Royalty interests may not be specifically mentioned, leaving unanswered the question of whether a royalty can ever be the subject of a lien. For example, New York's definition of lienable oil and gas property includes "any lease of oil lands or other right to operate for the production of oil or gas upon such lands."(113) Since royalties are neither a lease nor a right to operate, this definition would seem to exclude royalties as lienable property. New York's definition of lienable property, however, also includes "real estate, lands, tenements, and hereditaments, corporeal and incorporeal," which could possibly encompass royalties. The net result is uncertainty as to whether royalties may ever be lienable real estate.

Although a royalty may not be lienable, a mineral lien that attaches to a well and its production and proceeds can have the same binding effect on the royalty as if the royalty itself were subject to the lien. Because the lien can attach to production and the proceeds of the well, it may prevent the produced oil and gas from being transferred or the purchaser's payments from being disbursed to other interest holders. Consequently, the royalty owner may not realize the benefits of its interest until the lien is satisfied.

[3]--Fee and Severed Mineral Interests.

A lessee or optionee of an oil or gas property does not become an agent of the underlying owner simply because of its status; the general rule is that it is not an agent.(114) Consequently, the interest of the owner of the fee mineral interest is not subject to a lien unless that owner becomes involved in and advances the development activities or consents to them, expecting the development to benefit it.

Some jurisdictions require that the owner give signed consent that an improvement is made for its benefit before a mechanic's lien will attach to its interest.(115) Other jurisdictions require lesser manifestations of consent, but they must still rise above the level of mere acquiescence.(116) States that allow a lien to attach to the owner's property interest because of its consent to an improvement are usually those with general mechanics' liens or an oil and gas provision incorporated into the general lien statutes.

There is also a possibility that a court could find that a mineral owner consented to improvements contracted for by an oil and gas lessee. The general rule for mechanics' liens in the lease context is that a landlord's property is subject to a lien arising from improvements procured by a tenant if the lease required the tenant to construct the improvements.(117) Correspondingly, owners of mineral interests may face the possibility of liens where they have entered leases or other agreements that obligate the lessee or other party to conduct development and production activities.
Surface ownership itself should not be lienable, since oil and gas development would only benefit a surface owner who also holds a royalty or fractional mineral interest. It is doubtful that more than the surface owner's mineral interest would be lienable.

[4]--Personal Property, Production, Proceeds, and Runs.

Produced oil and gas does not fit neatly into a lien context because, once extracted, oil and gas are usually considered personal property and must be stored and often commingled with other production. Nevertheless, some statutes and even some cases have permitted liens to affect production.

[a]--Production in Tanks and Pipelines.

In the absence of a statute expressly including it as lienable property, a lien generally will not attach to production. Several states, however, do expressly grant a lien on production. These states may deal with the practicality of tying up easily removed production by continuing the lien on the removed property and also assessing penalties for removing production subject to the lien. The lienable of production can prove disruptive to a purchaser, who, despite existing division orders, may find it prudent to keep abreast of the operator's lienable activities. The prospect of production being subject to liens may frustrate a purchaser's attempt to procure an assured and constant supply of oil or gas. Additionally, if notice of the lien must only be provided to the owner, a purchaser may be faced with the task of reviewing property records for possible liens to avoid inadvertently removing production subject to a lien. This problem is usually avoided by requiring the lienholder to provide notice of the lien to the purchaser.

If a lien does attach to production and the lien statute prohibits removal of production, the operator may be forced to cease production until the lien is satisfied. This raises constitutional problems if the parties dispute the amount owed or the validity of the lien, and the lien forces the oil and gas production to come to a halt. The general rule is that the actual filing of a lien is a de minimis taking, which does not trigger due process protection. However, if the lien prevents the owner from making any use of the property, e.g., shut-in of a well, the statute may violate due process and be unenforceable. States have avoided this problem by allowing a property owner to post a bond to ensure that the debt will be paid. After the bond is posted, the lien is released.

[b]--Proceeds.

Proceeds from the sale of production have a tenuous connection to specific real property, are easily transferred, and more normally fall under the domain of secured interests under Article 9 of the Uniform Commercial Code. Notwithstanding, some states grant liens that attach to the proceeds of production, but the lienholder is often required to furnish notice of the lien to the purchaser.

Courts may not be reluctant to construe a statute as extending a lien's reach to proceeds. In Kentucky, an oil and gas lien attaches to "the leasehold or the entire interest of the lessee including oil or gas wells, machinery, and equipment." Although the statute does not specifically mention proceeds, a Kentucky court has held that "entire interest" includes the lessee's rights to proceeds, so they were lienable.

Although allowing a lien to extend to proceeds may seem excessive, ironically, it may produce a more satisfactory result than allowing a lien to attach only to production. It avoids halting the flow of production until the lien is satisfied. Operators may sell and purchasers may take production without risking penalties for violating a lien. Additionally, a purchaser can avoid the uncertainties of disbursing the proceeds to lienholders and different interest owners by instituting an interpleader action over the proceeds.
[c]-"Attached" and "Detached" Personal Property.

Liens also extend to appurtenances on the property and the owner's personal property associated with it. When personality associated with the property is owned by a third person, however, its lienability usually depends on whether it is attached to the surface. Personal property attached to the leasehold is a fixture and subject to lien, while detachable personal property remains out of the lien's reach.\(^{(129)}\)

Materials or equipment supplied by the owner of an oil and gas interest are subject to lien, even if they were rented or borrowed.\(^{(130)}\) Some statutes are broadly worded so as to suggest that detachable personality is subject to a lien, even if title remains in a third party. For example, Ohio grants a lien that attaches to the lease interests and "all machinery, equipment, material, and supplies located thereon or used in connection therewith."\(^{(131)}\) Although no case has been found discussing the scope of this provision, the statute makes no distinction for rented equipment, providing a lien on "all" equipment "located" on the lease.

§ 15.05. Filing the Lien Statement and Perfecting the Lien.

Although liens automatically arise on performance of eligible activities, it is ordinarily the filing of a lien statement that perfects the lien and bestows the superior priority that makes a mechanic's or mineral lien particularly effective. Some statutes or cases may suggest that substantial compliance with the procedures for perfecting a lien is sufficient. However, a prudent claimant should assume that strict compliance with all procedures is essential.\(^{(132)}\) Particularly fatal to a lien claim is a failure to make necessary filings within the prescribed time limits.

Because of the drastic consequences that could attend a failure to follow strictly the necessary procedures of perfection, a party claiming a lien should become familiar with the particular procedures of a state before commencing activities that will give rise to a lien. A general summary of the steps usually required follows.

[1]--Preliminary Notice Requirements.

Some statutes require certain parties to furnish preliminary notices to the owner of a property interest before a lien statement is filed.\(^{(133)}\) These notices are required most often of subcontractors, since the owner otherwise may have no notice of the possible creation of a lien against the property or interest and will need advance warning to withhold payment to the general contractor.\(^{(134)}\)

[2]--Filing Requirements.

Perfecting a lien requires filing a lien statement in the real property records of the county in which the land is situated. The time for filing the statement is of utmost importance, as states usually require the lien to be filed within 60 to 180 days after labor was last performed or materials were last supplied if the lien is to retain its priority.\(^{(135)}\)

If work is done under multiple contracts, they are usually construed together under the statute to be one contract, necessitating only one filing.\(^{(136)}\) The period for filing cannot be extended by rendering minor, inconsequential labor or supplies.\(^{(137)}\) The key characteristic of a mechanic's type lien is that the lien's priority relates back to the date of first labor or material was supplied.\(^{(138)}\)

Timing is crucial in the filing of the statement of lien. If the lien is filed too early, the lien may expire
prematurely. On the other hand, a statement filed late is even more disastrous since the lien becomes invalid at the running of the time for filing. (139) Louisiana is an exception to this rule. A late filing will not invalidate the lien or "privilege," but the lien's priority will be the date of the filing of the lien statement and will not relate back to the date work commenced. (140)

New York, however, poses a different challenge, since the priority of its mechanic's lien does not relate back to the date of first work or delivery of supplies. (141) Consequently, the lien statement can be filed "at any time during the progress of the work and the furnishing of the materials" or within eight months after completion. (142) An owner who pays the debt to the general contractor before a lien statement is filed has a valid defense to a lien. (143) The object in New York, therefore, is to file the statement as early as possible to gain the earliest priority date.

The exact contents required in a lien statement varies from state to state of course. The statute will usually require proper identification of the claimant, the interest owner, the work performed or materials supplied, the value of work or materials, and a description of the property subject to the lien. (144) Claimants must exercise extreme care, particularly in describing the interest owners and the property subject to liens. Claimants should include all possible property interests but take care not to include interests for which there is no reasonable basis for claiming the lien. Misidentifying the property owner would be fatal to the lien claim. The claimant also should review carefully relevant county records, federal and state mineral lease records, and state and federal pooling or unitization actions to ensure that all possible interests are included and all owners are correctly described.

To the extent possible, the claimant should describe the different types of activities supporting the lien and the amounts attributable to each type of activity. If a certain activity is determined not to be lienable, it can be separated from the rest of the claim. (145) If the amount owed is uncertain, a reasonable estimate, even if it is an overstatement, should suffice absent bad faith or fraud. (146)

[3]--Service.

Lien statutes usually require serving the property owner with the lien statement, particularly if the lien is being made by a subcontractor. (147) A claimant who has been dealing with an agent of the principal property owner may also be required to serve notice on the agent. (148) Most lien statutes require personal service. (149) Proof of service will also usually be required. (150)

§ 15.06. Enforcing the Mineral Lien.

[1]--Foreclosure Action.

Since liens are in rem creatures, they are usually enforced through foreclosure actions. Because lien foreclosure actions are proceedings in equity, there is generally no right to trial by jury, although some jurisdictions may allow limited jury trial to resolve certain factual issues. (151) In West Virginia, a commissioner is customarily appointed to make initial findings as to the nature, extent, amount, and priority of liens against the property. (152) Some jurisdictions require all interested parties to be joined. (153)

[2]--Time Limitations.

All jurisdictions require a lien to be enforced within a specified time, usually up to one year; otherwise the lien will expire. (154) If an action is filed within the time limit, the lien continues until resolution of the claim. Some states set a period of time in which resolution of a lien claim must occur, or the lien will
expire. (155)

[3]--Notice and Process.

Filing the foreclosure action may require additional notice to the owner and, in some jurisdictions, to other lienholders. Of course, the usual requirements of the state's rules of civil procedure will apply; but, since the foreclosure action will be a proceeding in rem, some additional notice and service provisions may be available. Additionally, a state will often require that a lis pendens be filed conjunctively with the foreclosure action. (156)

[4]--Priority of Mineral Liens in Relation to Other Claims.

The advantage of a mineral lien, as mentioned before, is that its priority normally relates back to the commencement of the activity giving rise to the lien. This early priority date allows the mineral lien to preempt security interests created in the intervening period. Additionally, the statute may provide that the liens of a preferred class such as laborers preempt even other lien claims. (157) New York is a major exception to the relation back rule: the lien's priority attaches only at the time of filing of a notice of lien. (158)

Generally, mineral liens will be superior to mortgages if the work or supplying of materials began before the mortgage was recorded. (159) Some priority questions may exist when mortgages or security agreements recorded or filed before the priority date of a lien include after-acquired clauses. Courts appear to grant priority to a mechanic's or mineral lien in this situation. (160) West Virginia's lien has a provision determining priority in situations where a lender extends money only as development proceeds, but the loan is secured by a previous mortgage with an after-acquired property clause. (161) A future loan in West Virginia secured by a prior mortgage will have priority over a subsequent mechanic's lien if the lending party was contractually obligated to advance the loan money.

Mortgages also typically attach to proceeds from the subject property, and conflicts may arise in states that allow liens on proceeds of production. The lien claimant can attach the proceeds until the mortgagee takes some action to possess the proceeds. (162) This result is possible because the mortgagee is construed to have constructive notice of the lien, allowing the lien to be superior simply by knowing that there is an operator in possession of a leased premises.

When there are more than one mechanics' and mineral liens on a property, the lien statute usually disregards the date of priority among the liens and requires the liens to share pro rata in the proceeds of the foreclosure sale. (163) If the statute, however, establishes preferred classes among lien claimants, the pro rata sharing will occur within each class. (164) Once the claims of a preferred class are satisfied, the remaining proceeds are distributed pro rata among the remaining lienholders. Intervening security interests may destroy the priority of liens with subsequent priority dates so that they do not participate in the pro rata sharing.

One should bear in mind that there are several other types of liens that can be asserted against oil and gas property, most notably tax liens. (165) Federal and state law may confer preference on these liens, so claimants should be familiar with the possibility of these liens being asserted.

[5]--The Effect of Bankruptcy.

Any situation involving unpaid debt also has looming the specter of bankruptcy and its automatic stay. Bankruptcy's automatic stay prohibits "any act to create, perfect, or enforce any lien against property of the
which would seem to preclude the filing of a lien statement and leave a lien claimant as an unsecured creditor. Section 546(b) of the Bankruptcy Code, however, states that the rights of the trustee are "subject to any generally applicable law that permits perfection of an interest in property to be effective against an entity that acquires rights in such property before the date of such perfection." One commentator has noted that this section would allow a creditor to perfect a mechanic's or mineral lien as an exception to the automatic stay where the claimant has the right to perfect the lien but has not filed the lien statement at the time of bankruptcy.

Even if the filing of a lien statement is allowed, the lien claimant must endure the bankruptcy process before its liens can be satisfied. The automatic stay will prevent foreclosure of the lien, even though the claimant can achieve the exalted status of secured creditor by filing a lien statement of the bankruptcy filing.

§ 15.07. Avoiding Mineral Liens.

[1]--Defenses.

Defenses are very limited. Most disconcerting is that payment to a general contractor is not a defense to lien claims by subcontractors, materialmen, and laborers. The most helpful defenses may be that the lien claimant did not correctly follow necessary procedures, timely file a lien statement, or enforce the lien within the allowed time.

[2]--Bonds.

An owner can eliminate the stifling effect of a lien in many states by posting a bond. Statutes may allow the filing of a bond by the owner to release a lien. Other participants in oil and gas development may want to consider requiring some assurance by way of escrowed funds or performance bonds to avoid the need to later pursue or defend against a mineral lien.

[3]--Other Procedures.

Some states have provisions allowing an owner of property subject to a lien to submit to the lienholder a notice to commence suit. If the lienholder does not commence an action to enforce the lien within the specified time, the lien is forfeit.

Ohio allows an owner to demand a written statement that accurately itemizes the amount of work and materials furnished. If the lien claimant does not comply with the demand within ten days, the lien is forfeit.

In Pennsylvania, an owner may file preliminary objections to the lien on the grounds of exemption, immunity, or lack of conformity with the lien statutes. Other states have similar procedures whereby the owner can challenge the lien.

§ 15.08. Conclusion.

Mechanics' liens have been adapted to supply security to laborers, contractors, subcontractors, and materialmen in oil and gas development. Even with lien statutes tailored to the oil and gas context and courts liberally construing provisions for application to oil and gas properties, a variety of situations remain whose resolution may prove uncertain. The prudent mineral development participant must carefully assess its own position under the lien laws of each state in which it works or owns an interest to determine what its actual rights or liabilities might be. Liens should not be carelessly considered to be a solid security device
by creditors without a serious look at their applicability and scope. Owners of oil and gas interests cannot rely on disclaimers and waivers to avoid the possibility of liens. All parties need to consider carefully the potential applicability of mineral liens for each specific case and act accordingly.


7. 7. Notice must be provided, however, to third parties. 5 American Law of Mining § 29.1 (2d. ed. 1983). This usually would be accomplished by recording the instrument creating the lien if one exists.


18. 2. West Virginia has seven statutes that cover the types of legal relationships that normally arise in a construction setting. W. Va. Code §§ 38-2-1 to -6, 38-2-31 (1985).


21. 5. See text, infra, at § 15.03[1][b].


26. 10. Minn. Stat. § 514.17 (1990); S.C. Code Ann. § 29-11-10 (Law. Co-op. 1991). The Minnesota statute grants a lien on the interest of a mine owner or lessee to those performing labor at the request of the owner or lessee or their contractor. The South Carolina statute grants a lien only on the output of the mine.

27. 11. A California court, however, has held that an oil and gas lease can be regarded as a mining claim within the meaning of this type of statute. Berentz v. Belmont Oil Co., 84 P. 47 (Cal. 1906).

28. 12. Arkansas' statute gives superior status to the lien of a "common laborer," which it describes as "persons actually performing manual labor in the drilling, operating, completing, equipping, maintaining, and repairing oil or gas wells . . . and persons hauling supplies or machinery to be used in the drilling, operating, equipping, maintaining, or repairing of any oil or gas wells." Ark. Stat. Ann. § 18-44-207. See Salisbury v. Lane, 63 P. 383 (Id. 1900).

29. 13. E.g., Fla. Stat. Ann. § 713.803 (allowing lien for labor and materials, whether furnished on or off the oil and gas land or leasehold).

30. 14. See N.Y. Lien Law § 2(12) (1990); Ohio Rev. Code Ann. § 1311.021(A). New York's general mechanics lien law describes a "materialman" as "any person who furnishes material or the use of machinery, tools, or equipment, or compressed gases for welding or cutting, or fuel or lubricants for the operation of machinery or motor vehicles, either to an owner, contractor, or subcontractor, or in the prosecution of such improvement." N.Y. Lien Law § 2(12). New York then lists a materialman as one of several classes of persons eligible to claim a mechanics lien. N.Y. Lien Law § 3.

31. 15. E.g., Fla. Stat. Ann. § 713.803; Ohio Rev. Code Ann. § 1311.021. Florida, which has a broad statutory mineral lien, defines "material" as "any machinery, equipment, appliances, buildings, structures, tools, bits, or supplies used in connection with any construction, drilling, or operating upon any land or leasehold for oil or gas purposes or for any oil or gas pipeline." Fla. Stat. Ann. § 713.801(3).


32. 16. However, a materialman to a subcontractor is entitled to a lien. See 68 Ohio Jur. 3d, Mechanics' Liens § 40.


38. 22. See Taylor v Murphy, 23 A. 1134 (Pa. 1892).

39. 23. See, infra, at § 15.05[1] n.3 and § 15.05[2] n.4 and accompanying text.


43. 27. The New York lien law is typical of the ambiguity of requiring an "improvement" for an oil and gas property. The New York statute employs several lines to define "improvement." N.Y. Lien Law § 2(4). The definition includes activities not always consistent with the "enhancement" of property value: the "demolition, erection, alteration, or repair of any structure." The remainder of the definition is helpful in that it lists several lienable activities, but the definition is ultimately somewhat tautological because it relates these activities to an "improvement."


45. 29. An Ohio court, interpreting an oil and gas lien statute that listed lienable activities, held that a lien attached to a lease and its existing producing well in favor of a contractor who drilled a nonproducing well. Moran v. Johnson, 107 N.E.2d 401 (Ohio Int. App. Ct. 1952). Even though the nonproducing well did not add to the property's value, the lien was created because the lien statute listed well drilling as a lienable activity.

46. 30. For example, Michigan's mineral lien statute allows liens on a contract for

the drilling, boring, torpedoing, acidizing, completing, operating, or repairing of any oil or gas well, or for the constructing or repairing of any oil or gas derrick, oil tank, gas pipe line, or oil pipe line, perform any labor or furnish any materials, machinery, tools, equipment, fuel, explosives, acid, or oil or gas well supplies or other things of value used in the drilling, torpedoing, acidizing, completing, operating, or repairing of any oil or gas well, or who shall furnish any oil or gas well supplies, or other things of value or perform any labor in constructing or putting together any of the apparatus, fixtures or machinery used in the drilling, boring, torpedoing, acidizing, operating, completing, or repairing of any oil or gas well, or who shall furnish any material, equipment, machinery, supplies or other things of value or perform any labor for constructing, operating or repairing any oil pipe line or gas pipe line, oil or gas derrick or oil tank.


52. 36. See Caird Eng'g Works v. Seven-Up Gold Mining Co., 111 P.2d 267 (Mont. 1941).


57. 41. See Lehigh Structural Steel Co. v. Joseph Langner, Inc., 43 So. 2d 335 (Fla. 1949).


59. 43. See C.F. Dahlberg & Co., Inc. v. Chevron U.S.A., Inc., 836 F.2d 915 (5th Cir. 1988) (Galvanizer of steel pieces incorporated into offshore oil well drilling platform had lien even though galvanization was not done on the drill site.); 68 Ohio Jur. 3d, Mechanics' Liens § 53. New York grants a mechanic's lien for "materials actually manufactured for [real property] but not delivered." N.Y. Lien Law § 3.

60. 44. See Baker Chemicals, Inc. v. Arkla Exploration Co., 545 So. 2d 709 (La. Int. App. Ct. 1989), writ denied, 550 So. 2d 632 (La. 1989), where a supplier of mud drilling equipment was not entitled to a lien because the supplier delivered the equipment to a warehouse, not the drill site, and expected payment from the warehouse and not the exploration company.


64. 48. In its definition of "improvement," New York includes "the drawing, by any architect or engineer or surveyor, of any plans or specifications or survey, which are prepared for or used in connection with such improvement [of real property]." N.Y. Lien Law § 2(4). In Kentucky, engineers may be able to claim a lien for their services. Ky. Rev. Stat. Ann. § 376.075. Pennsylvania includes in its definition of "contractor" architects and engineers who superintend or supervise erection, construction, alteration, or repair of structures or improvements. Pa. Stat. Ann. tit. 49, § 1201(4).

65. 49. E.g., N.Y. Lien Law § 2.


70. 54. 341 P.2d 207 (Utah 1959).

71. 55. Id. at 211.


77. 61. See Ill. Rev. Stat. ch. 82, § 501(5).


West Virginia is an exception to this general rule and allows the lien to attach only to the specific property that is being improved. For example, in Kanawha Oil & Gas Co. v. Wenner, 76 S.E. 893 (W. Va. 1912), the court allowed a foreclosure sale of only a well and its ten surrounding acres to pay the lien, even though the entire leasehold covered 5,000 acres. One West Virginia provision allows only that amount of rural land as "shall be reasonably necessary to the full enjoyment or improvement of such building or improvement" to be subject to the lien. W. Va. Code § 38-2-25.


86. 7. Ill. Rev. Stat. ch. 82, § 503(B).

87. 8. Ark. Stat. Ann. § 15-72-312. This operator's lien is presumably separate from and in addition to Arkansas' mineral lien.


89. 10. Ill. Rev. Stat. ch. 82, § 505.


In Young v. Hill, 57 S.W.2d 470 (Ky. 1933), a laborer sued a co-owner of a working interest for the value of his labor on the lease. The plaintiff, however, sued in personam, and the court held the co-owner was not liable as a partner of the operating party, who contracted with the laborer. The court then added, "Perhaps it might have been otherwise had [the plaintiff] pursued the statutes respecting laborer's liens." Id. at 471. Consequently, although an interest owner may not be liable personally for the debt, its interest may still be subject to the lien.


94. 15. 511 N.E.2d at 727.

95. 16. Kinne v. Duncan, 43 N.E.2d 425 (Ill. Int. App. Ct. 1942) (holding that a co-owner's interest in an oil and gas lease was not
subject to liens brought about by another co-owner).

96. 17. John Carey, 511 N.E.2d at 731.


99. 20. Mud Control Laboratories, 269 P.2d at 854.


101. 22. Cf. Adair v. Transcontinental Oil Co., 338 P.2d 79 (Kan. 1959); Dunlap v. Hinkle, 317 S.E. 2d 508 (W. Va. 1984). In Adair, the conditional vendee received the benefits of the drilling of the well because he was to be paid out of the proceeds and retain control over plugging, abandonment, and sale of the equipment. In addition, the Kansas court believed that the implied covenant to develop created an obligation which made the vendee the agent of the vendor, and, consequently, subject to mineral liens. Since the covenant to develop may only be created if the vendee chooses to undertake the obligation to develop, this reasoning seems questionable. In fact, the court recognized the general rule that the conditional vendee, i.e. farmee, usually is not considered to be the agent of the owner unless it is operating the lease for the owner's benefit.

102. 23. See Zone Oil & Gas Co. v. Dudley & Heath Drilling Co., 474 P.2d 395, 399 (Okla. 1970) ("[O]il runs should not be used to pay the purchase price of a lease assignment ahead of liens which made the oil runs possible in the first instance.").

103. 24. See Lakeview Drilling Co. v. Stark, 310 P.2d 627, 630 (Ore. 1957). Florida's mineral lien is rare in that one of its provisions specifically addresses farmout agreements and subjects to a lien the "leasehold interest or that portion thereof covered by [a] . . . farmout agreement."

104. 25. See Mich. Comp. Laws Ann. § 26.423(1) (Lien attaches to "leasehold or premises for which said [drilling] material and supplies were furnished or labor performed.").


108. 29. 49 S.E. 448 (W. Va. 1904).

109. 30. This case, in conjunction with Kanawha Oil & Gas v. Wenner, 76 S.E. 893 (W. Va. 1912), holding an oil well itself to be a lienable "structure" under the mechanics lien statute, would effectively subject an entire drill site to the lien.


111. 32. See Roberts v. Tice, 129 S.W.2d 258 (Ark. 1939).


113. 34. N.Y. Lien Law § 2(2).

114. 35. See Annotation, Interest of Owner of Land as Subject to Lien for Material or Service Engaged by Holder of Mineral


116. 37. See, supra, at § 15.04[1][b] n.22.


118. 39. See American Nat'l Bank v. Dux, 691 S.W.2d 851 (Ark. 1985); Annotation, Assertion of Statutory Mechanic's or Materialman's Lien Against Oil and Gas Produced or Against Proceeds Attributable to Oil and Gas Sold, 59 A.L.R.3d 278 (1974).


120. 41. Ill. Rev. Stat. ch. 82, ¶ 515.


125. 46. [See Sykes, "Representing Secured Creditors in Oil and Gas Transactions From Boom to Bankruptcy," 7 Eastern Min. L. Inst. ch. 17 (1986)--Ed.]


133. 2. In Kentucky, a claimant who has not contracted directly with the owner or its agent must furnish notice to the owner of the claimant's intention to claim a lien and the amount of debt. Ky. Rev. Stat. Ann. § 376.010(3), 4).

In Ohio, the general contractor must furnish the owner with sworn statements showing unpaid laborers, subcontractors, and materialmen along with the amount ultimately due them. These statements must also be accompanied by materialmen's certificates and sworn statements from each subcontractor. Ohio Rev. Code Ann. § 1331.04.

134. 3. W. Va. Code § 38-2-5 (subcontractors must furnish notice to owners within 60 days of last work or delivery).
Pennsylvania requires that subcontractors furnish two notices to the owner before filing a lien claim. The first notice must be furnished before completion of the subcontractor's work to permit the owner to withhold funds from the general contractor. The second notice must be furnished 30 days before the subcontractor files its lien statement. Pa. Stat. Ann. tit. 49, §§ 1501, 1502.


136. 5. Fla. Stat. Ann. § 713.819 (No more than 90 day interval allowed between work performed or materials supplied); Ill. Rev. Stat. ch. 82, § 509 (4 month interval); Mich. Comp. Laws Ann. § 26.423(1) (3 month interval); see Will B. Miller Co. v. Laval, 140 S.W.2d 376 (Ky. 1940).

137. 6. See Drummy v. Stern, 269 S.W. 2d 198 (Ky. 1954); Bank of Follansbee v. Follansbee Lumber Co., 248 F. 645 (4th Cir. 1918).


139. 8. Typically, statutes specify a time after filing a lien statement in which an action to enforce the lien must be filed. If the claimant does not commence an action, the lien expires. See text, infra, at § 15.06.


141. 10. N.Y. Lien Law § 3.

142. 11. N.Y. Lien Law § 10(1).


145. 14. See Phillips v. Salmon River Mining & Dev. Co., 72 P. 886 (Id. 1903); Annotation, Sufficiency of Notice, Claim, or Statement of Mechanic's Lien with Respect to Description or Location of Real Property, 52 A.L.R.2d 12 (1957).


152. 2. See Grant v. Cumberland Valley Cement Co., 52 S.E. 36 (W. Va. 1905).


155. 5. In Pennsylvania, a final judgment must be entered within five years or the claim is wholly lost. Pa. Stat. Ann. tit. 49, § 1701.


157. 7. N.Y. Lien Law § 13 (liens for wage earners have preference over all other claims); Ohio Rev. Code Ann. §§ 1311.13(A), .15 (manual laborers have priority for labor performed 30 days immediately preceding date of the performance of the last labor; laborer liens are superior to subcontractor liens, which are superior to contractor liens).

158. 8. N.Y. Lien Law § 3.


In Kentucky, mortgages have priority over mechanics liens, even mortgages given after a lien attaches, unless (1) the lienholder provided constructive notice by recording a preliminary statement prior to the mortgage; (2) the lien statement is recorded prior to the recording of the mortgage; (3) the mortgagee has actual notice of the lien claim; or (4) the mortgage was not given for value. Ky. Rev. Stat. Ann. § 376.010(2).


164. 14. W. Va. Code § 38-2-18 (laborers and materialmen have first priority, subcontractors have second priority, and general contractors have last priority).

165. 15. For a survey of the possible liens that can be asserted against oil and gas property, see Beard & Morris, "Lien Assertions: A Re-awakened Interest in the Mineral Industry," 2 J. Min'l L. & Pol'y 131 (1986).


168. 18. Gandy, "Creditors' Rights & the Oil & Gas Venture for the Nonbankruptcy Expert," 34 Inst. on Oil & Gas L. & Tax'n 1, 26 (1983).

169. 1. New York provides an exception to this rule if the owner pays the general contractor in full before a lien statement is filed. See text, supra, at § 15.05[2] n.12.

170. 2. Ohio Rev. Code Ann. § 1311.11 (lien claimant has 60 days to institute suit).


173. 5. See N.Y. Lien Law § 19 (motion to discharge).