

CHAPTER 45
MECHANICS' NOTICE AND LIEN REGISTRY

721—45.1(572) General provisions.

45.1(1) Scope. This chapter applies to the creation and administration of a mechanics' notice and lien registry under Iowa Code chapter 572. All mechanics' liens filed on or after January 1, 2013, must be posted in the office of the administrator in accordance with these rules. The residential notice provisions of these rules apply to labor performed and materials supplied on or after January 1, 2013.

Mechanics' liens filed prior to January 1, 2013, shall remain with the clerk of the district court of the county in which the building, land, or improvement charged with the lien is situated.

Rules 721—45.4(572) and 721—45.5(572) apply only to residential construction. All other rules in this chapter apply to both residential and commercial construction.

45.1(2) Definitions. The following terms shall have the respective meanings provided in this rule.

“Administrator” means the secretary of state.

“Building” shall be construed as if followed by the words “erection, or other improvement upon land.”

“Claimant” means a person entitled to a lien under Iowa Code chapter 572.

“Filing office” means the office of the secretary of state. The address of the office is Lucas State Office Building, First Floor, 321 East 12th Street, Des Moines, Iowa 50319.

“General contractor” means every person who does work or furnishes materials by contract, express or implied, with an owner. “General contractor” does not include a person who does work or furnishes materials on contract with an owner-builder.

“Index” means the categories by which a posting may be searched and retrieved.

“Labor” means labor completed by the claimant.

“Material,” in addition to its ordinary meaning, includes machinery, tools, fixtures, trees, evergreens, vines, plants, shrubs, tubers, bulbs, hedges, bushes, sod, soil, dirt, mulch, peat, fertilizer, fence wire, fence material, fence posts, tile and the use of forms, accessories, and equipment furnished by the claimant.

“Mechanics' notice and lien registry” or *“MNL”* means a centralized computer database maintained on the Internet by the administrator that provides a central repository for the submission and management of preliminary notices, notices of commencement of work on residential construction properties, and mechanics' liens on all construction properties.

“Mechanics' notice and lien registry number” or *“MNL number”* means a number provided by the administrator for all construction properties posted to the mechanics' notice and lien registry.

“Owner” means the legal or equitable titleholder of record.

“Owner-builder” means the legal or equitable titleholder of record who furnishes material for or performs labor upon a building, erection, or other improvement, or who contracts with a subcontractor to furnish material for or perform labor upon a building, erection, or other improvement and who offers or intends to offer to sell the owner-builder's property without occupying or using the structures, properties, developments, or improvements for a period of more than one year from the date the structure, property, development, or improvement is substantially completed or abandoned.

“Owner notice” means notification to the owner.

“Post” or *“posting”* means to enter notices, liens and any other document on the mechanics' notice and lien registry.

“Residential construction” means construction on single-family or two-family dwellings occupied or used, or intended to be occupied or used, primarily for residential purposes, and includes real property pursuant to Iowa Code chapter 499B.

“Subcontractor” means every person furnishing material or performing labor upon any building, erection, or other improvement, except those having contracts directly with the owner. “Subcontractor” shall include those persons having contracts directly with an owner-builder.

“Submit” or *“submission”* means to mail, fax, or deliver by person or courier a paper document.

[ARC 0464C, IAB 11/28/12, effective 1/2/13]

721—45.2(572) Creation of mechanics' notice and lien registry. The administrator shall create and administer a mechanics' notice and lien registry, hereafter known as the MNLR.

45.2(1) Access to MNLR by the general public. The MNLR shall be accessible to the general public through the administrator's Web site at www.sos.iowa.gov/mnlr. A notice, lien or any other document posted is immediately accessible to the general public.

45.2(2) MNLR searchable by index. The MNLR shall be searchable by the following indexes:

- a. Owner name.
- b. General contractor name.
- c. MNLR number.
- d. Property address.
- e. Legal description.
- f. Tax parcel identification number.
- g. County.

45.2(3) Acknowledgment of receipt. The administrator shall provide a receipt acknowledging submission of a notice if the submission of information is by U.S. mail, facsimile transmission, personal delivery or courier delivery, or acknowledging submission of a lien if the submission of information is by U.S. mail. The acknowledgment shall be sent to the e-mail address provided by the person submitting the required information to post a notice or lien.

45.2(4) MNLR user registration. To post information on the MNLR Internet Web site, the person must register as a user on the MNLR. Procedures for MNLR user registration and allowed use of the MNLR shall be posted on the administrator's Web site.

[ARC 0464C, IAB 11/28/12, effective 1/2/13]

721—45.3(572) Administrator identification. In addition to the promulgation of these rules, the administrator will disseminate the administrator's location, mailing address, telephone and facsimile numbers and the administrator's Internet and other electronic "addresses" through usual and customary means.

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721—45.4(572) Posting of notice of commencement of work.

45.4(1) Posting by general contractor. A general contractor for residential construction shall post a notice of commencement of work to the MNLR within ten days of commencement of work, or the general contractor is not entitled to a lien or remedies provided in Iowa Code chapter 572.

45.4(2) Information in notice of commencement of work. The information provided shall, at a minimum, include:

- a. The name and address of the owner.
- b. The name, address and telephone number of the general contractor or owner-builder.
- c. The address of the property or a description of the location of the property if the property cannot be reasonably identified by an address.
- d. The legal description of the property.
- e. The date work commenced.
- f. The tax parcel identification number.
- g. The county in which the building, land, or improvement to be charged with the lien is situated.
- h. The e-mail address of the person posting or submitting the notice of commencement of work or the e-mail address of another individual or entity designated to receive electronic correspondence on behalf of this person.

45.4(3) Commencement of work owner notice. At the time a notice of commencement of work is posted on the MNLR, the administrator shall mail a written owner notice to the owner's address. If the owner's address is different than the property address, a copy of the notice shall also be sent to the property address, addressed to the owner.

a. The owner notice shall be in boldface type and of a minimum size of ten points and contain the following language:

“Persons or companies furnishing labor or materials for the improvement of real property may enforce a lien upon the improved property if they are not paid for their contributions, even if the parties have no direct contractual relationship with the owner. The mechanics’ notice and lien registry provides a listing of all persons or companies furnishing labor or materials who have posted a lien or who may post a lien upon the improved property. If the person or company has posted its notice or lien to the mechanics’ notice and lien registry, you may be required to pay the person or company even if you have paid the general contractor the full amount due. Therefore, check the mechanics’ notice and lien registry internet website for information about the property including persons or companies furnishing labor or materials before paying your general contractor. In addition, when making payment to your general contractor, it is important to obtain lien waivers from your general contractor and from persons or companies registered as furnishing labor or materials to your property. The information in the mechanics’ notice and lien registry is posted on the internet website of the mechanics’ notice and lien registry.”

b. The owner notice shall include the MNLR Internet Web site address and MNLR toll-free telephone number.

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721—45.5(572) Posting of preliminary notice.

45.5(1) Posting by subcontractor.

a. A subcontractor for residential construction who has provided or will provide labor or furnish material for residential construction shall post a preliminary notice to the MNLR, or the subcontractor is not entitled to a lien or remedies provided in Iowa Code chapter 572.

b. Prior to the posting of a preliminary notice, a notice of commencement of work must be posted on the MNLR. If the general contractor or owner-builder has not posted a notice of commencement of work on the MNLR within ten days of commencement of work on the property, then the subcontractor may post a notice of commencement of work on the MNLR prior to posting the preliminary notice. In order to post a notice of commencement of work on the MNLR, the subcontractor must comply with subrule 45.4(2).

45.5(2) Contents of preliminary notice. The information provided by the subcontractor shall, at a minimum, include:

- a. The name of the owner.
- b. The MNLR number.
- c. The name, address and telephone number of the subcontractor furnishing the labor, service, equipment, or material.
- d. The name and address of the person who contracted with the claimant for the furnishing of the labor, service, equipment, or material.
- e. The name of the general contractor or owner-builder under which the claimant is performing or will perform the work.
- f. The address of the property or a description of the location of the property if the property cannot be reasonably identified by an address.
- g. The legal description of the property.
- h. The date the material or materials were first furnished or the labor was first performed.
- i. The tax parcel identification number.
- j. The county in which the building, land, or improvement to be charged with the lien is situated.
- k. The e-mail address of the subcontractor or the e-mail address of another individual or entity designated to receive electronic correspondence on behalf of the subcontractor.

45.5(3) Preliminary notice owner notice. At the time that a preliminary notice is posted on the MNLR, the administrator shall mail a written owner notice, as provided in paragraphs 45.4(3) “a” and 45.4(3) “b,” to the owner’s address. An owner-builder shall not receive an owner notice.

45.5(4) Proof of service of owner notice. The administrator shall post a proof of service on the MNLN. The subcontractor may obtain a copy by downloading the proof of service from the record of postings by MNLN number.

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721—45.6(572) Posting of mechanic's lien.

45.6(1) Posting of mechanic's lien. A person must post on the MNLN a verified statement of account of the demand due the person, after allowing all credits.

45.6(2) Contents of the statement of account. The verified statement of account provided by the person shall include:

- a. The date when such material was first furnished or labor first performed, and the date on which the last of the material was furnished or the last of the labor was performed.
- b. The legal description of the property to be charged with the lien.
- c. The name and last-known mailing address of the owner of the property.
- d. The address of the property or a description of the location of the property if the property cannot be reasonably identified by an address.
- e. The tax parcel identification number.

45.6(3) Mechanic's lien owner notice. At the time that a lien is posted on the MNLN, the administrator shall mail a copy of the lien to the owner's address. The owner notice shall include the MNLN Internet Web site address and MNLN toll-free telephone number.

45.6(4) Identification of lien county. A lien posted to the MNLN under this rule shall be limited to the county in which the building, land, or improvement to be charged with the lien is situated. The county identified on the MNLN Web site at the time of posting the required notices in rules 721—45.4(572) and 721—45.5(572) shall be the only county in which the building, land, or improvement may be charged with a mechanic's lien.

45.6(5) Lien information contained in posting. The liens posted on the MNLN shall contain the following items:

- a. The name of the person by whom posted.
- b. The date and hour of posting.
- c. The amount thereof.
- d. The name of the person against whom the lien is posted.
- e. The legal description of the property to be charged.
- f. The tax parcel identification number of the property to be charged.
- g. The address of the property or a description of the location of the property if the property cannot be reasonably identified by an address.

45.6(6) Additional information for posting of a mechanic's lien for commercial property. The person posting the mechanic's lien for a commercial property must register as a user with the MNLN and must provide the following additional information:

- a. The name and mailing address of the owner.
- b. The name, address and telephone number of the general contractor or owner-builder.
- c. The county in which the building, land, or improvement to be charged with the lien is situated.
- d. The e-mail address of the person posting or submitting the mechanic's lien or the e-mail address of another individual or entity designated to receive electronic correspondence on behalf of the person posting the lien.

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721—45.7(572) Forfeiture and cancellation of mechanics' liens.

45.7(1) Demand for acknowledgment of satisfaction of claim.

a. When a mechanic's lien is satisfied by payment of the claim, the claimant may post acknowledgment of that satisfaction on the MNLN.

b. If the claimant fails to acknowledge satisfaction by posting, the owner, general contractor or owner-builder may personally serve the claimant with a written demand that the claimant post the acknowledgment of satisfaction on the MNLN. If the claimant fails to post the acknowledgment of

satisfaction within 30 days of when the demand is served, the mechanic's lien is forfeited and canceled upon the posting of a copy of the demand and the posting of endorsed proofs of service.

45.7(2) Posting of demand to commence action to enforce the lien. The owner may serve a written demand on the claimant demanding that the claimant commence action to enforce the lien. If the claimant fails to commence action to enforce the lien within 30 days of receipt of the written demand, the owner may post a copy of the demand to commence action and the endorsed proofs of service. Completion of these requirements provides constructive notice to all parties that the lien has been canceled.

45.7(3) Notice to both parties. At the time that a demand is posted on the MNLR, the administrator shall mail a date- and time-stamped copy of the demand to both parties.

[ARC 0464C, IAB 11/28/12, effective 1/2/13]

721—45.8(572) Discharge of mechanic's lien by submission of a bond.

45.8(1) Submission or posting of a bond. Any person may submit a bond to the administrator or post a bond to discharge a mechanic's lien. The submitter of the bond shall provide the MNLR number so that the administrator can determine to which lien to apply the bond.

45.8(2) Acceptance of a bond. The administrator may accept a bond in twice the amount of the sum for which the claim for the lien is filed, with surety or sureties authorized to issue surety bonds in this state.

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721—45.9(572) Action against general contractor or owner-builder to recover amount due.

45.9(1) Giving of a bond. The general contractor or owner-builder may post or submit a surety bond to the administrator for purposes of preventing exemplary damages under Iowa Code section 572.30. The bond shall be in an amount not less than the amount necessary to satisfy the nonpayment for which the notice has been given, and in a form set forth by Iowa Code section 572.30.

45.9(2) Acceptance of a bond. The administrator shall accept a bond in an amount and form set forth by Iowa Code section 572.30.

[ARC 0464C, IAB 11/28/12, effective 1/2/13]

721—45.10(572) Delay by administrator. Delay by the administrator beyond a time limit prescribed in these rules is excused if:

1. The delay is caused by interruption of communication or computer facilities, war, emergency conditions, failure of equipment, or other circumstances beyond the control of the administrator.

2. The administrator exercises reasonable diligence under these circumstances.

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721—45.11(572) Nondisclosure of MNLR information. The following information, provided in compliance with this chapter, shall not be viewed as a public record under Iowa Code chapter 22 and shall not be disclosed by the administrator:

1. An e-mail address.

2. MNLR user account or payment information.

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721—45.12(572) Obligation to update information. The administrator may use e-mail for official correspondence with a registered user, except when law requires delivery by U.S. mail. If the registered user wants to receive timely notice by the administrator, it is the obligation of the registered user to update the user's contact information on the MNLR.

[ARC 0464C, IAB 11/28/12, effective 1/2/13]

721—45.13(572) Fees and services.

45.13(1) Fee for posting and mailing. The following fees shall be charged for posting on the MNLR and for the mailing of notices:

a. The fee for posting a notice of commencement of work using the Internet Web site is \$7. The fee for posting a notice of commencement of work by submitting the notice to the administrator by U.S. mail, facsimile, personal delivery or courier delivery is \$10.

b. The fee for posting a preliminary notice on the MNLN using the Internet Web site is \$7. The fee for posting a preliminary notice by submitting the notice to the administrator by U.S. mail, facsimile, personal delivery or courier delivery is \$10.

c. The fee for posting a mechanic's lien using the Internet Web site is \$30. The fee for posting a mechanic's lien by submitting the lien to the administrator by U.S. mail is \$40.

d. The fee for mailing a copy of the demand for acknowledgment is \$5 per party's mailing address.

e. The fee for mailing a copy of the demand to commence action is \$5 per party's mailing address.

f. The fee for posting a correction statement is \$5 to mail a new owner notice.

45.13(2) Searching the MNLN. A search of the MNLN by index list is available at no cost via the administrator's Web site. Any person may search the MNLN without registering as an MNLN user. When a search of the MNLN is performed by the administrator, the following fees apply:

a. The fee for an MNLN search request is \$5. The search will only be performed if an MNLN number is provided by the requester. Other than by MNLN number, no other search will be performed by the administrator. The request may be made by verbal communication, on paper, by facsimile, or by e-mail. The search provides the requester with a copy of the summary of postings for the provided MNLN number, and an estimate of the cost to obtain a paper copy of the documents listed on the summary of postings.

b. The fee for a paper copy of a document posted on the MNLN is:

(1) \$1 per page, delivered by U.S. mail.

(2) \$2 per page, delivered by facsimile machine.

Documents will not be delivered via e-mail.

45.13(3) Public records services. Public records services are provided on a nondiscriminatory basis to any member of the public on the terms described in these rules. The following fees shall be charged for obtaining copies of MNLN documents and copies of data from the MNLN information management system, as generated and provided by the administrator, by the following methods:

a. Paper copies of individual documents. The requester must provide the MNLN document number.

(1) U.S. mail delivery — \$1 per page.

(2) Facsimile delivery — \$2 per page.

Documents will not be delivered via e-mail.

b. Data download.

(1) Subscription service that allows a subscriber to electronically receive data fields via a spreadsheet format (unlimited downloads): \$500 annual fee, renewable January 1 each year. For subscribers, bulk copies of PDF images of postings may be purchased for 4 cents per document, delivered to the subscriber on a computer disk.

(2) One-time full extract of data for a calendar year via download: up to \$1,000 per year. In addition to the purchase of the download, a requester for full data extract may purchase a copy of all PDF images of postings for the calendar year for 4 cents per document, delivered to the requester on a computer disk.

45.13(4) Methods of payment. Fees for posting, mailing, and searching rendered by the administrator may be paid to the administrator by the following methods:

a. Check. Checks made payable to administrator, including checks in an amount to be filled in by the administrator but not to exceed a particular amount, will be accepted for payment if they are cashier's checks or certified checks drawn on a bank acceptable to the administrator or if the drawer is acceptable to the administrator.

b. Electronic funds transfer. The administrator may accept payment via electronic funds transfer under National Automated Clearing Housing Association (NACHA) rules from persons who have entered into appropriate NACHA-approved arrangements for such transfers and who authorize the relevant transfer pursuant to such arrangements and rules.

c. Accounts receivable. Payment for services shall be in accordance with rule 721—2.3(17A).

d. Credit card. The administrator may accept payments made by credit card issued by an approved credit card issuer.

45.13(5) Receipt of required fees verified.

a. A receipt of the required fee must be verified by the administrator to post to the MNLR. The administrator may reject a submission or posting; or post a withdrawal statement on the MNLR if the administrator is notified of insufficient funds, a disputed credit card charge, or other failure. A posting rejected for insufficient funds shall be identified as such by the administrator on the MNLR. If a posting is withdrawn by the administrator for failure to pay the required fee, the MNLR document number will be unavailable to select for posting a mechanic's lien; the original posting with funds verified may be reposted by the MNLR user.

b. In order for the administrator to provide a requested copy of an MNLR search or public record, receipt of the required fee must be verified by the administrator.

45.13(6) Overpayment and underpayment policies.

a. The administrator shall refund the amount of an overpayment exceeding \$15, less the administrative cost of processing a refund.

b. Upon receipt of a submission with an insufficient fee, the administrator shall return the document as provided in rule 721—45.14(572). A refund of partial payment may be included with the document or delivered under separate cover.

[ARC 0464C, IAB 11/28/12, effective 1/2/13]

721—45.14(572) Grounds for refusal of a posting or submission. A posting or submission may be refused by the administrator on the following grounds:

1. A posting or submission does not provide complete information as required under subrule 45.4(2) for a notice of commencement of work, subrule 45.5(2) for a preliminary notice, subrules 45.6(2) and 45.6(5) for a mechanic's lien, or subrules 45.6(2), 45.6(5) and 45.6(6) for a mechanic's lien for a commercial property;

2. A submission does not include an MNLR number, except for a submission for which the form provided by the administrator does not require an MNLR number;

3. The required fee is not paid for a submission or posting or the fee paid for the submission or posting is insufficient;

4. A submission is not on a form provided by the administrator for the purpose of performing the requested posting; or

5. A submission is not legible, as determined by the administrator.

Additional grounds for the administrator's refusal to accept an MNLR document for posting may be established by policy. The policy shall be noticed to the public by the posting of the policy on the MNLR Web site.

[ARC 0464C, IAB 11/28/12, effective 1/2/13]

721—45.15(572) Posting of a filing office statement, correction statement, or withdrawal statement.

45.15(1) Filing office statement. The administrator may post a filing office statement to correct information that was incorrectly transcribed from a paper submission.

45.15(2) Correction statement. A correction statement for a commencement of work or a preliminary notice is an electronic posting by a registered MNLR user. A correction statement does not allow for a change in the county where the building, land or improvement to be charged with the lien is situated; in the date of the commencement of work; or in the date that material was first furnished or labor was first performed by the subcontractor.

45.15(3) Withdrawal statement.

a. A withdrawal statement of an original posting of a notice or lien shall be made by the general contractor, owner-builder, or subcontractor, or party authorized on behalf of the original party, who originally posted the record on the MNLR. The MNLR number is required at the time the withdrawal statement is posted to identify the posting to be withdrawn.

b. A withdrawal statement of an original posting of a notice, lien or other document may be made by the administrator as provided in subrule 45.13(5).

45.15(4) *Notice of filing office statement, correction statement, or withdrawal statement to registered users.* At the time of the posting of a filing office statement, a correction statement, or a withdrawal statement, a notice will be sent by e-mail to all registered users, except the administrator, who have posted to the MNLN number.

[ARC 0464C, IAB 11/28/12, effective 1/2/13]

721—45.16(572) Assignment of date and time stamp and MNLN number.

45.16(1) *Method and time of posting.*

a. For a notice of commencement of work or preliminary notice, the posting shall be date- and time-stamped as follows:

(1) If posted electronically on the MNLN, the time of posting shall be upon posting of all required information and payment of the required fees.

(2) If the required information and fee are submitted by U.S. mail to the filing office, the administrator shall post to the MNLN within three business days of receipt.

(3) If the required information and fee are submitted by facsimile transmission to the filing office, the administrator shall post to the MNLN within three business days of receipt.

(4) If the required information and fee are submitted by personal delivery or courier delivery to the filing office's street address, the administrator shall post to the MNLN within three business days of receipt.

b. For a mechanic's lien, demand for acknowledgement of satisfaction of claim, demand to commence action to enforce the lien, bond to discharge a mechanic's lien, or bond to prevent exemplary damages, the posting will be date- and time-stamped as follows:

(1) If posted electronically on the MNLN, the time of posting shall be upon submission of all required information and payment of the required fees.

(2) If the required information and fee are submitted by U.S. mail to the filing office, the administrator shall post to the MNLN within three business days of receipt.

c. For a filing office statement, a correction statement, or a withdrawal statement, the posting shall be date- and time-stamped at the time the statement is posted electronically on the MNLN by the registered MNLN user.

45.16(2) *Assignment of an MNLN number.* The administrator shall assign an MNLN number at the time that a notice of commencement of work or a mechanic's lien on a commercial property is posted on the MNLN.

[ARC 0464C, IAB 11/28/12, effective 1/2/13]

721—45.17(572) Penalties. Submission of fictitious, forged, or false information to the MNLN by a general contractor, owner-builder or subcontractor is a civil offense punishable by a civil penalty of not more than \$750 for each violation or, if the infraction is a repeat offense, a civil penalty not to exceed \$1,000 for each repeat offense.

[ARC 0464C, IAB 11/28/12, effective 1/2/13]

721—45.18(572) Preservation and access by the public. This rule relates to the maintenance of archives and the ability of those archives to be searched.

45.18(1) *Paper documents.* Paper documents are scanned into the MNLN. The paper submission is returned to the submitter.

45.18(2) *Archives—data retention.*

a. The MNLN information management system is backed up to magnetic tape every business day.

b. Data in the MNLN information management system is retained for 15 years from the date of commencement of work.

c. Archival searches may be available through arrangements with the administrator in the administrator's sole discretion.

[ARC 0464C, IAB 11/28/12, effective 1/2/13]

These rules are intended to implement Iowa Code chapter 572.

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