

## CHAPTER 514

## LIENS; LABOR, MATERIAL

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**514.981 MEDICAL ASSISTANCE LIEN.**

*[For text of subs 1 to 5, see M.S.2002]*

Subd. 6. **Time limits; claim limits; liens on life estates and joint tenancies.** (a) A medical assistance lien is a lien on the real property it describes for a period of ten years from the date it attaches according to section 514.981, subdivision 2, paragraph (a), except as otherwise provided for in sections 514.980 to 514.985. The agency may renew a medical assistance lien for an additional ten years from the date it would otherwise expire by recording or filing a certificate of renewal before the lien expires. The certificate shall be recorded or filed in the office of the county recorder or registrar of titles for the county in which the lien is recorded or filed. The certificate must refer to the recording or filing data for the medical assistance lien it renews. The certificate need not be attested, certified, or acknowledged as a condition for recording or filing. The registrar of titles or the recorder shall file, record, index, and return the certificate of renewal in the same manner as provided for medical assistance liens in section 514.982, subdivision 2.

(b) A medical assistance lien is not enforceable against the real property of an estate to the extent there is a determination by a court of competent jurisdiction, or by an officer of the court designated for that purpose, that there are insufficient assets in the estate to satisfy the agency's medical assistance lien in whole or in part because of the homestead exemption under section 256B.15, subdivision 4, the rights of the surviving spouse or minor children under section 524.2-403, paragraphs (a) and (b), or claims with a priority under section 524.3-805, paragraph (a), clauses (1) to (4). For purposes of this section, the rights of the decedent's adult children to exempt property under section 524.2-403, paragraph (b), shall not be considered costs of administration under section 524.3-805, paragraph (a), clause (1).

(c) Notwithstanding any law or rule to the contrary, the provisions in clauses (1) to (7) apply if a life estate subject to a medical assistance lien ends according to its terms, or if a medical assistance recipient who owns a life estate or any interest in real property as a joint tenant that is subject to a medical assistance lien dies.

(1) The medical assistance recipient's life estate or joint tenancy interest in the real property shall not end upon the recipient's death but shall merge into the remainder interest or other interest in real property the medical assistance recipient owned in joint tenancy with others. The medical assistance lien shall attach to and run with the remainder or other interest in the real property to the extent of the medical assistance recipient's interest in the property at the time of the recipient's death as determined under this section.

(2) If the medical assistance recipient's interest was a life estate in real property, the lien shall be a lien against the portion of the remainder equal to the percentage factor for the life estate of a person the medical assistance recipient's age on the date the life estate ended according to its terms or the date of the medical assistance recipient's death as listed in the Life Estate Mortality Table in the health care program's manual.

(3) If the medical assistance recipient owned the interest in real property in joint tenancy with others, the lien shall be a lien against the portion of that interest equal to the fractional interest the medical assistance recipient would have owned in the jointly

owned interest had the medical assistance recipient and the other owners held title to that interest as tenants in common on the date the medical assistance recipient died.

(4) The medical assistance lien shall remain a lien against the remainder or other jointly owned interest for the length of time and be renewable as provided in paragraph (a).

(5) Subdivision 5, paragraph (a), clause (4), paragraph (b), clauses (1) and (2); and subdivision 6, paragraph (b), do not apply to medical assistance liens which attach to interests in real property as provided under this subdivision.

(6) The continuation of a medical assistance recipient's life estate or joint tenancy interest in real property after the medical assistance recipient's death for the purpose of recovering medical assistance provided for in sections 514.980 to 514.985 modifies common law principles holding that these interests terminate on the death of the holder.

(7) Notwithstanding any law or rule to the contrary, no release, satisfaction, discharge, or affidavit under section 256B.15 shall extinguish or terminate the life estate or joint tenancy interest of a medical assistance recipient subject to a lien under sections 514.980 to 514.985 on the date the recipient dies.

(8) The provisions of clauses (1) to (7) do not apply to a homestead owned of record, on the date the recipient dies, by the recipient and the recipient's spouse as joint tenants with a right of survivorship. Homestead means the real property occupied by the surviving joint tenant spouse as their sole residence on the date the recipient dies and classified and taxed to the recipient and surviving joint tenant spouse as homestead property for property tax purposes in the calendar year in which the recipient dies. For purposes of this exemption, real property the recipient and their surviving joint tenant spouse purchase solely with the proceeds from the sale of their prior homestead, own of record as joint tenants, and qualify as homestead property under section 273.124 in the calendar year in which the recipient dies and prior to the recipient's death shall be deemed to be real property classified and taxed to the recipient and their surviving joint tenant spouse as homestead property in the calendar year in which the recipient dies. The surviving spouse, or any person with personal knowledge of the facts, may provide an affidavit describing the homestead property affected by this clause and stating facts showing compliance with this clause. The affidavit shall be prima facie evidence of the facts it states.

**History:** 1Sp2003 c 14 art 12 s 90

#### **514.991 ALTERNATIVE CARE LIENS; DEFINITIONS.**

Subdivision 1. **Applicability.** The definitions in this section apply to sections 514.991 to 514.995.

Subd. 2. **Alternative care agency, agency, or department.** "Alternative care agency," "agency," or "department" means the Department of Human Services when it pays for or provides alternative care benefits for a nonmedical assistance recipient directly or through a county social services agency under chapter 256B according to section 256B.0913.

Subd. 3. **Alternative care benefit or benefits.** "Alternative care benefit" or "benefits" means a benefit provided to a nonmedical assistance recipient under chapter 256B according to section 256B.0913.

Subd. 4. **Alternative care recipient or recipient.** "Alternative care recipient" or "recipient" means a person who receives alternative care grant benefits.

Subd. 5. **Alternative care lien or lien.** "Alternative care lien" or "lien" means a lien filed under sections 514.992 to 514.995.

**History:** 1Sp2003 c 14 art 2 s 47

#### **514.992 ALTERNATIVE CARE LIEN.**

Subdivision 1. **Property subject to lien; lien amount.** (a) Subject to sections 514.991 to 514.995, payments made by an alternative care agency to provide benefits to a

recipient or to the recipient's spouse who owns property in this state constitute a lien in favor of the agency on all real property the recipient owns at and after the time the benefits are first paid.

(b) The amount of the lien is limited to benefits paid for services provided to recipients over 55 years of age and provided on and after July 1, 2003.

**Subd. 2. Attachment.** (a) A lien attaches to and becomes enforceable against specific real property as of the date when all of the following conditions are met:

(1) the agency has paid benefits for a recipient;

(2) the recipient has been given notice and an opportunity for a hearing under paragraph (b);

(3) the lien has been filed as provided for in section 514.993 or memorialized on the certificate of title for the property it describes; and

(4) all restrictions against enforcement have ceased to apply.

(b) An agency may not file a lien until it has sent the recipient, their authorized representative, or their legal representative written notice of its lien rights by certified mail, return receipt requested, or registered mail and there has been an opportunity for a hearing under section 256.045. No person other than the recipient shall have a right to a hearing under section 256.045 prior to the time the lien is filed. The hearing shall be limited to whether the agency has met all of the prerequisites for filing the lien and whether any of the exceptions in this section apply.

(c) An agency may not file a lien against the recipient's homestead when any of the following exceptions apply:

(1) while the recipient's spouse is also physically present and lawfully and continuously residing in the homestead;

(2) a child of the recipient who is under age 21 or who is blind or totally and permanently disabled according to supplemental security income criteria is also physically present on the property and lawfully and continuously residing on the property from and after the date the recipient first receives benefits;

(3) a child of the recipient who has also lawfully and continuously resided on the property for a period beginning at least two years before the first day of the month in which the recipient began receiving alternative care, and who provided uncompensated care to the recipient which enabled the recipient to live without alternative care services for the two-year period;

(4) a sibling of the recipient who has an ownership interest in the property of record in the office of the county recorder or registrar of titles for the county in which the real property is located and who has also continuously occupied the homestead for a period of at least one year immediately prior to the first day of the first month in which the recipient received benefits and continuously since that date.

(d) A lien only applies to the real property it describes.

**Subd. 3. Continuation of lien.** A lien remains effective from the time it is filed until it is paid, satisfied, discharged, or becomes unenforceable under sections 514.991 to 514.995.

**Subd. 4. Priority of lien.** (a) A lien which attaches to the real property it describes is subject to the rights of anyone else whose interest in the real property is perfected of record before the lien has been recorded or filed under section 514.993, including:

(1) an owner, other than the recipient or the recipient's spouse;

(2) a good faith purchaser for value without notice of the lien;

(3) a holder of a mortgage or security interest; or

(4) a judgment lien creditor whose judgment lien has attached to the recipient's interest in the real property.

(b) The rights of the other person have the same protections against an alternative care lien as are afforded against a judgment lien that arises out of an unsecured obligation and arises as of the time of the filing of an alternative care grant lien under section 514.993. The lien shall be inferior to a lien for property taxes and special

assessments and shall be superior to all other matters first appearing of record after the time and date the lien is filed or recorded.

**Subd. 5. Settlement, subordination, and release.** (a) An agency may, with absolute discretion, settle or subordinate the lien to any other lien or encumbrance of record upon the terms and conditions it deems appropriate.

(b) The agency filing the lien shall release and discharge the lien:

(1) if it has been paid, discharged, or satisfied;

(2) if it has received reimbursement for the amounts secured by the lien, has entered into a binding and legally enforceable agreement under which it is reimbursed for the amount of the lien, or receives other collateral sufficient to secure payment of the lien;

(3) against some, but not all, of the property it describes upon the terms, conditions, and circumstances the agency deems appropriate;

(4) to the extent it cannot be lawfully enforced against the property it describes because of an error, omission, or other material defect in the legal description contained in the lien or a necessary prerequisite to enforcement of the lien; and

(5) if, in its discretion, it determines the filing or enforcement of the lien is contrary to the public interest.

(c) The agency executing the lien shall execute and file the release as provided for in section 514.993, subdivision 2.

**Subd. 6. Length of lien.** (a) A lien shall be a lien on the real property it describes for a period of ten years from the date it attaches according to subdivision 2, paragraph (a), except as otherwise provided for in sections 514.992 to 514.995. The agency filing the lien may renew the lien for one additional ten-year period from the date it would otherwise expire by recording or filing a certificate of renewal before the lien expires. The certificate of renewal shall be recorded or filed in the office of the county recorder or registrar of titles for the county in which the lien is recorded or filed. The certificate must refer to the recording or filing data for the lien it renews. The certificate need not be attested, certified, or acknowledged as a condition for recording or filing. The recorder or registrar of titles shall record, file, index, and return the certificate of renewal in the same manner provided for liens in section 514.993, subdivision 2.

(b) An alternative care lien is not enforceable against the real property of an estate to the extent there is a determination by a court of competent jurisdiction, or by an officer of the court designated for that purpose, that there are insufficient assets in the estate to satisfy the lien in whole or in part because of the homestead exemption under section 256B.15, subdivision 4, the rights of a surviving spouse or a minor child under section 524.2-403, paragraphs (a) and (b), or claims with a priority under section 524.3-805, paragraph (a), clauses (1) to (4). For purposes of this section, the rights of the decedent's adult children to exempt property under section 524.2-403, paragraph (b), shall not be considered costs of administration under section 524.3-805, paragraph (a), clause (1).

**History:** *1Sp2003 c 14 art 2 s 48*

#### **514.993 LIEN; CONTENTS AND FILING.**

**Subdivision 1. Contents.** A lien shall be dated and must contain:

(1) the recipient's full name, last known address, and social security number;

(2) a statement that benefits have been paid to or for the recipient's benefit;

(3) a statement that all of the recipient's interests in the real property described in the lien may be subject to or affected by the agency's right to reimbursement for benefits;

(4) a legal description of the real property subject to the lien and whether it is registered or abstract property; and

(5) such other contents, if any, as the agency deems appropriate.

Subd. 2. **Filing.** Any lien, release, or other document required or permitted to be filed under sections 514.991 to 514.995 must be recorded or filed in the office of the county recorder or registrar of titles, as appropriate, in the county where the real property is located. Notwithstanding section 386.77, the agency shall pay the applicable filing fee for any documents filed under sections 514.991 to 514.995. An attestation, certification, or acknowledgment is not required as a condition of filing. If the property described in the lien is registered property, the registrar of titles shall record it on the certificate of title for each parcel of property described in the lien. If the property described in the lien is abstract property, the recorder shall file the lien in the county's grantor-grantee indexes and any tract indexes the county maintains for each parcel of property described in the lien. The recorder or registrar shall return the recorded or filed lien to the agency at no cost. If the agency provides a duplicate copy of the lien, the recorder or registrar of titles shall show the recording or filing data on the copy and return it to the agency at no cost. The agency is responsible for filing any lien, release, or other documents under sections 514.991 to 514.995.

**History:** *1Sp2003 c 14 art 2 s 49*

#### **514.994 ENFORCEMENT; OTHER REMEDIES.**

Subdivision 1. **Foreclosure or enforcement of lien.** The agency may enforce or foreclose a lien filed under sections 514.991 to 514.995 in the manner provided for by law for enforcement of judgment liens against real estate or by a foreclosure by action under chapter 581. The lien shall remain enforceable as provided for in sections 514.991 to 514.995 notwithstanding any laws limiting the enforceability of judgments.

Subd. 2. **Homestead exemption.** The lien may not be enforced against the homestead property of the recipient or the spouse while they physically occupy it as their lawful residence.

Subd. 3. **Agency claim or remedy.** Sections 514.992 to 514.995 do not limit the agency's right to file a claim against the recipient's estate or the estate of the recipient's spouse, do not limit any other claims for reimbursement the agency may have, and do not limit the availability of any other remedy to the agency.

**History:** *1Sp2003 c 14 art 2 s 50*

#### **514.995 AMOUNTS RECEIVED TO SATISFY LIEN.**

Amounts the agency receives to satisfy the lien must be deposited in the state treasury and credited to the fund from which the benefits were paid.

**History:** *1Sp2003 c 14 art 2 s 51*