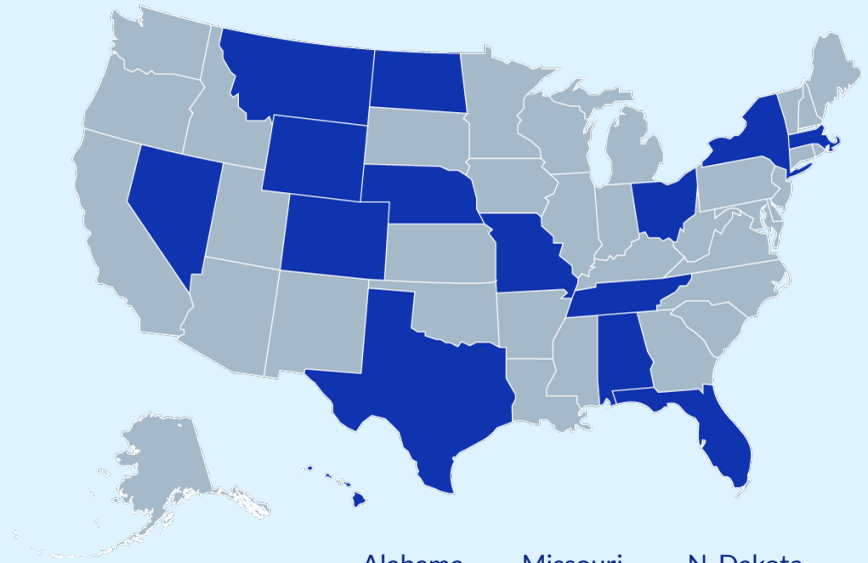


What Are Specially Fabricated Materials?

Generally, there are two factors that determine if materials are considered “Specially Fabricated”

1. Were the materials specially ordered and specially fabricated for that specific project?
2. Can the produced materials be used in another structure or in another project?

The lien laws of the following states address whether specially fabricated materials that are not actually incorporated into the construction project have lien rights:



Alabama	Missouri	N. Dakota
Colorado	Montana	Ohio
Florida	Nebraska	Tennessee
Hawaii	Nevada	Texas
Mass.	New York	Wyoming

What Does “Incorporated into the Project” Mean?

“**Incorporated into the project**” means that the labor or materials were installed or used in the project. This requirement is consistent from state-to-state.

The reason this is so important to specially fabricated materials is that by definition, a specially fabricated material is uniquely created for a specific project or structure. If it’s not used on that project, then the material supplier can’t easily reuse it on another project.

Specially fabricated materials that are used on a project generally do qualify for lien rights protection. However, sometimes specially fabricated materials are **ordered** (and maybe even delivered), but don’t end up being installed or used in the project.

That’s the scenario we’re talking about here - if the **specially fabricated materials don’t end getting used**, does the material supplier **still have a lien right** on those materials?

Do Specially Fabricated Materials that Are Not Incorporated Into the Project Qualify for Lien Rights Protection?

Alabama	Allowed, even though the law does not specifically mention specially fabricated materials. However, there are some complex preliminary notice provisions, and an Alabama construction attorney should be consulted for guidance.
Colorado	Allowed for materials “to be used in construction of the building,” even if the materials weren’t actually installed or consumed in the construction. The only condition is that the materials must be delivered to the project owner.
Florida	Allowed, and the materials don’t even have to physically make it to the jobsite if the non-incorporation was the fault of the property owner (either directly or by direction). However, preliminary notice is required that is earlier than
Hawaii	Allowed according to Hawaii lien law. However, the law is not entirely clear, and a Hawaii construction attorney should be consulted for guidance.
Massachusetts	Specifically allowed, but on public construction projects only (using bond claims instead of mechanic liens). Materials don’t necessarily have to be delivered to qualify, however there are notice requirements that must be
Missouri	Allowed even if the materials weren’t actually used in the construction or even delivered.
Montana	Specifically allowed, even if the materials weren’t actually used in the construction or even delivered.
Nebraska	Specifically allowed, even if the materials weren’t actually used in the construction or even delivered.
Nevada	Possibly allowed, though the statute is a bit unclear. A Nevada construction attorney should be consulted for guidance.
New York	Possibly allowed, though the law mentions “all materials.” It’s not entirely clear if specially fabricated materials are included. A New York construction attorney should be consulted for guidance.
North Dakota	Possibly allowed, though the statute is a bit unclear. A North Dakota construction attorney should be consulted for guidance.
Ohio	Specifically allowed.
Tennessee	Possibly allowed, though the statute is a bit unclear. A Tennessee construction attorney should be consulted for guidance.
Texas	Specifically allowed, however a special “Notice of Specialty Fabricated Items” must also be sent to the project owner in order to secure lien rights.
Wyoming	Allowed according to Wyoming lien law. However, the law is not entirely clear, and a Wyoming construction attorney should be consulted for guidance.