

**Fifty-sixth Legislative Assembly, State of North Dakota, begun in the  
Capitol in the City of Bismarck, on Tuesday, the fifth day of January,  
one thousand nine hundred and ninety-nine**

SENATE BILL NO. 2229  
(Senators Freborg, Watne)

AN ACT to amend and reenact sections 35-21-02, 35-21-03, 35-21-04, and 35-21-05 of the North Dakota Century Code, relating to the release of a lien by an undertaking.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Section 35-21-02 of the North Dakota Century Code is amended and reenacted as follows:

**35-21-02. Filing of application, affidavit and undertaking for release of lien.** The owner of the property to be released by undertaking, or of a substantial interest therein in the property, shall ~~cause to be filed~~ file the following with the officer having control of the record of the lien, his clerk of the district court for the county in which the lien is filed:

1. An application for the release of the lien by undertaking;
2. An affidavit, ~~or the affidavit of his agent or attorney,~~ describing his the owner's interest in ~~said the~~ property and stating that the owner has a defense against the collection of the lien, or a part thereof of the lien, and that there exists a disagreement between the parties as to the amount or validity of the lien, and that the owner desires a discharge of the lien from the records. ~~He shall cause to be filed with the officer an; and~~
3. An undertaking, in an amount not less than the lien, with two sureties thereon, to the effect that the owner will pay any amount that may be recovered by the lien claimant, together with all costs. ~~The sureties shall justify in not less than the amount of the lien.~~

**SECTION 2. AMENDMENT.** Section 35-21-03 of the North Dakota Century Code is amended and reenacted as follows:

**35-21-03. Affidavit Application, affidavit, undertaking, and notice of hearing time to except sureties served on lien claimant.** A copy of the application for release of lien by undertaking, the affidavit, and of the undertaking, together with a notice designating the time when and place where the application will be made for release of the lien of when exception to the sureties must be made, must be served on the lien claimant or his on the claimant's agent or attorney ~~in the following manner:~~ personally, ~~not less than five days before the time of the application;~~ or by registered or certified mail at ~~least ten days before the time of the application.~~ Proof of personal service must be made in the manner required for proof of service of a summons in a civil action. ~~Proof of service by registered or certified mail must be made by affidavit showing that copies of the notice, undertaking, and affidavit were enclosed in an envelope, properly addressed to the lien claimant, sealed, with sufficient postage attached to carry it to its destination, and by attaching the postmaster's receipt.~~

**SECTION 3. AMENDMENT.** Section 35-21-04 of the North Dakota Century Code is amended and reenacted as follows:

**35-21-04. Hearing on application Exception to sureties - Justification by sureties - Discharge of lien.** ~~At the time and place specified in the notice for the hearing, the lien claimant or his agent or attorney may except~~ If the clerk of court receives an exception to the sufficiency of the surety, and thereupon, the sureties may justify before the officer named in the original notice. The statute governing justification in title 32 sureties within seven days of the date of service, the clerk shall schedule a hearing before the district court judge at which the sureties may be justified. The clerk shall provide notice of the hearing to both the lien claimant and the applicant for the discharge by undertaking. Chapter 32-02 governs the justification of the sureties. If the sureties, or others

~~substituted, fail to justify within ten days from the date named for the hearing, said application must be dismissed. If no clerk of court does not receive an exception is taken to the sufficiency of the sureties, or if within seven days from the date of service, the clerk of court shall issue an order stating that the lien is discharged by undertaking and directing either the register of deeds or the secretary of state, as appropriate, to file the order of discharge to terminate the lien and to remove the lien from any computerized index system on which it appears or, in the case of a lien that is filed manually, to indicate in the margin of the record "discharged by undertaking". If the sureties justify as herein provided in this section, and if the officer having control of the record of the lien approves the undertaking is approved, the lien must be discharged of record by an entry on the margin of the record thereof as follows: "Discharged judge shall enter an order that the lien is discharged by undertaking and direct the register of deeds or the secretary of state, as appropriate, to file the order of discharge and terminate the lien on any computerized index system on which it appears or, in the case of a lien that is filed manually, to indicate in the margin of the record "discharged by undertaking". The officer shall date and sign the discharge, and thereafter~~ After the order, the lien is of no effect.

**SECTION 4. AMENDMENT.** Section 35-21-05 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**35-21-05. Fee –~~Recordation~~ - Certified copies as evidence.** ~~If the presiding officer is the clerk of the district court, the~~ The clerk may charge a fee as prescribed in subdivision d of subsection 1 of section 11-17-04 to be paid in advance by the applicant. ~~If the officer is the clerk of the district court, the clerk shall record the notice, affidavit, and undertaking in a recording system provided for that purpose. If the officer is the register of deeds, the officer shall record the same in the book of miscellaneous records. The register of deeds may charge a fee as provided by section 11-18-05.~~ Certified copies of the documents are prima facie evidence, in the courts of this state, of the matters ~~therein contained~~ they contain.

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President of the Senate

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Speaker of the House

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Secretary of the Senate

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Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-sixth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2229.

Senate Vote:    Yeas    49        Nays    0        Absent    0

House Vote:    Yeas    89        Nays    1        Absent    8

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Secretary of the Senate

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 1999.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 1999.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 1999,  
at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State