

# LIENS

## CHAPTER 312

### HOUSE BILL NO. 1367 (Representatives Svedjan, Keiser)

#### SATISFIED MORTGAGE DISCHARGE

AN ACT to amend and reenact section 35-01-27 of the North Dakota Century Code, relating to discharge of a satisfied mortgage.

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

**SECTION 1. AMENDMENT.** Section 35-01-27 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**35-01-27. Discharge of mortgage or lien on real property ~~must be furnished on demand~~ - Penalty.** ~~When~~ Within sixty days after any mortgage or other lien upon real property ~~has been~~ is satisfied; ~~immediately upon~~ or within thirty days of receipt of a written demand of the owner of the property, whichever is shorter, the owners of the mortgage or other lien shall execute a certificate of discharge duly acknowledged, and cause a satisfaction of record to be entered. The fee for filing the satisfaction must be paid by the owner of the property or added to the debt paid by the owner of the property. Any mortgagee or owner of a mortgage or lien who ~~refuses~~ fails to execute or deliver a discharge or to enter a satisfaction as ~~herein~~ provided under this section is liable to the owner of the property for all damages sustained ~~by reason~~ as a result of such ~~the~~ the refusal and exemplary damages of one hundred dollars.

Approved March 18, 1999  
Filed March 19, 1999

## CHAPTER 313

### HOUSE BILL NO. 1180

(Agriculture Committee)

(At the request of the Secretary of State)

### CENTRAL INDEX FILINGS

AN ACT to amend and reenact subsection 1 of section 35-13-02, section 35-20-16, subsection 2 of section 35-34-04, subsection 2 of section 35-34-06, subsections 3, 5, and 6 of section 41-09-46, sections 57-38-49, 57-38-50, subsections 3, 4, and 6 of section 57-39.2-13, subsections 3, 4, and 6 of section 57-40.2-16, subsections 2, 3, and 4 of section 57-40.3-07.1, subsections 3, 4, and 6 of section 57-43.1-17.4, subsections 3, 4, and 6 of section 57-43.2-16.3, and subsections 2 and 3 of section 57-51-11 of the North Dakota Century Code, relating to the filings indexed in the central indexing system.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 35-13-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The secretary of state shall prescribe one form that ~~must~~ can be used to obtain a lien under this section and ~~gain protection under~~ also be entered in the central ~~notice~~ indexing system. A person entitled to a lien under this chapter who retains possession of the property made, altered, or repaired is not required to file any statement to perfect the lien. If the possession of the property so made, altered, or repaired is relinquished, the person shall file, within ninety days, or if the property is used for agricultural purposes within one hundred twenty days, or in the exploration for or the production of oil or gas within six months, after the materials are furnished or the labor is completed, in the office of the register of deeds of the county in which the owner or legal possessor of the property resides, a verified written statement showing:
  - a. The labor performed.
  - b. The materials furnished.
  - c. The price agreed upon for the labor performed or materials furnished, or, if no price was agreed upon, the reasonable value thereof.
  - d. The name of the person for whom the labor was performed or to whom the materials were furnished.
  - e. The social security number, if available, or, in the case of a debtor doing business other than as an individual, the internal revenue service taxpayer identification number, if available, of the person for whom the labor was performed or to whom the materials were furnished.

- f. The name and address of the person claiming the lien.
- g. A description of the property upon which the lien is claimed.

**SECTION 2. AMENDMENT.** Section 35-20-16 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**35-20-16. Procedure to obtain unpaid earned property or casualty insurance premium lien - Filing.** The secretary of state shall prescribe a form that can be used to obtain a lien under this section and also be entered in the central ~~notice~~ indexing system. Any person entitled to an unpaid earned property or casualty insurance premium lien, within ninety days after termination of coverage, shall file in the office of the register of deeds of the county or counties in which the property covered by the policy is located and with any loss payee named in the policy, a verified statement in writing stating all of the following:

1. The name and address of the policyholder.
2. The name and address of the lienholder.
3. The social security number of the debtor, or in the case of a debtor doing business other than as an individual, the internal revenue service taxpayer identification number of that person.
4. The nature and quantity of insurance coverage provided.
5. The amount of unpaid earned premium.
6. A description of the property covered by the insurance and subject to the lien.
7. That a lien is claimed upon the property described.

**SECTION 3. AMENDMENT.** Subsection 2 of section 35-34-04 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. Upon filing of the notice of lien in accordance with this section, the notice of lien must be indexed by the secretary of state in the central ~~notice~~ indexing system and may be enforced and foreclosed in the same manner as a security agreement under the provisions of title 41.

**SECTION 4. AMENDMENT.** Subsection 2 of section 35-34-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. The information filed with a register of deeds or with the secretary of state under this section must be included in the computerized central ~~notice~~ indexing system maintained by the secretary of state under section 41-09-46 and must be accessible to the public on the same terms and conditions that apply to access other statutory lien information maintained in the computerized central ~~notice~~ indexing system.

<sup>232</sup> **SECTION 5. AMENDMENT.** Subsections 3, 5, and 6 of section 41-09-46 of the 1997 Supplement to the North Dakota Century Code are amended and reenacted as follows:

3. The secretary of state shall develop and implement a computerized central ~~notice~~ indexing system which must contain the information filed with the office of the secretary of state or with any of the offices of the registers of deeds in this state pursuant to sections 35-13-02, 35-17-04, 35-20-16, 35-30-02, 35-31-02, and 41-09-40. The system must connect each register of deeds' office to the secretary of state's office through the information services division. The system must allow access to financing statement information by equipment that conforms to requirements determined by the information services division. The system must have safeguards to allow access to information that is in the system relating to security interests or liens and to prevent unauthorized alteration or deletion of that information and to allow access to other information in the system as prescribed by the secretary of state. Within one working day of receipt of a financing statement, continuation statement, amendment, or termination statement filed pursuant to this chapter or a statement filed pursuant to section 35-13-02, 35-17-04, 35-20-16, 35-30-02, or 35-31-02, the register of deeds or secretary of state shall record the information contained in the statement in the computerized central ~~notice~~ indexing system. A computer printout of information from the system is prima facie evidence of the existence or nonexistence of the filing of a financing statement or lien. From the computerized central ~~notice~~ indexing system, the secretary of state or a designee shall produce each month one list for crops and one list for livestock which contain the information as filed on the forms pursuant to section 41-09-40. The secretary of state shall also include the information filed for crops and livestock pursuant to sections 35-17-04, 35-30-02, and 35-31-02. The list must be in alphabetical order according to the last name of, or in numerical order according to the social security number of, the person engaged in farming operations. The lists may be prepared in categories according to county, regions as designated by the secretary of state, or on a statewide basis. If requested, the lists must be in printed form and on microfiche. Each list must conspicuously note its effective date.
  
5. Upon a verbal request of any person, the secretary of state or a designee or a register of deeds shall verbally provide information contained on the list generated through the computerized central ~~notice~~ indexing system when the collateral is crops or livestock. The requesting party may request a certificate from the secretary of state or the register of deeds and the secretary of state or the register of deeds shall confirm the information given. Direct computer access is equivalent to oral confirmation and a computer printout constitutes the written confirmation of the secretary of state, if use of this method of confirmation does not cause the central ~~notice~~ indexing system to lose its federal certification. The fee for a verbal request and such a certificate must be as provided by section 41-09-42.

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<sup>232</sup> Section 41-09-46 was also amended by section 19 of Senate Bill No. 2043, chapter 483.

6. A computer printout from the computerized central ~~notice~~ indexing system constitutes the certificate of the secretary of state or the register of deeds as to whether there is on file, on the date and hour stated on the computer printout, a financing statement.

**SECTION 6. AMENDMENT.** Section 57-38-49 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**57-38-49. Preservation of lien.** Any mortgagee, purchaser, judgment creditor, or lien claimant acquiring any interest in, or lien on, any property situated in the state, prior to the commissioner filing in the central ~~notice~~ indexing system maintained by the secretary of state a notice of the lien provided for in section 57-38-48, takes free of, or has priority over, the lien. The commissioner shall index in the central ~~notice~~ indexing system the following data:

1. The name of the taxpayer.
2. The tax identification number or social security number of the taxpayer.
3. The name "State of North Dakota" as claimant.
4. The date and time the notice of lien was indexed.
5. The amount of the lien.

The notice of lien is effective as of eight a.m. next following the indexing of the notice. Any notice of lien filed by the commissioner with a register of deeds may be indexed in the central ~~notice~~ indexing system without changing its original priority as to property in the county where the lien was filed. The commissioner shall index any notice of lien with no payment of fees or costs to the secretary of state.

**SECTION 7. AMENDMENT.** Section 57-38-50 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**57-38-50. Satisfaction of lien.** Upon payment of the tax, together with any accrued penalties and interest, as to which the commissioner has filed a notice of lien, the commissioner shall index a satisfaction of the lien in the central ~~notice~~ indexing system without fees or costs.

**SECTION 8. AMENDMENT.** Subsections 3, 4, and 6 of section 57-39.2-13 of the 1997 Supplement to the North Dakota Century Code are amended and reenacted as follows:

3. Any mortgagee, purchaser, judgment creditor, or lien claimant acquiring any interest in, or lien on, any property situated in the state, prior to the commissioner filing in the central ~~notice~~ indexing system maintained by the secretary of state, a notice of the lien provided for in section 57-39.2-12, takes free of, or has priority over, the lien.
4. The commissioner shall index in the central ~~notice~~ indexing system the following data:
  - a. The name of the taxpayer.
  - b. The tax identification number or social security number of the taxpayer.

- c. The name "State of North Dakota" as claimant.
- d. The date and time the notice of lien was indexed.
- e. The amount of the lien.

The notice of lien is effective as of eight a.m. next following the indexing of the notice. Any notice of lien filed by the commissioner with a register of deeds may be indexed in the central ~~notice~~ indexing system without changing its original priority as to property in the county where the lien was filed.

6. Upon payment of the tax as to which the commissioner has indexed notice in the central ~~notice~~ indexing system, the commissioner shall index a satisfaction of the lien in the central ~~notice~~ indexing system.

**SECTION 9. AMENDMENT.** Subsections 3, 4, and 6 of section 57-40.2-16 of the 1997 Supplement to the North Dakota Century Code are amended and reenacted as follows:

3. Any mortgagee, purchaser, judgment creditor, or lien claimant acquiring any interest in, or lien on, any property situated in the state, prior to the commissioner filing in the central ~~notice~~ indexing system maintained by the secretary of state, a notice of the lien provided for in this section, takes free of, or has priority over, the lien.
4. The commissioner shall index in the central ~~notice~~ indexing system the following data:
  - a. The name of the taxpayer.
  - b. The tax identification number or social security number of the taxpayer.
  - c. The name "State of North Dakota" as claimant.
  - d. The date and time the notice of lien was indexed.
  - e. The amount of the lien.

The notice of lien is effective as of eight a.m. next following the indexing of the notice. Any notice of lien filed by the commissioner with a register of deeds may be indexed in the central ~~notice~~ indexing system without changing its original priority as to property in the county where the lien was filed.

6. Upon payment of the tax as to which the commissioner has indexed notice in the central ~~notice~~ indexing system, the commissioner shall index a satisfaction of the lien in the central ~~notice~~ indexing system.

**SECTION 10. AMENDMENT.** Subsections 2, 3, and 4 of section 57-40.3-07.1 of the 1997 Supplement to the North Dakota Century Code are amended and reenacted as follows:

2. Any mortgagee, purchaser, judgment creditor, or lien claimant acquiring any interest in, or lien on, any property situated in the state, prior to the

commissioner filing in the central ~~notice~~ indexing system maintained by the secretary of state, a notice of the lien provided for in this section, takes free of, or has priority over, the lien.

3. The commissioner shall index in the central ~~notice~~ indexing system the following data:
  - a. The name of the taxpayer.
  - b. The tax identification number or social security number of the taxpayer.
  - c. The name "State of North Dakota" as claimant.
  - d. The date and time the notice of lien was indexed.
  - e. The amount of the lien.

The notice of lien is effective as of eight a.m. next following the indexing of the notice. Any notice of lien filed by the commissioner with a register of deeds may be indexed in the central ~~notice~~ indexing system without changing its original priority as to property in the county where the lien was filed. The commissioner is exempt from the payment of fees otherwise provided by law for the indexing or the satisfaction of the lien.

4. Upon payment of the tax relative to which the commissioner has indexed notice in the central ~~notice~~ indexing system, the commissioner shall index a satisfaction of the lien in the central ~~notice~~ indexing system.

**SECTION 11. AMENDMENT.** Subsections 3, 4, and 6 of section 57-43.1-17.4 of the 1997 Supplement to the North Dakota Century Code are amended and reenacted as follows:

3. Any mortgagee, purchaser, judgment creditor, or lien claimant acquiring any interest in, or lien on, any property situated in the state, prior to the commissioner filing in the central ~~notice~~ indexing system maintained by the secretary of state, a notice of the lien provided for in this section, takes free of, or has priority over, the lien.
4. The commissioner shall index in the central ~~notice~~ indexing system the following data:
  - a. The name of the taxpayer.
  - b. The tax identification number or social security number of the taxpayer.
  - c. The name "State of North Dakota" as claimant.
  - d. The date and time the notice of lien was indexed.
  - e. The amount of the lien.

The notice of lien is effective as of eight a.m. next following the indexing of the notice. Any notice of lien filed by the commissioner with a register of deeds may be indexed in the central ~~notice~~ indexing system

without changing its original priority as to property in the county where the lien was filed.

6. Upon payment of the tax as to which the commissioner has indexed notice in the central ~~notice~~ indexing system, the commissioner shall index a satisfaction of the lien in the central ~~notice~~ indexing system.

**SECTION 12. AMENDMENT.** Subsections 3, 4, and 6 of section 57-43.2-16.3 of the 1997 Supplement to the North Dakota Century Code are amended and reenacted as follows:

3. Any mortgagee, purchaser, judgment creditor, or lien claimant acquiring any interest in, or lien on, any property situated in the state, prior to the commissioner filing in the central ~~notice~~ indexing system maintained by the secretary of state a notice of the lien provided for in this section, takes free of, or has priority over, the lien.
4. The commissioner shall index in the central ~~notice~~ indexing system the following data:
  - a. The name of the taxpayer.
  - b. The tax identification number or social security number of the taxpayer.
  - c. The name "State of North Dakota" as claimant.
  - d. The date and time the notice of lien was indexed.
  - e. The amount of the lien.

The notice of lien is effective as of eight a.m. next following the indexing of the notice. Any notice of lien filed by the commissioner with a register of deeds may be indexed in the central ~~notice~~ indexing system without changing its original priority as to property in the county where the lien was filed.

6. Upon payment of the tax as to which the commissioner has indexed notice in the central ~~notice~~ indexing system, the commissioner shall index a satisfaction of the lien in the central ~~notice~~ indexing system.

**SECTION 13. AMENDMENT.** Subsections 2 and 3 of section 57-51-11 of the 1997 Supplement to the North Dakota Century Code are amended and reenacted as follows:

2. Any judgment creditor, or lien claimant acquiring any interest in, or lien on, any property situated in this state, prior to the commissioner filing in the central ~~notice~~ indexing system maintained by the secretary of state, a notice of the lien provided for in this section, takes free of, or has priority over, the lien. The commissioner shall index in the central ~~notice~~ indexing system the following data:
  - a. The name of the taxpayer.
  - b. The tax identification number or social security number of the taxpayer.

- c. The name "State of North Dakota" as claimant.
- d. The date and time the notice of lien was indexed.
- e. The amount of the lien.

The notice of lien is effective as of eight a.m. of the first day following the indexing of the notice. A notice of lien filed by the commissioner with a register of deeds before August 1, 1997, may be indexed in the central ~~notice~~ indexing system without changing its original priority as to property in the county where the lien was filed.

- 3. Upon the payment of tax, penalty, and interest, if applicable, or a penalty assessed under section 57-51-06, as to which the commissioner has indexed a notice in the central ~~notice~~ indexing system, the commissioner shall index a satisfaction of the lien in the central ~~notice~~ indexing system.

Approved March 9, 1999  
Filed March 9, 1999

## CHAPTER 314

### SENATE BILL NO. 2119

(Industry, Business and Labor Committee)  
(At the request of the Secretary of State)

## SECRETARY OF STATE AND REGISTER OF DEEDS FILING FEES

AN ACT to amend and reenact sections 35-17-08, 35-29-05, 35-30-06, 35-31-06, and subsections 5 and 11 of section 41-09-42 of the North Dakota Century Code, relating to filing fees collected by the secretary of state and county register of deeds.

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

**SECTION 1. AMENDMENT.** Section 35-17-08 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**35-17-08. Fees - Penalty.** The fee for filing an agister's lien with the secretary of state or the county register of deeds is ~~five~~ ten dollars. The fee for filing a termination statement is five dollars. The termination fee must be paid at the time the fee for filing the lien is paid. The fee for filing an amendment or assignment of an agister's lien is ~~five~~ ten dollars. If a lienholder fails to file a termination statement within sixty days after the lien is satisfied, the lienholder is liable to the debtor for one hundred dollars.

**SECTION 2. AMENDMENT.** Section 35-29-05 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**35-29-05. Fees.**

1. The fee for filing and indexing each notice of lien is:
  - a. For a lien on real estate, five dollars, plus two dollars for the second and each succeeding page.
  - b. For a lien on tangible and intangible personal property, ~~five~~ ten dollars.
  - c. For a certificate of discharge or subordination, ~~five~~ ten dollars.
  - d. For a nonstandard statement when presented for filing, an additional fee of five dollars plus one dollar per page.
  - e. For all other notices, including a certificate of release or nonattachment, five dollars.
2. The officer may not file or record an instrument under this chapter unless the person offering the instrument for filing or recording has first paid the requisite filing or recording fee.

**SECTION 3. AMENDMENT.** Section 35-30-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**35-30-06. Fees - Penalty.** The fee for filing an agricultural processor's lien with the secretary of state or the county register of deeds is ~~five~~ ten dollars. The fee for filing a termination statement is five dollars. The termination fee must be paid at the time the fee for filing the lien is paid. The fee for filing an amendment or assignment of an agricultural processor's lien is ~~five~~ ten dollars. If a lienholder fails to file a termination statement within sixty days after the lien has been satisfied, the lienholder is liable to the debtor for one hundred dollars.

**SECTION 4. AMENDMENT.** Section 35-31-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**35-31-06. Fees - Penalty.** The fee for filing an agricultural supplier's lien with the secretary of state or the county register of deeds is ~~five~~ ten dollars. The fee for filing a termination statement is five dollars. The termination fee must be paid at the time the fee for filing the lien is paid. The fee for filing an amendment or assignment of an agricultural supplier's lien is ~~five~~ ten dollars. If a lienholder fails to file a termination statement within sixty days after the lien has been satisfied, the lienholder is liable to the debtor for one hundred dollars.

**SECTION 5. AMENDMENT.** Subsections 5 and 11 of section 41-09-42 of the 1997 Supplement to the North Dakota Century Code are amended and reenacted as follows:

5. The fee for filing and indexing and for stamping a copy furnished by the secured party to show the date and place of filing for an original financing statement or for a continuation statement or to obtain information from the system is as follows:
  - a. For filing and indexing any statement under the Uniform Commercial Code, ~~five~~ ten dollars, and when a nonstandard statement is presented for filing, an additional fee of five dollars plus one dollar per page must be made. No additional fee may be charged if the form is filed also to gain protection under the central notice system.
  - b. For making certified copies of any recorded instrument, seven dollars.
  - c. For completing a certificate requesting information, seven dollars for the first five entries and two dollars for each additional five entries or fraction thereof.
  - d. For completing a certificate requesting copies, seven dollars for the first three copies or fraction thereof, and two dollars for each additional copy.
  - e. For furnishing copies only of any filed instrument, one dollar.

11. The fee for furnishing lists pursuant to subsection 4 of section 41-09-46 must be established by the secretary of state; ~~but not to exceed twenty five dollars for a microfiche list and~~ based on actual cost for a printed list costs to produce the lists for distribution.

Approved March 18, 1999

Filed March 19, 1999

## CHAPTER 315

### SENATE BILL NO. 2229

(Senators Freborg, Watne)

#### LIEN RELEASE BY UNDERTAKING

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 or 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.

<sup>233</sup> **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 44-18-05.~~ Certified copies of the documents are prima facie evidence, in the courts of this state, of the matters ~~therein contained~~ they contain.

Approved April 8, 1999  
Filed April 8, 1999

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<sup>233</sup> Section 35-21-05 was also amended by section 8 of House Bill No. 1042, chapter 107, and section 58 of House Bill No. 1275, chapter 278.

## CHAPTER 316

### HOUSE BILL NO. 1179

(Judiciary Committee)

(At the request of the Secretary of State)

## NONCONSENSUAL COMMON-LAW LIEN FILING

AN ACT to create and enact chapter 35-35 of the North Dakota Century Code, relating to the filing of nonconsensual common-law liens; and to provide a penalty.

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

**SECTION 1.** Chapter 35-35 of the North Dakota Century Code is created and enacted as follows:

#### **35-35-01. Definitions.**

1. "Filing officer" includes a county register of deeds, the secretary of state, and any other government employee who is required in the course of the employee's duties to file or record liens.
2. "Nonconsensual common-law lien" means a document that purports to assert a lien against real or personal property of any person and:
  - a. Is not expressly provided for by a specific state or federal statute;
  - b. Does not depend upon the consent of the owner of the property affected; and
  - c. Is not an equitable or constructive lien imposed by a state or federal court of competent jurisdiction.

#### **35-35-02. Nonconsensual lien unlawful - Penalty.**

1. Any person who submits for filing or recording a nonconsensual common-law lien as defined in this chapter is guilty of a class B misdemeanor.
2. This section does not apply to a filing officer who acts in the course of the employee's official duties in filing or recording an instrument submitted to the employee for filing or recording.

#### **35-35-03. Filing officer may reject lien - Filing officer to accept notice of invalid lien - Filing officer not liable.**

1. Any filing officer may reject for filing or recording any nonconsensual common-law lien.
2. If a nonconsensual common-law lien has been accepted for filing or recording, the filing officer shall accept for filing any sworn notice of invalid lien signed and submitted by the person against whom such a lien was filed or that person's attorney. The notice must be captioned

"Notice of Invalid Lien" and must state the name and address of the person on whose behalf the notice is filed, the name and address of the lien claimant, and a clear reference to the document or documents the person believes constitute a nonconsensual common-law lien. The notice must be filed in such a manner that any search of the records which reveals the lien the notice refers to will also reveal the notice of invalid lien. The filing officer shall mail a copy of the notice of invalid lien to the lien claimant at the lien claimant's last known address within one business day.

3. A filing officer, county, or the state may not be held liable for filing a nonconsensual common-law lien, or for filing a sworn notice of invalid lien pursuant to this section.

**35-35-04. Lien claimant may petition court - Procedure - Order to show cause - Remedies - Order to be filed.**

1. Any person who submits for filing or recording a lien against real or personal property which is rejected by the filing officer as a nonconsensual common-law lien may petition the district court of the county in which the document was rejected for an order directing the filing officer to file or record the document pending a hearing on whether the document constitutes a nonconsensual common-law lien. The order may be granted ex parte. The lien claimant, as petitioner, shall appear at a time scheduled by the court and show cause why the document should not be declared a nonconsensual common-law lien with no legal effect and relief as provided in section 35-35-06 granted to the person against whom the document was attempted to be filed.
2. The petition must state the grounds upon which relief is sought and must be supported by the affidavit of the petitioner or the petitioner's attorney setting forth a concise statement of the facts upon which the claim for relief is based.
3. Any order rendered under this section must clearly state that if the lien claimant fails to appear at the time and place noted in the order, the document must be declared a nonconsensual common-law lien with no legal effect and the lien claimant must be ordered to pay damages to the person against whom the document was attempted to be filed in the amount of one thousand dollars or actual damages, whichever is greater, and costs, including reasonable attorney's fees.
4. If, after a hearing on the matter, the court determines that the document is a nonconsensual common-law lien, the court shall issue an order so declaring, and declaring the document to have no legal effect and awarding damages as provided in section 35-35-06 to the person against whom the document was attempted to be filed.
5. If the court determines that the document is not a nonconsensual common-law lien, the court shall issue an order so stating and may award costs and reasonable attorney's fees to the prevailing party.
6. The district court clerk shall file a copy of any order rendered pursuant to this section in the office of the filing officer who rejected the document for filing.

**35-35-05. Petition to declare lien invalid - Procedure - Order to show cause - Remedies - Order to be filed.**

1. Any person who has real or personal property or an interest therein, which is subject to a filed or recorded nonconsensual common-law lien may petition the district court for the county in which the lien is filed or recorded for an order directing the lien claimant to appear before the court to show cause why the lien should not be declared void and the relief provided for by section 35-35-06 granted to the petitioner. The order directing the lien claimant to appear and show cause may be granted ex parte. The petitioner shall serve the order and petition on the lien claimant by personal service or by mailing copies of the petition and order to the lien claimant at the lien claimant's last known address.
2. The petition must state the grounds upon which relief is requested, and must be supported by the affidavit of the petitioner, or the petitioner's attorney, setting forth a concise statement of the facts upon which the claim for relief is based.
3. Any order rendered under this section must clearly state that if the lien claimant fails to appear at the time and place noted in the order, the lien must be declared void ab initio and released and removed from the filing officer's files or records, and the lien claimant must be ordered to pay damages of one thousand dollars or actual damages, whichever is greater, and the costs incurred by the petitioner, including reasonable attorney's fees.
4. If, after a hearing on the matter, the court determines that the document is a nonconsensual common-law lien, the court shall issue an order declaring the lien void ab initio, directing the filing officer to release and remove the lien from the files and records and awarding damages as provided in section 35-35-06 to the petitioner.
5. If the court determines that the lien is not a nonconsensual common-law lien, the court shall issue an order so stating and may award costs and reasonable attorney's fees to the prevailing party.
6. The district court clerk shall file a copy of any order rendered pursuant to this section in the office where the lien was filed.

**35-35-06. Liability for submitting certain documents for filing - Penalty.** Any person who submits for filing or recording to the office of a filing officer any document purporting to create a nonconsensual common law lien against real or personal property is liable to the person against whom the lien is claimed for actual damages or one thousand dollars, whichever is greater, plus costs and reasonable attorney's fees. These damages and costs may be awarded in any action brought under section 35-35-04 or 35-35-05 or in a separate action for damages.

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