

## **CHAPTER 35-35**

### **NONCONSENSUAL COMMON-LAW LIENS**

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

1. "Filing officer" includes a county recorder, 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.