

Effective 5/13/2014

38-9-205 Petition to nullify lien -- Notice to lien claimant -- Summary relief -- Finding of wrongful lien -- Wrongful lien is void.

- (1) A record interest holder of real property against which a wrongful lien is recorded may petition the district court in the county in which the document is recorded for summary relief to nullify the wrongful lien.
- (2) The petition described in Subsection (1) shall state with specificity the claim that the lien is a wrongful lien and shall be supported by a sworn affidavit of the record interest holder.
- (3)
 - (a) If the court finds the petition insufficient, the court may dismiss the petition without a hearing.
 - (b) If the court finds the petition is sufficient, the court shall schedule a hearing within 10 days to determine whether the document is a wrongful lien.
 - (c) The record interest holder shall serve a copy of the petition on the lien claimant and a copy of a notice of the hearing pursuant to Rules of Civil Procedure, Rule 4, Process.
 - (d) The lien claimant is entitled to attend and contest the petition.
- (4) A summary proceeding under this section:
 - (a) may only determine whether a document is a wrongful lien; and
 - (b) may not determine any other property or legal rights of the parties or restrict other legal remedies of any party.
- (5)
 - (a) If, following a hearing, the court determines that the recorded document is a wrongful lien, the court shall issue an order declaring the wrongful lien void ab initio, releasing the property from the lien, and awarding costs and reasonable attorney fees to the petitioner.
 - (b)
 - (i) The record interest holder may submit a certified copy of the order to the county recorder for recording.
 - (ii) The order shall contain a legal description of the real property.
 - (c) If the court determines that the claim of lien is valid, the court shall dismiss the petition and may award costs and reasonable attorney's fees to the lien claimant. The dismissal order shall contain a legal description of the real property. The prevailing lien claimant may record a certified copy of the dismissal order.
- (6) If the court determines that the recorded document is a wrongful lien, the wrongful lien is void ab initio and provides no notice of claim or interest.
- (7) If a petition under this section contains a claim for damages, the proceedings related to the claim for damages may not be expedited under this section.

Renumbered and Amended by Chapter 114, 2014 General Session