

Effective 5/13/2014

Part 3
Recording a Nonconsensual Common Law Document

38-9-301 Title.

This part is known as "Recording a Nonconsensual Common Law Document."

Enacted by Chapter 114, 2014 General Session

38-9-302 Recording a nonconsensual common law document -- Procedure.

- (1) For a nonconsensual common law document recorded on or after May 13, 2014, within five business days after the day on which an individual submits a nonconsensual common law document to a county recorder for recording, the individual shall cause the sheriff to serve written notice of the recording of the nonconsensual common law document upon each affected person.
- (2) A written notice described in Subsection (1) shall include:
 - (a) the name, address, and telephone number of the document sponsor;
 - (b) the date the nonconsensual common law document was recorded; and
 - (c) a copy of the nonconsensual common law document.
- (3)
 - (a) No later than three business days after the day on which the sheriff serves the written notice described in Subsection (1), the sheriff shall submit proof of service to the county recorder for recording.
 - (b) The county recorder may not charge a fee for recording a proof of service under Subsection (3)(a).

Enacted by Chapter 114, 2014 General Session

38-9-303 Enforcement proceeding required.

- (1) For a nonconsensual common law document recorded on or after May 13, 2014, within 10 business days after the day on which a document sponsor submits a nonconsensual common law document to the county recorder for recording, the document sponsor shall file a complaint in district court in the county of the county recorder where the nonconsensual common law document was recorded for a proceeding to obtain an order that the nonconsensual common law document is valid and enforceable.
- (2) A complaint to initiate a judicial proceeding described in Subsection (1) shall:
 - (a) state with specificity the grounds that make the nonconsensual common law document valid and enforceable;
 - (b) be supported by the document sponsor's sworn affidavit; and
 - (c) name each affected person as an opposing party.
- (3) If the court finds that a complaint filed under Subsection (1) does not meet the requirements described in Subsection (2), the court may dismiss the complaint without a hearing.
- (4) If a complaint filed under Subsection (1) meets the requirements described in Subsection (2), the court:
 - (a) shall hold a hearing;
 - (b) following the hearing, shall issue an order that:
 - (i) states whether the nonconsensual common law document is valid and enforceable; and

- (ii) includes a legal description of the real property that is the subject of the complaint; and
- (c) may award costs and reasonable attorney fees to the prevailing party.
- (5) Within three business days after the day on which the court issues a final order in a proceeding under this section, the prevailing party shall submit a copy of the court's final order to the county recorder for recording.
- (6) A nonconsensual common law document is presumed invalid and unenforceable.
- (7) A person's lack of belief in the jurisdiction or authority of the state or of the government of the United States is not a defense to liability under this section.
- (8) A court's order in a proceeding under this section does not restrict any other legal remedies available to any party, including any right to injunctive relief under Rules of Civil Procedure, Rule 65A, Injunctions.

Enacted by Chapter 114, 2014 General Session

38-9-304 Civil liability -- Damages.

- (1) If, under Section 38-9-303, a court finds that a recorded nonconsensual common law document is unenforceable, the document sponsor of the nonconsensual common law document is liable to each affected person for any actual damages proximately caused by recording the nonconsensual common law document, costs, and reasonable attorney fees.
- (2) A person who is liable under Subsection (1) for a nonconsensual common law document is jointly and severally liable with each other person who is liable for the nonconsensual common law document.

Enacted by Chapter 114, 2014 General Session

38-9-305 Failure to comply -- Nonconsensual common law document void.

A recorded nonconsensual common law document that is recorded on or after May 13, 2014, is void and has no legal effect if the document sponsor does not:

- (1) comply with the notice requirements described in Section 38-9-302;
- (2) comply with the judicial enforcement requirements described in Section 38-9-303; and
- (3) prevail in a judicial enforcement proceeding under Section 38-9-303.

Enacted by Chapter 114, 2014 General Session