

**Effective 5/13/2014**

**38-9-204 Petition to file lien -- Notice to record interest holders -- Summary relief -- Contested petition.**

- (1) A lien claimant whose document is rejected pursuant to Section 38-9-202 may petition the district court for an expedited determination that the lien may be recorded.
- (2) A petition under Subsection (1) shall:
  - (a) be filed:
    - (i) with the district court in the county of the county recorder who refused to record the document; and
    - (ii) within 10 days after the day on which the person who files the petition receives the notice under Subsection 38-9-202(1)(b) of the county recorder's refusal to record the document;
  - (b) state with specificity the grounds why the document should lawfully be recorded; and
  - (c) be supported by a sworn affidavit of the lien claimant.
- (3) If the court finds the petition is insufficient, it may dismiss the petition without a hearing.
- (4)
  - (a) If the court grants a hearing, the petitioner shall, by certified or registered mail, serve a copy of the petition, notice of hearing, and a copy of the court's order granting an expedited hearing on all record interest holders of the property sufficiently in advance of the hearing to enable any record interest holder to attend the hearing.
  - (b) Any record interest holder of the property has the right to attend and contest the petition.
- (5)
  - (a) If, following a hearing, the court finds that the document may lawfully be recorded, the court shall issue an order directing the county recorder to accept the document for recording.
  - (b) If the petition is contested, the court may award costs and reasonable attorney fees to the prevailing party.
- (6)
  - (a) A summary proceeding under this section:
    - (i) may only determine whether a contested document, on its face, shall be recorded by the county recorder; and
    - (ii) may not determine the truth of the content of the document or the property or legal rights of the parties beyond the necessary determination of whether the document shall be recorded.
  - (b) A court's grant or denial of a petition under this section may not restrict any other legal remedies of any party, including any right to injunctive relief pursuant to Rules of Civil Procedure, Rule 65A, Injunctions.
- (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