

STATE OF OKLAHOMA

2nd Session of the 45th Legislature (1996)

HOUSE BILL NO. 2543

By: Seikel

AS INTRODUCED

An Act relating to liens; defining liens subject to certain provisions; excluding certain liens and mortgages from certain requirements; prescribing procedures for release of liens filed in error; describing error for which procedure available; requiring written demand; specifying content of demand; authorizing response; prescribing procedures based upon agreement with party seeking release; prescribing procedures based upon disagreement with party seeking release; requiring payment of certain expenses; providing for applicability of procedures to certain successors in interest; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 51 of Title 42, unless there is created a duplication in numbering, reads as follows:

A. The provisions of this section shall be applicable to:

1. A lien created pursuant to the provisions of Title 42 of the Oklahoma Statutes; and

2. A lien created pursuant to Section 706 of Title 12 of the Oklahoma Statutes.

B. The provisions of this section shall be applicable to the liens identified in subsection A of this section even if the liens were created prior to the effective date of this act.

C. The provisions of this section shall not be applicable to

1. A real estate mortgage; or

2. A lien created pursuant to the provisions of Section 9-101 et seq. of Title 12A of the Oklahoma Statutes.

D. A person against whose property a lien has been filed in error, whether through error in the description of property or through error in the identification of the person against whose property the lien is sought to be enforced, may require the person identified in the lien document as a plaintiff, creditor or lienholder to release the lien.

E. The person seeking a release of a lien filed in error shall make written demand upon the lienholder or the successor in interest to the lienholder for a release of the lien. The written demand shall contain a brief statement regarding the nature of the error. The lienholder shall have twenty (20) days within which to provide a written response to the party requesting the release. If the lienholder disagrees with the party requesting the release of the lien, the lienholder shall make a brief statement in the written response about the reasons for the disagreement. The party seeking the release may seek legal or equitable relief according to any legal theory which would support the release by filing a civil action as may be authorized by law. In any proceeding for the release of a lien subject to the provisions of this section, the prevailing party shall be entitled to all costs of the action and a

reasonable attorney fee to be determined by the court upon application of the prevailing party.

F. If the lienholder agrees that the lien should be released, the lienholder shall prepare and execute a release containing the required formalities in order to release the lien. The lienholder shall file the release with the appropriate officer responsible for maintaining the records that allow the creation and recordation of the lien, if applicable, and shall, if applicable, obtain a certified and file stamped copy of the release demonstrating the identity of the officer with whom the release was filed, the date and time of the filing and such other information as may be contained on the face of the document after its filing with the relevant officer.

G. In the written response to the party requesting the release required by subsection E of this section, the lienholder shall include a certified copy of the release obtained pursuant to subsection F of this section. If the lienholder cannot provide the release within the twenty (20) days required for a response, the lienholder shall indicate agreement to the release and notify the party requesting the release of the approximate time required to complete the process for a release.

H. If a lien has been filed in error, the lienholder shall bear the entire expense of any actions or proceedings which may be required in order to release the lien including, but not limited to, attorney fees, fees required in order to file the instrument evidencing the release of the lien or the expense of any judicial or administrative proceeding which may be required in order to effect the release of the lien.

I. The provisions of this section shall be applicable to a successor in interest or other legal representative of the person or entity identified in the lien document as a plaintiff, creditor or lienholder, including a personal representative of a decedent's

estate, a guardian, a trustee or any other person having acquired rights related to the enforcement of a lien subject to the provisions of this section.

SECTION 2. This act shall become effective November 1, 1996.

45-2-8587

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