

SENATE BILL NO. 2229

Introduced by

Senators Freborg, Watne

1 A BILL for an Act to amend and reenact sections 35-21-02, 35-21-03, 35-21-04, and 35-21-05
2 of the North Dakota Century Code, relating to the release of a lien by an undertaking.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 35-21-02 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **35-21-02. Filing of application, affidavit and undertaking for release of lien.** The
7 owner of the property to be released by undertaking, or of a substantial interest ~~therein~~ in the
8 property, shall ~~cause to be filed~~ file the following with the ~~officer having control of the record of~~
9 ~~the lien, his~~ clerk of the district court for the county in which the lien is filed:

- 10 1. An application for the release of the lien by undertaking;
- 11 2. An affidavit, ~~or the affidavit of his agent or attorney,~~ describing his the owner's
12 interest in ~~said~~ the property and stating that the owner has a defense against the
13 collection of the lien, or a part ~~thereof~~ of the lien, and that there exists a
14 disagreement between the parties as to the amount or validity of the lien, and that
15 the owner desires a discharge of the lien from the records. ~~He shall cause to be~~
16 filed with the officer an; and
- 17 3. An undertaking, in an amount not less than the lien, with two sureties ~~thereon,~~ to
18 the effect that the owner will pay any amount that may be recovered by the lien
19 claimant, together with all costs. ~~The sureties shall justify in not less than the~~
20 amount of the lien.

21 **SECTION 2. AMENDMENT.** Section 35-21-03 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **35-21-03. Affidavit Application, affidavit, undertaking, and notice of hearing time**
24 **to except sureties served on lien claimant.** A copy of the application for release of lien by

1 ~~undertaking, the affidavit, and of the undertaking, together with a notice designating the time~~
2 ~~when and place where the application will be made for release of the lien~~ of when exception to
3 the sureties must be made, must be served on the lien claimant or ~~his~~ on the claimant's agent
4 ~~or attorney in the following manner: personally, not less than five days before the time of the~~
5 ~~application; or by registered or certified mail at least ten days before the time of the application.~~
6 Proof of personal service must be made in the manner required for proof of service of a
7 summons in a civil action. ~~Proof of service by registered or certified mail must be made by~~
8 ~~affidavit showing that copies of the notice, undertaking, and affidavit were enclosed in an~~
9 ~~envelope, properly addressed to the lien claimant, sealed, with sufficient postage attached to~~
10 ~~carry it to its destination, and by attaching the postmaster's receipt.~~

11 **SECTION 3. AMENDMENT.** Section 35-21-04 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **35-21-04. ~~Hearing on application~~ Exception to sureties - Justification by sureties -**
14 **Discharge of lien.** ~~At the time and place specified in the notice for the hearing, the lien~~
15 ~~claimant or his agent or attorney may except~~ If the clerk of court receives an exception to the
16 ~~sufficiency of the surety, and thereupon, the sureties may justify before the officer named in the~~
17 ~~original notice. The statute governing justification in title 32~~ sureties within seven days of the
18 date of service, the clerk shall schedule a hearing before the district court judge at which the
19 sureties may be justified. The clerk shall provide notice of the hearing to both the lien claimant
20 and the applicant for the discharge by undertaking. Chapter 32-02 governs the justification of
21 ~~the sureties. If the sureties, or others substituted, fail to justify within ten days from the date~~
22 ~~named for the hearing, said application must be dismissed. If no clerk of court does not receive~~
23 ~~an exception is taken to the sufficiency of the sureties, or if~~ within seven days from the date of
24 service, the clerk of court shall issue an order stating that the lien is discharged by undertaking
25 and directing either the register of deeds or the secretary of state, as appropriate, to file the
26 order of discharge to terminate the lien and to remove the lien from any computerized index
27 system on which it appears or, in the case of a lien that is filed manually, to indicate in the
28 margin of the record "discharged by undertaking". If the sureties justify as herein provided in
29 this section, and if the officer having control of the record of the lien approves the undertaking is
30 approved, the lien must be discharged of record by an entry on the margin of the record thereof
31 as follows: "Discharged judge shall enter an order that the lien is discharged by undertaking

1 and direct the register of deeds or the secretary of state, as appropriate, to file the order of
2 discharge and terminate the lien on any computerized index system on which it appears or, in
3 the case of a lien that is filed manually, to indicate in the margin of the record "discharged by
4 undertaking". ~~The officer shall date and sign the discharge, and thereafter~~ After the order, the
5 lien is of no effect.

6 **SECTION 4. AMENDMENT.** Section 35-21-05 of the 1997 Supplement to the North
7 Dakota Century Code is amended and reenacted as follows:

8 **35-21-05. Fee ~~Recordation~~ - Certified copies as evidence.** ~~If the presiding officer~~
9 ~~is the clerk of the district court, the~~ The clerk may charge a fee as prescribed in subdivision d of
10 subsection 1 of section 11-17-04 to be paid in advance by the applicant. ~~If the officer is the~~
11 ~~clerk of the district court, the clerk shall record the notice, affidavit, and undertaking in a~~
12 ~~recording system provided for that purpose. If the officer is the register of deeds, the officer~~
13 ~~shall record the same in the book of miscellaneous records. The register of deeds may charge~~
14 ~~a fee as provided by section 11-18-05.~~ Certified copies of the documents are prima facie
15 evidence, in the courts of this state, of the matters ~~therein contained~~ they contain.