

CHAPTER 35-21 RELEASE OF LIEN BY UNDERTAKING

35-21-01. Release of lien by undertaking authorized.

When any construction lien, garage storage lien, repairman's lien, agricultural processor's lien, agricultural supplier's lien, unpaid earned insurance premium lien, or miner's lien is filed against the property of a resident of this state, the property affected may be released by an undertaking in the manner provided in this chapter.

35-21-02. Filing of application, affidavit, and undertaking for release of lien.

The owner of the property to be released by undertaking, or of a substantial interest in the property, shall file the following with the clerk of the district court for the county in which the lien is filed:

1. An application for the release of the lien by undertaking;
2. An affidavit describing the owner's interest in the property and stating that the owner has a defense against the collection of the lien, or a part of the lien, and that there exists a disagreement between the parties as to the amount or validity of the lien, and that the owner desires a discharge of the lien from the records; and
3. An undertaking, in an amount not less than the lien, with two sureties, to the effect that the owner will pay any amount that may be recovered by the lien claimant, together with all costs.

35-21-03. Application, affidavit, undertaking, and notice of time to except sureties served on lien claimant.

A copy of the application for release of lien by undertaking, the affidavit, and the undertaking, together with a notice of when exception to the sureties must be made, must be served on the lien claimant or on the claimant's agent or attorney personally or by registered mail. Proof of personal service must be made in the manner required for proof of service of a summons in a civil action.

35-21-04. Exception to sureties - Justification by sureties - Discharge of lien.

If the clerk of court receives an exception to the sufficiency of the sureties within seven days of the date of service, the clerk shall schedule a hearing before the district court judge at which the sureties may be justified. The clerk shall provide notice of the hearing to both the lien claimant and the applicant for the discharge by undertaking. Chapter 32-02 governs the justification of the sureties. If the clerk of court does not receive an exception to the sufficiency of the sureties, within seven days from the date of service, the clerk of court shall issue an order stating that the lien is discharged by undertaking and directing either the recorder or the secretary of state, as appropriate, to file the order of discharge to terminate the lien and to remove the lien from any computerized index system on which it appears or, in the case of a lien that is filed manually, to indicate in the margin of the record "discharged by undertaking". If the sureties justify as provided in this section, and if the undertaking is approved, the judge shall enter an order that the lien is discharged by undertaking and direct the recorder or the secretary of state, as appropriate, to file the order of discharge and terminate the lien on any computerized index system on which it appears or, in the case of a lien that is filed manually, to indicate in the margin of the record "discharged by undertaking". After the order, the lien is of no effect.

35-21-05. Fee - Certified copies as evidence.

The clerk may charge a fee as prescribed in subdivision d of subsection 1 of section 27-05.2-03 to be paid in advance by the applicant. Certified copies of the documents are prima facie evidence, in the courts of this state, of the matters they contain.