

CHAPTER 15

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**PROPERTY**

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**HOUSE BILL 97-1143**

BY REPRESENTATIVES Lawrence, C. Berry, Dyer, George, Kaufman, Kreutz, Schauer, Schwarz, Tool, Anderson, Clarke, Dean, Epps, Grossman, Nichol, Swenson, and Veiga;  
also SENATORS Norton, Arnold, Bishop, Chlouber, Congrove, Dennis, Hopper, J. Johnson, Martinez, Mutzebaugh, Perlmutter, Powers, Reeves, Schroeder, Weddig, Wells, and Wham.

**AN ACT**

CONCERNING SPURIOUS DOCUMENTS AFFECTING TITLE TO PROPERTY.

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** Article 35 of title 38, Colorado Revised Statutes, 1982 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW PART to read:

**PART 2  
SPURIOUS LIENS AND DOCUMENTS**

**38-35-201. Definitions.** AS USED IN THIS PART 2, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "FEDERAL OFFICIAL OR EMPLOYEE" MEANS AN APPOINTED OR ELECTED OFFICIAL OR ANY EMPLOYEE OF THE GOVERNMENT OF THE UNITED STATES OF AMERICA OR OF ANY AGENCY OF SUCH GOVERNMENT AS DEFINED FOR PURPOSES OF THE "FEDERAL TORT CLAIMS ACT", 28 U.S.C. SEC. 2671.

(2) "LIEN" MEANS AN ENCUMBRANCE ON REAL OR PERSONAL PROPERTY AS SECURITY FOR THE PAYMENT OF A DEBT OR PERFORMANCE OF AN OBLIGATION.

(3) "SPURIOUS DOCUMENT" MEANS ANY DOCUMENT THAT IS FORGED OR GROUNDLESS, CONTAINS A MATERIAL MISSTATEMENT OR FALSE CLAIM, OR IS OTHERWISE PATENTLY INVALID.

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

(4) "SPURIOUS LIEN" MEANS A PURPORTED LIEN OR CLAIM OF LIEN THAT:

(a) IS NOT PROVIDED FOR BY A SPECIFIC COLORADO OR FEDERAL STATUTE;

(b) IS NOT CREATED, SUFFERED, ASSUMED, OR AGREED TO BY THE OWNER OF THE PROPERTY IT PURPORTS TO ENCUMBER; OR

(c) IS NOT IMPOSED BY ORDER, JUDGMENT, OR DECREE OF A STATE COURT OR A FEDERAL COURT.

(5) "STATE COURT" MEANS A COURT ESTABLISHED PURSUANT TO TITLE 13, C.R.S.

(6) "STATE OR LOCAL OFFICIAL OR EMPLOYEE" MEANS AN APPOINTED OR ELECTED OFFICIAL OR ANY EMPLOYEE OF:

(a) THE STATE OF COLORADO;

(b) ANY AGENCY, BOARD, COMMISSION, OR STATE DEPARTMENT IN ANY BRANCH OF STATE GOVERNMENT;

(c) ANY INSTITUTION OF HIGHER EDUCATION; OR

(d) ANY SCHOOL DISTRICT, POLITICAL SUBDIVISION, COUNTY, MUNICIPALITY, INTERGOVERNMENTAL AGENCY, OR OTHER UNIT OF LOCAL GOVERNMENT IN COLORADO.

**38-35-202. Recording or filing.** (1) ANY STATE OR LOCAL OFFICIAL OR EMPLOYEE, INCLUDING THE CLERK AND RECORDER OF ANY COUNTY OR CITY AND COUNTY AND THE COLORADO SECRETARY OF STATE, MAY ACCEPT OR REJECT FOR RECORDING OR FILING ANY DOCUMENT THAT THE STATE OR LOCAL OFFICIAL OR EMPLOYEE REASONABLY BELIEVES IN GOOD FAITH MAY BE A SPURIOUS LIEN OR SPURIOUS DOCUMENT.

(2) NO STATE OR LOCAL OFFICIAL OR EMPLOYEE, INCLUDING THE CLERK AND RECORDER OF ANY COUNTY OR CITY AND COUNTY AND THE COLORADO SECRETARY OF STATE, SHALL BE LIABLE TO ANY PERSON OR CLAIMANT FOR EITHER THE ACCEPTANCE OR REJECTION FOR RECORDING OR FILING OF ANY DOCUMENT THAT THE STATE OR LOCAL OFFICIAL OR EMPLOYEE REASONABLY BELIEVES IN GOOD FAITH MAY BE A SPURIOUS LIEN OR SPURIOUS DOCUMENT.

(3) NO STATE OR LOCAL OFFICIAL OR EMPLOYEE, INCLUDING THE CLERK AND RECORDER OF ANY COUNTY OR CITY AND COUNTY AND THE COLORADO SECRETARY OF STATE, SHALL BE OBLIGATED TO ACCEPT FOR RECORDING OR FILING ANY LIEN OR CLAIM OF LIEN AGAINST A FEDERAL OFFICIAL OR EMPLOYEE OR A STATE OR LOCAL OFFICIAL OR EMPLOYEE BASED UPON THE PERFORMANCE OR NONPERFORMANCE OF THAT OFFICIAL'S OR EMPLOYEE'S DUTIES UNLESS SUCH LIEN OR CLAIM OF LIEN IS ACCOMPANIED BY A SPECIFIC ORDER ISSUED BY A STATE COURT OR FEDERAL COURT AUTHORIZING THE RECORDING OR FILING OF SUCH LIEN OR CLAIM OF LIEN.

**38-35-203. Action to enforce.** (1) NO SPURIOUS LIEN OR SPURIOUS DOCUMENT

SHALL HOLD OR AFFECT ANY REAL OR PERSONAL PROPERTY LONGER THAN THIRTY DAYS AFTER THE LIEN OR DOCUMENT HAS BEEN RECORDED OR FILED IN THE OFFICE OF ANY STATE OR LOCAL OFFICIAL OR EMPLOYEE, INCLUDING THE OFFICE OF THE CLERK AND RECORDER OF ANY COUNTY OR CITY AND COUNTY OR THE OFFICE OF THE COLORADO SECRETARY OF STATE, UNLESS WITHIN THE THIRTY DAYS:

(a) AN ACTION HAS BEEN COMMENCED TO ENFORCE SUCH LIEN OR DOCUMENT IN THE STATE DISTRICT COURT FOR THE COUNTY OR CITY AND COUNTY IN WHICH THE LIEN OR DOCUMENT WAS RECORDED OR FILED OR THE FEDERAL DISTRICT COURT IN COLORADO; AND

(b) A NOTICE OF LIS PENDENS STATING THAT SUCH AN ACTION HAS BEEN COMMENCED IS RECORDED OR FILED IN THE OFFICE WHERE THE LIEN OR DOCUMENT WAS RECORDED OR FILED.

(2) THE NOTICE OF LIS PENDENS REQUIRED BY PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION MUST COMPLY WITH THE REQUIREMENTS OF SECTION 38-35-110 AND RULE 105 (f) OF THE COLORADO RULES OF CIVIL PROCEDURE AND MUST INCLUDE THE CIVIL ACTION NUMBER OF THE ACTION THAT HAS BEEN COMMENCED TO ENFORCE THE LIEN OR DOCUMENT. FAILURE TO COMPLY WITH THE REQUIREMENTS OF THIS SUBSECTION (2) SHALL RENDER THE NOTICE OF LIS PENDENS INVALID.

**38-35-204. Order to show cause.** (1) ANY PERSON WHOSE REAL OR PERSONAL PROPERTY IS AFFECTED BY A RECORDED OR FILED LIEN OR DOCUMENT THAT THE PERSON BELIEVES IS A SPURIOUS LIEN OR SPURIOUS DOCUMENT MAY PETITION THE DISTRICT COURT IN THE COUNTY OR CITY AND COUNTY IN WHICH THE LIEN OR DOCUMENT WAS RECORDED OR FILED OR THE FEDERAL DISTRICT COURT IN COLORADO FOR AN ORDER TO SHOW CAUSE WHY THE LIEN OR DOCUMENT SHOULD NOT BE DECLARED INVALID. THE PETITION SHALL SET FORTH A CONCISE STATEMENT OF THE FACTS UPON WHICH THE PETITION IS BASED AND SHALL BE SUPPORTED BY AN AFFIDAVIT OF THE PETITIONER OR THE PETITIONER'S ATTORNEY. THE ORDER TO SHOW CAUSE MAY BE GRANTED EX PARTE AND SHALL:

(a) DIRECT ANY LIEN CLAIMANT AND ANY PERSON WHO RECORDED OR FILED THE LIEN OR DOCUMENT TO APPEAR AS RESPONDENT BEFORE THE COURT AT A TIME AND PLACE CERTAIN NOT LESS THAN TEN DAYS NOR MORE THAN TWENTY DAYS AFTER SERVICE OF THE ORDER TO SHOW CAUSE WHY THE LIEN OR DOCUMENT SHOULD NOT BE DECLARED INVALID AND WHY SUCH OTHER RELIEF PROVIDED FOR BY THIS SECTION SHOULD NOT BE GRANTED;

(b) STATE THAT IF THE RESPONDENT FAILS TO APPEAR AT THE TIME AND PLACE SPECIFIED, THE SPURIOUS LIEN OR SPURIOUS DOCUMENT WILL BE DECLARED INVALID AND RELEASED; AND

(c) STATE THAT THE COURT SHALL AWARD COSTS, INCLUDING REASONABLE ATTORNEY FEES, TO THE PREVAILING PARTY.

(2) IF, FOLLOWING THE HEARING ON THE ORDER TO SHOW CAUSE, THE COURT DETERMINES THAT THE LIEN OR DOCUMENT IS A SPURIOUS LIEN OR SPURIOUS DOCUMENT, THE COURT SHALL MAKE FINDINGS OF FACT AND ENTER AN ORDER AND DECREE DECLARING THE SPURIOUS LIEN OR SPURIOUS DOCUMENT AND ANY RELATED

NOTICE OF LIS PENDENS INVALID, RELEASING THE RECORDED OR FILED SPURIOUS LIEN OR SPURIOUS DOCUMENT, AND ENTERING A MONETARY JUDGMENT IN THE AMOUNT OF THE PETITIONER'S COSTS, INCLUDING REASONABLE ATTORNEY FEES, AGAINST ANY RESPONDENT AND IN FAVOR OF THE PETITIONER. A CERTIFIED COPY OF SUCH ORDER MAY BE RECORDED OR FILED IN THE OFFICE OF ANY STATE OR LOCAL OFFICIAL OR EMPLOYEE, INCLUDING THE CLERK AND RECORDER OF ANY COUNTY OR CITY AND COUNTY AND THE COLORADO SECRETARY OF STATE.

(3) IF, FOLLOWING THE HEARING ON THE ORDER TO SHOW CAUSE, THE COURT DETERMINES THAT THE LIEN OR DOCUMENT IS NOT A SPURIOUS LIEN OR SPURIOUS DOCUMENT, THE COURT SHALL ISSUE AN ORDER SO FINDING AND ENTER A MONETARY JUDGMENT IN THE AMOUNT OF ANY RESPONDENT'S COSTS, INCLUDING REASONABLE ATTORNEY FEES, AGAINST ANY PETITIONER AND IN FAVOR OF THE RESPONDENT.

**SECTION 2.** The introductory portion to 4-9.3-106 (1.5), Colorado Revised Statutes, 1992 Repl. Vol., as amended, is amended to read:

**4-9.3-106. Duties of filing officer.** (1.5) EXCEPT AS AUTHORIZED BY SECTION 38-35-202, C.R.S., a filing officer shall not reject a document submitted for filing under this title unless:

**SECTION 3.** 38-35-109 (4), Colorado Revised Statutes, 1982 Repl. Vol., as amended, is repealed as follows:

**38-35-109. Instrument may be recorded - validity of unrecorded instruments - liability for fraudulent documents.** (4) ~~Anyone who violates the recording or filing limitations of subsection (3) of this section commits a class 1 misdemeanor and shall be punished as provided in section 18-1-106, C.R.S.~~

**SECTION 4.** 10-11-106, Colorado Revised Statutes, 1994 Repl. Vol., is amended to read:

**10-11-106. Determination of insurability required.** (1) No policy or contract of title insurance shall be written unless and until the title insurance company has caused to be conducted a reasonable examination of the title and has caused to be made a determination of insurability of title in accordance with sound underwriting practices for title insurance companies. Evidence thereof shall be preserved and retained in the files of the title insurance company or its agent for a period of not less than fifteen years after the policy or contract of title insurance has been issued. In lieu of retaining the original copy, the title insurance company, or the agent of the title insurance company, may, in the regular course of business, establish a system whereby all or part of these writings are recorded, copied, or reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic, or other process which accurately reproduces or forms a durable medium for reproducing the original. This section shall not apply to either a company assuming no primary liability in a contract of reinsurance or a company acting as a coinsurer if one of the other coinsuring companies has complied with this section.

(2) A TITLE INSURANCE COMPANY SHALL NOT BE OBLIGATED TO MAKE A WRITTEN DISCLOSURE TO ITS PROSPECTIVE INSUREDS PRIOR TO THE ISSUANCE OF A TITLE INSURANCE POLICY OF THE FOLLOWING DOCUMENTS IF A REASONABLE EXAMINATION

OF TITLE REFERRED TO IN SUBSECTION (1) OF THIS SECTION REVEALS A RECORDED DOCUMENT THAT:

(a) IS A SPURIOUS LIEN OR SPURIOUS DOCUMENT AS DEFINED IN SECTION 38-35-201, C.R.S.;

(b) IS NOT, ACCORDING TO SOUND UNDERWRITING PRACTICES FOR TITLE INSURANCE COMPANIES, AN IMPAIRMENT OF RECORD CONCERNING THE PROPERTY TO BE INSURED; OR

(c) ALTHOUGH IT MAY PURPORT TO DO SO, DOES NOT ENCUMBER THE PROPERTY TO BE INSURED.

**SECTION 5. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: March 20, 1997