

**"CHAPTER 507D  
NONCONSENSUAL COMMON LAW LIENS AND FRIVOLOUS  
FINANCING STATEMENTS**

Section

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## Note

Chapter heading amended by L 2002, c 145, §2.

" **§507D-1 Findings and purpose.** The legislature finds that there is a problem with the recording at the land court or the bureau of conveyances of invalid instruments which purport to affect the property interests of various persons, including but not limited to government officers and employees. These instruments, which have no basis in fact or law, have a seriously disruptive effect on property interests and title. They appear on title searches and other disclosures based on public records, and are costly and time-consuming to expunge. When they so appear, they may obstruct a property owner's ability to transfer title or obtain title insurance and financing.

The bureau of conveyances does not have the discretionary authority to refuse to record instruments so long as those instruments comply with certain minimal format requirements. It would be inefficient and require substantial governmental expenditures to have the bureau of conveyances determine the legal sufficiency of instruments submitted for recordation. The land court's registrar screens instruments submitted for recordation, but has no mechanism to prevent the filing of frivolous lien claims during the pendency of litigation. Similarly, the public is in need of a mechanism to address the filing of frivolous financing statements.

The legislature finds that it is necessary and in the best interests of the State and private parties to legislatively provide a means to relieve this problem, and to limit the circumstances in which nonconsensual common law liens shall be recognized in this State and to remedy the filing of frivolous financing statements. [L 1996, c 24, pt of §1; am L 2002, c 145, §3]

" **§507D-2 Definitions.** As used in this chapter:

"Court" means any court described in the laws of the United States or any state.

"Debtor" means a person named as the debtor in a financing statement.

"Federal official or employee" means an employee of the federal government as defined for purposes of the Federal Tort Claims Act, 28 U.S.C. Sec. 2671.

"Financing statement" means a record filed under chapter 490:9.

"Frivolous" means without any basis in law or fact.

"Lien" means a recorded instrument that creates an encumbrance on or affects title or ownership of property.

"Lien claimant" means the person who executes or records or causes or materially assists in causing the lien to be prepared, executed, or recorded.

"Nonconsensual common law lien" means a lien that:

- (1) Is not provided for by a specific statute;
- (2) Does not depend upon, require by its terms, or call for the consent of the owner of the property affected for its existence; and
- (3) Is not a court-imposed equitable or constructive lien.

"Party in interest" means any owner, title holder, mortgagee, or other person holding a recorded or perfected security interest in real or personal property.

"Registrar" means the registrar of the land court or the bureau of conveyances.

"State or county officer or employee" means:

- (1) A court-appointed commissioner;
- (2) An appointed or elected officer;
- (3) Employee of the judiciary; or
- (4) Employee of a state or county department, agency, board, authority, or commission. [L 1996, c 24, pt of §1; am L 1997, c 284, §§1, 2; am L 1998, c 37, §1; am L 2002, c 145, §1]

" **[§507D-3] Scope of chapter.** Nothing in this chapter is intended to affect:

- (1) Any lien provided for by statute;
- (2) Any consensual liens now or hereafter recognized under the common law of this State; or
- (3) The ability of courts to impose equitable or constructive liens. [L 1996, c 24, pt of §1]

" **§507D-4 Contesting validity of recorded instruments; injunctions.** (a) Any party in interest in real or personal property which is subject to a claim of nonconsensual common law lien, who believes the claim of lien is invalid, may file a petition in the appropriate circuit court to contest the validity of that purported lien and to enjoin the lien claimant from making further filings with the registrar. The petition shall state the grounds upon which relief is requested, and shall be supported by the affidavit of the petitioner or the petitioner's attorney setting forth a concise statement of the facts upon which the petition is based. The procedure for obtaining injunctions and temporary restraining orders shall apply in cases brought under this section or section 507D-7(b).

(b) A debtor who believes the filing of a financing statement was unauthorized, may file a request with the registrar to determine the validity of the filing. Each such request shall identify the financing statement by document number and the requester shall be assessed a reasonable processing fee determined by the registrar. Upon the receipt of the request, the registrar shall send a demand to the secured party by certified or registered mail, at the address set forth on the financing statement, that the secured party provide a copy of the security agreement which purportedly authorized the filing of the financing statement to the registrar no later than thirty days following the postmarked date of the registrar's notice. If the registrar does not receive the security agreement within the thirty-day period, the registrar shall issue to the debtor and accept for filing, a notice of unauthorized filing of financing statement. The filing of a notice of unauthorized filing of financing statement shall effectively terminate the unauthorized financing statement.

(c) Subsections (a) and (b) shall not apply to any instrument that is recorded by the United States, the State, or any county. [L 1996, c 24, pt of §1; am L 1997, c 284, §3; am L 2002, c 145, §4]

" **§507D-5 Requirement of certified court order.** (a) Any claim of lien against a federal, state, or county officer or employee based on the performance or nonperformance of that officer's or employee's duties shall designate in the pleading header that the claim is directed to a federal, state, or county officer or employee, and shall be invalid unless accompanied by a certified order from a state or federal court of competent jurisdiction authorizing the filing of such lien.

(b) Any claim of nonconsensual common law lien against a private party in interest shall be invalid unless accompanied by a certified order from a state or federal court of competent jurisdiction authorizing the filing of nonconsensual common law lien.

(c) The registrar shall not accept for filing a claim for nonconsensual common law lien unless the claim is accompanied by a certified state or federal court order authorizing the filing of the lien. [L 1996, c 24, pt of §1; am L 2000, c 95, §1; am L 2001, c 96, §1]

" **§507D-6 Filing a notice of invalid lien.** (a) If a claim of lien not in conformity with section 507D-5(a) has been accepted for filing, the registrar shall accept for filing a notice of invalid lien signed and submitted by the assistant United States attorney representing the federal agency of which

the individual is an official or employee, or the attorney representing the state or county department, agency, board, authority, or commission of which the individual is an officer or employee. A copy of the notice of invalid lien shall be mailed by the government attorney to the lien claimant at his or her last known address.

(b) If a claim of nonconsensual common law lien not in conformity with section 507D-5(b) has been accepted for filing, the registrar shall accept for filing a notice of invalid lien signed and submitted by the party in interest.

(c) The registrar or registrar's assistants shall not be liable for accepting for filing either a claim of lien as described in section 507D-5 or a notice of invalid lien pursuant to this section. [L 1996, c 24, pt of §1; am L 2001, c 96, §2]

" **§507D-7 Expungement of invalid lien; penalties; sanctions for frivolous filings.** (a) If the circuit court finds the purported lien invalid, it shall order the registrar to expunge the instrument purporting to create it, and order the lien claimant to pay actual damages, costs of suit, and reasonable attorneys' fees. This order shall be presented to the registrar for recordation and shall have the effect of voiding the lien from its inception. If the circuit court finds the purported lien is frivolous, the prevailing party in any action brought under section 507D-4 shall be awarded costs of suit, reasonable attorneys' fees, and either actual damages or \$5,000, whichever is greater. The foregoing award shall be made in the form of a joint and several judgment issued in favor of the prevailing party and against each lien claimant and also against each person who owns or controls the activities of the lien claimant if the lien claimant is not a natural person.

(b) If the circuit court finds the purported lien is frivolous, upon application of a party in interest, the registrar, or the government counsel representing the government officer or employee affected by the purported lien, the court may also issue appropriate injunctive relief against the lien claimant to preclude further filings of any kind with the registrar for a period of five years, unless that person obtains leave of court to file another instrument with the registrar. The order shall be enforced in the manner for enforcement of injunctions. This order may be presented to the registrar for recordation. Proceedings under this subsection shall not preclude a person from proceeding under subsection (a) or section 507D-4 and recovering damages, penalties, costs, and attorneys' fees.

(c) Any person who knowingly submits for filing an invalid court order in support of a nonconsensual common law lien

against a federal, state, or county officer or employee, shall be guilty of tampering with a government record under section 710-1017.

(d) Nothing in this chapter shall inhibit or preclude any party in interest from seeking any other common law, statutory, or other equitable remedy. [L 1996, c 24, pt of §1; am L 1997, c 284, §4; am L 2000, c 95, §2]