

IC 32-28-13

Chapter 13. Common Law Liens

IC 32-28-13-1

"Common law lien"

Sec. 1. As used in this chapter, "common law lien" means a lien against real or personal property that is not:

- (1) a statutory lien;
- (2) a security interest created by agreement; or
- (3) except as provided in this chapter, a judicial lien obtained by legal or equitable process or proceedings.

As added by P.L.2-2002, SEC.13. Amended by P.L.191-2015, SEC.2.

IC 32-28-13-1.5

"Public employee"

Sec. 1.5. As used in this chapter, "public employee" means an individual who is an employee in the executive, judicial, or legislative branch of:

- (1) the state or a political subdivision (as defined in IC 5-11-10.5-1); or
- (2) the federal government;

in Indiana.

As added by P.L.191-2015, SEC.3.

IC 32-28-13-2

"Property owner"

Sec. 2. As used in this chapter, "property owner" means the owner of record of real or personal property.

As added by P.L.2-2002, SEC.13. Amended by P.L.191-2015, SEC.4.

IC 32-28-13-3

"Public official"

Sec. 3. As used in this chapter, "public official" means an individual who holds office or formerly held office at any time during the preceding four (4) years in the executive, judicial, or legislative branch of:

- (1) the state or a political subdivision (as defined in IC 5-11-10.5-1); or
- (2) the federal government;

in Indiana.

As added by P.L.2-2002, SEC.13. Amended by P.L.191-2015, SEC.5.

IC 32-28-13-4

Common law lien against public official based on performance of official duty precluded; voiding common law lien

Sec. 4. (a) This chapter provides the procedure for filing and releasing a common law lien.

(b) This chapter does not create a common law lien. A common law lien does not exist against the property of a public official for the

performance or nonperformance of the public official's official duty. A person asserting a common law lien must prove the existence of the lien:

- (1) as prescribed by the common law of Indiana; or
- (2) as provided in this chapter.

(c) Unless a common law lien becomes void at an earlier date under section 6(b) of this chapter, a common law lien is void if the common law lienholder fails to commence a suit on the common law lien within one hundred eighty (180) days after the date the common law lien is recorded under this chapter.

As added by P.L.2-2002, SEC.13. Amended by P.L.73-2009, SEC.1; P.L.191-2015, SEC.6.

IC 32-28-13-5

Statement of intention to hold common law lien

Sec. 5. (a) A person who wishes to record a common law lien must file with the county recorder of a county in which the real or personal property against which the common law lien is to be held is located a statement of the person's intention to hold a common law lien against the real or personal property. The statement must be recorded not later than sixty (60) days after the date of the last service provided by the person who wishes to record the lien.

(b) A statement of intention to hold a common law lien must meet all of the following requirements:

- (1) Except as provided in subsection (d), the person filing the statement must swear or affirm that the facts contained in the statement are true to the best of the person's knowledge.
- (2) The statement must be filed in duplicate.
- (3) The statement must set forth all of the following:
 - (A) That if the property owner is a public official or public employee who has filed a written notice in accordance with section 6.5 of this chapter, the common law lien is void thirty (30) days after filing the written notice if the suit has not been commenced.
 - (B) The amount claimed to be owed by the property owner to the lienholder.
 - (C) The name and address of the lienholder.
 - (D) The name of the property owner.
 - (E) The last address of the property owner as shown on the property tax records of the county.
 - (F) The legal description and street and number, if any, of the real property against which the common law lien is filed.
 - (G) A full description of the personal property against which the common law lien is filed, including the location of the personal property.
 - (H) The legal basis upon which the person asserts the right to hold the common law lien.

(c) The recorder shall send by first class mail one (1) of the duplicate statements filed under subsection (b) to the property owner

at the address listed in the statement within three (3) business days after the statement is recorded. The county recorder shall record the date the statement is mailed to the property owner under this subsection. The county recorder shall collect a fee of two dollars (\$2) from the lienholder for each statement that is mailed under this subsection.

(d) The statement of intention to hold a common law lien required under subsection (b) may be verified and filed on behalf of a client by an attorney registered with the clerk of the supreme court as an attorney in good standing under the requirements of the supreme court.

As added by P.L.2-2002, SEC.13. Amended by P.L.73-2009, SEC.2; P.L.191-2015, SEC.7.

IC 32-28-13-6

Notice to lienholder to commence suit; voiding common law lien

Sec. 6. (a) A property owner who is not a public official or public employee may send to the lienholder a notice requiring the lienholder to commence suit on the common law lien. The notice to commence suit must be made by first class mail to the lienholder at the address given in the lienholder's statement filed under section 5 of this chapter.

(b) If the lienholder fails to commence suit within thirty (30) days after the postmark date of the notice to commence suit received by the lienholder, the common law lien is void. To release the common law lien from the real or personal property, the property owner must comply with the requirements of section 7 of this chapter.

(c) The lienholder shall notify the county recorder in writing of:

- (1) the lienholder's commencement of a suit; or
- (2) the lienholder's intention not to commence suit.

As added by P.L.2-2002, SEC.13. Amended by P.L.191-2015, SEC.8.

IC 32-28-13-6.5

Property owner who is a public official or public employee

Sec. 6.5. (a) If a property owner who is a public official or public employee receives a statement of intention to hold a common law lien under section 5 of this chapter, the property owner may provide written notice to the county recorder swearing and affirming that the property owner is a public official or public employee.

(b) Not later than three (3) business days after receiving a property owner's written notice, the county recorder shall send to the lienholder the following:

- (1) A copy of the property owner's written notice.
- (2) A statement that if the lienholder fails to commence suit on the common law lien within thirty (30) days after the postmark date of the county recorder's notice under this subsection, the common law lien is void.

The county recorder shall send a copy of the county recorder's written notice to the property owner. The county recorder's notice to the

lienholder must be made by first class mail to the lienholder at the address given in the lienholder's statement filed under section 5 of this chapter. The county recorder shall record the date the statement is mailed to the lienholder under this section.

(c) The lienholder shall notify the county recorder in writing of:

- (1) the lienholder's commencement of a suit; or
- (2) the lienholder's intention not to commence suit.

As added by P.L.191-2015, SEC.9.

IC 32-28-13-7

Affidavit of service of notice to commence suit; release of property and expunging record; fee

Sec. 7. (a) If a lienholder fails to commence suit after notice to commence suit is sent under section 6 of this chapter, a property owner may file an affidavit of service of notice to commence suit with the recorder of the county in which the statement of intention to hold a common law lien was recorded. The affidavit must:

(1) include:

- (A) the date the notice to commence suit was mailed to the lienholder;
- (B) a statement that at least thirty (30) days have elapsed from the date the notice to commence suit was mailed to the lienholder;
- (C) a statement that a suit for foreclosure of the common law lien has not been filed and is not pending;
- (D) a statement that an unsatisfied judgment has not been rendered on the common law lien; and
- (E) a cross-reference specifying the record of the county recorder containing the statement of intention to hold a common law lien; and

(2) have attached to it a copy of the notice to commence suit that was sent to the lienholder under section 6 of this chapter. the

(b) The real or personal property against which the lien has been filed is released from the common law lien when the county recorder:

- (1) records the affidavit of service of notice to commence suit in the miscellaneous record book of the recorder's office; and
- (2) certifies in the county recorder's records that the lien is released.

(c) The county recorder shall collect a fee for filing the affidavit of service of notice to commence suit under the fee schedule established in IC 36-2-7-10.

As added by P.L.2-2002, SEC.13. Amended by P.L.191-2015, SEC.10.

IC 32-28-13-8

Certificate of satisfaction

Sec. 8. (a) When a common law lien recorded under this chapter has been satisfied, the lienholder shall record a certificate of satisfaction with the recorder of the county in which the statement of

intention to hold a common law lien was recorded. The certificate must specify the record of the county recorder that contains the statement of intention to hold a common law lien filed by the lienholder under section 5 of this chapter.

(b) The certificate of satisfaction recorded under this section must discharge and release the property owner from the common law lien and bar all suits and actions on the lien.

(c) The recorder shall collect a fee for recording a certificate of satisfaction under this section in accordance with the fee schedule established in IC 36-2-7-10.

As added by P.L.2-2002, SEC.13.

IC 32-28-13-9

Civil actions against lienholder

Sec. 9. A person who is injured by a common law lien that is recorded under section 5 of this chapter may bring a civil action against the lienholder for:

- (1) actual damages;
- (2) costs; and
- (3) reasonable attorney's fees.

As added by P.L.2-2002, SEC.13.