

CHAPTER 35**NONSTATUTORY LIENS — CONFIRMATION OF NOTICE TO AFFECTED PARTIES***S.F. 303*

AN ACT requiring that the clerk of the district court confirm that notice has been given to required parties prior to the filing of a nonstatutory lien.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 575.1, Code 1999, is amended to read as follows:

575.1 NONSTATUTORY LIENS.

1. A person claiming a common law lien, an equitable servitude lien, or a lien of similar nature which is other than a statutory lien, shall first give notice to any legal and equitable owners and persons in possession of the real or personal property against which the lien is sought.

a. If the lien is filed by an owner of the real or personal property, notice shall first be given to any person with a lien or other interest in the property.

b. The notice shall be given pursuant to the Iowa rules of civil procedure.

2. Prior to the filing of the lien in any office of record in the county where the real or personal property is located, the following shall occur:

a. The clerk of the district court shall confirm that all notices required pursuant to subsection 1 have been given.

b. The district court in such county shall hold a hearing to determine the validity of the lien.

(1) Pendency of such a proceeding shall not be indexed under section 617.10 and shall not constitute lis pendens or constructive notice to third persons under sections 617.11 through 617.15.

(2) A bona fide purchaser takes title to the real or personal property free of any claims arising from such proceeding unless proper filing is made in the office of the county recorder as provided in this section.

(3) The person claiming the lien is required to prove the validity of the lien by a preponderance of the evidence.

(4) If the court determines the person claiming the lien has willfully and maliciously proceeded, a judgment may be entered against the person claiming the lien in favor of any resisting party for reasonable damages, including actual damages, costs, and reasonable attorneys' fees incurred by the resisting party.

3. A lien, as described in this section, shall not be filed in any office of record other than as provided in this section and if such lien is filed other than as provided in this section, the lien shall be null and void and of no force or effect.

4. If, after hearing the district court enters an order determining the lien to be valid, the person claiming the lien shall file a certified copy of the order in the office of the county recorder where the real or personal property is located.

5. An appeal from the district court arising from such proceeding is by certiorari.

Approved April 16, 1999