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 States: Kansas

## EXPEDITING DETERMINATION OF VALIDITY OF LIENS IN KANSAS

By: Blair T. Gisi – SouthLaw, P.C.

Kansas is gradually transitioning into a state where, sooner rather than later, everything will be filed or recorded electronically. While these technological advancements make things easier and more convenient for most, it presents an increasing concern for creditors: the easier it is to file and record a lien, the higher the propensity that the lien is fraudulent.

In combating the rise in fraudulent liens, it's useful to keep in mind that Kansas has provided a most efficient route to determine the validity of said lien under K.S.A. § 58-4301. This statute sets out the steps creditors need to be prepared to take when it believes that a fraudulent lien is already clouding or will cloud title.

The statute specifically sets out:

Any person who owns real or personal property or who is the purported debtor or obligor and who has reason to believe that any document or instrument purporting to create a lien or claim against the real or personal property or an interest in real or personal property previously filed or submitted for filing and recording is fraudulent as defined in subsection (e) may complete and file, at any time without any time limitation, with the district court of the county in which the property or the rights appertaining thereto is situated, a motion for judicial review of the status of documentation or instrument purporting to create a lien or claim as provided in this section. K.S.A. §

58-4301(a)(1).

The motion must be accompanied by an affidavit by the movant or movant's attorney setting out the facts which the claim for relief is based. It's also recommended that the document or instrument creating the fraudulent lien is attached as well given that under subsection (b), the court can make a finding based solely on review of the documentation without hearing any testimonial evidence and can be made ex parte "without delay or notice of any kind". Also of note, there is no filing fee for filing a motion under this statute.

A presumption of fraud is given to a document or instrument that purports to create a lien or assert a claim against real property and: (1) was not provided for under the Constitution of the United States; (2) was not created by implied or express consent of all parties; or (3) was not judgment lien imposed by a Kansas or federal court. See K.S.A. § 58-4301(e).

This statute has been used to defend against everything from the more common fraudulent deed to even fraudulent UCC Liens and has proven to be as effective and efficient as it set out to be. It's an invaluable tool to keep handy when creditors' rights are fraudulently being threatened.

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