

## HOUSE BILL NO. 529

INTRODUCED BY S. FITZPATRICK

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO ENFORCEMENT OF LIENS; REVISING REQUIREMENTS FOR A SUMMONS AND AN ORDER TO SHOW CAUSE; REVISING LOCATIONS FOR FILINGS AND HEARINGS; AND AMENDING SECTION 71-3-1203, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 71-3-1203, MCA, is amended to read:

**"71-3-1203. Enforcement of lien -- sale.** If payment for work, labor, or services performed or feed or material furnished is not made within 30 days after the performance of the work, labor, or services or furnishing of the feed or material, the lienor under the provisions of this part may enforce the lien in the following manner:

(1) The lienor may file a lien enforcement action in ~~the district court of the county~~ a court of competent jurisdiction in the county in which the:

- (a) contract between the lienor and the owner of the property was entered into;
- (b) owner resided at the time the lien enforcement action commenced; or
- (c) property is located.

(2) Issuance or service of a summons is not required when a claim is made under this section. The order to show cause pursuant to subsection (5)(a) is in lieu of a summons as permitted by Rule 4(c)(2)(C), M.R.Civ.P., and Rule 4D(3) of the Montana Justice and City Courts Rules of Civil Procedure. A notice to or service of process on the owner is not required prior to the issuance of the order to show cause pursuant to subsection (5)(a).

(2)(3) When a claim is made under this section for a lien other than a nonpossessory special lien, an affidavit must be made by the lienor claiming the property or by someone on the lienor's behalf, stating:

- (a) the facts that the lienor performed a service for the property owner entitling the lienor to a lien on the owner's property pursuant to 71-3-1201;
- (b) that the service described in subsection ~~(2)(a)~~ (3)(a) was performed at the written or verbal

1 request of the owner or owner's agent;

2 (c) ~~a~~ the particular property upon which the lien is claimed; and

3 (d) an itemized list of the charges that are due and unpaid under the lien.

4 ~~(3)(4)~~ When a claim is made under this section for a nonpossessory special lien, the lienor shall  
5 submit to the court:

6 (a) a copy of the document required by 71-3-1201(2)(c); and

7 (b) a statement of the charges that are due and unpaid under the lien.

8 ~~(4)(5)~~ (a) If satisfactory, the court shall order the owner of the property to show cause why the  
9 property should not be sold pursuant to the procedures in this section. The order must include the date and  
10 time for a hearing. ~~The hearing may not be held more than 20 working days after the date of the issuance of the~~  
11 ~~order.~~

12 (b) One copy of The court the order to show cause provided for in subsection ~~(4)(a)~~ (5)(a) must be  
13 served on the owner pursuant to the Montana Rules of Civil Procedure on the owner by certified mail, return  
14 receipt requested, and one copy must be served by first-class mail at the owner's last address known to the  
15 lienor at least 5 21 days before the hearing date.

16 ~~(5)(6)~~ The lienor shall deliver to the sheriff of the county in which the property is located a copy of the  
17 court's lien enforcement judgment.

18 ~~(6)(7)~~ Upon receipt of the court's lien enforcement judgment, the sheriff shall advertise and sell at  
19 public auction as much of the property covered by the lien as will satisfy the lien.

20 ~~(7)(8)~~ The sale must be advertised, conducted, and held in the same manner as prescribed in 25-13-  
21 701(1)(b).

22 ~~(8)(9)~~ The owner of the property may request a hearing in ~~district a~~ court of competent jurisdiction to  
23 contest any matter regarding the sale of the property.

24 ~~(9)(10)~~ The sheriff shall apply the proceeds of the sale to the discharge of the lien and the cost of the  
25 proceedings in selling the property and enforcing the lien, and the remainder, if any, or a part that is required to  
26 discharge the claims, must be turned over by the sheriff to the holders, in the order of their precedence, of the  
27 chattel mortgages or other lien claimants of record against the property, and the balance of the proceeds must  
28 be turned over to the owner of the property."

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