



AN ACT REVISING MONTANA'S AGISTERS' LIEN ENFORCEMENT LAWS TO CONFORM WITH THE DUE PROCESS PROVISIONS OF THE MONTANA AND THE UNITED STATES CONSTITUTIONS; PROVIDING THAT THE PERSON WHO OWNS PROPERTY THAT IS SUBJECT TO THE LIEN BE PROVIDED A PROCESS FOR NOTICE AND AN OPPORTUNITY TO BE HEARD PRIOR TO THE PROPERTY BEING SOLD; AMENDING SECTION 71-3-1203, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

WHEREAS, Article II, section 17, of the Montana Constitution provides "No person shall be deprived of life, liberty, or property without due process of law" and Section 1 of the Fourteenth Amendment to the United States Constitution provides "nor shall any State deprive any person of life, liberty, or property, without due process of law"; and

WHEREAS, in light of these constitutional due process provisions, the United States District Court for the District of Montana in *Cox v. Yellowstone County*, 795 F. Supp. 2d 1128 (2011), held that the Court "can conceive of no set of circumstances under which Montana's agisters' lien statute could pass constitutional muster in view of procedural due process requirements. Particularly, the need to provide a meaningful opportunity to be heard prior to a government deprivation of property"; and

WHEREAS, the Court in *Cox v. Yellowstone County* further held that "the enforcement provision of Montana's agisters' lien statute, Mont. Code Ann. § 71-3-1203, is unconstitutional as written"; and

WHEREAS, this Act revises Montana's agisters' lien enforcement laws to conform with the due process provisions of the Montana and United States Constitutions.

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 ~~person entitled to a lien~~ 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 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) When a claim is made under this section, 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) was performed at the written or verbal request of the owner or owner's agent;

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

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

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

(b) The court order provided for in subsection (3)(a) must be served pursuant to the Montana Rules of Civil Procedure on the owner at least 5 days before the hearing date.

~~(4)~~(4) The person lienor shall deliver to the sheriff or a constable of the county in which the property is located a copy of the court's lien enforcement judgment an affidavit of the amount of the person's claim against the property, a description of the property, and the name of the owner of the property or of the person at whose request the work, labor, or services were performed or the feed or material was furnished.

~~(2)~~(5) Upon receipt of the affidavit court's lien enforcement judgment, the sheriff or constable shall proceed to advertise and sell at public auction as much of the property covered by the lien as will satisfy the lien.

~~(3)~~(6) The sale must be advertised, conducted, and held in the same manner as prescribed in 25-13-701(1)(b).

(7) The owner of the property may request a hearing in district court to contest any matter regarding the sale of the property.

~~(4) Before the sheriff or constable sells the property at public auction, the sheriff or constable shall give~~

~~notice of the sale to the owner or person at whose request the work, labor, or services were performed or the feed or material was furnished.~~

~~_____ (a) Notice to the owner must be given at least 10 days before the sale.~~

~~_____ (b) The notice must state:~~

~~_____ (i) the time and place of the sale;~~

~~_____ (ii) the amount of the claim against the property;~~

~~_____ (iii) a description of the property;~~

~~_____ (iv) the name of the owner or person who contracted for the services or materials; and~~

~~_____ (v) the name of the person claiming the lien.~~

~~_____ (c) The notice may be given by personal service or by mailing by certified mail a copy of the notice to the last known post office address of the owner or person who contracted for the work, labor, or services performed or the feed or material furnished.~~

~~_____ (d) If the sheriff or constable is not able to effect personal service or service by mail because the location and mailing address of the owner or the contracting person are unknown, the sheriff or constable may give notice by posting notice of the sale in three public places in the county in which the property is located.~~

~~(5)(8) The sheriff shall apply the proceeds of the sale to the discharge of the lien and the cost of the proceedings in selling the property and enforcing the lien, and the remainder, if any, or a part that is required to discharge the claims, must be turned over by the sheriff to the holders, in the order of their precedence, of the chattel mortgages or other lien claimants of record against the property, and the balance of the proceeds must be turned over to the owner of the property.~~

~~_____ (6) However, before seizing any property under the provisions of this section, the sheriff may require an indemnity bond from the lienor that may not exceed double the amount of the claim against the property. The bond and the surety or sureties on the bond must be approved by the sheriff."~~

Section 2. Effective date. [This act] is effective July 1, 2013.

Section 3. Applicability. [This act] applies to all proceedings and actions initiated on or after [the effective date of this act].

- END -

I hereby certify that the within bill,
HB 0462, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2013.

President of the Senate

Signed this _____ day
of _____, 2013.

HOUSE BILL NO. 462

INTRODUCED BY D. JONES, KNUDSEN, C. SMITH

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