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SENATE BILL 11-264

BY SENATOR(S) Newell, Lundberg;
also REPRESENTATIVE(S) Gardner B. and Lee, Hulinghorst, Labuda,
Wilson.

CONCERNING A CLARIFICATION OF STATE LAW GOVERNING THE
CIRCUMSTANCES UNDER WHICH A NOTICE OF LIS PENDENS MUST BE
RECORDED IN CONNECTION WITH THE FILING OF A DEBT SECURITY
INSTRUMENT AS A SUBSTITUTE FOR THE FILING OF CERTAIN LIENS.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly hereby finds, determines, and declares that:

(a) In *Weize Company, LLC v. Colorado Regional Construction, Inc.*, No. 09CA1369 (Colo. App. June 10, 2010), the Colorado Court of Appeals held that the filing of a bond or undertaking as a substitute for the filing of a mechanics' lien does not excuse a lien claimant from the requirement to record a notice of lis pendens;

(b) Section 38-22-131, Colorado Revised Statutes, authorizes a bond or undertaking to be substituted for the filing of a lien;

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(c) The purpose and intent of section 38-22-132, Colorado Revised Statutes, is to provide that, upon the filing of a bond or undertaking pursuant to section 38-22-131, Colorado Revised Statutes, the lien against the property is forever discharged and released from any action to foreclose the lien, as the bond or undertaking is substituted in place of the lien. In addition, under section 38-22-110, Colorado Revised Statutes, a lis pendens is required only to "hold the property" and the section does not require that the lis pendens be recorded in connection with an action on a bond or other undertaking pursuant to section 38-22-133, Colorado Revised Statutes. Moreover, because a lien claimant is without the right to assert any lien against property upon the filing of a bond or undertaking pursuant to section 38-22-131, Colorado Revised Statutes, it is not only unnecessary but also prohibited for the lien claimant to thereafter record or maintain a lis pendens relating to the lien or any action for the enforcement of the lien.

(d) In holding that the recording of a lis pendens is required in connection with the commencement of an action on a substituted bond or undertaking pursuant to section 38-22-133, Colorado Revised Statutes, the ruling of the Court of Appeals in *Weize* is contrary to the purpose and intent of sections 38-22-110 and 38-22-132, Colorado Revised Statutes; and

(e) Section 38-22.5-111, Colorado Revised Statutes, contains a provision similar to that found in section 38-22-131, Colorado Revised Statutes, that allows for the substitution of a bond or similar form of financial surety in place of a real estate broker's lien.

(2) By enacting Senate Bill 11-264, enacted in 2011, it is the intent of the general assembly to clarify for future lien claimants and other interested parties the circumstances under which a notice of lis pendens is required to be recorded in connection with the filing of a bond or undertaking as a substitute for the filing of a mechanics' or real estate broker's lien.

SECTION 2. 38-22-132, Colorado Revised Statutes, is amended to read:

38-22-132. Lien to be discharged. Notwithstanding the provisions of ~~section 38-22-119~~ ANY OTHER PROVISION OF THIS ARTICLE OR SECTION 38-35-110, upon ~~the filing~~ COURT APPROVAL of a bond or undertaking as provided in section 38-22-131, AND UPON THE ISSUANCE AND RECORDING

OF A CERTIFICATE OF RELEASE AS SPECIFIED IN THIS SECTION, the lien against the property, ~~shall be forthwith~~ AND ANY NOTICE OF LIS PENDENS OR NOTICE OF THE COMMENCEMENT OF ANY ACTION RELATING TO SUCH LIEN, SHALL BE IMMEDIATELY discharged and released in full; ~~and~~ the real property described in such bond or undertaking shall be FOREVER released from the lien, FROM ANY NOTICE OF LIS PENDENS OR NOTICE OF THE COMMENCEMENT OF ANY ACTION RELATING TO SUCH LIEN, and from any action brought to foreclose such lien; ~~and~~ the bond or undertaking shall be substituted; AND NO NOTICE OF LIS PENDENS OR NOTICE OF THE COMMENCEMENT OF ANY ACTION RELATING TO SUCH LIEN OR ANY ACTION FOR THE ENFORCEMENT OR FORECLOSURE THEREOF SHALL THEREAFTER BE RECORDED AGAINST THE PROPERTY. The clerk of the district court with which such bond or undertaking has been filed shall issue a certificate of release which shall be recorded in the office of the clerk and recorder of the county wherein the original mechanic's lien was filed, and the certificate of release shall show that the property has been FOREVER released from the lien, FROM ANY NOTICE OF LIS PENDENS OR NOTICE OF THE COMMENCEMENT OF ANY ACTION RELATING TO SUCH LIEN, and from any action brought to foreclose such lien.

SECTION 3. 38-22.5-111 (3), Colorado Revised Statutes, is amended to read:

38-22.5-111. Substitution of bond allowed - lien to be discharged. (3) NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE OR SECTION 38-35-110, upon the filing of a bond or undertaking as provided in this section, the lien against the property, ~~shall be~~ AND ANY NOTICE OF LIS PENDENS RELATING TO SUCH LIEN OR NOTICE OF THE COMMENCEMENT OF ANY ACTION RELATING TO SUCH LIEN, SHALL BE immediately discharged and released in full; the real property described in such bond or undertaking shall be FOREVER released from the lien, FROM ANY NOTICE OF LIS PENDENS OR NOTICE OF THE COMMENCEMENT OF ANY ACTION RELATING TO SUCH LIEN, and from any action brought to foreclose the lien; the bond or undertaking shall be substituted; AND NO NOTICE OF LIS PENDENS OR NOTICE OF THE COMMENCEMENT OF ANY ACTION RELATING TO SUCH LIEN OR ANY ACTION FOR THE ENFORCEMENT OR FORECLOSURE THEREOF SHALL THEREAFTER BE RECORDED AGAINST THE PROPERTY. The clerk of the district court with which the bond or undertaking has been filed shall issue a certificate of release, which shall be recorded in the office of the clerk and recorder of the county in which the original real estate brokers' lien was filed, and the certificate of release shall show that the property has

been FOREVER released from the lien, FROM ANY NOTICE OF LIS PENDENS RELATING TO SUCH LIEN, FROM ANY NOTICE OF THE COMMENCEMENT OF ANY ACTION RELATING TO SUCH LIEN, and from any action brought to foreclose the SUCH lien.

SECTION 4. The introductory portion to 38-35-110 (2) (a), Colorado Revised Statutes, is amended to read:

38-35-110. Lis pendens as notice - issuance of certificate - expiration. (2) (a) Unless a timely notice of appeal is filed while a notice of lis pendens is in effect or unless the notice of lis pendens has expired and ceased to be notice as provided in subsection (6) of this section, EXCEPT AS PROVIDED IN SECTIONS 38-22-132 AND 38-22.5-111, a recorded notice of lis pendens shall remain in effect until the earliest of the following:

SECTION 5. Effective date - applicability. This act shall take effect July 1, 2011, and shall apply to actions commenced on or after said date.

SECTION 6. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Brandon C. Shaffer
PRESIDENT OF
THE SENATE

Frank McNulty
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO