

First Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 11-1006.01 Bob Lackner

SENATE BILL 11-264

SENATE SPONSORSHIP

Newell,

HOUSE SPONSORSHIP

Gardner B. and Lee,

Senate Committees
Judiciary

House Committees
Judiciary

HOUSE
3rd Reading Unam ended
May 11, 2011

HOUSE
2nd Reading Unam ended
May 10, 2011

SENATE
3rd Reading Unam ended
May 6, 2011

SENATE
Am ended 2nd Reading
May 5, 2011

A BILL FOR AN ACT

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

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Upon the filing of a bond or undertaking as a substitute for the

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

filing of a mechanics' or real estate broker's lien, the bill provides that:

- ! The lien, and any notice of lis pendens relating to the lien or notice of the commencement of any action relating to a lien filed against the real property, is immediately discharged and released in full;
- ! The real property described in the bond or undertaking is to be forever released from the lien and from any notice of lis pendens or notice of the commencement of any action relating to the lien and from any action brought to foreclose the lien; and
- ! No notice of lis pendens or notice of the commencement of any action relating to the lien or any action for the enforcement of the lien shall thereafter be recorded against the property.

The bill requires the clerk of the district court to show that the property has been forever released from the lien and from any notice of lis pendens or notice of the commencement of any action relating to such lien in the certificate of release issued by the clerk.

The bill makes an exception for its provisions from statutory requirements specifying when a recorded notice of lis pendens shall remain in effect.

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

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

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

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

11 (c) The purpose and intent of section 38-22-132, Colorado
12 Revised Statutes, is to provide that, upon the filing of a bond or
13 undertaking pursuant to section 38-22-131, Colorado Revised Statutes,

1 the lien against the property is forever discharged and released from any
2 action to foreclose the lien, as the bond or undertaking is substituted in
3 place of the lien. In addition, under section 38-22-110, Colorado Revised
4 Statutes, a lis pendens is required only to "hold the property" and the
5 section does not require that the lis pendens be recorded in connection
6 with an action on a bond or other undertaking pursuant to section
7 38-22-133, Colorado Revised Statutes. Moreover, because a lien
8 claimant is without the right to assert any lien against property upon the
9 filing of a bond or undertaking pursuant to section 38-22-131, Colorado
10 Revised Statutes, it is not only unnecessary but also prohibited for the lien
11 claimant to thereafter record or maintain a lis pendens relating to the lien
12 or any action for the enforcement of the lien.

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

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

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

1 broker's lien.

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

4 **38-22-132. Lien to be discharged.** Notwithstanding the
5 provisions of section 38-22-119 ANY OTHER PROVISION OF THIS ARTICLE
6 OR SECTION 38-35-110, upon the filing COURT APPROVAL of a bond or
7 undertaking as provided in section 38-22-131, AND UPON THE ISSUANCE
8 AND RECORDING OF A CERTIFICATE OF RELEASE AS SPECIFIED IN THIS
9 SECTION, the lien against the property, shall be forthwith AND ANY NOTICE
10 OF LIS PENDENS OR NOTICE OF THE COMMENCEMENT OF ANY ACTION
11 RELATING TO SUCH LIEN, SHALL BE IMMEDIATELY discharged and released
12 in full; ~~and~~ the real property described in such bond or undertaking shall
13 be FOREVER released from the lien, FROM ANY NOTICE OF LIS PENDENS OR
14 NOTICE OF THE COMMENCEMENT OF ANY ACTION RELATING TO SUCH LIEN,
15 and from any action brought to foreclose such lien; ~~and~~ the bond or
16 undertaking shall be substituted; AND NO NOTICE OF LIS PENDENS OR
17 NOTICE OF THE COMMENCEMENT OF ANY ACTION RELATING TO SUCH LIEN
18 OR ANY ACTION FOR THE ENFORCEMENT OR FORECLOSURE THEREOF SHALL
19 THEREAFTER BE RECORDED AGAINST THE PROPERTY. The clerk of the
20 district court with which such bond or undertaking has been filed shall
21 issue a certificate of release which shall be recorded in the office of the
22 clerk and recorder of the county wherein the original mechanic's lien was
23 filed, and the certificate of release shall show that the property has been
24 FOREVER released from the lien, FROM ANY NOTICE OF LIS PENDENS OR
25 NOTICE OF THE COMMENCEMENT OF ANY ACTION RELATING TO SUCH LIEN,
26 and from any action brought to foreclose such lien.

27 **SECTION 3.** 38-22.5-111 (3), Colorado Revised Statutes, is

1 amended to read:

2 **38-22.5-111. Substitution of bond allowed - lien to be**
3 **discharged.** (3) NOTWITHSTANDING ANY OTHER PROVISION OF THIS
4 ARTICLE OR SECTION 38-35-110, upon the filing of a bond or undertaking
5 as provided in this section, the lien against the property, ~~shall be~~ AND ANY
6 NOTICE OF LIS PENDENS RELATING TO SUCH LIEN OR NOTICE OF THE
7 COMMENCEMENT OF ANY ACTION RELATING TO SUCH LIEN, SHALL BE
8 immediately discharged and released in full; the real property described
9 in such bond or undertaking shall be FOREVER released from the lien,
10 FROM ANY NOTICE OF LIS PENDENS OR NOTICE OF THE COMMENCEMENT OF
11 ANY ACTION RELATING TO SUCH LIEN, and from any action brought to
12 foreclose the lien; the bond or undertaking shall be substituted; AND NO
13 NOTICE OF LIS PENDENS OR NOTICE OF THE COMMENCEMENT OF ANY
14 ACTION RELATING TO SUCH LIEN OR ANY ACTION FOR THE ENFORCEMENT
15 OR FORECLOSURE THEREOF SHALL THEREAFTER BE RECORDED AGAINST
16 THE PROPERTY. The clerk of the district court with which the bond or
17 undertaking has been filed shall issue a certificate of release, which shall
18 be recorded in the office of the clerk and recorder of the county in which
19 the original real estate brokers' lien was filed, and the certificate of
20 release shall show that the property has been FOREVER released from the
21 lien, FROM ANY NOTICE OF LIS PENDENS RELATING TO SUCH LIEN, FROM
22 ANY NOTICE OF THE COMMENCEMENT OF ANY ACTION RELATING TO SUCH
23 LIEN, and from any action brought to foreclose ~~the~~ SUCH lien.

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

26 **38-35-110. Lis pendens as notice - issuance of certificate -**
27 **expiration.** (2) (a) Unless a timely notice of appeal is filed while a

1 notice of lis pendens is in effect or unless the notice of lis pendens has
2 expired and ceased to be notice as provided in subsection (6) of this
3 section, EXCEPT AS PROVIDED IN SECTIONS 38-22-132 AND 38-22.5-111,
4 a recorded notice of lis pendens shall remain in effect until the earliest of
5 the following:

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

9 **SECTION 6. Safety clause.** The general assembly hereby finds,
10 determines, and declares that this act is necessary for the immediate
11 preservation of the public peace, health, and safety.