

§ 38-35-201. Definitions

As used in this part 2, unless the context otherwise requires:

(1) "Federal official or employee" means an appointed or elected official or any employee of the government of the United States of America or of any agency of such government as defined for purposes of the "Federal Tort Claims Act", 28 U.S.C. sec. 2671.

(2) "Lien" means an encumbrance on real or personal property as security for the payment of a debt or performance of an obligation.

(3) "Spurious document" means any document that is forged or groundless, contains a material misstatement or false claim, or is otherwise patently invalid.

(4) "Spurious lien" means a purported lien or claim of lien that:

(a) Is not provided for by a specific Colorado or federal statute or by a specific ordinance or charter of a home rule municipality;

(b) Is not created, suffered, assumed, or agreed to by the owner of the property it purports to encumber; or

(c) Is not imposed by order, judgment, or decree of a state court or a federal court.

(5) "State court" means a court established pursuant to title 13, C.R.S.

(6) "State or local official or employee" means an appointed or elected official or any employee of:

(a) The state of Colorado;

(b) Any agency, board, commission, or state department in any branch of state government;

(c) Any institution of higher education; or

(d) Any school district, political subdivision, county, municipality, intergovernmental agency, or other unit of local government in Colorado.

History:

L. 97: Entire part added, p. 35, § 1, effective March 20. L. 98: (4)(a) amended, p. 152, § 1, effective April 2.

Case Note:

ANNOTATION

For purposes of satisfying the definition of "spurious document" under subsection (3), a document is "groundless" for which a proponent can advance no rational argument based on evidence or the law to support the claim of a lien. Westar Holdings P'ship v. Reece, 991 P.2d 328 (Colo. App. 1999).

The "spuriousness" of a lis pendens turns on whether the lis pendens is filed in connection with a claim that affects title to real property and not on an assessment of the merits of the claim in connection with which the lis pendens was filed. Better Baked, LLC v. GJG Prop., LLC, 2020 COA 51, 465 P.3d 84 (disagreeing with Westar Holdings P'ship v. Reece annotated above).

Notice of lis pendens may be a spurious document, which includes any document that is forged or groundless, contains a material misstatement or false claim, or is otherwise patently invalid. Pierce v. Francis, 194 P.3d 505 (Colo. App. 2008); Shyanne Props., LLC v. Torp, 210 P.3d 490 (Colo. App. 2009).

"Wild deed" is "patently invalid" and thus a spurious document under subsection (3). A deed of trust executed by a grantor with no right, title, or interest in the subject properties the deed purported to convey is outside the chain of title, a "wild deed", and a spurious document. GMAC Mortgage Corp. v. PWI Group, 155 P.3d 556 (Colo. App. 2006).

Use of notices of lis pendens in will contests appropriate. Pierce v. Francis, 194 P.3d 505 (Colo. App. 2008).

Claims in underlying will contest sufficient to justify a notice of lis pendens. Pierce v. Francis, 194 P.3d 505 (Colo. App. 2008).

Likelihood of success at trial or on appeal not required to rebuff a challenge to a lis pendens notice. Pierce v. Francis, 194 P.3d 505 (Colo. App. 2008).

Because mechanic's liens are provided for by statute, article 22 of title 38, they are excluded from definition of "spurious liens" and cannot be invalidated on that basis. Moreover, mechanic's liens cannot be challenged as "spurious documents". Tuscan, LLC v. W. States Excavating Pipe & Boring, LLC, 128 P.3d 274 (Colo. App. 2005).

Courts of general jurisdiction have the authority to weigh the validity of a mechanic's lien on other grounds and apply the spurious liens and documents' statutes. *SR Condos., LLC v. K.C. Constr., Inc.*, 176 P.3d 866 (Colo. App. 2007).

Notice of lis pendens cannot be a spurious lien because such notice is not a lien. A notice of lis pendens does not encumber property but merely informs third parties that litigation is pending that could affect title to the property. *Pierce v. Francis*, 194 P.3d 505 (Colo. App. 2008).

A deed of trust must be examined as a spurious lien under subsection (4), not as a spurious document under subsection (3). *Deutsche Bank Trust Co. Ams. v. Samora*, 2013 COA 81, 321 P.3d 590 .

A district court magistrate's order is an "order" of a state court for purposes of subsection (4)(c). *Evans v. Evans*, 2 019 COA 179, 469 P.3d 498 .

Abstract of magistrate's order allocating previously undisclosed marital assets filed with county clerk and recorder by wife's attorney and that appeared as an encumbrance against husband's property is not a "spurious lien" under subsection (4). The magistrate's order was an enforceable order at the time the abstract was recorded. And it was an order of a state court for purposes of subsection (4)(c). The statute does not require that a lien imposed by a court order be a judgment lien. Rather, any type of lien imposed by order, judgment, or decree of a state court cannot be spurious, regardless of how it was created or what it is called. *Evans v. Evans*, 2 019 COA 179, 469 P.3d 498 .

Abstract of magistrate's order was not a "spurious document" within subsection (3). A spurious document is one for which a proponent can advance no rational argument based on evidence or the law to support the claim. *Evans v. Evans*, 2 019 COA 179, 469 P.3d 498 .

Wife advanced a rational argument that the abstract reflected an enforceable order. Even if the abstract were invalid, it is not the type of patently invalid document that this section was enacted to invalidate. *Evans v. Evans*, 2019 COA 179, 469 P.3d 498 .

§ 38-35-202. Recording or filing

(1) Any state or local official or employee, including the clerk and recorder of any county or city and county and the Colorado secretary of state, may accept or reject for recording or filing any document that the state or local official or employee reasonably believes in good faith may be a spurious lien or spurious document.

(2) No state or local official or employee, including the clerk and recorder of any county or city and county and the Colorado secretary of state, shall be liable to any person or claimant for either the acceptance or rejection for recording or filing of any document that the state or local official or employee reasonably believes in good faith may be a spurious lien or spurious document.

(3) No state or local official or employee, including the clerk and recorder of any county or city and county and the Colorado secretary of state, shall be obligated to accept for recording or filing any lien or claim of lien against a federal official or employee or a state or local official or employee based upon the performance or nonperformance of that official's or employee's duties unless such lien or claim of lien is accompanied by a specific order issued by a state court or federal court authorizing the recording or filing of such lien or claim of lien.

History:

L. 97: Entire part added, p. 36, § 1, effective March 20.

§ 38-35-203. Action to enforce

(1) No spurious lien or spurious document shall hold or affect any real or personal property longer than thirty-five days after the lien or document has been recorded or filed in the office of any state or local official or employee, including the office of the clerk and recorder of any county or city and county or the office of the Colorado secretary of state, unless within the thirty-five days:

(a) An action has been commenced to enforce such lien or document in the state district court for the county or city and county in which the lien or document was recorded or filed or the federal district court in Colorado; and

(b) A notice of lis pendens stating that such an action has been commenced is recorded or filed in the office where the lien or document was recorded or filed.

(2) The notice of lis pendens required by paragraph (b) of subsection (1) of this section must comply with the requirements of section 38-35-110 and rule 105 (f) of the Colorado rules of civil procedure and must include the civil action number of the action that has been commenced to enforce the lien or document. Failure to comply with the requirements of this subsection (2) shall render the notice of lis pendens invalid.

History:

L. 97: Entire part added, p. 37, § 1, effective March 20. L. 2012: IP(1) amended, (SB 12-175), ch. 208, p. 895, § 169, effective July 1.

§ 38-35-204. Order to show cause

(1) Any person whose real or personal property is affected by a recorded or filed lien or document that the person believes is a spurious lien or spurious document may petition the district court in the county or city and county in which the lien or document was recorded or filed or the federal district court in Colorado for an order to show cause why the lien or document should not be declared invalid. The petition shall set forth a concise statement of the facts upon which the petition is based and shall be supported by an affidavit of the petitioner or the petitioner's attorney. The order to show cause may be granted ex parte and shall:

(a) Direct any lien claimant and any person who recorded or filed the lien or document to appear as respondent before the court at a time and place certain not less than fourteen days nor more than twenty-one days after service of the order to show cause why the lien or document should not be declared invalid and why such other relief provided for by this section should not be granted;

(b) State that, if the respondent fails to appear at the time and place specified, the spurious lien or spurious document will be declared invalid and released; and

(c) State that the court shall award costs, including reasonable attorney fees, to the prevailing party.

(2) If, following the hearing on the order to show cause, the court determines that the lien or document is a spurious lien or spurious document, the court shall make findings of fact and enter an order and decree declaring the spurious lien or spurious document and any related notice of lis pendens invalid, releasing the recorded or filed spurious lien or spurious document, and entering a monetary judgment in the amount of the petitioner's costs, including reasonable attorney fees, against any respondent and in favor of the petitioner. A certified copy of such order may be recorded or filed in the office of any state or local official or employee, including the clerk and recorder of any county or city and county and the Colorado secretary of state.

(3) If, following the hearing on the order to show cause, the court determines that the lien or document is not a spurious lien or spurious document, the court shall issue an order so finding and enter a monetary judgment in the amount of any respondent's costs, including reasonable attorney fees, against any petitioner and in favor of the respondent.

History:

L. 97: Entire part added, p. 37, § 1, effective March 20. L. 2012: (1)(a) amended, (SB 12-175), ch. 208, p. 895, § 170, effective July 1.

Editor's Note:

Section 38-22.5-110 states that this section applies to liens asserted pursuant to article 22.5 of this title.

Case Note:

ANNOTATION

For purposes of satisfying the definition of "spurious document" under this section, a document is "groundless" for which a proponent can advance no rational argument based on evidence or the law to support the claim of a lien. Westar Holdings P'ship v. Reece, 991 P.2d 328 (Colo. App. 1999).

Exhibit in civil action cannot be a spurious document. Section only applies to recording or filing that affects a person's real property, and an exhibit is nothing more than evidence relating to the parties' legal positions. Battle N., LLC v. Sensible Hous. Co., 2 015 COA 83, 370 P.3d 238 .

An invalid quitclaim deed may be a spurious document. Such a document creates a cloud on the title, and thereby may affect a person's real property. Battle N., LLC v. Sensible Hous. Co., 2015 COA 83, 370 P.3d 238 .

A hearing held pursuant to subsection (3) includes both the privilege to be present when the case is being considered and the right to present and support one's contentions by evidence and argument, unless the parties agree to a waiver of the right to be present and have evidence considered. Accordingly, the court erred in limiting its review to the pleaded allegations and legal argument. Westar Holdings P'ship v. Reece, 991 P.2d 328 (Colo. App. 1999).

Trial court had jurisdiction to award attorney fees and costs to defendants for a spurious lis pendens. Because plaintiff did not refute that the lis pendens was spurious at the show cause hearing, and because a lis pendens can be a spurious document, trial court had jurisdiction to enter judgment in favor of defendants and against plaintiff for defendants' costs and attorney fees. Shyanne Props., LLC v. Torp, 210 P.3d 490 (Colo. App. 2009).

Trial court abused its discretion in awarding attorney fees without holding an evidentiary hearing on the reasonableness and necessity of the attorney fees requested by defendants. If a party requests a

hearing concerning an award of fees, the trial court must hold a hearing. *Shyanne Props., LLC v. Torp*, 210 P.3d 490 (Colo. App. 2009).

Release of contested liens or documents before the show cause hearing precludes an award of attorney fees under this section. *Sifton v. Stewart Title Guar. Co.*, 259 P.3d 542 (Colo. App. 2011).

This section and C.R.C.P. 105.1, both governing spurious lien proceedings, conflict with, and thus control over, the more general rules of pleading. Therefore, the trial court did not err when it concluded that banks could not raise their counterclaims and third-party claim in the spurious lien action and dismissed them without prejudice. *Fiscus v. Liberty Mortgage Corp.*, 2014 COA 79, 373 P.3d 644, *aff'd* on other grounds, 2016 CO 31, 379 P.3d 278 .