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SENATE BILL 93

**54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

INTRODUCED BY

Bill Tallman

AN ACT

RELATING TO MUNICIPAL LIENS; REMOVING THE STATUTE OF  
LIMITATIONS ON CAUSES OF ACTION REGARDING MUNICIPAL LIENS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 3-36-1 NMSA 1978 (being Laws 1965,  
Chapter 300, Section 14-35-1, as amended) is amended to read:

"3-36-1. MUNICIPAL LIEN--FILING WITH COUNTY CLERK--  
CONTENTS OF LIEN--INTEREST ON PRINCIPAL AMOUNT OF UTILITY  
LIEN--

A. The municipal clerk shall file in the office of  
the county clerk any notice of lien created by ordinance or  
under authority of law. The notice of lien shall include:

(1) the number of the ordinance under which  
the lien is established;

(2) the fact that a lien is established;

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- 1 (3) the general purpose of the lien;  
2 (4) the name of the owner of the property  
3 against which the lien is established, as determined from the  
4 records of the county assessor;  
5 (5) a description of the property against  
6 which the lien is established;  
7 (6) the amount of the lien; and  
8 (7) if the lien is for more than one period of  
9 time, the dates for which the lien is established.

10 B. A lien for charges or assessments [~~which~~] that  
11 are provided for or fixed by any one ordinance or under  
12 authority of law may be included in the same notice of lien,  
13 and it shall not be necessary to file separate liens against  
14 the separate properties. The lien shall be attested in the  
15 name of the municipal clerk under the seal of the municipality.

16 C. The principal amount of any lien imposed for a  
17 municipal utility charge or assessment shall bear interest at  
18 the rate of twelve percent per year from the date of filing the  
19 notice of the lien unless otherwise provided by law.

20 D. No statute of limitation shall exist for a cause  
21 of action regarding a municipal lien."

22 SECTION 2. Section 3-36-6 NMSA 1978 (being Laws 1973,  
23 Chapter 379, Section 1, as amended) is amended to read:

24 "3-36-6. SPECIAL ALTERNATIVE PROCEDURE FOR THE  
25 FORECLOSURE OF MUNICIPAL LIENS BY ACTION IN REM.--

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1           A. As used in this section:

2                   (1) "lien" means any unpaid assessment for a  
3 street, alley, curb, gutter, storm sewer, sanitary sewer, off-  
4 street parking or any other type of municipal special  
5 assessment, together with interest and penalties on all of the  
6 foregoing and cost in connection therewith, ~~[which]~~ that is a  
7 lien on real property duly recorded in the land records of the  
8 county;

9                   (2) "court" means the district court of the  
10 county in which the land is situate; and

11                   (3) "municipal clerk" means the clerk of the  
12 municipality, ~~[his]~~ the clerk's deputy, if any, or ~~[his]~~ the  
13 clerk's designated representative.

14           B. The provisions of this section shall be  
15 applicable only to liens owned by a municipality and shall not:

16                   (1) affect existing remedy or procedure for  
17 the enforcement or foreclosure of liens provided for in ~~[this~~  
18 ~~chapter]~~ the Municipal Code or any other law, but the procedure  
19 provided ~~[herein]~~ in this section for foreclosure by action in  
20 rem shall be in addition to any other remedies now provided by  
21 law for the foreclosure of any municipal lien and shall not be  
22 construed as repealing or amending any existing procedure by  
23 implication; and

24                   (2) affect pending actions or proceedings  
25 ~~[provided, however, that any pending action or proceeding for~~

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1 ~~the enforcement or foreclosure of municipal liens may, at the~~  
2 ~~election of the municipality, be discontinued without prejudice~~  
3 ~~and a new action may be instituted pursuant to the provisions~~  
4 ~~of this section in respect to any such lien, which new action,~~  
5 ~~if instituted within sixty days, shall relate back for purposes~~  
6 ~~of the statute of limitations to the date of the filing of the~~  
7 ~~original action].~~

8 C. The district courts shall have jurisdiction of  
9 actions authorized by this section.

10 D. Whenever it [~~shall appear~~] appears that a lien  
11 as defined [~~herein~~] in this section, or any installments  
12 thereon, has been due and unpaid and is delinquent after the  
13 date [~~said~~] the assessment or other legal charge became a lien,  
14 the municipality may elect to declare the total amount due and  
15 payable, and such lien may be foreclosed in the manner provided  
16 [~~herein~~] in this section notwithstanding the provisions of any  
17 other general or special law. [~~An election to declare the~~  
18 ~~total amount due and payable shall not constitute an~~  
19 ~~acceleration of the payment for the purpose of the statute of~~  
20 ~~limitation, and the statute of limitation shall not commence to~~  
21 ~~run until the last installment would normally come due.]~~

22 (1) The director of finance or other municipal  
23 officer designated by the governing body to collect and receive  
24 payments due on municipal liens shall, from time to time,  
25 submit to the municipal clerk a list of tracts or parcels of

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1 land against which the municipality holds a lien and a payment  
2 or any installments due thereon have been unpaid and are  
3 delinquent. [~~Such~~] The list shall contain the legal  
4 [~~description~~] descriptions of the parcels concerned and may  
5 include one or more separate parcels or tracts with the [~~name~~]  
6 names and [~~address~~] addresses of the owners and other parties  
7 of interest, if known.

8 (2) The municipal clerk shall then prepare and  
9 sign a notice of foreclosure [~~which will~~] that shall also bear  
10 the signature and mailing address of an attorney representing  
11 the municipality. The notice shall be substantially in the  
12 following form:

13 "STATE OF NEW MEXICO COUNTY OF \_\_\_\_\_  
14 IN THE DISTRICT COURT  
15 NOTICE OF FORECLOSURE OF LIENS BY THE CITY OF \_\_\_\_\_,  
16 Plaintiff.

17 By: Action in rem

18 To: (List the names and addresses, if known, of all  
19 parties having an interest in any of the parcels of land to be  
20 described below)

21 Defendants.

22 A. List all parcels by legal description with name  
23 of the title owner and mortgage holder, and other  
24 interested parties if known, with the following  
25 information as to each parcel:

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- 1                   1. The date such lien was made of record.
- 2                   2. The legal basis for the lien, such as assessment
- 3                   district and account number.
- 4                   3. If lien is imposed by an ordinance, the number
- 5                   and the date of the ordinance.
- 6                   4. The date of the last payment made on such
- 7                   assessment or charges [~~which~~] that constitute the lien.
- 8                   5. A statement that payments on the assessment or
- 9                   charges or any installment of an assessment are
- 10                  delinquent.
- 11                  6. The total amount due and payable, including
- 12                  penalties and interest to date.
- 13                  7. A statement that the municipality elects to
- 14                  declare the total unpaid balance now due and payable.
- 15                  B. A statement to the effect all persons and
- 16                  corporations named above and any and all unknown persons
- 17                  who may have an interest in the lands described are hereby
- 18                  notified that the filing of this notice of foreclosure
- 19                  with the clerk of the district court constitutes the
- 20                  complaint and commencement by the city of \_\_\_\_\_
- 21                  of an action in the district court of \_\_\_\_\_
- 22                  county to foreclose the liens herein described by
- 23                  foreclosure proceedings in rem, and that the filing of a
- 24                  duplicate original of this notice in the office of the
- 25                  county clerk of the county where the land is situate

1 constitutes notice of pendency of the action against each  
2 piece or parcel of land herein described to enforce the  
3 payment of such liens. This action is brought against the  
4 real property only and is to foreclose the liens described  
5 in this notice.

6 C. All interested parties are hereby notified that  
7 a copy of this notice is on file in the office of the  
8 municipal clerk and is open to public inspection during  
9 normal business hours for a period of sixty (60) days from  
10 the date this notice was filed with the district court.

11 D. And take further notice that any person having  
12 or claiming to have an interest in any such parcel or  
13 parcels and the legal right thereto, may, on or before  
14 sixty (60) days from the date of the filing of this notice  
15 with the clerk of the district court, by paying to the  
16 municipality all amounts due, including interest and  
17 penalties due thereon, computed to the date of payment,  
18 [~~attorneys~~] attorney fees and costs, or at the option of  
19 the municipality, by paying to the municipality the amount  
20 of the unpaid installments thereon, plus all interest and  
21 penalties due thereon computed to the date of payment,  
22 [~~attorneys~~] attorney fees and costs, move for dismissal  
23 of the foreclosure with or without prejudice, as  
24 applicable.  
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Municipal Clerk

ATTEST:

\_\_\_\_\_  
Attorney for the city of \_\_\_\_\_  
(mailing address)".

(3) Upon the filing of the notice of foreclosure as provided [~~herein~~] in this section, the clerk of the district court shall forthwith issue a summons substantially in the following form:

"SUMMONS

Defendants: Greeting:

You are hereby commanded to appear before the Honorable \_\_\_\_\_, Division \_\_\_\_\_, the \_\_\_\_\_ Judicial District of the state of New Mexico, sitting within and for the county of \_\_\_\_\_ that being the county in which the notice of foreclosure of liens herein is filed, within sixty (60) days after the date hereof and then and there answer the notice of foreclosure of liens and show cause why the foreclosure should not be granted.

You are further notified that in the event of failure to pay the total amount due, including interest, penalties, [~~attorneys'~~] attorney fees and costs or at the option of the municipality to pay the unpaid installments due together with interest and penalties computed to date,



1           [~~attorneys~~] attorney fees and costs or to answer by any  
2 person having the right to redeem or answer within the  
3 time provided, a judgment of foreclosure shall be entered  
4 and ownership of said property shall in due course pass to  
5 the city of \_\_\_\_\_ unless redeemed as provided  
6 by law.

7           WITNESS the Honorable \_\_\_\_\_,  
8 district judge of the \_\_\_\_\_ judicial district court of  
9 the state of New Mexico, and the seal of the district  
10 court of \_\_\_\_\_ county this \_\_\_\_\_ day of  
11 \_\_\_\_\_, [~~19~~] 20\_\_\_\_\_.

12 \_\_\_\_\_  
13 Clerk

14 (SEAL)

15 By: \_\_\_\_\_  
16 Deputy".

17           E. The original notice of foreclosure prepared in  
18 accordance with Paragraph (2) of Subsection D [~~1~~] of this  
19 section shall be filed with the clerk of the district court,  
20 and such notice shall constitute a complaint. A duplicate  
21 original of the notice shall be filed with the county clerk,  
22 which filing shall constitute constructive notice to all  
23 purchasers or encumbrancers of the property concerned of  
24 commencement of the foreclosure action in rem. Upon the filing  
25 of the notice of foreclosure, the municipal clerk shall

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1     forthwith cause a copy [~~thereof~~] of the notice to be published  
2     once each week for two successive weeks in a newspaper  
3     published in or having general circulation within the county in  
4     which the property affected is located.

5             F. Within five days after filing the notice of  
6     foreclosure as provided [~~herein~~] in this section, the municipal  
7     clerk shall cause a copy of [~~such~~] the notice and summons to be  
8     mailed by registered or certified mail, return receipt  
9     requested, to the last known address of each owner, the  
10    mortgage holder, lien holder and all other known persons having  
11    an interest in any of the property affected thereby as the same  
12    appears upon the records of the county clerk, the county  
13    assessor or any other source [~~he~~] the municipal clerk deems  
14    reliable. An affidavit of [~~such~~] the mailing shall be filed  
15    with the clerk of the district court. In the event the address  
16    of the owner or other persons having an interest is unknown,  
17    the municipal clerk shall so state in [~~his~~] an affidavit of  
18    mailing [~~which~~] that shall be filed with the clerk of the  
19    district court, and in such event, a copy of the notice of  
20    foreclosure, summons and [~~such~~] affidavit shall be posted in  
21    the county courthouse of the county where the land is situated.

22             G. All affidavits of filing, posting, mailing or  
23    other acts required [~~herein~~] in this section shall be filed  
24    with the clerk of the district court and, together with all  
25    other documents required [~~herein~~] in this section, constitute

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1 and become part of the court record in [~~such~~] the foreclosure  
2 action.

3 H. It shall not be necessary for the municipality  
4 to plead or prove the various steps, procedures and notices  
5 taken prior to the enactment of an ordinance imposing an  
6 assessment or other lawful charges against the lands described  
7 in the notice of foreclosure, and all such assessments or other  
8 lawful charges shall be presumed to be valid. A defendant  
9 alleging any jurisdictional defect or invalidity in the  
10 assessment or other lawful charge [~~must~~] shall particularly  
11 specify in [~~his~~] the defendant's answer such defect or  
12 invalidity and [~~must~~] shall affirmatively establish such  
13 defense.

14 I. If an answer is filed and served upon the  
15 municipality within the time provided [~~herein~~] in this section,  
16 the court shall forthwith hear and determine the issues raised.  
17 Upon such trial, proof that [~~such~~] the assessment or other  
18 charges [~~was~~] were paid, together with any penalties and  
19 interest costs [~~which~~] that may have been due, or that the  
20 property was not legally subject to the assessment or charges  
21 shall constitute a complete defense. If the court finds for  
22 the municipality, it shall issue its judgment foreclosing the  
23 liens and transferring title in fee simple to the municipality  
24 subject only to unpaid ad valorem taxes, other special  
25 assessments having a lien on the property [~~which~~] that is

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1       coequal with the lien for ad valorem taxes and the right of  
2       redemption as [~~hereinafter~~] provided in Subsection K of this  
3       section. A certified copy of the judgment shall be filed for a  
4       record with the county clerk.

5               J. If a defendant fails to answer within the time  
6       period provided [~~herein~~], the court shall find [~~such~~] the  
7       defendant in default and shall thereupon make a final judgment  
8       foreclosing the liens and transferring title in fee simple to  
9       the municipality subject only to unpaid ad valorem taxes and  
10      other special assessments having a lien on the property [~~which~~]  
11      that is coequal with the lien for ad valorem taxes and the  
12      right of redemption as [~~hereinafter~~] provided in Subsection K  
13      of this section.

14              K. The owner or mortgage holder or other person  
15      having an interest, or [~~their~~] the owner's or mortgage holder's  
16      or other person's assigns, of any parcel of land foreclosed  
17      upon under this procedure to satisfy municipal liens may redeem  
18      [~~said~~] the parcel any time within one year after the date the  
19      judgment of foreclosure is entered by paying to the  
20      municipality the total amount due to satisfy the lien,  
21      including all interest and penalties, [~~attorneys'~~] attorney  
22      fees and other costs, if any, computed to the date of payment.

23              L. The municipality may at any time prior to final  
24      judgment withdraw any parcel from a proceeding under this  
25      section where the liens and other charges have been paid up to

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1 date or paid in full or in cases where a parcel was listed on  
2 the notice of foreclosure in error or where the municipality  
3 has accepted a deed in lieu of foreclosure.

4 M. ~~[Sale of property foreclosed under this~~  
5 ~~procedure.]~~ No real property foreclosed under this procedure  
6 shall be sold to satisfy a delinquent assessment until at least  
7 fifteen days after the date of judgment or decree of the court,  
8 within which time the owner, mortgage holder or other parties  
9 having an interest in the tract or parcel of land may pay off  
10 the judgment or decree and avoid the sale. Thereafter, the  
11 municipality may sell the property at public or private sale,  
12 subject to the right of redemption, ad valorem taxes and other  
13 special assessments having a lien on the property ~~[which]~~ that  
14 is coequal with the lien for ad valorem taxes."

15 SECTION 3. EFFECTIVE DATE.--The effective date of the  
16 provisions of this act is July 1, 2019.