



OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

November 15, 2007

The Honorable Joe Dorman
State Representative, District 65
State Capitol, Room 536
Oklahoma City, Oklahoma 73105

Dear Representative Dorman:

I have received your letter requesting an official Attorney General Opinion in which you ask the following question:

Are county recording offices legally able to record liens on property without legal evidence or court orders?

This request has been assigned to **James Barwick**, Assistant Attorney General. For your reference the internal tracking number is **J-73**. Mr. Barwick may contact you in order to obtain better insight as to the nature of your request and to clarify the request, as understood by him, is the same you intended to have answered. Please be assured your request will be given every consideration at the earliest possible time.

Sincerely,

A handwritten signature in black ink, appearing to read "W.A. Edmondson".

W.A. DREW EDMONDSON
ATTORNEY GENERAL OF OKLAHOMA

WAE:kb



OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

January 31, 2008

The Honorable Joe Dorman
State Representative, District 65
State Capitol, Room 536
Oklahoma City, Oklahoma 73105

Re: Opinion Request No. J73

Dear Representative Dorman,

This office has received your request for an Official Attorney General opinion in which you ask in effect, the following question:

Are county recording offices legally able to record liens on property without legal evidence or court orders?

The short answer to your question is it depends on the type of lien being filed. Usually nothing outside of the lien documents are required and the type of lien dictates what documents are necessary for filing. The legal evidence consists of the lien documents being filed and/or the court judgment as discussed below.

Under 19 O.S. 2001§ 298 a county recording officer may record a lien if a person presents the county recording officer with an original or certified copy of the lien instrument that is clearly legible, the instrument contains a specific legal description of the subject property, the mailing addresses of the grantor and grantee are provided, and all the information needed for indexing under 19 O.S. 2001§§ 287 & 291 is provided. Once the requirements of § 298 are satisfied, a county recording officer must file the lien of record, if the person presenting the lien for filing, pays the filing fee and also provides a statement verified under oath or by affidavit that describes the dollar amount of the debt owed as well as a legal description of the subject property to which the lien will attach and the name of the person who owes the debt and on whose property the lien is filed against. *See*, 42 O.S. 2001 §§ 98, 142, &150.

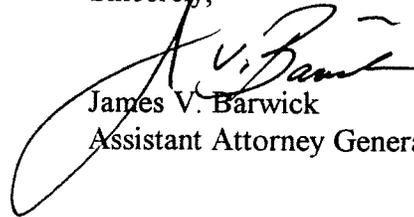
Your constituent's situation is truly unfortunate. However, as long as the aforementioned requirements are satisfied, a county recording officer can record a lien without further legal evidence or a court order, unless the lien is a judgement lien, which does require an underlying court order or judgment.

The law does provide some protections, though, that are meant to discourage a person from wrongfully filing a lien against someone who does not owe them money. An owner of land who has a lien filed against his or her property may contest the lien in a civil proceeding. *See*, 42 O.S. 2001 § 177. If the court rules in the landowner's favor, the person who wrongfully filed the lien would be liable for the costs of the proceeding and the county record would state that the lien is cancelled. *See*, *Id.* An individual who files a lien on another's property may also be guilty of a felony if the individual knowingly offered a false or forged lien to be filed with the county recording office. *See*, 21 O.S. 2001 § 463. Furthermore, a contractor who falsifies a statement regarding a lien for labor or materials filed against an owner of a dwelling may also be guilty of a felony. *See*, 42 O.S. 2001 § 142.4. Also, a notary public or other officer authorized to take an acknowledgment may be guilty of a criminal offense (second degree forgery) if he or she knowingly and falsely certified that a lien was acknowledged by an individual when in fact the lien document was not actually acknowledged by the person signing the documents. *See*, 21 O.S. 2001 § 1574.

Because your question can be answered from a reading of the relevant statutes and rules, our office is responding by this letter in lieu of issuing an official Attorney General Opinion. Therefore, please note that the conclusions made herein do not represent an official opinion of the Attorney General, but rather represent the conclusions of the undersigned Assistant Attorney General.

We hope this information is helpful to you.

Sincerely,



James V. Barwick
Assistant Attorney General