

# MARION COUNTY RECORDER

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## Standard Operating Procedure – Mechanic’s Lien Releases – Affidavit of Service IC 32-28-3-10 – Effective February 26, 2015

In addition to a lien holder filing a release or a judge’s order doing so, Mechanic’s Liens can *also* be released through an **Affidavit of Service**. The Marion County Recorder’s Office will accept the Affidavit of Service under IC 32-28-3-10 provided it meets general recording requirements and the requirements below. Standard operating procedures for recording an AFFIDAVIT document, including recording fees apply. **These requirements only apply to the Affidavit of Service in releasing the Mechanic’s Lien.**

### NOTICE TO COMMENCE SUIT

Two requirements must be met before the affidavit can be recorded and the lien released:

1. The owner of the property, or their attorney, must provide written notice by certified or registered mail to the lienholder to file an action to foreclose the lien. AND,
2. The lienholder fails to file an action to foreclose the lien not later than 30 days after receiving the notice.

### RECORDING AN AFFIDAVIT OF SERVICE

An affidavit of service to release the lien may be filed for recording if:

1. All recording requirements are met, and must include:
2. Facts of the notice (a copy of the notice to the lienholder).
3. Proof that more than 30 days have passed since the noticed was received by the lienholder (copy of certified or registered mail receipt)

And must state or provide evidence of the following:

1. No action for foreclosure of the lien is pending.
2. No unsatisfied judgement has been rendered on the lien.

Relevant Indiana Code:

#### **IC 32-28-3-10 Notice to commence suit; affidavit of service**

Sec. 10. (a) A lien is void if both of the following occur:

- (1) The owner of property subject to a mechanic's lien or any person or corporation having an interest in the property, including a mortgagee or a lienholder, provides written notice to the owner or holder of the lien to file an action to foreclose the lien.
- (2) The owner or holder of the lien fails to file an action to foreclose the lien in the county where the property is located not later than thirty (30) days after receiving the notice. However, this section does not prevent the claim from being collected as other claims are collected by law.

(b) A person who gives notice under subsection (a)(1) by registered or certified mail to the lienholder at the address given in the recorded statement and notice of intention to hold a lien may file an affidavit of service of the notice to file an action to foreclose the lien with the recorder of the county in which the property is located. The affidavit must state the following:

- (1) The facts of the notice.
- (2) That more than thirty (30) days have passed since the notice was received by the lienholder.
- (3) That no action for foreclosure of the lien is pending.
- (4) That no unsatisfied judgment has been rendered on the lien.

(c) The recorder shall:

- (1) record the affidavit of service in the miscellaneous record book of the recorder's office; and
- (2) certify on the face of the record any lien that is fully released.

When the recorder records the affidavit and certifies the record under this subsection, the real estate described in the lien is released from the lien.

As added by P.L.2-2002, SEC.13.