

**WRONGFUL LIEN AMENDMENTS**

2013 GENERAL SESSION

STATE OF UTAH

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**LONG TITLE**

**General Description:**

This bill repeals provisions relating to wrongful liens.

**Highlighted Provisions:**

This bill:

- ▶ repeals provisions relating to a county recorder's authority to reject recording a lien that the recorder determines to be a wrongful lien and provisions relating to a lien claimant's petition to district court for a determination that a rejected lien may be recorded;
- ▶ modifies a provision imposing civil liability for damages caused by a wrongful lien; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**38-9-2**, as last amended by Laws of Utah 2012, Chapter 278

**38-9-4**, as last amended by Laws of Utah 2010, Chapter 381

REPEALS:

**38-9-3**, as last amended by Laws of Utah 2010, Chapter 381

**38-9-6**, as enacted by Laws of Utah 1997, Chapter 125

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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **38-9-2** is amended to read:

**38-9-2. Scope.**

(1) (a) The provisions of Sections 38-9-1[~~, 38-9-3,~~] and 38-9-4[~~, and 38-9-6~~] apply to

33 any recording or filing or any rejected recording or filing of a lien pursuant to this chapter on or  
34 after May 5, 1997.

35 (b) The provisions of Sections 38-9-1 and 38-9-7 apply to all liens of record regardless  
36 of the date the lien was recorded or filed.

37 (c) Notwithstanding Subsections (1)(a) and (b), the provisions of this chapter  
38 applicable to the filing of a notice of interest do not apply to a notice of interest filed before  
39 May 5, 2008.

40 (2) The provisions of this chapter shall not prevent a person from filing a lis pendens in  
41 accordance with Section 78B-6-1303 or seeking any other relief permitted by law.

42 (3) This chapter does not apply to a person entitled to a preconstruction or construction  
43 lien under Section 38-1a-301 who files a lien pursuant to Title 38, Chapter 1a, Preconstruction  
44 and Construction.

45 Section 2. Section **38-9-4** is amended to read:

46 **38-9-4. Civil liability for submitting wrongful lien for recording -- Damages.**

47 (1) A ~~[lien claimant who records or causes]~~ person who submits a wrongful lien ~~[as~~  
48 ~~defined in Section 38-9-1 to be recorded]~~ for recording in the office of the county recorder  
49 against real property is liable to a record interest holder of that real property for:

50 (a) any actual damages proximately caused by the wrongful lien~~[-];~~

51 ~~[(2) If the person in violation of Subsection (1) refuses to release or correct the~~  
52 ~~wrongful lien within 10 days from the date of written request from a record interest holder of~~  
53 ~~the real property delivered personally or mailed to the last-known address of the lien claimant;~~  
54 ~~the person is liable to that record interest holder for]~~

55 (b) \$3,000 or ~~[for]~~ treble actual damages proximately caused by the wrongful lien,  
56 whichever is greater, and [for] reasonable attorney fees and costs[-], if the person fails to  
57 release or correct the wrongful lien within 10 days after the date of a written request from a  
58 record interest holder of the real property delivered personally to the person or mailed to the  
59 last-known address of the person; or

60 ~~[(3) A person is liable to the record owner of real property for]~~

61 (c) \$10,000 or ~~[for]~~ treble actual damages proximately caused by the wrongful lien,  
62 whichever is greater, and [for] reasonable attorney fees and costs, [who records or causes to be  
63 recorded-a] if the person submitting the wrongful lien [as defined in Section 38-9-1 in the

64 office of the county recorder against the real property, knowing or having reason to know that  
65 the document: (a) for recording knows or reasonably should know that it is a wrongful lien;

66 ~~[(b) is groundless; or]~~

67 ~~[(c) contains a material misstatement or false claim.]~~

68 (2) A county recorder who, within the scope of the county recorder's employment,  
69 accepts a wrongful lien for recording in good faith may not be held liable for damages caused  
70 by the wrongful lien.

71 Section 3. **Repealer.**

72 This bill repeals:

73 Section **38-9-3, County recorder may reject wrongful lien within scope of**  
74 **employment -- Good faith requirement.**

75 Section **38-9-6, Petition to file lien -- Notice to record interest holders -- Summary**  
76 **relief -- Contested petition.**

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Legislative Review Note  
as of 6-27-12 7:28 AM

Office of Legislative Research and General Counsel