

WRONGFUL DOCUMENTS

2013 GENERAL SESSION

STATE OF UTAH

LONG TITLE

General Description:

This bill relates to documents submitted to county recorders for recording that are claimed to be wrongful.

Highlighted Provisions:

This bill:

- ▶ modifies provisions relating to documents submitted for recording which are claimed to establish invalid liens;
- ▶ applies those provisions to documents submitted for recording which improperly purport to release or extinguish a lawful lien or interest or reflect or establish a claim or obligation against a person; and
- ▶ provides for joint and several liability for those who prepare, sign, or submit a wrongful document.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

- 38-9-1**, as last amended by Laws of Utah 2010, Chapter 381
- 38-9-2**, as last amended by Laws of Utah 2012, Chapter 278
- 38-9-3**, as last amended by Laws of Utah 2010, Chapter 381
- 38-9-4**, as last amended by Laws of Utah 2010, Chapter 381
- 38-9-6**, as enacted by Laws of Utah 1997, Chapter 125
- 38-9-7**, as enacted by Laws of Utah 1997, Chapter 125

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

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

33 CHAPTER 9. WRONGFUL DOCUMENTS

34 38-9-1. Definitions.

35 [~~As used in this chapter:~~]36 [~~(1) "Interest holder" means a person who holds or possesses a present, lawful property~~
37 ~~interest in certain real property, including an owner, title holder, mortgagee, trustee, or~~
38 ~~beneficial owner.~~]39 [~~(2) "Lien claimant" means a person claiming an interest in real property who offers a~~
40 ~~document for recording or filing with any county recorder in the state asserting a lien, or notice~~
41 ~~of interest, or other claim of interest in certain real property.~~]

42 (1) "Affected person" means a person who is:

43 (a) a record interest holder of the real property that is the subject of a recorded
44 wrongful document;45 (b) the owner of personal property that is the subject of a recorded wrongful document;
46 or47 (c) the person against whom a recorded wrongful document purports to reflect or
48 establish a claim or obligation.49 (2) "Document sponsor" means a person who prepares, signs, or submits for recording
50 a document that is claimed to be a wrongful document.51 (3) "Owner" means a person who has a vested ownership interest in [~~certain~~] real
52 property.

53 (4) (a) "Record interest holder":

54 (a) means a person who holds or possesses a present, lawful property interest in
55 [~~certain~~] real property, including an owner, titleholder, mortgagee, trustee, or beneficial owner,
56 and whose name and interest in that real property appears in the county recorder's records for
57 the county in which the property is located[~~;~~]; and58 (b) [~~"Record interest holder"~~] includes any grantor in the chain of the title in [~~certain~~]
59 real property.60 [~~(5) "Record owner" means an owner whose name and ownership interest in certain~~
61 ~~real property is recorded or filed in the county recorder's records for the county in which the~~
62 ~~property is located.~~]63 [~~(6)~~] (5) "Wrongful [~~lien~~] document" means [~~any~~] a document that is submitted to a

64 county recorder's office for recording and that:

65 (a) (i) purports to create a lien~~[-]~~ or encumbrance on or a notice of interest~~[-or~~
66 ~~encumbrance on an owner's interest in certain]~~ in real or personal property; and

67 (ii) at the time it is ~~[recorded]~~ submitted for recording is not:

68 ~~[(a)]~~ (A) expressly authorized by this chapter or another state or federal statute;

69 ~~[(b)]~~ (B) authorized by or contained in an order or judgment of a court of competent
70 jurisdiction in the state; or

71 ~~[(c)]~~ (C) signed by or expressly authorized ~~[pursuant to]~~ under a document signed by
72 the owner of the real or personal property~~[-]~~;

73 (b) (i) purports to extinguish or release a lawful lien or encumbrance on or notice of
74 interest in real or personal property:

75 (ii) is submitted without authority from the holder of the lien, encumbrance, or notice
76 of interest; and

77 (iii) is submitted for recording before, as applicable, the obligation for which the lien
78 or encumbrance was given is satisfied or the interest is terminated; or

79 (c) (i) purports to reflect or establish a claim or obligation against a person; and

80 (ii) at the time it is submitted for recording is not:

81 (A) expressly authorized by state or federal law;

82 (B) authorized by or contained in an order or judgment of a court of competent
83 jurisdiction in the state; or

84 (C) signed by or expressly authorized under a document signed by the person.

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

86 **38-9-2. Scope.**

87 ~~[(1)(a) The provisions of Sections 38-9-1, 38-9-3, 38-9-4, and 38-9-6 apply to any~~
88 ~~recording or filing or any rejected recording or filing of a lien pursuant to this chapter on or~~
89 ~~after May 5, 1997.]~~

90 ~~[(b) The provisions of Sections 38-9-1 and 38-9-7 apply to all liens of record regardless~~
91 ~~of the date the lien was recorded or filed.]~~

92 ~~[(c)]~~ (1) ~~[Notwithstanding Subsections (1)(a) and (b), the provisions of this]~~ This
93 chapter [applicable to the filing of a notice of interest do] does not apply to a notice of interest
94 filed before May 5, 2008.

95 (2) ~~[The provisions of this chapter shall]~~ This chapter does not prevent a person from
96 filing a lis pendens in accordance with Section 78B-6-1303 or seeking any other relief
97 permitted by law.

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

101 Section 3. Section **38-9-3** is amended to read:

102 **38-9-3. Refusal to record wrongful document.**

103 (1) (a) A county recorder may ~~[reject recording of a lien]~~ refuse to record a document if
104 the county recorder determines that the [lien] document is a wrongful [lien as defined in
105 Section 38-9-1] document.

106 ~~[(b) If the county recorder rejects a document to record a lien in accordance with~~
107 ~~Subsection (1)(a), the county recorder shall immediately return the original document together~~
108 ~~with a notice that the document was rejected pursuant to this section to the person attempting~~
109 ~~to record the document or to the address provided on the document.]~~

110 (b) A county recorder who refuses to record a document as provided in Subsection
111 (1)(a) shall immediately:

112 (i) return the original document to the person who submitted the document for
113 recording; and

114 (ii) provide written notice to the person who submitted the document for recording or
115 to the address provided on the document that the recorder refuses to record the document as
116 authorized under Subsection (1)(a).

117 (2) A county recorder who, within the scope of the county recorder's employment and
118 in good faith, [rejects or accepts] records or, as provided in this section, refuses to record a
119 document [for recording in good faith under this section] is not liable for damages resulting
120 from the recording or the refusal to record.

121 (3) If a ~~[rejected]~~ document that a county recorder refuses to record under this section
122 is later found not to be [recordable] a wrongful document pursuant to a court order[~~it shall~~
123 have] and the document is subsequently recorded, the document has no retroactive recording
124 priority.

125 (4) Nothing in this chapter ~~[shall preclude any]~~ precludes a person from pursuing any

126 remedy pursuant to Utah Rules of Civil Procedure, Rule 65A, Injunctions.

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

128 **38-9-4. Civil liability for submitting wrongful document for recording --**

129 **Damages.**

130 ~~[(1) A lien claimant who records or causes a wrongful lien as defined in Section 38-9-1~~
131 ~~to be recorded in the office of the county recorder against real property is liable to a record~~
132 ~~interest holder for]~~

133 (1) A document sponsor of a wrongful document that is recorded is liable to an
134 affected person for:

135 (a) any actual damages proximately caused by the wrongful [lien:] document;

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

140 (b) \$3,000 or [for] treble actual damages proximately caused by the wrongful
141 document, whichever is greater, and [for] reasonable attorney fees and costs[-], if the document
142 sponsor fails to release or correct the wrongful document within 10 days after the date of a
143 written request from the affected person, delivered personally to the document sponsor or
144 mailed to the last-known address of the document sponsor; or

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

146 (c) \$10,000 or [for] treble actual damages proximately caused by the wrongful
147 document, whichever is greater, and [for] reasonable attorney fees and costs, [who records or
148 causes to be recorded a wrongful lien as defined in Section 38-9-1 in the office of the county
149 recorder against the real property, knowing or having reason to] if:

150 (i) the document sponsor knows or reasonably should know that the document[:(a)]
151 submitted for recording is a wrongful [lien:] document; and

152 (ii) the document sponsor fails to release or correct the wrongful document within 10
153 days after the date of a written request from the affected person, delivered personally to the
154 document sponsor or mailed to the last-known address of the document sponsor.

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

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

157 (2) A person who is liable under Subsection (1) for a wrongful document is jointly and
158 severally liable with each other person who is liable for the wrongful document.

159 Section 5. Section **38-9-6** is amended to read:

160 **38-9-6. Petition to file lien -- Notice to record interest holders -- Summary relief --**
161 **Contested petition.**

162 (1) A [~~lien claimant whose~~] person who submits for recording a document [is rejected]
163 that a county recorder refuses to record pursuant to Section 38-9-3 may petition the district
164 court [~~in the county in which the document was rejected~~] for an expedited determination that
165 the [~~lien may~~] document is not a wrongful document and should be allowed to be recorded [or
166 filed].

167 (2) [~~(a) The~~] A petition under Subsection (1) shall:

168 (a) be filed:

169 (i) with the district court in the county of the county recorder who refused to record the
170 document; and

171 (ii) within 10 days [of] after the date the person who files the petition receives the
172 notice [is received of the rejection and shall] under Subsection 38-9-3(1)(b)(ii) of the county
173 recorder's refusal to record the document;

174 (b) state with specificity the grounds why the document is not a wrongful document
175 and should [lawfully] be allowed to be recorded [or filed. (b) The petition shall]; and

176 (c) be supported by a sworn affidavit of the [lien claimant] person who submitted the
177 document for recording.

178 [~~(e)~~] (3) If the court finds the petition is insufficient, it may dismiss the petition without
179 a hearing.

180 [~~(d)~~] (4) (a) If the court grants a hearing, the petitioner shall, by certified or registered
181 mail, serve a copy of the petition, notice of hearing, and a copy of the court's order granting an
182 expedited hearing on all record interest holders of the property sufficiently in advance of the
183 hearing to enable any record interest holder to attend the hearing [and service shall be
184 accomplished by certified or registered mail].

185 [~~(e)~~] (b) Any record interest holder of the property has the right to attend and contest
186 the petition.

187 [~~(3)~~] (5) (a) [Following a hearing on the matter, if] If, following a hearing, the court

188 finds that the document [~~may lawfully be recorded, it~~] is not a wrongful document, the court
 189 shall issue an order directing the county recorder to accept the document for recording.

190 (b) If the petition is contested, the court may award costs and reasonable [~~attorney's~~]
 191 attorney fees to the prevailing party.

192 [~~(4)~~] (6) (a) A summary proceeding under this section [~~is~~]:

193 (i) may only [~~to~~] determine whether or not a contested document [~~, on its face, shall be~~
 194 ~~recorded by the county recorder. The proceeding~~] is a wrongful document; and

195 (ii) may not determine the truth of the content of the document [~~nor~~] or the property or
 196 legal rights of the parties beyond the necessary determination of whether or not the document
 197 [~~shall be recorded. The~~] is a wrongful document.

198 (b) A court's grant or denial of [~~the~~] a petition under this section may not restrict any
 199 other legal remedies of any party, including any right to injunctive relief pursuant to Rules of
 200 Civil Procedure, Rule 65A, Injunctions.

201 [~~(5)~~] (7) If [~~the~~] a petition under this section contains a claim for damages, the
 202 [~~damage~~] proceedings related to the claim for damages may not be expedited under this
 203 section.

204 Section 6. Section **38-9-7** is amended to read:

205 **38-9-7. Petition to nullify wrongful document -- Notice -- Summary relief --**
 206 **Finding of wrongful document -- Wrongful document is void.**

207 (1) Any [~~record interest holder of real property against which a wrongful lien as~~
 208 ~~defined in Section 38-9-1 has been recorded~~] affected person may petition the district court in
 209 the county in which the wrongful document [~~was~~] is recorded for summary relief to nullify the
 210 [~~lien~~] wrongful document.

211 (2) [~~The~~] A petition under Subsection (1) shall state with specificity the claim [~~that the~~
 212 ~~lien is a~~] of the wrongful [~~lien~~] document and shall be supported by a sworn affidavit of the
 213 [~~record interest holder~~] affected person.

214 (3) [~~(a)~~] If the court finds the petition insufficient, [~~it~~] the court may dismiss the
 215 petition without a hearing.

216 [~~(b)~~] (4) (a) If the court finds the petition is sufficient, the court shall schedule a
 217 hearing within 10 days to determine whether the document is a wrongful [~~lien~~] document.

218 [~~(c)~~] (b) The [~~record interest holder~~] affected person shall serve on the document

219 sponsor a copy of the petition [~~on the lien claimant~~] and a copy of a notice of the hearing
 220 [~~pursuant to~~], as provided in Rules of Civil Procedure, Rule 4, Process.

221 ~~[(d)] (c)~~ The [~~lien claimant~~] document sponsor is entitled to attend and contest the
 222 petition.

223 ~~[(4)] (5)~~ A summary proceeding under this section [~~is~~]:

224 (a) may only [~~to~~] determine whether or not a recorded document is a wrongful [~~lien-~~
 225 ~~The proceeding shall~~] document; and

226 (b) may not determine any other property or legal rights of the parties [~~nor~~] or restrict
 227 other legal remedies of any party.

228 ~~[(5)] (6)~~ (a) [~~Following a hearing on the matter, if~~] If, following a hearing, the court
 229 determines that the recorded document is a wrongful [~~lien~~] document, the court shall issue an
 230 order declaring the [~~wrongful lien~~] document void ab initio, releasing the property from the
 231 [~~lien~~] wrongful document, if applicable, and awarding costs and reasonable [~~attorney's~~]
 232 attorney fees to the petitioner.

233 (b) (i) The [~~record interest holder may record~~] affected person may submit a certified
 234 copy of the order [~~with~~] to the county recorder for recording.

235 (ii) [~~The~~] If the order releases real property from a wrongful document, the order shall
 236 contain a legal description of the real property.

237 ~~[(c)-If] (7)~~ (a) If, following a hearing, the court determines that the [~~claim of lien is~~
 238 ~~valid~~] recorded document claimed to be a wrongful document is not a wrongful document, the
 239 court shall dismiss the petition and may award costs and reasonable [~~attorney's~~] attorney fees to
 240 the [~~lien claimant~~] document sponsor. [~~The~~]

241 (b) If the dismissal order relates to a recorded document that purports to create,
 242 extinguish, or release a lien or encumbrance on or a notice of interest in real property, the
 243 dismissal order under Subsection (7)(a) shall contain a legal description of the real property.
 244 [~~The~~]

245 (c) A prevailing [~~lien claimant~~] document sponsor may [~~record~~] submit a certified copy
 246 of the dismissal order to the county recorder for recording.

247 ~~[(6)] (8)~~ If the district court determines that [~~the lien~~] a recorded document is a
 248 wrongful [~~lien as defined in Section 38-9-1~~] document, the [~~wrongful lien~~] document is void ab
 249 initio [~~and provides no notice of claim or interest~~].

250 ~~[(7)]~~ (9) If ~~[the]~~ a petition under this section contains a claim for damages, the
251 ~~[damage]~~ proceedings related to the claim for damages may not be expedited under this
252 section.