

Effective 5/13/2014

Part 2
Recording a Wrongful Lien

38-9-201 Title.

This part is known as "Recording a Wrongful Lien."

Enacted by Chapter 114, 2014 General Session

38-9-202 County recorder may reject wrongful lien within scope of employment -- Good faith requirement.

- (1)
 - (a) A county recorder may refuse to record a lien if the county recorder determines that the lien is a wrongful lien.
 - (b) If the county recorder refuses to record a lien in accordance with Subsection (1)(a), the county recorder shall immediately return the original document together with a notice that the document was rejected pursuant to this section to the person attempting to record the document or to the address provided on the document.
- (2) A county recorder who, within the scope of the county recorder's employment, rejects or accepts a document for recording in good faith under this section is not liable for damages.
- (3) If a document that a county recorder refuses to record under this section is later found not to be a wrongful lien pursuant to a court order, it shall have no retroactive recording priority.
- (4) Nothing in this chapter precludes a person from pursuing any remedy pursuant to Utah Rules of Civil Procedure, Rule 65A, Injunctions.

Renumbered and Amended by Chapter 114, 2014 General Session

38-9-203 Civil liability for recording wrongful lien -- Damages.

- (1) A lien claimant who records or causes a wrongful lien to be recorded in the office of the county recorder against real property is liable to a record interest holder for any actual damages proximately caused by the wrongful lien.
- (2) If the person in violation of Subsection (1) refuses to release or correct the wrongful lien within 10 days from the date of written request from a record interest holder of the real property delivered personally or mailed to the last-known address of the lien claimant, the person is liable to that record interest holder for \$3,000 or for treble actual damages, whichever is greater, and for reasonable attorney fees and costs.
- (3) A person is liable to the record owner of real property for \$10,000 or for treble actual damages, whichever is greater, and for reasonable attorney fees and costs, who records or causes to be recorded a wrongful lien in the office of the county recorder against the real property, knowing or having reason to know that the document:
 - (a) is a wrongful lien;
 - (b) is groundless; or
 - (c) contains a material misstatement or false claim.

Renumbered and Amended by Chapter 114, 2014 General Session

38-9-204 Petition to file lien -- Notice to record interest holders -- Summary relief -- Contested petition.

- (1) A lien claimant whose document is rejected pursuant to Section 38-9-202 may petition the district court for an expedited determination that the lien may be recorded.
- (2) A petition under Subsection (1) shall:
 - (a) be filed:
 - (i) with the district court in the county of the county recorder who refused to record the document; and
 - (ii) within 10 days after the day on which the person who files the petition receives the notice under Subsection 38-9-202(1)(b) of the county recorder's refusal to record the document;
 - (b) state with specificity the grounds why the document should lawfully be recorded; and
 - (c) be supported by a sworn affidavit of the lien claimant.
- (3) If the court finds the petition is insufficient, it may dismiss the petition without a hearing.
- (4)
 - (a) If the court grants a hearing, the petitioner shall, by certified or registered mail, serve a copy of the petition, notice of hearing, and a copy of the court's order granting an expedited hearing on all record interest holders of the property sufficiently in advance of the hearing to enable any record interest holder to attend the hearing.
 - (b) Any record interest holder of the property has the right to attend and contest the petition.
- (5)
 - (a) If, following a hearing, the court finds that the document may lawfully be recorded, the court shall issue an order directing the county recorder to accept the document for recording.
 - (b) If the petition is contested, the court may award costs and reasonable attorney fees to the prevailing party.
- (6)
 - (a) A summary proceeding under this section:
 - (i) may only determine whether a contested document, on its face, shall be recorded by the county recorder; and
 - (ii) may not determine the truth of the content of the document or the property or legal rights of the parties beyond the necessary determination of whether the document shall be recorded.
 - (b) A court's grant or denial of a petition under this section may not restrict any other legal remedies of any party, including any right to injunctive relief pursuant to Rules of Civil Procedure, Rule 65A, Injunctions.
- (7) If a petition under this section contains a claim for damages, the proceedings related to the claim for damages may not be expedited under this section.

Renumbered and Amended by Chapter 114, 2014 General Session

38-9-205 Petition to nullify lien -- Notice to lien claimant -- Summary relief -- Finding of wrongful lien -- Wrongful lien is void.

- (1) A record interest holder of real property against which a wrongful lien is recorded may petition the district court in the county in which the document is recorded for summary relief to nullify the wrongful lien.
- (2) The petition described in Subsection (1) shall state with specificity the claim that the lien is a wrongful lien and shall be supported by a sworn affidavit of the record interest holder.
- (3)
 - (a) If the court finds the petition insufficient, the court may dismiss the petition without a hearing.

- (b) If the court finds the petition is sufficient, the court shall schedule a hearing within 10 days to determine whether the document is a wrongful lien.
 - (c) The record interest holder shall serve a copy of the petition on the lien claimant and a copy of a notice of the hearing pursuant to Rules of Civil Procedure, Rule 4, Process.
 - (d) The lien claimant is entitled to attend and contest the petition.
- (4) A summary proceeding under this section:
- (a) may only determine whether a document is a wrongful lien; and
 - (b) may not determine any other property or legal rights of the parties or restrict other legal remedies of any party.
- (5)
- (a) If, following a hearing, the court determines that the recorded document is a wrongful lien, the court shall issue an order declaring the wrongful lien void ab initio, releasing the property from the lien, and awarding costs and reasonable attorney fees to the petitioner.
 - (b)
 - (i) The record interest holder may submit a certified copy of the order to the county recorder for recording.
 - (ii) The order shall contain a legal description of the real property.
 - (c) If the court determines that the claim of lien is valid, the court shall dismiss the petition and may award costs and reasonable attorney's fees to the lien claimant. The dismissal order shall contain a legal description of the real property. The prevailing lien claimant may record a certified copy of the dismissal order.
- (6) If the court determines that the recorded document is a wrongful lien, the wrongful lien is void ab initio and provides no notice of claim or interest.
- (7) If a petition under this section contains a claim for damages, the proceedings related to the claim for damages may not be expedited under this section.

Renumbered and Amended by Chapter 114, 2014 General Session