

AMENDMENTS TO ATTORNEY LIEN LAW

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: David L. Hogue

This act modifies the statute relating to attorney's liens. It repeals the original statute and replaces it with provisions allowing for an attorney's lien on work performed, clarifies the circumstances under which it can be filed, specifies what the lien may be applied to, and provides for enforcement of the lien. The act provides a coordination clause.

This act affects sections of Utah Code Annotated 1953 as follows:

REPEALS AND REENACTS:

78-51-41, as last amended by Chapter 100, Laws of Utah 1989

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

Section 1. Section **78-51-41** is repealed and reenacted to read:

78-51-41. Compensation -- Attorney's lien.

(1) The compensation of an attorney is governed by agreement between the attorney and a client, express or implied, which is not restrained by law.

(2) An attorney shall have a lien for the balance of compensation due from a client on any moneys or property owned by the client that is the subject of or connected with work performed for the client, including, but not limited to:

(a) any real or personal property that is the subject of or connected with the work performed for the client;

(b) any funds held by the attorney for the client, including any amounts paid as a retainer to the attorney by the client; and

(c) any settlement, verdict, report, decision, or judgment in the client's favor in any matter or action in which the attorney assisted, including any proceeds derived from the matter or action, whether or not the attorney is employed by the client at the time the settlement, verdict, report, decision, or judgment is obtained.

(3) An attorney's lien commences at the time of employment of the attorney by the client.

(4) An attorney may enforce a lien under this section by moving to intervene in a pending

legal action in which the attorney has assisted or performed work, or by filing a separate legal action.

An attorney may not move to intervene in an action or file a separate legal action to enforce a lien before 30 days has expired after a demand for payment has been made and not been complied with.

(5) An attorney may file a notice of lien in a pending legal action in which the attorney has assisted or performed work for which the attorney has a lien under this section. In addition, an attorney may file a notice of lien with the county recorder of the county in which real property that is subject to a lien under this section is located. A notice of lien shall include the following:

(a) the name, address, and telephone number of the attorney claiming the lien;

(b) the name of the client who is the owner of the property subject to the lien;

(c) a verification that the property is the subject of or connected with work performed by the attorney for the client and that a demand for payment of amounts owed to the attorney for the work has been made and not been paid within 30 days of the demand;

(d) the date the attorney first provided services to the client;

(e) a description of the property, sufficient for identification; and

(f) the signature of the lien claimant and an acknowledgment or certificate as required under Title 57, Chapter 3, Recording of Documents.

(6) Within 30 days after filing the notice of lien, the attorney shall deliver or mail by certified mail to the client a copy of the notice of lien.

(7) Any person who takes an interest in any property, other than real property, that is subject to an attorney's lien with actual or constructive knowledge of the attorney's lien, takes their interest subject to the attorney's lien. An attorney's lien on real property has as its priority the date and time when a notice of lien is filed with the county recorder of the county in which real property that is subject to a lien under this section is located.

(8) This section does not alter or diminish in any way an attorney's common law retaining lien rights.

(9) This section does not authorize an attorney to have a lien in the representation of a client in a criminal matter or domestic relations matter where a final order of divorce has not been secured unless:

(a) the criminal matter has been concluded or the domestic relations matter has been concluded by the securing of a final order of divorce or the attorney/client relationship has terminated; and

(b) the client has failed to fulfill their financial obligation to the attorney.

Section 2. Coordination clause.

If this bill and S.B. 13, Repeal of Attorneys and Counselors Provisions, both pass, it is the intent of the Legislature that the Office of Legislative Research and General Counsel in preparing the database for publication, shall renumber Section 78-51-41 in this bill to Section 38-2-7 as provided in S.B. 13.