

ATTORNEY'S LIEN AMENDMENTS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: R. Curt Webb

Senate Sponsor: _____

LONG TITLE

General Description:

This bill addresses the enforcement of an attorney's lien.

Highlighted Provisions:

This bill:

- ▶ requires an action to enforce an attorney's lien filed with a county recorder to be filed within 180 days after the notice of lien is filed;
- ▶ addresses the requirements for and effect of filing or failing to file an action enforcing an attorney's lien;
- ▶ applies the changes to enforcement requirements for an attorney's lien to an existing attorney's lien; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

38-2-7, as renumbered and amended by Laws of Utah 2001, Chapter 4 and repealed and reenacted by Laws of Utah 2001, Chapter 360



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

29 Section 1. Section **38-2-7** is amended to read:

30 **38-2-7. Compensation -- Attorney's lien.**

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

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

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

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

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

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

46 (4) (a) An attorney may enforce a lien under this section by moving to intervene in a
47 pending legal action in which the attorney has assisted or performed work, or by filing a
48 separate legal action.

49 (b) An attorney may not move to intervene in an action or file a separate legal action to
50 enforce a lien before 30 days [~~has~~] have expired after a demand for payment [~~has been~~] is made
51 and not been complied with.

52 (5) (a) An attorney may file a notice of lien in a pending legal action in which the
53 attorney has assisted or performed work for which the attorney has a lien under this section.

54 (b) In addition to a notice under Subsection (5)(a), an attorney may file a notice of lien
55 with the county recorder of the county in which real property that is subject to a lien under this
56 section is located.

57 (c) A notice of lien shall include the following:

58 [~~(a)~~] (i) the name, address, and telephone number of the attorney claiming the lien;

59 ~~[(b)]~~ (ii) the name of the client who is the owner of the property subject to the lien;
 60 ~~[(c)]~~ (iii) a verification that the property is the subject of or connected with work
 61 performed by the attorney for the client and that a demand for payment of amounts owed to the
 62 attorney for the work has been made and not been paid within 30 days of the demand;
 63 ~~[(d)]~~ (iv) the date the attorney first provided services to the client;
 64 ~~[(e)]~~ (v) a description of the property, sufficient for identification; and
 65 ~~[(f)]~~ (vi) the signature of the lien claimant and an acknowledgment or certificate as
 66 required under Title 57, Chapter 3, Recording of Documents.

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

69 (7) (a) Any person who takes an interest in any property, other than real property, that
 70 is subject to an attorney's lien with actual or constructive knowledge of the attorney's lien, takes
 71 ~~[his or her]~~ that interest subject to the attorney's lien.

72 (b) An attorney's lien on real property has as its priority the date and time when a
 73 notice of lien is filed with the county recorder of the county in which real property that is
 74 subject to a lien under this section is located.

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

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

80 (a) the criminal matter ~~[has been]~~ is concluded or the domestic relations matter ~~[has~~
 81 ~~been]~~ is concluded by the securing of a final order of divorce or the attorney/client relationship
 82 has terminated; and

83 (b) the client has failed to fulfill the client's financial obligation to the attorney.

84 (10) For a lien filed with a county recorder under Subsection (5), the lien claimant shall
 85 file an action to enforce the lien within 180 days after the day on which the lien claimant filed
 86 the notice of lien under Subsection (5).

87 (11) (a) Within the time period provided for filing in Subsection (10), the lien claimant
 88 shall file for record with the county recorder of each county in which the lien is recorded a
 89 notice of the pendency of the action, in the manner provided in actions affecting the title or

90 right to possession of real property, or the lien is void, except as to a person who has been
91 made party to the action and a person having actual knowledge of the commencement of the
92 action.

93 (b) The burden of proof is upon the lien claimant and those claiming under the lien
94 claimant to show actual knowledge under Subsection (11)(a).

95 (c) A lien filed with a county recorder under Subsection (5) is automatically and
96 immediately void if an action to enforce the lien is not filed within the time required by this
97 section.

98 (d) Notwithstanding Section 78-12-40, a court has no subject matter jurisdiction to
99 adjudicate a lien that becomes void under Subsection (11)(c).

100 (12) A lien filed with a county recorder under Subsection (5) before May 5, 2008 is
101 subject to the time requirements of Subsections (10) and (11) beginning on May 5, 2008.

Legislative Review Note
as of 1-14-08 2:13 PM

Office of Legislative Research and General Counsel

H.B. 306 - Attorney's Lien Amendments

Fiscal Note

2008 General Session
State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
