

SB0196S01 compared with SB0196

~~{Omitted text}~~ shows text that was in SB0196 but was omitted in SB0196S01

inserted text shows text that was not in SB0196 but was inserted into SB0196S01

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1

Wrongful Lien Act Amendments

2026 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Don L. Ipson

House Sponsor:

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3

LONG TITLE

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General Description:

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This bill amends provisions related to wrongful liens.

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Highlighted Provisions:

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This bill:

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- expands the definition of "wrongful lien";

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- provides that if a notice of a reinvestment fee covenant or transfer fee covenant is a wrongful lien, the notice of a reinvestment fee covenant or transfer fee covenant is invalid; { and }

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- provides additional filing requirements for a homeowner association that records a lien;

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- provides that a county recorder is not required to determine whether a notice is a wrongful lien under certain circumstances; and

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- makes technical changes.

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Money Appropriated in this Bill:

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None

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Other Special Clauses:

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None

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Utah Code Sections Affected:

AMENDS:

38-9-102 , as last amended by Laws of Utah 2025, First Special Session, Chapter 15

38-12-102 , as last amended by Laws of Utah 2014, Chapter 129

57-1-46 , as last amended by Laws of Utah 2025, Chapter 226

57-1-47 , as enacted by Laws of Utah 2024, Chapter 431

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

Section 1. Section **38-9-102** is amended to read:

38-9-102. Definitions.

As used in this chapter:

(1) "Affected person" means:

(a) a person who is a record interest holder of the real property that is the subject of a recorded nonconsensual common law document; or

(b) the person against whom a recorded nonconsensual common law document purports to reflect or establish a claim or obligation.

(2) "Document sponsor" means a person who, personally or through a designee, signs or submits for recording a document that is, or is alleged to be, a nonconsensual common law document.

(3) "Interest holder" means a person who holds or possesses a present, lawful property interest in ~~[certain]~~real property, including an owner, a title holder, a mortgagee, a trustee, or a beneficial owner.

(4) "Lien claimant" means a person claiming an interest in real property who offers a document for recording or filing with ~~[any]~~ a county recorder in the state asserting a lien, or notice of interest, or other claim of interest in ~~[certain]~~real property.

(5) "Nonconsensual common law document" means a document that is submitted to a county recorder's office for recording against public official property that:

(a) purports to create a lien or encumbrance on or a notice of interest in the real property;

(b) at the time the document is recorded, is not:

(i) expressly authorized by this chapter or a state or federal statute;

(ii) authorized by or contained in an order or judgment of a court ~~[of competent]~~ with jurisdiction; or

(iii) signed by or expressly authorized by a document signed by the owner of the real property; and

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- 49 (c) is submitted in relation to the public official's status or capacity as a public official.
- 50 (6) "Owner" means a person who has a vested ownership interest in real property.
- 51 (7) "Political subdivision" means a county, city, town, school district, special improvement or taxing
district, special district, special service district, or other governmental subdivision or public
corporation.
- 54 (8) "Public official" means:
- 55 (a) a current or former:
- 56 (i) member of the Legislature;
- 57 (ii) member of Congress;
- 58 (iii) judge;
- 59 (iv) member of law enforcement;
- 60 (v) corrections officer;
- 61 (vi) active member of the Utah State Bar; or
- 62 (vii) member of the Board of Pardons and Parole;
- 63 (b) an individual currently or previously appointed or elected to an elected position in:
- 64 (i) the executive branch of state or federal government; or
- 65 (ii) a political subdivision;
- 66 (c) an individual currently or previously appointed to or employed in a position in a political
subdivision, or state or federal government that:
- 68 (i) is a policymaking position; or
- 69 (ii) involves:
- 70 (A) purchasing or contracting decisions;
- 71 (B) drafting legislation or making rules;
- 72 (C) determining rates or fees; or
- 73 (D) making adjudicative decisions; or
- 74 (d) an immediate family member of a person described in Subsections (8)(a) through (c).
- 75 (9) "Public official property" means real property that has at least one record interest holder who is a
public official.
- 77 (10)
- (a) "Record interest holder" means a person who holds or possesses a present, lawful property interest
in real property, including an owner, titleholder, mortgagee, trustee, or beneficial owner, and whose

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name and interest in that real property appears in the county recorder's records for the county in which the property is located.

(b) "Record interest holder" includes ~~[any]~~ a grantor in the chain of the title in real property.

(11) "Record owner" means an owner whose name and ownership interest in ~~[certain]~~ real property is recorded or filed in the county recorder's records for the county in which the property is located.

(12)

(a) "Wrongful lien" means ~~[any]~~ a document that purports to create a lien, notice of interest, or encumbrance on an owner's interest in ~~[certain]~~ real property and at the time ~~[it]~~ the document is recorded is not:

(i) expressly authorized by this chapter or another state or federal statute;

(ii) authorized by or contained in an order or judgment of a court ~~[of competent]~~ with jurisdiction in the state; or

(iii) signed by or authorized in accordance with a document signed by the owner of the real property.

(b) "Wrongful lien" includes:

(i) ~~[-]~~ a document recorded in violation of Subsection 10-20-508(2)(d)~~[-]~~ ; ~~{or}~~

(ii) a document that purports to be a notice of transfer fee covenant described in Subsection {~~57-1-46(6)~~ (a)} ~~57-1-46(7)(b)~~ or Section 57-1-47 or a document that purports to create, continue, or reestablish a transfer fee covenant as a lien or encumbrance on an owner's interest in real property, if at the time the document was recorded the transfer fee covenant was not enforceable due to the:

(A) foreclosure of a trust deed or mortgage that has priority over the transfer fee covenant;

(B) document not being recorded in accordance with Subsection {~~57-1-46(6)~~ } ~~57-1-46(7)~~ or Section 57-1-47; or

(C) existence of a recorded rescission, termination, release, waiver, or other document terminating the transfer fee covenant{~~.~~} ; or

(iii) a lien recorded on or after May 6, 2026, that at the time the lien is submitted for recording, does not provide the information described in Subsection 38-12-102(2)(a)(v) or (vi).

Section 2. Section 38-12-102 is amended to read:

38-12-102. Notice requirements for lien filings -- Exceptions.

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(1) A lien claimant or the lien claimant's agent shall send by certified mail a written copy of a notice of lien to the last-known address of the person against whom the notice of lien is filed no later than 30 days after the day on which the notice of lien is submitted for recording with:

- (a) a county recorder;
- (b) a county clerk;
- (c) a clerk of the court; or
- (d) in the case of a lien on an aircraft under Section 38-13-201, the Federal Aviation Administration.

(2)

(a) A notice of lien submitted for recording shall contain the following information:

- (i) the name and address of the person against whom the lien is filed;
- (ii) a statement that the property owned by the person against whom the lien is filed is subject to a lien;

(iii)

(A) the amount of the judgment, settlement, or compromise, if the lien is based on a charge against or interest in a judgment, settlement, or compromise;

(B) the amount of state taxes owed, if the lien is based on unpaid state taxes;

(C) the total amount of the unpaid assessment that is subject to the lien, including any fees, charges, or costs, if the lien is based on an unpaid assessment under Title 57, Chapter 8, Condominium Ownership Act, or Title 57, Chapter 8a, Community Association Act; or

(D) the amount of the unpaid fine, if the lien is based on an unpaid fine under Title 57, Chapter 8, Condominium Ownership Act, or Title 57, Chapter 8a, Community Association Act;~~[-and]~~

(iv)

(A) the name, address, and phone number of the lien claimant; or

(B) if the lien claimant has a representative for purposes of the lien, the name of the lien claimant and the name, address, and phone number of the lien claimant's representative~~[-]~~ ;

(v) if the lien claimant is an association of unit owners, as that term is defined in Section 57-8-3, a document stating:

(A) the day on which the association of unit owners last registered with the Department of Commerce in accordance with Section 57-8-13.1; and

(B) that the association of unit owners is not in a period of noncompliance that would prevent the association of unit owners from recording the lien under Subsection 57-8-13.1(6); and

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(vi) if the lien claimant is an association, as that term is defined in Section 57-8a-102, a document stating:

(A) the day on which the association last registered with the Department of Commerce in accordance with Section 57-8a-105; and

(B) that the association is not in a period of noncompliance that would prevent the association from recording the lien under Subsection 57-8a-105(6).

(b) When a lien claimant mails a copy of a notice of lien to the person against whom the notice of lien is filed, in accordance with Subsection (1), the notice of lien shall contain:

(i) the requirements described in Subsection (2)(a);

(ii) the date the notice of lien was submitted for recording; and

(iii) the article number on the certified mail receipt.

(3) The notice requirements of Subsections (1) and (2) do not apply to:

(a) a preconstruction or construction lien as provided in Title 38, Chapter 1a, Preconstruction and Construction Liens;

(b) a lessors' lien as provided in Title 38, Chapter 3, Lessors' Liens;

(c) a federal tax lien as provided in Title 38, Chapter 6, Federal Tax Liens;

(d) a hospital lien as provided in Title 38, Chapter 7, Hospital Lien Law;

(e) a self-service storage facilities lien as provided in Title 38, Chapter 8, Self-Service Storage Facilities;

(f) an oil, gas, or mining lien as provided in Title 38, Chapter 10, Oil, Gas, and Mining Liens;

(g) a claim against the Residence Lien Recovery Fund as provided in Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act;

(h) a trust deed;

(i) a mortgage;

(j) any interests subject to a security agreement as defined in Section 70A-9a-102;

(k) any other liens subject to the same or stricter notice requirements than those imposed by Subsections (1) and (2); or

(l) a court judgment or abstract of a court judgment presented for recording in the office of a county recorder.

Section 3. Section **57-1-46** is amended to read:

57-1-46. Transfer fee and reinvestment fee covenants.

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- 109 (1) As used in this section:
- 110 (a) "Association expenses" means expenses incurred by a common interest association for:
- 112 (i) the purchase, ownership, leasing, construction, operation, use, administration, maintenance,
improvement, repair, or replacement of association facilities, including expenses for taxes,
insurance, operating reserves, capital reserves, and emergency funds;
- 116 (ii) providing, establishing, creating, or managing a facility, activity, service, or program for the benefit
of property owners, tenants, common areas, the burdened property, or property governed by the
common interest association; or
- 119 (iii) other facilities, activities, services, or programs that are required or permitted under the common
interest association's organizational documents.
- 121 (b) "Association facilities" means any real property, improvements on real property, or personal
property owned, leased, constructed, developed, managed, or used by a common interest
association, including common areas.
- 124 (c) "Association transfer fee" means a fee, charge, or payment that is:
- 125 (i) related to the sale of real property; and
- 126 (ii) as a result of a transfer of the real property, is imposed on a buyer or seller by:
- 127 (A) a common interest association; or
- 128 (B) a person acting on behalf of the common interest association.
- 129 (d) "Burdened property" means the real property that is subject to a reinvestment fee covenant or
transfer fee covenant.
- 131 (e) "Common areas" means areas described within:
- 132 (i) the definition of "common areas and facilities" under Section 57-8-3; and
- 133 (ii) the definition of "common areas" under Section 57-8a-102.
- 134 (f)
- (i) "Common interest association" means:
- 135 (A) an association, as defined in Section 57-8a-102;
- 136 (B) an association of unit owners, as defined in Section 57-8-3; or
- 137 (C) a nonprofit association.
- 138 (ii) "Common interest association" includes a person authorized by an association, association of unit
owners, or nonprofit association.
- 140 (g) "Large master planned development" means an approved development:

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- 141 (i) of at least 500 acres or 500 units; and
- 142 (ii) that includes a commitment to fund, construct, develop, or maintain:
- 143 (A) common infrastructure;
- 144 (B) association facilities;
- 145 (C) community programming;
- 146 (D) resort facilities;
- 147 (E) open space; or
- 148 (F) recreation amenities.
- 149 (h) "Nonprofit association" means a nonprofit corporation organized under Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, to benefit, enhance, preserve, govern, manage, or maintain burdened property.
- 152 (i) "Organizational documents" means:
- 153 (i) for an association, as defined in Section 57-8a-102, governing documents as defined in Section 57-8a-102;
- 155 (ii) for an association of unit owners, as defined in Section 57-8-3, a declaration as defined in Section 57-8-3; and
- 157 (iii) for a nonprofit association:
- 158 (A) a written instrument by which the nonprofit association exercises powers or manages, maintains, or otherwise affects the property under the jurisdiction of the nonprofit association; and
- 161 (B) articles of incorporation, bylaws, plats, charters, the nonprofit association's rules, and declarations of covenants, conditions, and restrictions.
- 163 (j) "Reinvestment fee" means a fee imposed, directly or indirectly, by a common interest association:
- 165 (i) upon a buyer or seller of real property;
- 166 (ii) upon and as a result of a transfer of the real property; and
- 167 (iii) that is dedicated to benefiting the common areas, including payment for:
- 168 (A) common planning, facilities, and infrastructure;
- 169 (B) obligations arising from an environmental covenant;
- 170 (C) community programming;
- 171 (D) resort facilities;
- 172 (E) open space;
- 173 (F) recreation amenities;

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- 174 (G) charitable purposes; or
175 (H) association expenses.
- 176 (k) "Reinvestment fee covenant" means a covenant, restriction, or agreement that:
177 (i) affects real property; and
178 (ii) obligates a future buyer or seller of the real property to pay to a common interest association, upon
and as a result of a transfer of the real property, a fee that is dedicated to benefitting the burdened
property, including payment for:
- 181 (A) common planning, facilities, and infrastructure;
182 (B) obligations arising from an environmental covenant;
183 (C) community programming;
184 (D) resort facilities;
185 (E) open space;
186 (F) recreation amenities;
187 (G) charitable purposes; or
188 (H) association expenses.
- 189 (l) "Transfer fee covenant":
190 (i) means an obligation, however denominated, expressed in a covenant, restriction, agreement, or other
instrument or document:
192 (A) that affects real property;
193 (B) that is imposed on a future buyer or seller of real property, other than a person who is a party to the
covenant, restriction, agreement, or other instrument or document; and
196 (C) to pay a fee upon and as a result of a transfer of the real property; and
197 (ii) does not include:
198 (A) an obligation imposed by a court judgment, order, or decree;
199 (B) an obligation imposed by the federal government or a state or local government entity; or
201 (C) a reinvestment fee covenant.
- 202 (2) A transfer fee covenant recorded on or after March 16, 2010, is void and unenforceable.
203 (3)
(a) Except as provided in Subsection (3)(b), a reinvestment fee covenant may not be sold, assigned, or
conveyed unless the sale, assignment, or conveyance is to a common interest association that was
formed to benefit the burdened property.

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- 206 (b) A common interest association may assign or pledge to a lender the right to receive payment under a
reinvestment fee covenant if:
- 208 (i) the assignment or pledge is as collateral for a credit facility; and
- 209 (ii) the lender releases the collateral interest upon payment in full of all amounts that the common
interest association owes to the lender under the credit facility.
- 211 (4) A reinvestment fee covenant recorded on or after March 16, 2010, is not enforceable if the
reinvestment fee covenant is intended to affect property that is the subject of a previously recorded
transfer fee covenant or reinvestment fee covenant.
- 214 (5) A reinvestment fee covenant recorded on or after March 16, 2010, may not obligate the payment of
a fee that exceeds .5% of the value of the burdened property, unless the burdened property is part of
a large master planned development.
- 217 (6)
- (a) A reinvestment fee covenant recorded on or after March 16, 2010, is void and unenforceable unless
a notice of reinvestment fee covenant{ ~~or a notice of transfer fee covenant~~ }, separate from the
reinvestment fee covenant{ ~~or transfer fee covenant~~ }, is recorded in the office of the recorder of
each county in which any of the burdened property is located.
- 222 (b) A notice under Subsection (6)(a) shall:
- 223 (i) state the name and address of the common interest association to which the fee under the
reinvestment fee covenant is required to be paid;
- 225 (ii) include the notarized signature of the common interest association's authorized representative;
- 227 (iii) state that the burden of the reinvestment fee covenant is intended to run with the land and to bind
successors in interest and assigns;
- 229 (iv) state that the existence of the reinvestment fee covenant precludes the imposition of an additional
reinvestment fee covenant on the burdened property;
- 231 (v) state the duration of the reinvestment fee covenant;
- 232 (vi) state the purpose of the fee required to be paid under the reinvestment fee covenant; and
- 234 (vii) state that the fee required to be paid under the reinvestment fee covenant is required to benefit the
burdened property.
- 236 (c) A recorded notice of reinvestment fee covenant that substantially complies with the requirements of
Subsection (6)(b) is valid and effective.
- 238 (7)

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(a) A reinvestment fee covenant or transfer fee covenant recorded before March 16, 2010, is not enforceable after May 31, 2010, unless:

- (i) a notice that is consistent with the notice described in Subsection (6) is recorded in the office of the recorder of each county in which any of the burdened property is located; or
- (ii) a notice of reinvestment fee covenant or transfer fee covenant, as described in Subsection (7)(b), is recorded in the office of the recorder of each county in which any of the burdened property is located.

(b) A notice under Subsection (7)(a)(ii) shall:

- (i) include the notarized signature of the beneficiary of the reinvestment fee covenant or transfer fee covenant, or the beneficiary's authorized representative;
- (ii) state the name and current address of the beneficiary under the reinvestment fee covenant or transfer fee covenant;
- (iii) state that the burden of the reinvestment fee covenant or transfer fee covenant is intended to run with the land and to bind successors in interest and assigns; and
- (iv) state the duration of the reinvestment fee covenant or transfer fee covenant.

(c)

(i) A recorded notice of reinvestment fee covenant or transfer fee covenant that substantially complies with the requirements of Subsection (7)(b) is valid and effective, unless the notice is a wrongful lien as that term is defined in Section 38-9-102.

(ii) A county recorder is not required to determine whether a notice is a wrongful lien for purposes of this Subsection (7)(c).

(d) A notice under Subsection (7)(b):

- (i) that is recorded after May 31, 2010, is not enforceable; and
- (ii) shall comply with the requirements of Section 57-1-47.

(e) An amendment to a notice under Subsection (7)(b) recorded after May 31, 2010, seeking to amend a notice under Subsection (7)(b) recorded before May 31, 2010, is not an enforceable amendment.

(8) A reinvestment fee covenant recorded on or after March 16, 2010, may not be enforced upon:

- (a) an involuntary transfer;
- (b) a transfer that results from a court order;
- (c) a bona fide transfer to a family member of the seller within three degrees of consanguinity who, before the transfer, provides adequate proof of consanguinity;

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- 270 (d) a transfer or change of interest due to death, whether provided in a will, trust, or decree of
distribution; or
- 272 (e) the transfer of burdened property by a financial institution, except to the extent that the reinvestment
fee covenant requires the payment of a common interest association's costs directly related to the
transfer of the burdened property, not to exceed \$250.
- 276 (9) An association transfer fee imposed on or after May 7, 2025, is void and unenforceable unless the
association uses the fee only to pay expenses related to the transfer.
- 278 (10) On or after May 7, 2025, an association may not impose a reinvestment fee unless:
- 279 (a) imposing the reinvestment fee is authorized in the declaration or a reinvestment fee covenant; and
- 281 (b) a majority of voting interests in the association, or a higher percentage if required in the
organizational documents, approves the reinvestment fee.
- 283 (11) After a vote approving the reinvestment fee described in Subsection (10)(b), an association may set
the amount of a reinvestment fee only:
- 285 (a) in accordance with the terms of the declaration or a reinvestment fee covenant; and
- 286 (b) upon providing notice in accordance with Section 57-8a-214.
- 287 (12) Members of the association may remove or amend a reinvestment fee by holding a vote at a special
meeting:
- 289 (a) called by the members for the purpose of removing or amending the reinvestment fee; and
- 291 (b) at which:
- 292 (i) at least 51% of the voting interests attend and vote; and
- 293 (ii) a majority of the voting interests that attend vote to remove or amend the reinvestment fee.
- 371 Section 4. Section **57-1-47** is amended to read:
- 372 **57-1-47. Notice requirements for continuation of existing private transfer fee obligations.**
- 298 (1) In addition to the requirements described in Subsection 57-1-46(7), a person required to file a notice
under this section shall:
- 300 (a)
- (i) file the notice described in this section on or before May 31, 2024; and
- 301 (ii) re-file the notice, no earlier than May 1 and no later than May 31, every three years thereafter; and
- 303 (b) amend the notice to reflect any change in the name or address of any payee included in the notice no
later than the 30 days after the day on which the change occurs.
- 305 (2) A person who amends a notice filed under Subsection (1) shall include with the amendment:

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- 307 (a) the recording information of the original notice; and
308 (b) the legal description of the property subject to the private transfer fee obligation.
309 (3) To be effective, a notice filed under this section shall be approved in writing by every person
holding a majority of the beneficial interests in the private transfer fee obligation.
311 (4) If a person required to file a notice under this section fails to comply with this section:
312 (a) payment of the private transfer fee may not be a requirement for the conveyance of an interest in the
property to a purchaser;
314 (b) the property is not subject to further obligation under the private transfer fee obligation; and
316 (c) the private transfer fee obligation is void.
317 (5)
(a) A recorded notice of transfer fee covenant that complies with the requirements of this section is
valid and effective, unless the notice is a wrongful lien as that term is defined in Section 38-9-102.
396 (b) A county recorder is not required to determine whether a notice is a wrongful lien for purposes of
this Subsection (5).
320 (6)
(a) A person that is no longer subject to a private transfer fee obligation may seek declaratory relief in
court to address any encumbrance on real property owned by the person.
323 (b) Upon a successful claim for declaratory relief, as described in Subsection (6)(a), a court may award
the person costs and reasonable attorney fees.
403 Section 5. **Effective date.**
Effective Date.
This bill takes effect on May 6, 2026.

2-3-26 11:31 AM