

SB0196S02 compared with SB0196

{Omitted text} shows text that was in SB0196 but was omitted in SB0196S02

inserted text shows text that was not in SB0196 but was inserted into SB0196S02

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1

Wrongful Lien Act Amendments
2026 GENERAL SESSION
STATE OF UTAH
Chief Sponsor: Don L. Ipson
House Sponsor: R. Neil Walter



2

3 **LONG TITLE**

4 **General Description:**

5 This bill amends provisions related to wrongful liens.

6 **Highlighted Provisions:**

7 This bill:

- 8 ▸ expands the definition of "wrongful lien";
- 9 ▸ provides that if a {~~reinvestment fee covenant or~~} notice of transfer fee covenant is a wrongful lien, the {~~reinvestment fee covenant or~~} notice of transfer fee covenant is invalid; {and}

11 ▸ **provides that a county recorder is not required to determine whether a notice of transfer fee covenant is a wrongful lien under certain circumstances; and**

11 ▸ makes technical changes.

14 **Money Appropriated in this Bill:**

15 None

16 **Other Special Clauses:**

17 None

18 **Utah Code Sections Affected:**

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19 AMENDS:

20 **38-9-102** , as last amended by Laws of Utah 2025, First Special Session, Chapter 15

21 **57-1-46** , as last amended by Laws of Utah 2025, Chapter 226

22 **57-1-47** , as enacted by Laws of Utah 2024, Chapter 431

23

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

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

26 **38-9-102. Definitions.**

As used in this chapter:

26 (1) "Affected person" means:

27 (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

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

31 (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.

34 (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.

37 (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.

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

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

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

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

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

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

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.

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

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- 81 (b) "Record interest holder" includes [any] a grantor in the chain of the title in real property.
- 83 (11) "Record owner" means an owner whose name and ownership interest in [ertain-]real property is
recorded or filed in the county recorder's records for the county in which the property is located.
- 86 (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 [ertain-]real property and at the time [it] the document is
recorded is not:
- 89 (i) expressly authorized by this chapter or another state or federal statute;
- 90 (ii) authorized by or contained in an order or judgment of a court [~~of competent~~] with jurisdiction in
the state; or
- 92 (iii) signed by or authorized in accordance with a document signed by the owner of the real
property.
- 94 (b) "Wrongful lien" includes:
- 95 (i) [-]a document recorded in violation of Subsection 10-20-508(2)(d)[-] ; or
- 96 (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)~~ 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:
- 101 (A) foreclosure of a trust deed or mortgage that has priority over the transfer fee covenant;
- 103 (B) { document not being recorded in accordance with } absence of a previously recorded notice of
transfer fee covenant required by Subsection { ~~57-1-46(6)~~ } 57-1-46(7) or Section 57-1-47; or
- 105 (C) existence of a recorded rescission, termination, release, waiver, or other document terminating the
transfer fee covenant.
- 109 Section 2. Section **57-1-46** is amended to read:
- 110 **57-1-46. Transfer fee and reinvestment fee covenants.**
- 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;

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- (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
121 interest association's organizational documents.
- (b) "Association facilities" means any real property, improvements on real property, or personal
124 property owned, leased, constructed, developed, managed, or used by a common interest
125 association, including common areas.
- (c) "Association transfer fee" means a fee, charge, or payment that is:
126 (i) related to the sale of real property; and
127 (ii) as a result of a transfer of the real property, is imposed on a buyer or seller by:
128 (A) a common interest association; or
129 (B) a person acting on behalf of the common interest association.
- (d) "Burdened property" means the real property that is subject to a reinvestment fee covenant or
131 transfer fee covenant.
- (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.
- (f)
134 (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.
- (ii) "Common interest association" includes a person authorized by an association, association of unit
138 owners, or nonprofit association.
- (g) "Large master planned development" means an approved development:
140 (i) of at least 500 acres or 500 units; and
141 (ii) that includes a commitment to fund, construct, develop, or maintain:
142 (A) common infrastructure;
143 (B) association facilities;
144 (C) community programming;
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- 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;
- 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
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(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 (I) "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.

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

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- (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)
(a) A reinvestment fee covenant or transfer fee covenant recorded before March 16, 2010, is not
enforceable after May 31, 2010, unless:
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- (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
- 243 (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.
- 246 (b) A notice under Subsection (7)(a)(ii) shall:
- 247 (i) include the notarized signature of the beneficiary of the reinvestment fee covenant or transfer fee covenant, or the beneficiary's authorized representative;
- 249 (ii) state the name and current address of the beneficiary under the reinvestment fee covenant or transfer fee covenant;
- 251 (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
- 253 (iv) state the duration of the reinvestment fee covenant or transfer fee covenant.
- 254 (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 of transfer fee covenant is a wrongful lien as that term is defined in Section 38-9-102.
- 259 (ii) A county recorder is not required to determine whether a notice of transfer fee covenant is a wrongful lien for purposes of this Subsection (7)(c).
- 258 (d) A notice under Subsection (7)(b):
- 259 (i) that is recorded after May 31, 2010, is not enforceable; and
- 260 (ii) shall comply with the requirements of Section 57-1-47.
- 261 (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.
- 264 (8) A reinvestment fee covenant recorded on or after March 16, 2010, may not be enforced upon:
- 266 (a) an involuntary transfer;
- 267 (b) a transfer that results from a court order;
- 268 (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;
- 270 (d) a transfer or change of interest due to death, whether provided in a will, trust, or decree of distribution; or

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- 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.
- 298 Section 3. Section **57-1-47** is amended to read:
- 299 **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:
- 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.

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- 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 of transfer fee covenant is a wrongful lien as that term is
defined in Section 38-9-102.
- 323 (b) A county recorder is not required to determine whether a notice of transfer fee covenant 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.
- 330 (7) This section does not apply to a reinvestment fee covenant, as that term is defined in Section
57-1-46.

332 Section 4. **Effective date.**

Effective Date.

This bill takes effect on May 6, 2026.

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