

Wrongful Lien Act Amendments

2026 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Don L. Ipson

House Sponsor:

LONG TITLE**General Description:**

This bill amends provisions related to wrongful liens.

Highlighted Provisions:

This bill:

- expands the definition of "wrongful lien";
- provides that if a reinvestment fee covenant or transfer fee covenant is a wrongful lien, the reinvestment fee covenant or transfer fee covenant is invalid; and
- makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

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

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
 - (c) is submitted in relation to the public official's status or capacity as a public official.
- (6) "Owner" means a person who has a vested ownership interest in real property.
- (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.
- (8) "Public official" means:
- (a) a current or former:
 - (i) member of the Legislature;
 - (ii) member of Congress;
 - (iii) judge;
 - (iv) member of law enforcement;
 - (v) corrections officer;
 - (vi) active member of the Utah State Bar; or
 - (vii) member of the Board of Pardons and Parole;
 - (b) an individual currently or previously appointed or elected to an elected position in:
 - (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
- 67 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
- 76 who is a public official.
- 77 (10)(a) "Record interest holder" means a person who holds or possesses a present, lawful
- 78 property interest in real property, including an owner, titleholder, mortgagee, trustee,
- 79 or beneficial owner, and whose name and interest in that real property appears in the
- 80 county recorder's records for the county in which the property is located.
- 81 (b) "Record interest holder" includes ~~[any]~~ a grantor in the chain of the title in real
- 82 property.
- 83 (11) "Record owner" means an owner whose name and ownership interest in ~~[certain]~~ real
- 84 property is recorded or filed in the county recorder's records for the county in which the
- 85 property is located.
- 86 (12)(a) "Wrongful lien" means ~~[any]~~ a document that purports to create a lien, notice of
- 87 interest, or encumbrance on an owner's interest in ~~[certain]~~ real property and at the
- 88 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
- 91 jurisdiction in the state; or
- 92 (iii) signed by or authorized in accordance with a document signed by the owner of
- 93 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
- 97 Subsection 57-1-46(6)(a) or a document that purports to create, continue, or
- 98 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) or Section 57-1-47; or

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

Section 2. Section **57-1-46** is amended to read:

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

(1) As used in this section:

(a) "Association expenses" means expenses incurred by a common interest association for:

(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;

(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

(iii) other facilities, activities, services, or programs that are required or permitted under the common interest association's organizational documents.

(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.

(c) "Association transfer fee" means a fee, charge, or payment that is:

(i) related to the sale of real property; and

(ii) as a result of a transfer of the real property, is imposed on a buyer or seller by:

(A) a common interest association; or

(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 transfer fee covenant.

(e) "Common areas" means areas described within:

(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,
- 139 association of unit owners, or nonprofit association.
- 140 (g) "Large master planned development" means an approved development:
- 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,
- 150 Chapter 6a, Utah Revised Nonprofit Corporation Act, to benefit, enhance, preserve,
- 151 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
- 154 defined in Section 57-8a-102;
- 155 (ii) for an association of unit owners, as defined in Section 57-8-3, a declaration as
- 156 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
- 159 manages, maintains, or otherwise affects the property under the jurisdiction of
- 160 the nonprofit association; and
- 161 (B) articles of incorporation, bylaws, plats, charters, the nonprofit association's
- 162 rules, and declarations of covenants, conditions, and restrictions.
- 163 (j) "Reinvestment fee" means a fee imposed, directly or indirectly, by a common interest
- 164 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

(iii) that is dedicated to benefiting the common areas, including payment for:

- (A) common planning, facilities, and infrastructure;
- (B) obligations arising from an environmental covenant;
- (C) community programming;
- (D) resort facilities;
- (E) open space;
- (F) recreation amenities;
- (G) charitable purposes; or
- (H) association expenses.

(k) "Reinvestment fee covenant" means a covenant, restriction, or agreement that:

(i) affects real property; and

(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 benefiting the burdened property, including payment for:

- (A) common planning, facilities, and infrastructure;
- (B) obligations arising from an environmental covenant;
- (C) community programming;
- (D) resort facilities;
- (E) open space;
- (F) recreation amenities;
- (G) charitable purposes; or
- (H) association expenses.

(l) "Transfer fee covenant":

(i) means an obligation, however denominated, expressed in a covenant, restriction, agreement, or other instrument or document:

- (A) that affects real property;
- (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

(C) to pay a fee upon and as a result of a transfer of the real property; and

(ii) does not include:

- (A) an obligation imposed by a court judgment, order, or decree;
- (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
- 204 sold, assigned, or conveyed unless the sale, assignment, or conveyance is to a
- 205 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
- 207 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
- 210 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
- 212 the reinvestment fee covenant is intended to affect property that is the subject of a
- 213 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
- 215 payment of a fee that exceeds .5% of the value of the burdened property, unless the
- 216 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
- 218 unenforceable unless a notice of reinvestment fee covenant or a notice of transfer fee
- 219 covenant, separate from the reinvestment fee covenant or transfer fee covenant, is
- 220 recorded in the office of the recorder of each county in which any of the burdened
- 221 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
- 224 under the reinvestment fee covenant is required to be paid;
- 225 (ii) include the notarized signature of the common interest association's authorized
- 226 representative;
- 227 (iii) state that the burden of the reinvestment fee covenant is intended to run with the
- 228 land and to bind successors in interest and assigns;
- 229 (iv) state that the existence of the reinvestment fee covenant precludes the imposition
- 230 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
- 233 covenant; and
- 234 (vii) state that the fee required to be paid under the reinvestment fee covenant is

- 235 required to benefit the burdened property.
- 236 (c) A recorded notice of reinvestment fee covenant that substantially complies with the
- 237 requirements of Subsection (6)(b) is valid and effective.
- 238 (7)(a) A reinvestment fee covenant or transfer fee covenant recorded before March 16,
- 239 2010, is not enforceable after May 31, 2010, unless:
- 240 (i) a notice that is consistent with the notice described in Subsection (6) is recorded in
- 241 the office of the recorder of each county in which any of the burdened property is
- 242 located; or
- 243 (ii) a notice of reinvestment fee covenant or transfer fee covenant, as described in
- 244 Subsection (7)(b), is recorded in the office of the recorder of each county in which
- 245 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
- 248 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
- 250 covenant or transfer fee covenant;
- 251 (iii) state that the burden of the reinvestment fee covenant or transfer fee covenant is
- 252 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) A recorded notice of reinvestment fee covenant or transfer fee covenant that
- 255 substantially complies with the requirements of Subsection (7)(b) is valid and
- 256 effective, unless the notice is a wrongful lien as that term is defined in Section
- 257 38-9-102.
- 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,
- 262 seeking to amend a notice under Subsection (7)(b) recorded before May 31, 2010, is
- 263 not an enforceable amendment.
- 264 (8) A reinvestment fee covenant recorded on or after March 16, 2010, may not be enforced
- 265 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;
- (d) a transfer or change of interest due to death, whether provided in a will, trust, or decree of distribution; or
- (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.
- (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.
- (10) On or after May 7, 2025, an association may not impose a reinvestment fee unless:
- (a) imposing the reinvestment fee is authorized in the declaration or a reinvestment fee covenant; and
- (b) a majority of voting interests in the association, or a higher percentage if required in the organizational documents, approves the reinvestment fee.
- (11) After a vote approving the reinvestment fee described in Subsection (10)(b), an association may set the amount of a reinvestment fee only:
- (a) in accordance with the terms of the declaration or a reinvestment fee covenant; and
- (b) upon providing notice in accordance with Section 57-8a-214.
- (12) Members of the association may remove or amend a reinvestment fee by holding a vote at a special meeting:
- (a) called by the members for the purpose of removing or amending the reinvestment fee; and
- (b) at which:
- (i) at least 51% of the voting interests attend and vote; and
- (ii) a majority of the voting interests that attend vote to remove or amend the reinvestment fee.

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

57-1-47 . Notice requirements for continuation of existing private transfer fee obligations.

- (1) In addition to the requirements described in Subsection 57-1-46(7), a person required to file a notice under this section shall:
- (a)(i) file the notice described in this section on or before May 31, 2024; and
- (ii) re-file the notice, no earlier than May 1 and no later than May 31, every three years thereafter; and

(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.

(2) A person who amends a notice filed under Subsection (1) shall include with the amendment:

(a) the recording information of the original notice; and

(b) the legal description of the property subject to the private transfer fee obligation.

(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.

(4) If a person required to file a notice under this section fails to comply with this section:

(a) payment of the private transfer fee may not be a requirement for the conveyance of an interest in the property to a purchaser;

(b) the property is not subject to further obligation under the private transfer fee obligation; and

(c) the private transfer fee obligation is void.

(5) 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.

(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.

(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.

Section 4. **Effective Date.**

This bill takes effect on May 6, 2026.