

Don L. Ipson proposes the following substitute bill:

**Wrongful Lien Act Amendments**

2026 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Don L. Ipson**

House Sponsor: R. Neil Walter

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**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 notice of transfer fee covenant is a wrongful lien, the notice of transfer fee covenant is invalid;
- 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
- 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

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*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:

- 29 (a) a person who is a record interest holder of the real property that is the subject of a  
30 recorded nonconsensual common law document; or
- 31 (b) the person against whom a recorded nonconsensual common law document purports  
32 to reflect or establish a claim or obligation.
- 33 (2) "Document sponsor" means a person who, personally or through a designee, signs or  
34 submits for recording a document that is, or is alleged to be, a nonconsensual common  
35 law document.
- 36 (3) "Interest holder" means a person who holds or possesses a present, lawful property  
37 interest in [~~certain~~]real property, including an owner, a title holder, a mortgagee, a  
38 trustee, or a beneficial owner.
- 39 (4) "Lien claimant" means a person claiming an interest in real property who offers a  
40 document for recording or filing with [~~any~~] a county recorder in the state asserting a lien,  
41 or notice of interest, or other claim of interest in [~~certain~~]real property.
- 42 (5) "Nonconsensual common law document" means a document that is submitted to a  
43 county recorder's office for recording against public official property that:
- 44 (a) purports to create a lien or encumbrance on or a notice of interest in the real property;  
45 (b) at the time the document is recorded, is not:
- 46 (i) expressly authorized by this chapter or a state or federal statute;  
47 (ii) authorized by or contained in an order or judgment of a court [~~of competent~~] with  
48 jurisdiction; or
- 49 (iii) signed by or expressly authorized by a document signed by the owner of the real  
50 property; and
- 51 (c) is submitted in relation to the public official's status or capacity as a public official.
- 52 (6) "Owner" means a person who has a vested ownership interest in real property.
- 53 (7) "Political subdivision" means a county, city, town, school district, special improvement  
54 or taxing district, special district, special service district, or other governmental  
55 subdivision or public corporation.
- 56 (8) "Public official" means:
- 57 (a) a current or former:
- 58 (i) member of the Legislature;  
59 (ii) member of Congress;  
60 (iii) judge;  
61 (iv) member of law enforcement;  
62 (v) corrections officer;

- 63 (vi) active member of the Utah State Bar; or  
 64 (vii) member of the Board of Pardons and Parole;
- 65 (b) an individual currently or previously appointed or elected to an elected position in:  
 66 (i) the executive branch of state or federal government; or  
 67 (ii) a political subdivision;
- 68 (c) an individual currently or previously appointed to or employed in a position in a  
 69 political subdivision, or state or federal government that:  
 70 (i) is a policymaking position; or  
 71 (ii) involves:  
 72 (A) purchasing or contracting decisions;  
 73 (B) drafting legislation or making rules;  
 74 (C) determining rates or fees; or  
 75 (D) making adjudicative decisions; or
- 76 (d) an immediate family member of a person described in Subsections (8)(a) through (c).
- 77 (9) "Public official property" means real property that has at least one record interest holder  
 78 who is a public official.
- 79 (10)(a) "Record interest holder" means a person who holds or possesses a present, lawful  
 80 property interest in real property, including an owner, titleholder, mortgagee, trustee,  
 81 or beneficial owner, and whose name and interest in that real property appears in the  
 82 county recorder's records for the county in which the property is located.
- 83 (b) "Record interest holder" includes ~~any~~ a grantor in the chain of the title in real  
 84 property.
- 85 (11) "Record owner" means an owner whose name and ownership interest in ~~ertain~~ real  
 86 property is recorded or filed in the county recorder's records for the county in which the  
 87 property is located.
- 88 (12)(a) "Wrongful lien" means ~~any~~ a document that purports to create a lien, notice of  
 89 interest, or encumbrance on an owner's interest in ~~ertain~~ real property and at the  
 90 time ~~it~~ the document is recorded is not:  
 91 (i) expressly authorized by this chapter or another state or federal statute;  
 92 (ii) authorized by or contained in an order or judgment of a court ~~of competent~~ with  
 93 jurisdiction in the state; or  
 94 (iii) signed by or authorized in accordance with a document signed by the owner of  
 95 the real property.
- 96 (b) "Wrongful lien" includes:

- 97           (i) [-] a document recorded in violation of Subsection 10-20-508(2)(d)[-] ; or  
 98           (ii) a document that purports to be a notice of transfer fee covenant described in  
 99                 Subsection 57-1-46(7) or Section 57-1-47 or a document that purports to create,  
 100                 continue, or reestablish a transfer fee covenant as a lien or encumbrance on an  
 101                 owner's interest in real property, if at the time the document was recorded the  
 102                 transfer fee covenant was not enforceable due to the:  
 103                 (A) foreclosure of a trust deed or mortgage that has priority over the transfer fee  
 104                         covenant;  
 105                 (B) absence of a previously recorded notice of transfer fee covenant required by  
 106                         Subsection 57-1-46(7) or Section 57-1-47; or  
 107                 (C) existence of a recorded rescission, termination, release, waiver, or other  
 108                         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.**

111           (1) As used in this section:

- 112           (a) "Association expenses" means expenses incurred by a common interest association  
 113                 for:  
 114                 (i) the purchase, ownership, leasing, construction, operation, use, administration,  
 115                         maintenance, improvement, repair, or replacement of association facilities,  
 116                         including expenses for taxes, insurance, operating reserves, capital reserves, and  
 117                         emergency funds;  
 118                 (ii) providing, establishing, creating, or managing a facility, activity, service, or  
 119                         program for the benefit of property owners, tenants, common areas, the burdened  
 120                         property, or property governed by the common interest association; or  
 121                 (iii) other facilities, activities, services, or programs that are required or permitted  
 122                         under the common interest association's organizational documents.
- 123           (b) "Association facilities" means any real property, improvements on real property, or  
 124                 personal property owned, leased, constructed, developed, managed, or used by a  
 125                 common interest association, including common areas.
- 126           (c) "Association transfer fee" means a fee, charge, or payment that is:  
 127                 (i) related to the sale of real property; and  
 128                 (ii) as a result of a transfer of the real property, is imposed on a buyer or seller by:  
 129                         (A) a common interest association; or  
 130                         (B) a person acting on behalf of the common interest association.

- 131 (d) "Burdened property" means the real property that is subject to a reinvestment fee  
132 covenant or transfer fee covenant.
- 133 (e) "Common areas" means areas described within:  
134 (i) the definition of "common areas and facilities" under Section 57-8-3; and  
135 (ii) the definition of "common areas" under Section 57-8a-102.
- 136 (f)(i) "Common interest association" means:  
137 (A) an association, as defined in Section 57-8a-102;  
138 (B) an association of unit owners, as defined in Section 57-8-3; or  
139 (C) a nonprofit association.  
140 (ii) "Common interest association" includes a person authorized by an association,  
141 association of unit owners, or nonprofit association.
- 142 (g) "Large master planned development" means an approved development:  
143 (i) of at least 500 acres or 500 units; and  
144 (ii) that includes a commitment to fund, construct, develop, or maintain:  
145 (A) common infrastructure;  
146 (B) association facilities;  
147 (C) community programming;  
148 (D) resort facilities;  
149 (E) open space; or  
150 (F) recreation amenities.
- 151 (h) "Nonprofit association" means a nonprofit corporation organized under Title 16,  
152 Chapter 6a, Utah Revised Nonprofit Corporation Act, to benefit, enhance, preserve,  
153 govern, manage, or maintain burdened property.
- 154 (i) "Organizational documents" means:  
155 (i) for an association, as defined in Section 57-8a-102, governing documents as  
156 defined in Section 57-8a-102;  
157 (ii) for an association of unit owners, as defined in Section 57-8-3, a declaration as  
158 defined in Section 57-8-3; and  
159 (iii) for a nonprofit association:  
160 (A) a written instrument by which the nonprofit association exercises powers or  
161 manages, maintains, or otherwise affects the property under the jurisdiction of  
162 the nonprofit association; and  
163 (B) articles of incorporation, bylaws, plats, charters, the nonprofit association's  
164 rules, and declarations of covenants, conditions, and restrictions.

- 165 (j) "Reinvestment fee" means a fee imposed, directly or indirectly, by a common interest  
166 association:
- 167 (i) upon a buyer or seller of real property;
- 168 (ii) upon and as a result of a transfer of the real property; and
- 169 (iii) that is dedicated to benefiting the common areas, including payment for:
- 170 (A) common planning, facilities, and infrastructure;
- 171 (B) obligations arising from an environmental covenant;
- 172 (C) community programming;
- 173 (D) resort facilities;
- 174 (E) open space;
- 175 (F) recreation amenities;
- 176 (G) charitable purposes; or
- 177 (H) association expenses.
- 178 (k) "Reinvestment fee covenant" means a covenant, restriction, or agreement that:
- 179 (i) affects real property; and
- 180 (ii) obligates a future buyer or seller of the real property to pay to a common interest  
181 association, upon and as a result of a transfer of the real property, a fee that is  
182 dedicated to benefitting the burdened property, including payment for:
- 183 (A) common planning, facilities, and infrastructure;
- 184 (B) obligations arising from an environmental covenant;
- 185 (C) community programming;
- 186 (D) resort facilities;
- 187 (E) open space;
- 188 (F) recreation amenities;
- 189 (G) charitable purposes; or
- 190 (H) association expenses.
- 191 (l) "Transfer fee covenant":
- 192 (i) means an obligation, however denominated, expressed in a covenant, restriction,  
193 agreement, or other instrument or document:
- 194 (A) that affects real property;
- 195 (B) that is imposed on a future buyer or seller of real property, other than a person  
196 who is a party to the covenant, restriction, agreement, or other instrument or  
197 document; and
- 198 (C) to pay a fee upon and as a result of a transfer of the real property; and

- 199 (ii) does not include:
- 200 (A) an obligation imposed by a court judgment, order, or decree;
- 201 (B) an obligation imposed by the federal government or a state or local
- 202 government entity; or
- 203 (C) a reinvestment fee covenant.
- 204 (2) A transfer fee covenant recorded on or after March 16, 2010, is void and unenforceable.
- 205 (3)(a) Except as provided in Subsection (3)(b), a reinvestment fee covenant may not be
- 206 sold, assigned, or conveyed unless the sale, assignment, or conveyance is to a
- 207 common interest association that was formed to benefit the burdened property.
- 208 (b) A common interest association may assign or pledge to a lender the right to receive
- 209 payment under a reinvestment fee covenant if:
- 210 (i) the assignment or pledge is as collateral for a credit facility; and
- 211 (ii) the lender releases the collateral interest upon payment in full of all amounts that
- 212 the common interest association owes to the lender under the credit facility.
- 213 (4) A reinvestment fee covenant recorded on or after March 16, 2010, is not enforceable if
- 214 the reinvestment fee covenant is intended to affect property that is the subject of a
- 215 previously recorded transfer fee covenant or reinvestment fee covenant.
- 216 (5) A reinvestment fee covenant recorded on or after March 16, 2010, may not obligate the
- 217 payment of a fee that exceeds .5% of the value of the burdened property, unless the
- 218 burdened property is part of a large master planned development.
- 219 (6)(a) A reinvestment fee covenant recorded on or after March 16, 2010, is void and
- 220 unenforceable unless a notice of reinvestment fee covenant, separate from the
- 221 reinvestment fee covenant, is recorded in the office of the recorder of each county in
- 222 which any of the burdened property is located.
- 223 (b) A notice under Subsection (6)(a) shall:
- 224 (i) state the name and address of the common interest association to which the fee
- 225 under the reinvestment fee covenant is required to be paid;
- 226 (ii) include the notarized signature of the common interest association's authorized
- 227 representative;
- 228 (iii) state that the burden of the reinvestment fee covenant is intended to run with the
- 229 land and to bind successors in interest and assigns;
- 230 (iv) state that the existence of the reinvestment fee covenant precludes the imposition
- 231 of an additional reinvestment fee covenant on the burdened property;
- 232 (v) state the duration of the reinvestment fee covenant;

- 233 (vi) state the purpose of the fee required to be paid under the reinvestment fee  
234 covenant; and
- 235 (vii) state that the fee required to be paid under the reinvestment fee covenant is  
236 required to benefit the burdened property.
- 237 (c) A recorded notice of reinvestment fee covenant that substantially complies with the  
238 requirements of Subsection (6)(b) is valid and effective.
- 239 (7)(a) A reinvestment fee covenant or transfer fee covenant recorded before March 16,  
240 2010, is not enforceable after May 31, 2010, unless:
- 241 (i) a notice that is consistent with the notice described in Subsection (6) is recorded in  
242 the office of the recorder of each county in which any of the burdened property is  
243 located; or
- 244 (ii) a notice of reinvestment fee covenant or transfer fee covenant, as described in  
245 Subsection (7)(b), is recorded in the office of the recorder of each county in which  
246 any of the burdened property is located.
- 247 (b) A notice under Subsection (7)(a)(ii) shall:
- 248 (i) include the notarized signature of the beneficiary of the reinvestment fee covenant  
249 or transfer fee covenant, or the beneficiary's authorized representative;
- 250 (ii) state the name and current address of the beneficiary under the reinvestment fee  
251 covenant or transfer fee covenant;
- 252 (iii) state that the burden of the reinvestment fee covenant or transfer fee covenant is  
253 intended to run with the land and to bind successors in interest and assigns; and
- 254 (iv) state the duration of the reinvestment fee covenant or transfer fee covenant.
- 255 (c)(i) A recorded notice of reinvestment fee covenant or transfer fee covenant that  
256 substantially complies with the requirements of Subsection (7)(b) is valid and  
257 effective, unless the notice of transfer fee covenant is a wrongful lien as that term  
258 is defined in Section 38-9-102.
- 259 (ii) A county recorder is not required to determine whether a notice of transfer fee  
260 covenant is a wrongful lien for purposes of this Subsection (7)(c).
- 261 (d) A notice under Subsection (7)(b):
- 262 (i) that is recorded after May 31, 2010, is not enforceable; and
- 263 (ii) shall comply with the requirements of Section 57-1-47.
- 264 (e) An amendment to a notice under Subsection (7)(b) recorded after May 31, 2010,  
265 seeking to amend a notice under Subsection (7)(b) recorded before May 31, 2010, is  
266 not an enforceable amendment.

- 267 (8) A reinvestment fee covenant recorded on or after March 16, 2010, may not be enforced  
268 upon:
- 269 (a) an involuntary transfer;
  - 270 (b) a transfer that results from a court order;
  - 271 (c) a bona fide transfer to a family member of the seller within three degrees of  
272 consanguinity who, before the transfer, provides adequate proof of consanguinity;
  - 273 (d) a transfer or change of interest due to death, whether provided in a will, trust, or  
274 decree of distribution; or
  - 275 (e) the transfer of burdened property by a financial institution, except to the extent that  
276 the reinvestment fee covenant requires the payment of a common interest  
277 association's costs directly related to the transfer of the burdened property, not to  
278 exceed \$250.
- 279 (9) An association transfer fee imposed on or after May 7, 2025, is void and unenforceable  
280 unless the association uses the fee only to pay expenses related to the transfer.
- 281 (10) On or after May 7, 2025, an association may not impose a reinvestment fee unless:
- 282 (a) imposing the reinvestment fee is authorized in the declaration or a reinvestment fee  
283 covenant; and
  - 284 (b) a majority of voting interests in the association, or a higher percentage if required in  
285 the organizational documents, approves the reinvestment fee.
- 286 (11) After a vote approving the reinvestment fee described in Subsection (10)(b), an  
287 association may set the amount of a reinvestment fee only:
- 288 (a) in accordance with the terms of the declaration or a reinvestment fee covenant; and
  - 289 (b) upon providing notice in accordance with Section 57-8a-214.
- 290 (12) Members of the association may remove or amend a reinvestment fee by holding a  
291 vote at a special meeting:
- 292 (a) called by the members for the purpose of removing or amending the reinvestment  
293 fee; and
  - 294 (b) at which:
    - 295 (i) at least 51% of the voting interests attend and vote; and
    - 296 (ii) a majority of the voting interests that attend vote to remove or amend the  
297 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**  
300 **obligations.**

- 301 (1) In addition to the requirements described in Subsection 57-1-46(7), a person required to  
302 file a notice under this section shall:
- 303 (a)(i) file the notice described in this section on or before May 31, 2024; and  
304 (ii) re-file the notice, no earlier than May 1 and no later than May 31, every three  
305 years thereafter; and
- 306 (b) amend the notice to reflect any change in the name or address of any payee included  
307 in the notice no later than the 30 days after the day on which the change occurs.
- 308 (2) A person who amends a notice filed under Subsection (1) shall include with the  
309 amendment:
- 310 (a) the recording information of the original notice; and  
311 (b) the legal description of the property subject to the private transfer fee obligation.
- 312 (3) To be effective, a notice filed under this section shall be approved in writing by every  
313 person holding a majority of the beneficial interests in the private transfer fee obligation.
- 314 (4) If a person required to file a notice under this section fails to comply with this section:
- 315 (a) payment of the private transfer fee may not be a requirement for the conveyance of  
316 an interest in the property to a purchaser;  
317 (b) the property is not subject to further obligation under the private transfer fee  
318 obligation; and  
319 (c) the private transfer fee obligation is void.
- 320 (5)(a) A recorded notice of transfer fee covenant that complies with the requirements of  
321 this section is valid and effective, unless the notice of transfer fee covenant is a  
322 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  
324 covenant is a wrongful lien for purposes of this Subsection (5).
- 325 (6)(a) A person that is no longer subject to a private transfer fee obligation may seek  
326 declaratory relief in court to address any encumbrance on real property owned by the  
327 person.
- 328 (b) Upon a successful claim for declaratory relief, as described in Subsection (6)(a), a  
329 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  
331 Section 57-1-46.

332 Section 4. **Effective Date.**

333 This bill takes effect on May 6, 2026.