

## **Chapter 9 Wrongful Lien Act**

### **Part 1 General Provisions**

#### **38-9-101 Title.**

- (1) This chapter is known as the "Wrongful Lien Act."
- (2) This part is known as "General Provisions."

Enacted by Chapter 114, 2014 General Session

#### **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, title holder, mortgagee, trustee, or beneficial owner.
- (4) "Lien claimant" means a person claiming an interest in real property who offers a document for recording or filing with any 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 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
  - (ii) a political subdivision;
- (c) an individual currently or previously appointed to or employed in a position in a political subdivision, or state or federal government that:
  - (i) is a policymaking position; or
  - (ii) involves:
    - (A) purchasing or contracting decisions;
    - (B) drafting legislation or making rules;
    - (C) determining rates or fees; or
    - (D) making adjudicative decisions; or
- (d) an immediate family member of a person described in Subsections (8)(a) through (c).
- (9) "Public official property" means real property that has at least one record interest holder who is a public official.
- (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.
  - (b) "Record interest holder" includes any 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 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 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 jurisdiction in the state; or
    - (iii) signed by or authorized pursuant to a document signed by the owner of the real property.
  - (b) "Wrongful lien" includes a document recorded in violation of Subsection 10-9a-532(2)(d).

Amended by Chapter 415, 2024 General Session

**38-9-103 Scope.**

- (1) This chapter does not apply to a notice of interest filed before May 5, 2008.
- (2) This chapter does not apply to a lis pendens recorded in accordance with Section 78B-6-1303 and does not prevent a person from seeking any other relief permitted by law.
- (3) This chapter does not apply to a person entitled to a preconstruction or construction lien under Section 38-1a-301 who files a lien pursuant to Title 38, Chapter 1a, Preconstruction and Construction Liens.

Renumbered and Amended by Chapter 114, 2014 General Session

## **Part 2**

### **Recording a Wrongful Lien**

#### **38-9-201 Title.**

This part is known as "Recording a Wrongful Lien."

Enacted by Chapter 114, 2014 General Session

#### **38-9-202 County recorder may reject wrongful lien within scope of employment -- Good faith requirement.**

- (1)
  - (a) A county recorder may refuse to record a lien if the county recorder determines that the lien is a wrongful lien.
  - (b) If the county recorder refuses to record a lien in accordance with Subsection (1)(a), the county recorder shall immediately return the original document together with a notice that the document was rejected pursuant to this section to the person attempting to record the document or to the address provided on the document.
- (2) A county recorder who, within the scope of the county recorder's employment, rejects or accepts a document for recording in good faith under this section is not liable for damages.
- (3) If a document that a county recorder refuses to record under this section is later found not to be a wrongful lien pursuant to a court order, it shall have no retroactive recording priority.
- (4) Nothing in this chapter precludes a person from pursuing any remedy pursuant to Utah Rules of Civil Procedure, Rule 65A, Injunctions.

Renumbered and Amended by Chapter 114, 2014 General Session

#### **38-9-203 Civil liability for recording wrongful lien -- Damages.**

- (1) A lien claimant who records or causes a wrongful lien to be recorded in the office of the county recorder against real property is liable to a record interest holder for any actual damages proximately caused by the wrongful lien.
- (2) If the person in violation of Subsection (1) refuses to release or correct the wrongful lien within 10 days from the date of written request from a record interest holder of the real property delivered personally or mailed to the last-known address of the lien claimant, the person is liable to that record interest holder for \$3,000 or for treble actual damages, whichever is greater, and for reasonable attorney fees and costs.
- (3) A person is liable to the record owner of real property for \$10,000 or for treble actual damages, whichever is greater, and for reasonable attorney fees and costs, who records or causes to be recorded a wrongful lien in the office of the county recorder against the real property, knowing or having reason to know that the document:
  - (a) is a wrongful lien;
  - (b) is groundless; or
  - (c) contains a material misstatement or false claim.

Renumbered and Amended by Chapter 114, 2014 General Session

#### **38-9-204 Petition to file lien -- Notice to record interest holders -- Summary relief -- Contested petition.**

- (1) A lien claimant whose document is rejected pursuant to Section 38-9-202 may petition a court with jurisdiction under Title 78A, Judiciary and Judicial Administration, for an expedited determination that the lien may be recorded.
- (2) A petition under Subsection (1) shall:
  - (a) be filed:
    - (i) notwithstanding Title 78B, Chapter 3a, Venue for Civil Actions, in the county of the county recorder who refused to record the document if the petition is filed in the district court; and
    - (ii) within 10 days after the day on which the person who files the petition receives the notice under Subsection 38-9-202(1)(b) of the county recorder's refusal to record the document;
  - (b) state with specificity the grounds why the document should lawfully be recorded; and
  - (c) be supported by a sworn affidavit of the lien claimant.
- (3) If the court finds the petition is insufficient, it may dismiss the petition without a hearing.
- (4)
  - (a) If the court grants a hearing, the petitioner shall, by certified or registered mail, serve a copy of the petition, notice of hearing, and a copy of the court's order granting an expedited hearing on all record interest holders of the property sufficiently in advance of the hearing to enable any record interest holder to attend the hearing.
  - (b) Any record interest holder of the property has the right to attend and contest the petition.
- (5)
  - (a) If, following a hearing, the court finds that the document may lawfully be recorded, the court shall issue an order directing the county recorder to accept the document for recording.
  - (b) If the petition is contested, the court may award costs and reasonable attorney fees to the prevailing party.
- (6)
  - (a) A summary proceeding under this section:
    - (i) may only determine whether a contested document, on its face, shall be recorded by the county recorder; and
    - (ii) may not determine the truth of the content of the document or the property or legal rights of the parties beyond the necessary determination of whether the document shall be recorded.
  - (b) A court's grant or denial of a petition under this section may not restrict any other legal remedies of any party, including any right to injunctive relief pursuant to Rules of Civil Procedure, Rule 65A, Injunctions.
- (7) If a petition under this section contains a claim for damages, the proceedings related to the claim for damages may not be expedited under this section.

Amended by Chapter 158, 2024 General Session

**38-9-205 Petition to nullify lien -- Notice to lien claimant -- Summary relief -- Finding of wrongful lien -- Wrongful lien is void.**

- (1)
  - (a) A record interest holder of real property against which a wrongful lien is recorded may petition a court with jurisdiction under Title 78A, Judiciary and Judicial Administration, for summary relief to nullify the wrongful lien.
  - (b) Notwithstanding Title 78B, Chapter 3a, Venue for Civil Actions, a record interest holder shall bring a petition described in Subsection (1)(a) in the county in which the document is recorded if the person brings the petition in the district court.
- (2) The petition described in Subsection (1) shall state with specificity the claim that the lien is a wrongful lien and shall be supported by a sworn affidavit of the record interest holder.

- (3)
  - (a) If the court finds the petition insufficient, the court may dismiss the petition without a hearing.
  - (b) If the court finds the petition is sufficient, the court shall schedule a hearing within 10 days to determine whether the document is a wrongful lien.
  - (c) The record interest holder shall serve a copy of the petition on the lien claimant and a copy of a notice of the hearing pursuant to Rules of Civil Procedure, Rule 4, Process.
  - (d) The lien claimant is entitled to attend and contest the petition.
- (4) A summary proceeding under this section:
  - (a) may only determine whether a document is a wrongful lien; and
  - (b) may not determine any other property or legal rights of the parties or restrict other legal remedies of any party.
- (5)
  - (a) If, following a hearing, the court determines that the recorded document is a wrongful lien, the court shall issue an order declaring the wrongful lien void ab initio, releasing the property from the lien, and awarding costs and reasonable attorney fees to the petitioner.
  - (b)
    - (i) The record interest holder may submit a certified copy of the order to the county recorder for recording.
    - (ii) The order shall contain a legal description of the real property.
  - (c) If the court determines that the claim of lien is valid, the court shall dismiss the petition and may award costs and reasonable attorney's fees to the lien claimant. The dismissal order shall contain a legal description of the real property. The prevailing lien claimant may record a certified copy of the dismissal order.
- (6) If the court determines that the recorded document is a wrongful lien, the wrongful lien is void ab initio and provides no notice of claim or interest.
- (7) If a petition under this section contains a claim for damages, the proceedings related to the claim for damages may not be expedited under this section.

Amended by Chapter 158, 2024 General Session

### **Part 3**

## **Recording a Nonconsensual Common Law Document**

### **38-9-301 Title.**

This part is known as "Recording a Nonconsensual Common Law Document."

Enacted by Chapter 114, 2014 General Session

### **38-9-302 Recording a nonconsensual common law document -- Procedure.**

- (1) For a nonconsensual common law document recorded on or after May 13, 2014, within five business days after the day on which an individual submits a nonconsensual common law document to a county recorder for recording, the individual shall cause the sheriff to serve written notice of the recording of the nonconsensual common law document upon each affected person.
- (2) A written notice described in Subsection (1) shall include:
  - (a) the name, address, and telephone number of the document sponsor;

- (b) the date the nonconsensual common law document was recorded; and
  - (c) a copy of the nonconsensual common law document.
- (3)
- (a) No later than three business days after the day on which the sheriff serves the written notice described in Subsection (1), the sheriff shall submit proof of service to the county recorder for recording.
  - (b) The county recorder may not charge a fee for recording a proof of service under Subsection (3)(a).

Enacted by Chapter 114, 2014 General Session

**38-9-303 Enforcement proceeding required.**

- (1)
- (a) For a nonconsensual common law document recorded on or after May 13, 2014, within 10 business days after the day on which a document sponsor submits a nonconsensual common law document to the county recorder for recording, the document sponsor shall bring an action in a court with jurisdiction under Title 78A, Judiciary and Judicial Administration, to obtain an order that the nonconsensual common law document is valid and enforceable.
  - (b) Notwithstanding Title 78B, Chapter 3a, Venue for Civil Actions, the document sponsor shall bring an action described in Subsection (1)(a) in the county of the county recorder where the nonconsensual common law document was recorded if the person brings the petition in the district court.
- (2) A complaint to initiate an action described in Subsection (1) shall:
- (a) state with specificity the grounds that make the nonconsensual common law document valid and enforceable;
  - (b) be supported by the document sponsor's sworn affidavit; and
  - (c) name each affected person as an opposing party.
- (3) If the court finds that a complaint does not meet the requirements described in Subsection (2), the court may dismiss the complaint without a hearing.
- (4) If a complaint meets the requirements described in Subsection (2), the court:
- (a) shall hold a hearing;
  - (b) following the hearing, shall issue an order that:
    - (i) states whether the nonconsensual common law document is valid and enforceable; and
    - (ii) includes a legal description of the real property that is the subject of the complaint; and
  - (c) may award costs and reasonable attorney fees to the prevailing party.
- (5) Within three business days after the day on which the court issues a final order in a proceeding under this section, the prevailing party shall submit a copy of the court's final order to the county recorder for recording.
- (6) A nonconsensual common law document is presumed invalid and unenforceable.
- (7) A person's lack of belief in the jurisdiction or authority of the state or of the government of the United States is not a defense to liability under this section.
- (8) A court's order in an action under this section does not restrict any other legal remedies available to any party, including any right to injunctive relief under Utah Rules of Civil Procedure, Rule 65A, Injunctions.

Amended by Chapter 158, 2024 General Session

**38-9-304 Civil liability -- Damages.**

- (1) If, under Section 38-9-303, a court finds that a recorded nonconsensual common law document is unenforceable, the document sponsor of the nonconsensual common law document is liable to each affected person for any actual damages proximately caused by recording the nonconsensual common law document, costs, and reasonable attorney fees.
- (2) A person who is liable under Subsection (1) for a nonconsensual common law document is jointly and severally liable with each other person who is liable for the nonconsensual common law document.

Enacted by Chapter 114, 2014 General Session

**38-9-305 Failure to comply -- Nonconsensual common law document void.**

A recorded nonconsensual common law document that is recorded on or after May 13, 2014, is void and has no legal effect if the document sponsor does not:

- (1) comply with the notice requirements described in Section 38-9-302;
- (2) comply with the judicial enforcement requirements described in Section 38-9-303; and
- (3) prevail in a judicial enforcement proceeding under Section 38-9-303.

Enacted by Chapter 114, 2014 General Session