

## **Part 13 Quiet Title**

### **78B-6-1301 Quiet title -- Action to determine adverse claim to property.**

A person may bring an action against another person to determine rights, interests, or claims to or in personal or real property.

Enacted by Chapter 3, 2008 General Session

### **78B-6-1302 Definitions.**

As used in this part:

- (1) "Claimant" means a person who files a notice.
- (2) "Guarantee" means an agreement by a claimant to pay an amount of damages:
  - (a) specified by the court;
  - (b) suffered as a result of the maintenance of a notice;
  - (c) to a person with an interest in the real property that is the subject of the notice; and
  - (d) if the requirements of Subsection 78B-6-1304(5) are met.
- (3) "Notice" means a notice of the pendency of an action filed under Section 78B-6-1303.

Enacted by Chapter 3, 2008 General Session

### **78B-6-1303 Lis pendens -- Notice.**

- (1)
  - (a) Any party to an action filed in the United States District Court for the District of Utah, the United States Bankruptcy Court for the District of Utah, or a Utah district court that affects the title to, or the right of possession of, real property may file a notice of pendency of action.
  - (b) A party that chooses to file a notice of pendency of action shall:
    - (i) first, file the notice with the court that has jurisdiction of the action; and
    - (ii) second, record a copy of the notice filed with the court with the county recorder in the county where the property or any portion of the property is located.
  - (c) A person may not file a notice of pendency of action unless a case has been filed and is pending in a United States or Utah district court.
- (2) The notice shall contain:
  - (a) the caption of the case, with the names of the parties and the case number;
  - (b) the object of the action or defense; and
  - (c) the specific legal description of only the property affected.
- (3) From the time of filing the notice, a purchaser, an encumbrancer of the property, or any other party in interest that may be affected by the action is considered to have constructive notice of pendency of action.

Amended by Chapter 306, 2016 General Session

### **78B-6-1304 Motions related to a notice of pendency of an action.**

- (1) Any time after a notice has been filed pursuant to Section 78B-6-1303, any of the following may make a motion to the court in which the action is pending to release the notice:
  - (a) a party to the action; or

- (b) a person with an interest in the real property affected by the notice, including a prospective purchaser with an executed purchase contract.
- (2) A court shall order notice of pendency of action released if:
  - (a) the court receives a motion to release under Subsection (1); and
  - (b) after a notice and hearing if determined to be necessary by the court, the court finds that the claimant has not established by a preponderance of the evidence the validity of the real property claim that is the subject of the notice.
- (3) In deciding a motion under Subsection (2), if the underlying action for which a notice of pendency of action is filed is an action for specific performance, a court shall order a notice released if:
  - (a) the court finds that the party filing the action has failed to satisfy the statute of frauds for the transaction under which the claim is asserted relating to the real property; or
  - (b) the court finds that the elements necessary to require specific performance have not been established by a preponderance of the evidence.
- (4) If a court releases a claimant's notice pursuant to this section, that claimant may not record another notice with respect to the same property without an order from the court in which the action is pending that authorizes the recording of a new notice of pendency.
- (5) Upon a motion by any person with an interest in the real property that is the subject of a notice of pendency, a court may, at any time after the notice has been recorded, require, as a condition of maintaining the notice, that the claimant provide security to the moving party in the amount and form directed by the court, regardless of whether the court has received an application to release under Subsection (1).
- (6) A person who receives security under Subsection (5) may recover from the surety an amount not to exceed the amount of the security upon a showing that:
  - (a) the claimant did not prevail on the real property claim; and
  - (b) the person receiving the security suffered damages as a result of the maintenance of the notice.
- (7) The amount of security required by the court under Subsection (5) does not establish or limit the amount of damages or reasonable attorney fees and costs that may be awarded to a party who is found to have been damaged by a wrongfully filed notice of pendency.
- (8) A court shall award costs and attorney fees to a prevailing party on any motion under this section unless the court finds that:
  - (a) the nonprevailing party acted with substantial justification; or
  - (b) other circumstances make the imposition of attorney fees and costs unjust.
- (9) The motion permitted by this section does not apply to a notice of pendency of an action required by Section 38-1a-701 or Section 38-10-106.

Amended by Chapter 103, 2017 General Session

**78B-6-1304.5 Civil liability for recording wrongful notice of pendency -- Damages.**

A person is liable to the record owner of real property, or to a person with a leasehold interest in the real property that is damaged by the maintenance of a notice of pendency, for \$10,000 or for treble actual damages, whichever is greater, and for reasonable attorney fees and costs, if the person records or causes to be recorded a notice of pendency against the real property, knowing or having reason to know that:

- (1) legal action against the property has not been filed as required by Section 78B-6-1303;
- (2) the notice is groundless;
- (3) the notice fails to comply with the notice requirements of Subsection 78B-6-1303(2); or

(4) the notice contains an intentional material misstatement or false claim.

Enacted by Chapter 306, 2016 General Session

**78B-6-1305 Disclaimer or default by defendant -- Costs.**

The plaintiff may not recover costs of the action if:

- (1) the defendant disclaims in his answer any interest or estate in the property; or
- (2) allows judgment to be taken against him by refusing to answer.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1306 Termination of title pending action -- Judgment -- Damages.**

If the plaintiff demonstrates a right to recover at the time the action is brought, but his right terminates during the pendency of the action, the verdict and judgment shall be according to the fact, and the plaintiff may recover damages for withholding the property.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1307 Setoff or counterclaim for improvements made.**

If permanent improvements have been made by a defendant, or persons under whom the defendant claims in good faith, the value of the improvements, except improvements made upon mining property, shall be allowed as a setoff or counterclaim against the damages recovered for withholding the property.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1308 Right of entry pending action for purposes of action.**

The court in which an action is pending under this part or for damages for an injury to property may, on motion and upon notice to either party, for good cause shown, issue an order allowing a party the right to enter the property and take surveys and measurements including any tunnels, shafts, or drifts, even though entry must be made through other lands belonging to parties to the action.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1309 Order for entry -- Liability for injuries.**

The order shall describe the property, and a copy served on the owner or occupant. The party may enter the property with necessary surveyors and assistants, and may take surveys and measurements. The party shall be liable for any unnecessary injury done to the property.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1310 Mortgage not considered a conveyance -- Foreclosure necessary.**

A mortgage of real property may not be considered a conveyance which would enable the owner of the mortgage to recover possession of the real property without a foreclosure and sale.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1311 Alienation pending action not to prejudice recovery.**

An action for the recovery of real property against a person in possession cannot be prejudiced by any alienation made by the person, either before or after the commencement of the action.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1312 Actions respecting mining claims -- Proof of customs and usage admissible.**

In actions respecting mining claims proof must be admitted of the customs, usages, or regulations established and in force in the district, bar, diggings, or camp in which the claim is located. The customs, usages, or regulations, if not in conflict with the laws of this state or of the United States, shall govern any decision in the action.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1313 Temporary injunction in actions involving title to mining claims.**

- (1) The court may grant a postponement if:
  - (a) the court is satisfied that the delay is necessary for either or both parties to adequately prepare for trial; and
  - (b) the party requesting the postponement is not guilty of laches and is acting in good faith.
- (2) The court may provide, as part of its order, that the party obtaining the postponement may not remove from the property which is the subject of the action any valuable quartz, rock, earth, or ores. The court may vacate the postponement order or hold the party in contempt if the order is violated.

Enacted by Chapter 3, 2008 General Session

**78B-6-1314 Service of summons and conclusiveness of judgment.**

If service of process is made upon unknown defendants by publication, the action shall proceed against the unknown persons in the same manner as against the defendants who are named and upon whom service is made by publication. Any unknown person who has or claims to have any right, title, estate, lien, or interest in the property, which is a cloud on the title and adverse to the plaintiff, who has been served as above, and anyone claiming under him, shall be concluded by any judgment in the action even though the unknown person may be under a legal disability.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-6-1315 Judgment on default -- Court must require evidence -- Conclusiveness of judgment.**

- (1) If the summons has been served and the time for answering has expired, the court shall proceed to hear the cause as in other cases.
- (2) The court may examine and determine the legality of the plaintiff's title and the title and claims of all the defendants and all unknown persons.
- (3) The court may not enter any judgment by default against unknown defendants, but in all cases shall require evidence of plaintiff's title and possession and hear the evidence offered respecting the claims and title of any of the defendants. The court may enter judgment in accordance with the evidence and the law only after hearing all the evidence.

- (4) The judgment shall be conclusive against all the persons named in the summons and complaint who have been served and against all unknown persons as stated in the complaint and summons who have been served by publication.

Renumbered and Amended by Chapter 3, 2008 General Session