

JUDGMENT LIEN AMENDMENTS

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Thomas V. Hatch

This act modifies provisions of the Utah Code related to judgment liens. The act provides that a judgment or an abstract of a judgment constitutes a lien when it is recorded in the office of the county recorder. The act exempts state agencies from the recording requirement. The act outlines requirements for documents presented for recording in the office of the county recorder. The act designates the duration of a judgment recorded in the office of the county recorder. The act requires that a judgment recorded in the office of the county recorder that becomes a lien on the real property of a judgment debtor shall be entered in the appropriate index in the office of the county recorder. The act modifies provisions related to the filing of judgments in the Registry of Judgments. The act modifies provisions related to foreign judgment liens. The act also makes technical corrections. This act provides an effective date. This act provides a coordination clause.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

21-7-2, as last amended by Chapter 181, Laws of Utah 1991

38-5-1, as last amended by Chapter 85, Laws of Utah 1971

38-12-102 (Effective 07/01/01), as last amended by Chapter 252, Laws of Utah 2000

57-3-106, as last amended by Chapter 320, Laws of Utah 2000

78-5-119, as enacted by Chapter 157, Laws of Utah 1989

78-22-1, as last amended by Chapter 161, Laws of Utah 2000

78-22-1.5, as last amended by Chapter 327, Laws of Utah 1998

78-22a-5, as last amended by Chapter 172, Laws of Utah 1986

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

Section 1. Section **21-7-2** is amended to read:

21-7-2. Payment of fees prerequisite to service -- Exception.

(1) (a) The state and county officers mentioned in this title may not perform any official

service unless the fees prescribed for that service are paid in advance.

(b) When the fee is paid, the officer shall perform the services required.

(c) An officer is liable upon ~~his~~ the officer's official bond for every failure or refusal to perform an official duty when the fees are tendered.

(2) Except as provided for payment of ~~filings~~ recording fees ~~of~~ for county and municipal improvement district ~~filings~~ recordings in compliance with Sections 17A-3-207 and 17A-3-307, and as provided for payment of recording fees for judgments recorded in compliance with Section 57-3-106, no fees may be charged:

- (a) to the officer's state, or any county or subdivision of the state;
- (b) to any public officer acting for the state, county, or subdivision;
- (c) in cases of habeas corpus;
- (d) in criminal causes before final judgment;
- (e) for administering and certifying the oath of office;
- (f) for swearing pensioners and their witnesses; or
- (g) for filing and recording bonds of public officers.

Section 2. Section **38-5-1** is amended to read:

38-5-1. Filing with clerk of district court -- Recording with county recorder -- Effect.

(1) Transcripts of judgments or decrees rendered in the district court of the United States within the state ~~of Utah~~ may be filed ~~and docketed~~ in the office of the clerk of the state district court of any county in this state, and when so filed ~~and docketed~~, such judgments or decrees shall have the same force and effect as a ~~lien as judgments~~ judgment rendered ~~and docketed~~ in a district court of this state in and for such county.

(2) Except as provided in Subsection (3), if a judgment or an abstract of judgment or decree under Subsection (1) is recorded in the office of the county recorder, that judgment or decree becomes a lien on the real property of the judgment debtor in that county owned or acquired during the time the judgment is effective.

(3) State agencies are exempt from the recording requirement of Subsection (2).

Section 3. Section **38-12-102 (Effective 07/01/01)** is amended to read:

38-12-102 (Effective 07/01/01). Notice requirements for lien filings -- Exceptions.

(1) No later than 30 days after the day on which a lien claimant or the lien claimant's authorized agent files for recordation a notice of lien meeting the requirements of Subsection (2) with a county recorder, county clerk, or clerk of the court, a lien claimant or the lien claimant's agent shall send by certified mail a written copy of the notice of lien to the last-known address of the person against whom the notice of lien is filed.

(2) The notice of lien shall contain the following information:

(a) the name and address of the person against whom the lien is filed;

(b) (i) a statement that certain property owned by the person against whom the lien is filed is subject to a lien;

(ii) the amount of the judgment, settlement, or compromise if the lien is based on a charge against or interest in a judgment, settlement, or compromise; or

(iii) the amount of state taxes owed;

(c) the article number contained on the certified mail receipt;

(d) the date the notice of lien was filed; and

(e) the name and address of the lien claimant.

(3) The notice requirements of Subsections (1) and (2) do not apply to [a]:

(a) a mechanics' lien as provided in Title 38, Chapter 1, Mechanics' Liens;

(b) a lessors' lien as provided in Title 38, Chapter 3, Lessors' Liens;

(c) a federal tax lien as provided in Title 38, Chapter 6, Federal Tax Liens;

(d) a hospital lien as provided in Title 38, Chapter 7, Hospital Lien Law;

(e) a self-service storage facilities lien as provided in Title 38, Chapter 8, Self-Service Storage Facilities;

(f) an oil, gas, or mining lien as provided in Title 38, Chapter 10, Oil, Gas, and Mining Liens;

(g) a claim against the Residence Lien Recovery Fund as provided in Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act;

(h) a trust deed;

- (i) a mortgage;
- (j) any interests subject to a security agreement as defined in Section 70A-9a-102; [or]
- (k) any other liens subject to the same or stricter notice requirements than those imposed by Subsections (1) and (2)[-]; or
- (l) a court judgment or abstract of a court judgment presented for recording in the office of a county recorder.

Section 4. Section **57-3-106** is amended to read:

57-3-106. Original documents required -- Captions -- Legibility.

(1) (a) Unless otherwise provided, documents presented for recording in the office of the county recorder shall:

- (i) be originals; and
- (ii) contain a brief caption stating the nature of the document.

(b) If a document is a master form, as defined in Section 57-3-201, the caption required by Subsection (1)(a)(ii) shall state that the document is a master form.

(2) A court judgment or an abstract of a court judgment presented for recording in the office of the county recorder in compliance with Section 78-22-1 shall:

- (a) be an original or certified copy; and
- (b) include the information identifying the judgment debtor as referred to in Subsection

78-22-1.5(4) either:

- (i) in the judgment or abstract of judgment; or
- (ii) as a separate information statement of the judgment creditor as referred to in Subsection

78-22-1.5(5).

(3) Judgments, abstracts of judgments, and separate information statements of the judgment creditor do not require an acknowledgment or a legal description to be recorded.

(4) A foreign judgment or an abstract of a foreign judgment recorded in the office of a county recorder shall include the affidavit as required in Section 78-22a-3.

(5) Any document recorded in the office of the county recorder to release or assign a judgment lien shall include:

(a) the name of any judgment creditor, debtor, assignor, or assignee;

(b) the date of recording; and

(c) the entry number of the instrument creating the judgment lien.

~~[(2)]~~ (6) Documents presented for recording shall also be sufficiently legible for the recorder to make certified copies.

~~[(3)]~~ (7) (a) A document which is of record in the office of the appropriate county recorder in compliance with this chapter may not be recorded again in that same county recorder's office unless the original document has been reexecuted by all parties who executed the document. Unless exempt by statute, original documents which are reexecuted must also contain the appropriate acknowledgment, proof of execution, jurat or other notarial certification for all parties who are reexecuting the document as required by Title 46, Chapter 1, Notaries Public Reform Act, and Title 57, Chapter 2, Acknowledgments. Documents submitted for rerecording shall contain a brief statement explaining the reason for rerecording.

(b) A county recorder may refuse to accept a document for rerecording if that document does not conform to the requirements of this section.

(c) Subsection ~~[(3) of this section]~~ (7) applies only to documents executed after July 1, 1998.

~~[(4)]~~ (8) Minor typographical or clerical errors in a document of record may be corrected by the recording of an appropriate instrument.

Section 5. Section **78-5-119** is amended to read:

78-5-119. Judgment not a lien unless so recorded.

(1) ~~[(A)]~~ Except as provided under Subsection (3), a judgment rendered in a justice court does not create a lien upon any ~~[lands]~~ real property of the judgment debtor unless ~~[an]~~ the judgment or abstract of the judgment:

(a) is ~~[filed and docketed]~~ recorded in the office of the ~~[clerk of the district court]~~ county recorder of the county in which the ~~[lands are]~~ real property of the judgment debtor is located[-]; and

(b) contains the information identifying the judgment debtor as referred to in Subsection 78-22-1.5(4) either:

(i) in the judgment or abstract of judgment; or

(ii) as a separate information statement of the judgment creditor as referred to in Subsection 78-22-1.5(5).

(2) [~~When filed and docketed, the judgment is a lien upon the real property of the judgment debtor that is not exempt from execution and is situated in that county~~] The lien runs for eight years from the date the judgment was entered in the district court under Section 78-22-1 unless the judgment is earlier satisfied.

(3) State agencies are exempt from the recording requirement of Subsection (1).

Section 6. Section **78-22-1** is amended to read:

78-22-1. Duration of judgment -- Judgment as a lien upon real property -- Abstract of judgment -- Small claims judgment not a lien -- Appeal of judgment -- Child support orders.

(1) Except as provided in Subsection (6), judgments shall continue for eight years from the date of entry in a court unless previously satisfied or unless enforcement of the judgment is stayed in accordance with law.

(2) Prior to July 1, 1997, except as limited by Subsections (4) and (5), the entry of judgment by a district court [~~is~~] creates a lien upon the real property of the judgment debtor, not exempt from execution, owned or acquired during the existence of the judgment, located in the county in which the judgment is entered.

(3) [~~Prior to and after July 1, 1997, an~~] An abstract of judgment issued by the court in which the judgment is entered may be [~~recorded~~] filed in any court of this state and shall have the same force and effect as a judgment entered in that court.

(4) Prior to July 1, 1997, and after May 15, 1998, a judgment entered in the small claims division of any court shall not qualify as a lien upon real property unless abstracted to the civil division of the district court and recorded in accordance with Subsection (3).

(5) (a) If any judgment is appealed, upon deposit, with the court where the notice of appeal is filed, of cash or other security in a form and amount considered sufficient by the court that rendered the judgment to secure the full amount of the judgment, together with ongoing interest and any other anticipated damages or costs, including attorney's fees and costs on appeal, the lien created by [~~Subsection (2)]~~ the judgment shall be terminated as provided in Subsection (5)(b).

(b) Upon the deposit of sufficient security as provided in Subsection (5)(a), the court shall enter an order terminating the lien created by the judgment [~~under Subsection (2)~~] and granting the judgment creditor a perfected lien in the deposited security as of the date of the original judgment.

(6) Enforcement of a child support order may be pursued at any time within four years after the date the youngest child reaches majority.

(7) (a) After July 1, 2002, a judgment entered by a district court or a justice court in the state becomes a lien upon real property if:

(i) the judgment or an abstract of the judgment containing the information identifying the judgment debtor as described in Subsection 78-22-1.5(4) is recorded in the office of the county recorder; or

(ii) the judgment or an abstract of the judgment and a separate information statement of the judgment creditor as described in Subsection 78-22-1.5(5) is recorded in the office of the county recorder.

(b) The judgment shall run from the date of entry by the district court or justice court.

(c) The real property subject to the lien includes all the real property of the judgment debtor:

(i) in the county in which the recording under Subsection (7)(a)(i) or (ii) occurs; and

(ii) owned or acquired at any time by the judgment debtor during the time the judgment is effective.

(d) State agencies are exempt from the recording requirement of Subsection (7)(a).

(8) (a) A judgment referred to in Subsection (7) shall be entered under the name of the judgment debtor in the judgment index in the office of the county recorder as required in Section 17-21-6.

(b) A judgment containing a legal description shall also be abstracted in the appropriate tract index in the office of the county recorder.

Section 7. Section **78-22-1.5** is amended to read:

78-22-1.5. Definitions -- Judgment recorded in Registry of Judgments.

(1) For purposes of this section, "Registry of Judgments" means the index where a judgment shall be [~~recorded~~] filed and searchable by the name of the judgment debtor through electronic means

or by tangible document.

(2) On or after July 1, 1997, a judgment [~~rendered or recorded~~] entered in a district court does not create a lien upon or affect the title to real property unless the judgment is [~~recorded~~] filed in the Registry of Judgments of the office of the clerk of the district court of the county in which the property is located.

(3) (a) On or after July 1, 2002, except as provided in Subsection (3)(b), a judgment entered in a district court does not create a lien upon or affect the title to real property unless the judgment or an abstract of judgment is recorded in the office of the county recorder in which the real property of the judgment debtor is located.

(b) State agencies are exempt from the recording requirement of Subsection (3)(a).

~~[(3)]~~ (4) In addition to the [~~requirement~~] requirements of [~~Subsection~~] Subsections (2) and (3)(a), any judgment that is [~~recorded~~] filed in the Registry of Judgments on or after September 1, 1998, or any judgment or abstract of judgment that is recorded in the office of a county recorder after July 1, 2002, shall include [~~a~~]:

(a) the information identifying the judgment debtor on the judgment or abstract of judgment;

or

(b) a copy of the separate information statement of the judgment creditor that contains:

~~[(a)]~~ (i) the correct name and last-known address of each judgment debtor and the address at which each judgment debtor received service of process;

~~[(b)]~~ (ii) the name and address of the judgment creditor;

~~[(c)]~~ (iii) the amount of the judgment as [~~entered~~] filed in the Registry of Judgments;

~~[(d)]~~ (iv) if known, the judgment debtor's social security number, date of birth, and driver's license number if a natural person; and

~~[(e)]~~ (v) whether or not a stay of enforcement has been ordered by the court and the date the stay expires.

~~[(4)]~~ (5) For the information required in Subsection [~~(3)~~] (4), the judgment creditor shall:

(a) provide the information on the separate information statement if known or available to the judgment creditor from its records, its attorney's records, or the court records in the action in

which the judgement was entered; or

(b) state on the separate information statement that the information is unknown or unavailable.

~~[(5)]~~ (6) (a) Any judgment that requires payment of money and is [recorded] entered in a district court on or after September 1, 1998, [and is] or any judgment or abstract of judgment recorded in the office of a county recorder after July 1, 2002, that does not [accompanied by the separate] include the debtor identifying information [statement] as required in [Subsections (3) and (4) may be amended by recording a document entitled "Amendment to Recorded Judgment" in the Registry of Judgments] Subsection (4) is not a lien until a separate information statement of the judgment creditor is recorded in the office of a county recorder in compliance with [Subsections (3) and (4)] Subsections (4) and (5).

~~[(b) The amendment to the recorded judgment shall state the date of recording the original judgment in the Registry of Judgments.]~~

~~[(c) Recording an amendment to a recorded judgment has no effect on the computation of time as provided in Section 78-22-1.]~~

(b) The separate information statement of the judgment creditor referred to in Subsection (6)(a) shall include:

- (i) the name of any judgment creditor, debtor, assignor, or assignee;
- (ii) the date of recording; and
- (iii) the entry number of the original judgment or abstract of judgment.

~~[(6)]~~ (7) A judgment that requires payment of money recorded on or after September 1, 1998, but prior to July 1, 2002, has as its priority the date of [compliance with Subsections (3) and (4)] entry.

Section 8. Section **78-22a-5** is amended to read:

78-22a-5. Lien.

(1) A foreign judgment ~~[filed]~~ entered in a district court under this chapter becomes a lien as provided in Section 78-22-1 if:

- (a) a stay of execution has not been granted[.];

~~[(2) If]~~ (b) the requirements of this chapter are satisfied~~[, the foreign]; and~~

(c) the judgment [becomes a lien upon the] is recorded in the office of the county recorder where the property of the judgment [debtor's property on the date it is docketed] debtor is located, as provided in Section 78-22-1.

(2) The lien becomes effective at the time and date of recording.

Section 9. **Effective date.**

This act takes effect on July 1, 2002.

Section 10. **Coordination clause.**

If this bill and H.B. 19, Fees Recodification, both pass, it is the intent of the Legislature that the Office of Legislative Research and General Counsel in preparing the Utah Code database for publication, shall renumber Section 21-7-2 in this bill as Section 63-38-3.3 and amend it to read:

"~~[21-7-2]~~ 63-38-3.3. Payment of fees prerequisite to service -- Exception.

(1) (a) ~~[The state]~~ State and county officers ~~[mentioned in this title]~~ required by law to charge fees may not perform any official service unless the fees prescribed for that service are paid in advance.

(b) When the fee is paid, the officer shall perform the services required.

(c) An officer is liable upon ~~[his]~~ the officer's official bond for every failure or refusal to perform an official duty when the fees are tendered.

(2) Except as provided for payment of ~~[filing]~~ recording fees ~~[of]~~ for county and municipal improvement district ~~[filings]~~ recordings in compliance with Sections 17A-3-207 and 17A-3-307, and as provided for payment of recording fees for judgments recorded in compliance with Sections 57-3-106 and 78-5-119, no fees may be charged:

- (a) to the officer's state, or any county or subdivision of the state;
- (b) to any public officer acting for the state, county, or subdivision;
- (c) in cases of habeas corpus;
- (d) in criminal causes before final judgment;
- (e) for administering and certifying the oath of office;
- (f) for swearing pensioners and their witnesses; or

(g) for filing and recording bonds of public officers."