

CLAIMS ON REAL PROPERTY

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Gregory H. Hughes

LONG TITLE

General Description:

This bill modifies provisions of the Judicial Code governing pending actions involving real property.

Highlighted Provisions:

This bill:

- ▶ allows a notice of the pendency of an action involving real property to be released under certain circumstances; and
- ▶ allows, under certain circumstances, a person with an interest in real property that is the subject of a notice of the pendency of an action to recover damages, costs, and attorney fees.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

78-40-2.5, Utah Code Annotated 1953

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

Section 1. Section **78-40-2.5** is enacted to read:

78-40-2.5. Motions related to a notice of the pendency of an action.

(1) As used in this section:

(a) "Claimant" means a person who files a notice.

(b) "Guarantee" means an agreement by a claimant to pay an amount of damages:

(i) specified by the court;

(ii) suffered as a result of the maintenance of a notice;

(iii) to a person with an interest in the real property that is the subject of the notice; and

(iv) if the requirements of Subsection (6) are met.

(c) "Notice" means a notice of the pendency of an action filed under Section 78-40-2.

(2) Any time after a notice has been recorded pursuant to Section 78-40-2, 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.

(3) A court shall order a notice released if:

(a) the court receives a motion to release under Subsection (2); and

(b) the court finds that the claimant has not established by a preponderance of the evidence the probable validity of the real property claim that is the subject of the notice.

(4) If a court releases a notice pursuant to this section, the claimant may not record another notice with respect to the same property without approval of the court in which the action is pending.

(5) Upon a motion by any person with an interest in the real property that is the subject of a notice, a court may require the claimant to give the moving party a guarantee as a condition of maintaining the notice:

(a) any time after a notice has been recorded; and

(b) regardless of whether the court has received an application to release under Subsection (2).

(6) A person who receives a guarantee under Subsection (5) may recover an amount not to exceed the amount of the guarantee upon a showing that:

(a) the claimant did not prevail on the real property claim; and

(b) the person seeking the guarantee suffered damages as a result of the maintenance of the notice.

(7) 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.