

1 **CLAIMS ON REAL PROPERTY**

2 2004 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Gregory H. Hughes**

5

LONG TITLE

6 **General Description:**

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

9 **Highlighted Provisions:**

10 This bill:

11 ▶ allows a notice of the pendency of an action involving real property to be expunged
12 under certain circumstances; and

13 ▶ allows, under certain circumstances, a person with an interest in real property that is
14 the subject of a notice of the pendency of an action to recover damages, costs, and
15 attorney fees.

16 **Monies Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 None

20 **Utah Code Sections Affected:**

21 ENACTS:

22 **78-40-2.5**, Utah Code Annotated 1953

23

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

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

25 **78-40-2.5. Motions related to a notice of the pendency of an action.**



- 28 (1) As used in this section:
- 29 (a) "Claimant" means a person who files a notice.
- 30 (b) "Guarantee" means an agreement by a claimant to pay an amount of damages:
- 31 (i) specified by the court;
- 32 (ii) suffered as a result of the maintenance of a notice;
- 33 (iii) to a person with an interest in the real property that is the subject of the notice; and
- 34 (iv) if the requirements of Subsection (6) are met.
- 35 (c) "Notice" means a notice of the pendency of an action filed under Section 78-40-2.
- 36 (2) Any time after a notice has been recorded pursuant to Section 78-40-2, any of the
- 37 following may make a motion to the court in which the action is pending to expunge the notice:
- 38 (a) a party to the action; or
- 39 (b) a person with an interest in the real property affected by the notice.
- 40 (3) A court shall order a notice expunged if:
- 41 (a) the court receives a motion to expunge under Subsection (2); and
- 42 (b) the court finds that the claimant has not established by a preponderance of the
- 43 evidence the probable validity of the real property claim that is the subject of the notice.
- 44 (4) If a court expunges a notice, the claimant may not record another notice with
- 45 respect to the same property without approval of the court in which the action is pending.
- 46 (5) Upon a motion by any person with an interest in the real property that is the subject
- 47 of a notice, a court may require the claimant to give the moving party a guarantee as a
- 48 condition of maintaining the notice:
- 49 (a) any time after a notice has been recorded; and
- 50 (b) regardless of whether the court has received an application to expunge under
- 51 Subsection (2).
- 52 (6) A person who receives a guarantee under Subsection (5) may recover an amount
- 53 not to exceed the amount of the guarantee upon a showing that:
- 54 (a) the claimant did not prevail on the real property claim; and
- 55 (b) the person seeking the guarantee suffered damages as a result of the maintenance of
- 56 the notice.
- 57 (7) A court shall award costs and attorney fees to a prevailing party on any motion
- 58 under this section unless the court finds that:

- 59 (a) the nonprevailing party acted with substantial justification; or
60 (b) other circumstances make the imposition of attorney fees and costs unjust.
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Legislative Review Note
as of 2-5-04 10:39 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0336

Claims on Real Property

13-Feb-04

10:35 AM

State Impact

It is estimated that provisions of this bill can be implemented with existing resources.

Individual and Business Impact

It is not possible to determine the fiscal impact.

Office of the Legislative Fiscal Analyst