

1 **WRONGFUL LIENS AND WRONGFUL**
2 **JUDGEMENT LIENS**

3 2008 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: James R. Gowans**

6 Senate Sponsor: Curtis S. Bramble

8 **LONG TITLE**

9 **General Description:**

10 This bill addresses the filing of, and an action against, a wrongful lien.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ includes a notice of interest and other encumbrances within the definition of
- 14 "wrongful lien";
- 15 ▶ addresses the impact of various wrongful lien provisions on a notice of interest and
- 16 other encumbrance;
- 17 ▶ increases the statutory amount that may be recovered by a person against whom a
- 18 wrongful lien is recorded; and
- 19 ▶ makes technical changes.

20 **Monies Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 None

24 **Utah Code Sections Affected:**

25 **AMENDS:**

26 **38-9-1**, as repealed and reenacted by Laws of Utah 1997, Chapter 125

27 **38-9-2**, as last amended by Laws of Utah 2005, Chapter 93

28 **38-9-4**, as last amended by Laws of Utah 2006, Chapter 297

29 **38-9a-201**, as enacted by Laws of Utah 2005, Chapter 93

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

Section 1. Section **38-9-1** is amended to read:

38-9-1. Definitions.

As used in this chapter:

(1) "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.

(2) "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.

(3) "Owner" means a person who has a vested ownership interest in certain real property.

(4) "Record interest holder" means a person who holds or possesses a present, lawful property interest in certain 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.

(5) "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.

(6) "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 or filed is not:

(a) expressly authorized by this chapter or another state or federal statute;

(b) authorized by or contained in an order or judgment of a court of competent jurisdiction in the state; or

(c) signed by or authorized pursuant to a document signed by the owner of the real property.

58 Section 2. Section **38-9-2** is amended to read:

59 **38-9-2. Scope.**

60 (1) (a) The provisions of Sections 38-9-1, 38-9-3, 38-9-4, and 38-9-6 apply to any
61 recording or filing or any rejected recording or filing of a lien pursuant to this chapter on or
62 after May 5, 1997.

63 (b) The provisions of Sections 38-9-1 and 38-9-7 apply to all liens of record regardless
64 of the date the lien was recorded or filed.

65 (c) Notwithstanding Subsections (1)(a) and (b), the provisions of this chapter applicable
66 to the filing of a notice of interest do not apply to a notice of interest filed before May 5, 2008.

67 (2) The provisions of this chapter shall not prevent a person from filing a lis pendens in
68 accordance with Section ~~[78-40-2]~~ 78B-6-1303 or seeking any other relief permitted by law.

69 (3) This chapter does not apply to a person entitled to a lien under Section 38-1-3 who
70 files a lien pursuant to Title 38, Chapter 1, Mechanics' Liens.

71 Section 3. Section **38-9-4** is amended to read:

72 **38-9-4. Civil liability for filing wrongful lien -- Damages.**

73 (1) A lien claimant who records or files or causes a wrongful lien as defined in Section
74 38-9-1 to be recorded or filed in the office of the county recorder against real property is liable
75 to a record interest holder for any actual damages proximately caused by the wrongful lien.

76 (2) If the person in violation of ~~[this]~~ Subsection (1) refuses to release or correct the
77 wrongful lien within ten days from the date of written request from a record interest holder of
78 the real property delivered personally or mailed to the last-known address of the lien claimant,
79 the person is liable to that record interest holder for ~~[\$1,000]~~ \$3,000 or for treble actual
80 damages, whichever is greater, and for reasonable attorney fees and costs.

81 (3) A person is liable to the record owner of real property for ~~[\$3,000]~~ \$10,000 or for
82 treble actual damages, whichever is greater, and for reasonable attorney fees and costs, who
83 records or files or causes to be recorded or filed a wrongful lien as defined in Section 38-9-1 in
84 the office of the county recorder against the real property, knowing or having reason to know
85 that the document:

- 86 (a) is a wrongful lien;
- 87 (b) is groundless; or
- 88 (c) contains a material misstatement or false claim.

89 Section 4. Section **38-9a-201** is amended to read:

90 **38-9a-201. Wrongful lien injunction -- Forms.**

91 (1) (a) Any person who believes that he or she is the victim of a wrongful lien may file a
92 verified written petition for a civil wrongful lien injunction against the person filing, making, or
93 uttering the lien, notice of interest, or other encumbrance in the district court in the district in
94 which the petitioner or respondent resides or in which any of the events occurred.

95 (b) A minor accompanied by his or her parent or guardian may file a petition on his or
96 her own behalf, or a parent, guardian, or custodian may file a petition on the minor's behalf.

97 (2) (a) (i) The Administrative Office of the Courts shall develop and adopt forms for
98 petitions, ex parte civil wrongful lien injunctions, civil wrongful lien injunctions, service, and any
99 other necessary forms in accordance with the provisions of this chapter on or before May 2,
100 2005.

101 (ii) The office shall provide the forms adopted under Subsection (2)(a)(i) to the clerk of
102 each district court.

103 (b) The court clerks shall provide the forms to persons seeking to proceed under this
104 chapter.

105 (c) The district courts shall issue all petitions, injunctions, ex parte injunctions, and any
106 other necessary forms in the form prescribed by the Administrative Office of the Courts.