

# HB0046S01 compared with HB0046

**DISCLAIMER: This document MAY NOT BE an accurate comparison of the two bills. This document is provided to assist you in your comparison of the two bills. This automatically generated document could experience abnormalities caused by: limitations of the compare program; bad input data; the timing of the compare; and other potential causes.**

**Representative R. Curt Webb proposes the following substitute bill:**

## COUNTY RECORDER AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: R. Curt Webb**

Senate Sponsor: \_\_\_\_\_

---

### LONG TITLE

#### General Description:

This bill modifies provisions related to the duties of a county recorder and recording requirements.

#### Highlighted Provisions:

This bill:

- ▶ authorizes a county recorder to require that an owner of land modify a subdivision name;
- ▶ modifies provisions related to records and indexes;
- ▶ modifies provisions related to judgments affecting real estate;
- ▶ modifies provisions related to legal description and notarization requirements for a recorded document;
- ▶ modifies provisions related to the recording of a release or assignment of a judgment lien;
- ▶ modifies provisions related to the creation of a joint tenancy;
- ▶ modifies provisions related to a boundary line agreement operating as a quitclaim

## HB0046S01 compared with HB0046

deed;

- ▶ modifies provisions related to information included in a document conveying title to real property;
- ▶ modifies provisions related to notarization of a judgment, abstract of judgment, or information statement; and
- ▶ makes technical corrections.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

- 10-9a-603**, as last amended by Laws of Utah 2010, Chapters 269 and 381
- 17-21-6**, as last amended by Laws of Utah 2010, Chapter 381
- 17-21-10**, as last amended by Laws of Utah 1999, Chapter 85
- 17-21-20**, as last amended by Laws of Utah 2010, Chapter 381
- 17-27a-603**, as last amended by Laws of Utah 2010, Chapters 269 and 381
- 38-5-1**, as last amended by Laws of Utah 2001, Chapter 370
- 57-1-5**, as last amended by Laws of Utah 2010, Chapter 381
- 57-1-13**, as last amended by Laws of Utah 2000, Chapter 75
- 57-1-45**, as enacted by Laws of Utah 2001, Chapter 241
- 57-3-105**, as last amended by Laws of Utah 2008, Chapter 97
- 57-3-106**, as last amended by Laws of Utah 2010, Chapter 381
- 78B-5-201**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 78B-5-202**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 78B-5-408**, as renumbered and amended by Laws of Utah 2008, Chapter 3

---

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

Section 1. Section **10-9a-603** is amended to read:

**10-9a-603. Plat required when land is subdivided -- Approval of plat -- Owner acknowledgment, surveyor certification, and underground utility facilities owner**

## HB0046S01 compared with HB0046

### approval of plat -- Recording plat.

(1) (a) Unless exempt under Section 10-9a-605 or excluded from the definition of subdivision under Section 10-9a-103, whenever any land is laid out and platted, the owner of the land shall provide an accurate plat that describes or specifies:

~~[(a)]~~ (i) subject to Subsection (1)(b), a subdivision name that is distinct from any subdivision name on a plat recorded in the county recorder's office;

~~[(b)]~~ (ii) the boundaries, course, and dimensions of all of the parcels of ground divided, by their boundaries, course, and extent, whether the owner proposes that any parcel of ground is intended to be used as a street or for any other public use, and whether any such area is reserved or proposed for dedication for a public purpose;

~~[(c)]~~ (iii) the lot or unit reference, block or building reference, street or site address, street name or coordinate address, acreage or square footage for all parcels, units, or lots, and length and width of the blocks and lots intended for sale; and

~~[(d)]~~ (iv) every existing right-of-way and easement grant of record for underground facilities, as defined in Section 54-8a-2, and for other utility facilities.

(b) A county recorder may require that the owner of land modify the subdivision name to comply with Subsection (1)(a)(i).

(2) (a) Subject to Subsections (3), (4), and (5), if the plat conforms to the municipality's ordinances and this part and has been approved by the culinary water authority and the sanitary sewer authority, the municipality shall approve the plat.

(b) Municipalities are encouraged to receive a recommendation from the fire authority before approving a plat.

(3) The municipality may withhold an otherwise valid plat approval until the owner of the land provides the legislative body with a tax clearance indicating that all taxes, interest, and penalties owing on the land have been paid.

(4) (a) A plat may not be submitted to a county recorder for recording unless:

(i) prior to recordation, each owner of record of land described on the plat has signed the owner's dedication as shown on the plat; and

(ii) the signature of each owner described in Subsection (4)(a)(i) is acknowledged as provided by law.

(b) The surveyor making the plat shall certify that the surveyor:

## HB0046S01 compared with HB0046

(i) holds a license in accordance with Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act;

(ii) has completed a survey of the property described on the plat in accordance with Section 17-23-17 and has verified all measurements; and

(iii) has placed monuments as represented on the plat.

(c) (i) As applicable, the owner or operator of the underground and utility facilities shall approve the:

(A) boundary, course, dimensions, and intended use of the right-of-way and easement grants of record;

(B) location of existing underground and utility facilities; and

(C) conditions or restrictions governing the location of the facilities within the right-of-way, and easement grants of records, and utility facilities within the subdivision.

(ii) The approval of an owner or operator under Subsection (4)(c)(i):

(A) indicates only that the plat approximates the location of the existing underground and utility facilities but does not warrant or verify their precise location; and

(B) does not affect a right that the owner or operator has under:

(I) Title 54, Chapter 8a, Damage to Underground Utility Facilities;

(II) a recorded easement or right-of-way;

(III) the law applicable to prescriptive rights; or

(IV) any other provision of law.

(5) (a) After the plat has been acknowledged, certified, and approved, the owner of the land shall, within the time period designated by ordinance, record the plat in the county recorder's office in the county in which the lands platted and laid out are situated.

(b) An owner's failure to record a plat within the time period designated by ordinance renders the plat voidable.

Section 2. Section 17-21-6 is amended to read:

### **17-21-6. General duties of recorder -- Records and indexes.**

(1) Each recorder shall:

(a) keep an entry record, in which the recorder shall, upon acceptance and recording of any instrument, enter the instrument in the order of its recording, the names of the parties to the instrument, its date, the hour, the day of the month and the year of recording, and a brief

## HB0046S01 compared with HB0046

description, and endorse upon each instrument a number corresponding with the number of the entry;

(b) keep a grantors' index, in which the recorder shall index deeds and final judgments or decrees partitioning or affecting the title to or possession of real property, which shall show the entry number of the instrument, the name of each grantor in alphabetical order, the name of the grantee, the date of the instrument, the time of recording, the kind of instrument, the book and page, and a brief description;

(c) keep a grantees' index, in which the recorder shall index deeds and final judgments or decrees partitioning or affecting the title to or possession of real property, which shall show the entry number of the instrument, the name of each grantee in alphabetical order, the name of the grantor, the date of the instrument, the time of recording, the kind of instrument, the book and page, and a brief description;

(d) keep a mortgagors' index, in which the recorder shall enter all mortgages, deeds of trust, liens, and other instruments in the nature of an encumbrance upon real estate, which shall show the entry number of the instrument, the name of each mortgagor, debtor, or person charged with the encumbrance in alphabetical order, the name of the mortgagee, lien holder, creditor, or claimant, the date of the instrument, the time of recording, the instrument, consideration, the book and page, and a brief description;

(e) keep a mortgagees' index, in which the recorder shall enter all mortgages, deeds of trust, liens, and other instruments in the nature of an encumbrance upon real estate, which shall show the entry number of the instrument, the name of each mortgagee, lien holder, creditor, or claimant, in alphabetical order, the name of the mortgagor or person charged with the encumbrance, the date of the instrument, the time of recording, the kind of instrument, the consideration, the book and page, and a brief description;

(f) subject to Subsection (3), keep a tract index, which shall show by description every instrument recorded, the date and the kind of instrument, the time of recording, and the book and page and entry number;

(g) keep an index of recorded maps, plats, and subdivisions;

(h) keep an index of powers of attorney showing the date and time of recording, the book, the page, and the entry number;

(i) keep a miscellaneous index, in which the recorder shall enter all instruments of a

## HB0046S01 compared with HB0046

miscellaneous character not otherwise provided for in this section, showing the date of recording, the book, the page, the entry number, the kind of instrument, from, to, and the parties;

(j) keep an index of judgments showing the judgment debtors, the judgment creditors, the amount of judgment, the date and time of recording, the satisfaction, and the book, the page, and the entry number; and

(k) keep a general recording index in which the recorder shall index all executions and writs of attachment, and any other instruments not required by law to be spread upon the records, and in separate columns the recorder shall enter the names of the plaintiffs in the execution and the names of the defendants in the execution.

(2) The recorder shall alphabetically arrange the indexes required by this section and keep a reverse index.

(3) (a) The tract index required by Subsection (1)(f) shall be kept so that it shows a true chain of title to each tract or parcel, together with each encumbrance on the tract or parcel, according to the records of the office.

(b) A recorder shall abstract an instrument in the tract index unless:

(i) the instrument is required to contain a legal description under Section 17-21-20 or Section 57-3-105 and does not contain that legal description; or

(ii) the instrument contains errors, omissions, or defects to the extent that the tract or parcel to which the instrument relates cannot be determined.

(c) If a recorder abstracts an instrument in the tract index or another index required by this section, the recorder may:

(i) use a tax parcel number;

(ii) use a site address;

(iii) reference to other instruments of record recited on the instrument; or

(iv) reference another instrument that is recorded concurrently with the instrument.

(d) A recorder is not required to go beyond the face of an instrument to determine the tract or parcel to which an instrument may relate.

(e) A person may not bring an action against a recorder for injuries or damages suffered as a result of information contained in an instrument recorded in a tract index or other index that is required by this section despite errors, omissions, or defects in the instrument.

## HB0046S01 compared with HB0046

(f) The fact that a recorded instrument described in Subsection (3)(e) is included in the tract index does not cure a failure to give public notice caused by an error, omission, or defect.

(g) A document that is indexed in all or part of the indexes required by this section shall give constructive notice.

(4) Nothing in this section prevents the recorder from using a single name index if that index includes all of the indexes required by this section.

Section 3. Section **17-21-10** is amended to read:

### **17-21-10. Judgments affecting real estate.**

~~[The recorder]~~ (1) A county recorder shall record for real property, any part of which is located in the county:

(a) a judgment ~~(lien)~~ affecting the real [estate] property;

(b) a release or assignment of a judgment lien affecting the real property; or

(c) a certified [copies of final judgments or decrees] copy of a final judgment or decree partitioning or affecting the title or possession of the real property [any part of which is located in the county].

(2) A document recorded in accordance with this section is subject to the requirements of Section 57-3-106.

Section 4. Section **17-21-20** is amended to read:

**17-21-20. Recording required -- Recorder may impose requirements on documents to be recorded -- Prerequisites -- Additional fee for noncomplying documents -- Recorder may require tax serial number -- Exceptions -- Requirements for recording final local entity plat.**

(1) Subject to Subsections (2), (3), and (4), each paper, notice, and instrument required by law to be recorded in the office of the county recorder shall be recorded unless otherwise provided.

(2) Each document executed on or after July 1, 2007, that is submitted for recording to a county recorder's office shall:

(a) unless otherwise provided by law, be an original or certified copy of the document;

(b) be in English or be accompanied by an accurate English translation of the document;

(c) contain a brief title, heading, or caption on the first page stating the nature of the

## HB0046S01 compared with HB0046

document;

(d) except as otherwise provided by statute, contain the legal description of the property that is the subject of the document;

(e) comply with the requirements of Section 17-21-25 and Subsections 57-3-105(1) and (2);

(f) except as otherwise provided by statute, be notarized with the notary stamp with the seal legible; and

(g) have original signatures.

(3) (a) Beginning September 1, 2007, a county recorder may require that each paper, notice, and instrument submitted for recording in the county recorder's office:

(i) be on white paper that is 8-1/2 inches by 11 inches in size;

(ii) have a margin of one inch on the left and right sides and at the bottom of each page;

(iii) have a space of 2-1/2 inches down and 4-1/2 inches across the upper right corner of the first page and a margin of one inch at the top of each succeeding page;

(iv) not be on sheets of paper that are continuously bound together at the side, top, or bottom;

(v) not contain printed material on more than one side of each page;

(vi) be printed in black ink and not have text smaller than seven lines of text per vertical inch; and

(vii) be sufficiently legible to make certified copies.

(b) A county recorder who intends to establish requirements under Subsection (3)(a) shall first:

(i) provide formal notice of the requirements; and

(ii) establish and publish an effective date for the requirements that is at least three months after the formal notice under Subsection (3)(b)(i).

(c) If a county recorder establishes requirements under this Subsection (3), the county recorder may charge and collect from persons who submit a document for recording that does not comply with the requirements, in addition to any other fee that the county recorder is authorized to charge and collect, a fee that:

(i) is calculated to recover the additional cost of handling and recording noncomplying



## HB0046S01 compared with HB0046

documents; and

(ii) may not exceed \$2 per page.

(4) (a) To facilitate the abstracting of an instrument, a county recorder may require that the applicable tax serial number of each parcel described in the instrument be noted on the instrument before it may be accepted for recording.

(b) If a county recorder requires the applicable tax serial number to be on an instrument before it may be recorded:

(i) the county recorder shall post a notice of that requirement in a conspicuous place at the recorder's office;

(ii) the tax serial number may not be considered to be part of the legal description and may be indicated on the margin of the instrument; and

(iii) an error in the tax serial number does not affect the validity of the instrument or effectiveness of the recording.

(5) Subsections (2), (3), and (4) do not apply to:

(a) a map;

(b) a certificate or affidavit of death;

(c) a military discharge;

(d) a document regarding taxes that is issued by the Internal Revenue Service of the United States Department of the Treasury;

(e) a document submitted for recording that has been filed with a court and conforms to the formatting requirements established by the court; or

(f) a document submitted for recording that is in a form required by law.

(6) (a) As used in this Subsection (6):

(i) "Boundary action" has the same meaning as defined in Section 17-23-20.

(ii) "Local entity" has the same meaning as defined in Section 67-1a-6.5.

(b) A person may not submit to a county recorder for recording a plat depicting the boundary of a local entity as the boundary exists as a result of a boundary action, unless:

(i) the plat has been approved under Section 17-23-20 by the county surveyor as a final local entity plat, as defined in Section 17-23-20; and

(ii) the person also submits for recording:

(A) the original notice of an impending boundary action, as defined in Section

## HB0046S01 compared with HB0046

67-1a-6.5, for the boundary action for which the plat is submitted for recording; ~~and~~

(B) the original applicable certificate, as defined in Section 67-1a-6.5, issued by the lieutenant governor under Section 67-1a-6.5 for the boundary action for which the plat is submitted for recording; and

(C) each other document required by statute to be submitted for recording with the notice of an impending boundary action and applicable certificate.

(c) Promptly after recording the documents described in Subsection (6)(b) relating to a boundary action, but no later than 10 days after recording, the county recorder shall send a copy of all those documents to the State Tax Commission.

Section 5. Section **17-27a-603** is amended to read:

### **17-27a-603. Plat required when land is subdivided -- Approval of plat --**

#### **Recording plat.**

(1) (a) Unless exempt under Section 17-27a-605 or excluded from the definition of subdivision under Section 17-27a-103, whenever any land is laid out and platted, the owner of the land shall provide an accurate plat that describes or specifies:

~~(a)~~ (i) subject to Subsection (1)(b), a subdivision name that is distinct from any subdivision name on a plat recorded in the county recorder's office;

~~(b)~~ (ii) the boundaries, course, and dimensions of all of the parcels of ground divided, by their boundaries, course, and extent, whether the owner proposes that any parcel of ground is intended to be used as a street or for any other public use, and whether any such area is reserved or proposed for dedication for a public purpose;

~~(c)~~ (iii) the lot or unit reference, block or building reference, street or site address, street name or coordinate address, acreage or square footage for all parcels, units, or lots, and length and width of the blocks and lots intended for sale; and

~~(d)~~ (iv) every existing right-of-way and easement grant of record for underground facilities, as defined in Section 54-8a-2, and for other utility facilities.

(b) A county recorder may require that the owner of land modify the subdivision name to comply with Subsection (1)(a)(i).

(2) (a) Subject to Subsections (3), (4), and (5), if the plat conforms to the county's ordinances and this part and has been approved by the culinary water authority and the sanitary sewer authority, the county shall approve the plat.

## HB0046S01 compared with HB0046

(b) Counties are encouraged to receive a recommendation from the fire authority before approving a plat.

(3) The county may withhold an otherwise valid plat approval until the owner of the land provides the legislative body with a tax clearance indicating that all taxes, interest, and penalties owing on the land have been paid.

(4) (a) A plat may not be submitted to a county recorder for recording unless:

(i) prior to recordation, each owner of record of land described on the plat has signed the owner's dedication as shown on the plat; and

(ii) the signature of each owner described in Subsection (4)(a)(i) is acknowledged as provided by law.

(b) The surveyor making the plat shall certify that the surveyor:

(i) holds a license in accordance with Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act;

(ii) has completed a survey of the property described on the plat in accordance with Section 17-23-17 and has verified all measurements; and

(iii) has placed monuments as represented on the plat.

(c) (i) As applicable, the owner or operator of the underground and utility facilities shall approve the:

(A) boundary, course, dimensions, and intended use of the right-of-way and easement grants of record;

(B) location of existing underground and utility facilities; and

(C) conditions or restrictions governing the location of the facilities within the right-of-way, and easement grants of records, and utility facilities within the subdivision.

(ii) The approval of an owner or operator under Subsection (4)(c)(i):

(A) indicates only that the plat approximates the location of the existing underground and utility facilities but does not warrant or verify their precise location; and

(B) does not affect a right that the owner or operator has under:

(I) Title 54, Chapter 8a, Damage to Underground Utility Facilities;

(II) a recorded easement or right-of-way;

(III) the law applicable to prescriptive rights; or

(IV) any other provision of law.

## HB0046S01 compared with HB0046

(5) (a) After the plat has been acknowledged, certified, and approved, the owner of the land shall, within the time period designated by ordinance, record the plat in the county recorder's office in the county in which the lands platted and laid out are situated.

(b) An owner's failure to record a plat within the time period designated by ordinance renders the plat voidable.

Section 6. 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~~] (a) A person may file in the office of the clerk of a state district court a transcript of a judgment or decree rendered in the district court of the United States within the state [~~may be filed in the office of the clerk of the state district court of any county in this state, and when so filed, such judgments or decrees shall have~~].

(b) A decree or judgment filed in accordance with Subsection (1)(a) has the same force and effect as a judgment rendered in a state district court [~~of this state in and for such county~~].

(2) Except as provided in Subsection (3), if a person records 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~~] in accordance with Section 78B-5-202.

(3) [~~State agencies are~~] A state agency is exempt from the recording requirement of Subsection (2).

(4) (a) To release or assign a ~~{recorded}~~ lien created by a judgment ~~{lien}~~ recorded in the office of a county recorder, a person shall ~~{record}~~ in the ~~{release or assignment in}~~ office of the county ~~{recorder's office}~~ recorder of each county in which ~~{the judgment}~~ an instrument creating the lien is recorded, record a document releasing or assigning the lien.

(b) The ~~{release or assignment}~~ document described in Subsection (4)(a) shall ~~{contain}~~ include:

(i) the date of the release or assignment;

~~{i}~~ ii) the name of any judgment creditor, debtor, assignor, or assignee;

~~{ii}~~ the date of recording; and

~~{iii}~~ the entry number, book, and

## HB0046S01 compared with HB0046

(iii) for the county in which the document is recorded in accordance with Subsection (4)(a):

(A) the date on which the instrument creating the lien was recorded in that county's office of the county recorder; and

(B) in accordance with Section 57-3-106, that county recorder's entry number and book and page of the recorded instrument creating the judgment lien; ~~in accordance with Section 57-3-106.~~

Section 7. Section 57-1-5 is amended to read:

**57-1-5. Creation of joint tenancy presumed -- Tenancy in common -- Severance of joint tenancy -- Tenants by the entirety -- Tenants holding as community property.**

(1) (a) (i) Beginning on May 5, 1997, every ownership interest in real estate granted to two persons in their own right who are designated as husband and wife in the granting documents is presumed to be a joint tenancy interest with rights of survivorship, unless severed, converted, or expressly declared in the grant to be otherwise.

(ii) Except as provided in Subsection (1)(a)(iii), joint tenancy may be established between two or more people.

(iii) Joint tenancy may not be established between a person and an entity or organization, including:

(A) a corporation;

(B) a trustee of a trust; or

(C) a partnership.

(iv) Joint tenancy may not be established between an entity or organization and another entity or organization.

(b) Every ownership interest in real estate that does not qualify for the joint tenancy presumption as provided in Subsection (1)(a) is presumed to be a tenancy in common interest unless expressly declared in the grant to be otherwise.

(2) (a) Use of words "joint tenancy" or "with rights of survivorship" or "and to the survivor of them" or words of similar import means a joint tenancy.

(b) Use of words "tenancy in common" or "with no rights of survivorship" or "undivided interest" or "and/or" in the context of an ownership interest or words of similar import declare a tenancy in common.

## HB0046S01 compared with HB0046

(3) A ~~[sole owner of]~~ person who owns real property creates a joint tenancy in himself or herself and another or others:

(a) by making a transfer to himself or herself and another or others as joint tenants by use of the words as provided in Subsection (2)(a); or

(b) by conveying to another person or persons an interest in land in which an interest is retained by the grantor and by declaring the creation of a joint tenancy by use of the words as provided in Subsection (2)(a).

(4) In all cases, the interest of joint tenants shall be equal and undivided.

(5) (a) Except as provided in Subsection (5)(b), if a joint tenant makes a bona fide conveyance of the joint tenant's interest in property held in joint tenancy to himself or herself or another, the joint tenancy is severed and converted into a tenancy in common.

(b) If there is more than one joint tenant remaining after a joint tenant severs a joint tenancy under Subsection (5)(a), the remaining joint tenants continue to hold their interest in joint tenancy.

(6) The amendments to this section in Laws of Utah 1997, Chapter 124, have no retrospective operation and shall govern instruments executed and recorded on or after May 5, 1997.

(7) Tenants by the entirety are considered to be joint tenants.

(8) Tenants holding title as community property are considered to be joint tenants.

Section 8. Section **57-1-13** is amended to read:

### **57-1-13. Form of quitclaim deed -- Effect.**

~~[Conveyances]~~ (1) A conveyance of land may also be substantially in the following form:

#### "QUITCLAIM DEED

\_\_\_\_ (here insert name), grantor, of \_\_\_\_ (insert place of residence), hereby quitclaims to \_\_\_\_ (insert name), grantee, of \_\_\_\_ (here insert place of residence), for the sum of \_\_\_\_ dollars, the following described tract \_\_\_\_ of land in \_\_\_\_ County, Utah, to wit: (here describe the premises).

Witness the hand of said grantor this \_\_\_\_\_ (month\day\year).

A quitclaim deed when executed as required by law shall have the effect of a conveyance of all right, title, interest, and estate of the grantor in and to the premises therein

## HB0046S01 compared with HB0046

described and all rights, privileges, and appurtenances thereunto belonging, at the date of the conveyance."

(2) For a boundary line agreement operating as a quitclaim deed as described in Section 57-1-45, the boundary line agreement shall include, in addition to a legal description of the ~~land conveyed~~ agreed upon boundary line:

- (a) the signature of each grantor;
- (b) a sufficient acknowledgment for each grantor's signature; and
- (c) the address of each grantee for assessment purposes.

Section 9. Section **57-1-45** is amended to read:

### **57-1-45. Boundary line agreements.**

(1) If properly executed and acknowledged as required under this chapter, an agreement between property owners designating the boundary line between their properties, when recorded in the office of the recorder of the county in which the property is located, shall act as a quitclaim deed and convey all of each party's right, title, interest, and estate in property outside the agreed boundary line that had been the subject of the boundary dispute that led to the boundary line agreement.

(2) ~~[Each]~~ A boundary line agreement ~~[under]~~ described in Subsection (1) shall ~~[contain]~~ include:

- (a) a legal description of the ~~land conveyed~~ agreed upon boundary line;
- (b) the signature of each grantor;
- (c) a sufficient acknowledgment for each grantor's signature; and
- (d) the address of each grantee for assessment purposes.

Section 10. Section **57-3-105** is amended to read:

### **57-3-105. Legal description of real property and names and addresses required in documents.**

(1) Except as otherwise provided by statute, a person may not present a document for recording unless the document complies with this section.

(2) A document executed after July 1, 1983, is entitled to be recorded in the office of the recorder of the county in which the property described in the document is located only if the document contains a legal description of the real property.

(3) (a) A document conveying title to real property presented for recording after July 1,

## HB0046S01 compared with HB0046

1981, is entitled to be recorded in the office of the recorder of the county in which the property described in the document is located only if the document [~~contains the names and mailing addresses of the~~] names the grantees and recites a mailing address to be used for assessment and taxation in addition to the legal description required under Subsection (2).

(b) The address of the management committee may be used as the mailing address of a grantee as required in Subsection (3)(a) if the interest conveyed is a timeshare interest as defined by Section 57-19-2.

(4) A person may not present and a county recorder may refuse to accept a document for recording if the document does not conform to this section.

(5) Notwithstanding Subsections (2), (3), and (4), a master form, as defined in Section 57-3-201, that does not meet the requirements of Subsections (2) and (3) is entitled to be recorded in the office of the recorder of the county in which the property described in the master form is located if it complies with Part 2, Master Mortgage and Trust Deeds.

Section 11. Section **57-3-106** is amended to read:

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

(1) A person may not present and a county recorder may refuse to accept a document for recording if the document does not comply with this section.

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

(i) be an original;

(ii) contain a brief caption on the first page of the document stating the nature of the document; and

(iii) contain a legal description of the property as required under Section 57-3-105.

(b) If a document is a master form, as defined in Section 57-3-201, the caption required by Subsection (2)(a)(ii) shall state that the document is a master form.

(3) A court judgment or an abstract of a court judgment presented for recording in the office of the county recorder in compliance with Section 78B-5-202 shall:

(a) be an original or certified copy; and

(b) include the information identifying the judgment debtor as referred to in Subsection 78B-5-201(4) either:

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



## HB0046S01 compared with HB0046

(ii) as a separate information statement of the judgment creditor as referred to in Subsection 78B-5-201(5).

(4) A judgment, abstract of judgment, ~~[and]~~ or separate information statement of the judgment creditor does not require an acknowledgment ~~[or]~~, a legal description, or notarization to be recorded.

(5) 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 78B-5-303.

(6) 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.]~~

(b) the date on which the instrument creating the lien was recorded in the office of the county recorder;

(c) the entry number and book and page of the recorded instrument creating the judgment lien; and

(d) the date on which the document is recorded.

(7) A document presented for recording shall be sufficiently legible for the recorder to make certified copies of the document.

(8) (a) (i) A document that 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.

(ii) Unless exempt by statute, an original document that is reexecuted shall 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.

(iii) A document submitted for rerecording shall contain a brief statement explaining the reason for rerecording.

(b) A person may not present and a county recorder may refuse to accept a document for rerecording if that document does not conform to this section.

(c) This Subsection (8) applies only to documents executed after July 1, 1998.

## HB0046S01 compared with HB0046

(9) Minor typographical or clerical errors in a document of record may be corrected by the recording of an affidavit or other appropriate instrument.

(10) (a) Except as required by federal law, or by agreement between a borrower under the trust deed and a grantee under the trustee's deed, and subject to Subsection (10)(b), neither the recordation of an affidavit under Subsection (9) nor the reexecution and rerecording of a document under Subsection (8):

- (i) divests a grantee of any real property interest;
- (ii) alters an interest in real property; or
- (iii) returns to the grantor an interest in real property conveyed by statute.

(b) A person who reexecutes and rerecords a document under Subsection (8), or records an affidavit under Subsection (9), shall include with the document or affidavit a notice containing the name and address to which real property valuation and tax notices shall be mailed.

Section 12. Section **78B-5-201** is amended to read:

### **78B-5-201. Definitions -- Judgment recorded in Registry of Judgments.**

(1) For purposes of this part, "Registry of Judgments" means the index where a judgment is 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 entered in a district court does not create a lien upon or affect the title to real property unless the judgment is 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).

(4) In addition to the requirements of Subsections (2) and (3)(a), any judgment that is 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) the information identifying the judgment debtor on the judgment or abstract of judgment; or

## HB0046S01 compared with HB0046

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

- (i) the correct name and last-known address of each judgment debtor and the address at which each judgment debtor received service of process;
- (ii) the name and address of the judgment creditor;
- (iii) the amount of the judgment as filed in the Registry of Judgments;
- (iv) if known, the judgment debtor's Social Security number, date of birth, and driver's license number if a natural person; and
- (v) whether or not a stay of enforcement has been ordered by the court and the date the stay expires.

(5) For the information required in Subsection (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.

(6) (a) Any judgment that requires payment of money and is entered in a district court on or after September 1, 1998, or any judgment or abstract of judgment recorded in the office of a county recorder after July 1, 2002, that does not include the debtor identifying information as required in 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 (4) and (5).

(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 {, book, and page} of the original judgment or abstract of judgment.]~~

[(ii) the date on which the judgment was recorded in the office of the county recorder as described in Subsection (4); and

[(iii) the county recorder's entry number and book and page of the recorded judgment.]

(7) A judgment that requires payment of money recorded on or after September 1,

## HB0046S01 compared with HB0046

1998, but prior to July 1, 2002, has as its priority the date of entry, except as to parties with actual or constructive knowledge of the judgment.

(8) A judgment or notice of judgment wrongfully filed against real property is subject to Title 38, Chapter 9, Wrongful Liens and Wrongful Judgment Liens.

(9) (a) To release or assign a recorded lien created by a judgment lien recorded in the office of a county recorder, a person shall record, in the release or assignment in office of the county recorder of each county in which an instrument creating the lien is recorded, record a document releasing or assigning the lien.

(b) The document described in Subsection (9)(a) shall include:

(i) the date of the release or assignment;

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

~~(ii) the date of recording; and~~

~~(iii) the entry number, book, and~~

(iii) for the county in which the document is recorded in accordance with Subsection (9)(a):

(A) the date on which the instrument creating the lien was recorded in that county's office of the county recorder; and

(B) in accordance with Section 57-3-106, that county recorder's entry number and book and page of the recorded instrument creating the judgment lien in accordance with Section 57-3-106.

Section 13. Section **78B-5-202** is amended to read:

**78B-5-202. 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) 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 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.

## HB0046S01 compared with HB0046

(3) An abstract of judgment issued by the court in which the judgment is entered may be 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 may 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 fees and costs on appeal, the lien created by 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 and granting the judgment creditor a perfected lien in the deposited security as of the date of the original judgment.

(6) (a) A child support order or a sum certain judgment for past due support may be enforced:

- (i) within four years after the date the youngest child reaches majority; or
- (ii) eight years from the date of entry of the sum certain judgment entered by a tribunal.

(b) The longer period of duration shall apply in every order.

(c) A sum certain judgment may be renewed to extend the duration.

(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 78B-5-201(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 78B-5-201(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:

## HB0046S01 compared with HB0046

(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.

(9) (a) To release or assign a ~~recorded~~ lien created by a judgment ~~lien~~ recorded in the office of a county recorder, a person shall ~~record~~, in the ~~release or assignment in~~ office of the county ~~recorder's office~~ recorder of each county in which ~~the judgment~~ an instrument creating the lien is recorded, record a document releasing or assigning the lien.

(b) The ~~release or assignment~~ document described in Subsection (9)(a) shall ~~contain~~ include:

(i) the date of the release or assignment;

~~(i)~~ (ii) the name of any judgment creditor, debtor, assignor, or assignee;

~~(ii) the date of recording; and~~

~~(iii) the entry number, book, and~~

(iii) for the county in which the document is recorded in accordance with Subsection (9)(a):

(A) the date on which the instrument creating the lien was recorded in that county's office of the county recorder; and

(B) in accordance with Section 57-3-106, that county recorder's entry number and book and page of the recorded instrument creating the judgment lien ~~in accordance with Section 57-3-106~~.

Section 14. Section **78B-5-408** is amended to read:

**78B-5-408. Judgments and awards on foreign-money claims -- Time of money conversion -- Form of judgment.**

(1) Except as provided in Subsection (3), a judgment or arbitration award on a foreign-money claim must be stated in an amount of the money of the claim.

## HB0046S01 compared with HB0046

(2) The judgment or award is payable in that foreign money or at the option of the debtor in the amount of United States dollars which will purchase that foreign money on the conversion date at a bank-offered spot rate.

(3) Assessed costs must be entered in United States dollars.

(4) Each payment in United States dollars must be accepted and credited on the judgment or award in the amount of the foreign money that could be purchased by the dollars at a bank-offered spot rate of exchange at or near the close of business on the conversion date for that payment.

(5) Judgments or awards made in an action on both:

(a) a defense, set-off, recoupment, or counterclaim; and

(b) the adverse party's claim, must be netted by converting the money of the smaller into the money of the larger, and by subtracting the smaller from the larger, and must specify the rates of exchange used.

(6) A judgment substantially in the following form complies with Subsection (1):

IT IS ADJUDGED AND ORDERED that Defendant (insert name) pay to Plaintiff (insert name) the sum of (insert amount in the foreign money) plus interest on that sum at the rate of (insert rate - see Section 78B-5-410) percent a year or, at the option of the judgment debtor, the number of United States dollars as will purchase the (insert name of foreign money) with interest due, at a bank-offered spot rate at or near the close of business on the banking day next before the day of payment, together with assessed costs of (insert amount) United States dollars.

(7) If a contract claim is of the type covered by Subsection 78B-5-406(1) or (2), the judgment or award shall be entered for the amount of the money stated to measure the obligation to be paid in the money specified for payment or, at the option of the debtor, the number of United States dollars as will purchase the computed amount of the money of payment on the conversion date at a bank-offered spot rate.

(8) A judgment shall be filed in the judgment docket and indexed in foreign money in the same manner, and shall have the same effect as a lien as other judgments. It may be discharged by payment.

(9) A person shall record a judgment lien or assignment or release of a judgment lien in the county recorder's office in accordance with Sections 17-21-10, 38-9-1,

**HB0046S01 compared with HB0046**

~~{75B-5-201}~~ 78B-5-201, and ~~{75B-5-202}~~ 78B-5-202.

†

**Legislative Review Note**

~~\_\_\_\_\_ as of 12-15-10 11:56 AM~~

~~\_\_\_\_\_ Office of Legislative Research and General Counsel}~~