

Senator Todd Weiler proposes the following substitute bill:

NOTICE OF PENDENCY OF ACTION AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: V. Lowry Snow

LONG TITLE

General Description:

This bill modifies provisions relating to the filing of a notice of pendency of action against real property.

Highlighted Provisions:

This bill:

- ▶ adds additional filing requirements;
- ▶ affirmatively prohibits filing a notice of pendency of action until the underlying action has been filed;
- ▶ adds additional standards for release of the notice when the underlying action is for specific performance;
- ▶ revises requirements relating to the contents of the notice;
- ▶ adds specific civil liability and damage provisions when a notice of pendency is improperly filed; and
- ▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

None



26 **Utah Code Sections Affected:**

27 AMENDS:

28 **78B-6-1303**, as enacted by Laws of Utah 2008, Chapter 3

29 **78B-6-1304**, as enacted by Laws of Utah 2008, Chapter 3

30 ENACTS:

31 **78B-6-1304.5**, Utah Code Annotated 1953



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

34 Section 1. Section **78B-6-1303** is amended to read:

35 **78B-6-1303. Lis pendens -- Notice.**

36 (1) ~~Either~~ (a) Any party to an action [affecting] filed in the United States District
37 Court for the District of Utah, the United States Bankruptcy Court for the District of Utah, or a
38 Utah district court that affects the title to, or the right of possession of, real property may file a
39 notice of [the] pendency of [the] action [with the county recorder in the county where the
40 property or any portion of the property is located].

41 (b) A party that chooses to file a notice of pendency of action shall:

42 (i) first, file the notice with the court that has jurisdiction of the action; and

43 (ii) second, record a copy of the notice filed with the court with the county recorder in
44 the county where the property or any portion of the property is located.

45 (c) A person may not file a notice of pendency of action unless a case has been filed
46 and is pending in a United States or Utah district court.

47 (2) The notice shall contain:

48 (a) the caption of the case, with the names of the parties and the case number;

49 (b) the object of the action or defense; and

50 (c) [a] the specific legal description of only the property affected [in that county].

51 (3) From the time of filing the notice, a purchaser ~~or~~, an encumbrancer of the
52 property [who], or any other party in interest that may be affected by the action is considered to
53 have constructive notice of ~~the~~ pendency of ~~the~~ action.

54 Section 2. Section **78B-6-1304** is amended to read:

55 **78B-6-1304. Motions related to a notice of pendency of an action.**

56 (1) Any time after a notice has been ~~recorded~~ filed pursuant to Section **78B-6-1303**,

57 any of the following may make a motion to the court in which the action is pending to release
58 the notice:

59 (a) a party to the action; or

60 (b) a person with an interest in the real property affected by the notice, including a
61 prospective purchaser with an executed purchase contract.

62 (2) A court shall order ~~[a]~~ notice of pendency of action released if:

63 (a) the court receives a motion to release under Subsection (1); and

64 (b) after a notice and hearing if determined to be necessary by the court, the court finds
65 that the claimant has not established by a preponderance of the evidence the ~~[probable]~~ validity
66 of the real property claim that is the subject of the notice.

67 (3) In deciding a motion under Subsection (2), if the underlying action for which a
68 notice of pendency of action is filed is an action for specific performance, a court shall order a
69 notice released if:

70 (a) the court finds that the party filing the action has failed to satisfy the statute of
71 frauds for the transaction under which the claim is asserted relating to the real property; or

72 (b) the court finds that the elements necessary to require specific performance have not
73 been established by a preponderance of the evidence.

74 ~~[(3)]~~ (4) If a court releases a claimant's notice pursuant to this section, ~~[the]~~ that
75 claimant may not record another notice with respect to the same property without ~~[approval of]~~
76 an order from the court in which the action is pending that authorizes the recording of a new
77 notice of pendency.

78 ~~[(4)]~~ (5) Upon a motion by any person with an interest in the real property that is the
79 subject of a notice of pendency, a court may, at anytime after the notice has been recorded,
80 require, as a condition of maintaining the notice, that the claimant ~~[to give]~~ provide security to
81 the moving party ~~[a guarantee as a condition of maintaining the notice: (a) any time after a~~
82 ~~notice has been recorded; and (b)]~~ in the amount and form directed by the court, regardless of
83 whether the court has received an application to release under Subsection (1).

84 ~~[(5)]~~ (6) A person who receives ~~[a guarantee]~~ security under Subsection ~~[(4)]~~ (5) may
85 recover from the surety an amount not ~~Ŝ~~ \hat{S} \rightarrow ~~[H]~~ to exceed ~~[less than]~~ \leftarrow ~~Ŝ~~ the amount of the
85a [guarantee]

86 security upon a showing that:

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

88 (b) the person [~~seeking the guarantee~~] receiving the security suffered damages as a
89 result of the maintenance of the notice.

90 (7) The amount of security required by the court under Subsection (5) does not
91 establish or limit the amount of damages or reasonable attorney fees and costs that may be
92 awarded to a party who is found to have been damaged by a wrongfully filed notice of
93 pendency.

94 [(6)] (8) A court shall award costs and attorney fees to a prevailing party on any motion
95 under this section unless the court finds that:

- 96 (a) the nonprevailing party acted with substantial justification; or
- 97 (b) other circumstances make the imposition of attorney fees and costs unjust.

98 Section 3. Section **78B-6-1304.5** is enacted to read:

99 **78B-6-1304.5. Civil liability for recording wrongful notice of pendency --**

100 **Damages.**

101 A person is liable to the record owner of real property, or to a person with a leasehold
102 interest in the real property that is damaged by the maintenance of a notice of pendency, for
103 \$10,000 or for treble actual damages, whichever is greater, and for reasonable attorney fees and
104 costs, if the person records or causes to be recorded a notice of pendency against the real
105 property, knowing or having reason to know that:

- 106 (1) legal action against the property has not been filed as required by Section
107 [78B-6-1303](#);
- 108 (2) the notice is groundless;
- 109 (3) the notice fails to comply with the notice requirements of Subsection
110 [78B-6-1303\(2\)](#); or
- 111 (4) the notice contains an intentional material misstatement or false claim.