

1 **NOTICE OF PENDENCY OF ACTION AMENDMENTS**

2 2016 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Todd Weiler**

5 House Sponsor: _____

6

7 **LONG TITLE**

8 **General Description:**

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

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ adds additional filing requirements;
- 14 ▶ affirmatively prohibits filing a notice of pendency of action until the underlying
15 action has been filed;
- 16 ▶ adds additional standards for release of the notice when the underlying action is for
17 specific performance;
- 18 ▶ adds specific civil liability and damage provisions when a notice of pendency is
19 improperly filed; and
- 20 ▶ makes technical corrections.

21 **Money Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 None

25 **Utah Code Sections Affected:**

26 AMENDS:

27 **78B-6-1303**, as enacted by Laws of Utah 2008, Chapter 3



28 **78B-6-1304**, as enacted by Laws of Utah 2008, Chapter 3

29 ENACTS:

30 **78B-6-1304.5**, Utah Code Annotated 1953



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

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

33 **78B-6-1303. Lis pendens -- Notice.**

34 (1) (a) Either party to an action [~~affecting~~] filed in the United States District Court or in
35 a Utah district court that affects the title to, or the right of possession of, real property may file
36 a notice of the pendency of the action [~~with~~].

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

38 (i) record the notice with the county recorder in the county where the property or any
39 portion of the property is located[-];

40 (ii) file the notice with the United States District Court and the United States
41 Bankruptcy Court for Utah; and

42 (iii) file the notice with the Utah district court in the county where the property or any
43 portion of the property is located.

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

46 (2) The notice shall contain:

- 47 (a) the names of the parties;
- 48 (b) the object of the action or defense; and
- 49 (c) a description of the property affected in that county.

50 (3) From the time of filing the notice, a purchaser or encumbrancer of the property who
51 may be affected by the action is considered to have constructive notice of the pendency of the
52 action.

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

54 **78B-6-1304. Motions related to a notice of the pendency of an action.**

55 (1) Any time after a notice has been recorded pursuant to Section **78B-6-1303**, any of
56 the following may make a motion to the court in which the action is pending to release the
57 notice:
58

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 money contract.

62 (2) A court shall order a notice released if:

63 (a) the court receives a motion to release under Subsection (1); and
 64 (b) the court finds that the claimant has not established by a preponderance of the
 65 evidence the probable validity of the real property claim that is the subject of the notice.

66 (3) If the underlying action for which the notice of pendency of action is filed is an
 67 action for specific performance, a court shall order a notice released if:

68 (a) the court finds that the party filing the action has failed to satisfy the statute of
 69 frauds for the transaction in question relating to the real property; or

70 (b) the court finds that the elements necessary to require specific performance have not
 71 been met.

72 [~~(3)~~] (4) If a court releases a notice pursuant to this section, the claimant may not
 73 record another notice with respect to the same property without approval of the court in which
 74 the action is pending.

75 [~~(4)~~] (5) Upon a motion by any person with an interest in the real property that is the
 76 subject of a notice of pendency, a court may, anytime after a notice has been recorded, require
 77 the claimant to give the moving party a guarantee as a condition of maintaining the notice[~~-(a)~~
 78 ~~any time after a notice has been recorded; and (b)~~], regardless of whether the court has received
 79 an application to release under Subsection (1).

80 [~~(5)~~] (6) A person who receives a guarantee under Subsection [~~(4)~~] (5) may recover an
 81 amount not to exceed the amount of the guarantee upon a showing that:

82 (a) the claimant did not prevail on the real property claim; and
 83 (b) the person seeking the guarantee suffered damages as a result of the maintenance of
 84 the notice.

85 [~~(6)~~] (7) A court shall award costs and attorney fees to a prevailing party on any motion
 86 under this section unless the court finds that:

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

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

90 78B-6-1304.5. Civil liability for recording wrongful notice of pendency --

91 **Damages.**

92 A person is liable to the record owner of real property for \$10,000 or for treble actual
93 damages, whichever is greater, and for reasonable attorney fees and costs, if the person records
94 or causes to be recorded a notice of pendency against the real property, knowing or having
95 reason to know that:

96 (1) legal action against the property has not been filed as required by Section

97 [78B-6-1303](#);

98 (2) the notice is groundless; or

99 (3) the notice contains a material misstatement or false claim.

Legislative Review Note
Office of Legislative Research and General Counsel