

SB0225S01 compared with SB0225

~~deleted text~~ shows text that was in SB0225 but was deleted in SB0225S01.

inserted text shows text that was not in SB0225 but was inserted into SB0225S01.

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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: _____

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;
- ▶ adds specific civil liability and damage provisions when a notice of pendency is improperly filed; and

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- ▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

ENACTS:

78B-6-1304.5, Utah Code Annotated 1953

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

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

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

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

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

~~{ (i) record the notice with}~~ (i) first, file the notice with the court that has jurisdiction of the action; and

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

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

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

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

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(2) The notice shall contain:

- (a) the caption of the case, with the names of the parties and the case number;
- (b) the object of the action or defense; and
- (c) ~~[a]~~ the legal description of the property affected ~~[in that county]~~.

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

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

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

(1) Any time after a notice has been ~~[recorded]~~ filed pursuant to Section 78B-6-1303, any of the following may make a motion to the court in which the action is pending to release the notice:

- (a) a party to the action; or
- (b) a person with an interest in the real property affected by the notice, including a prospective purchaser with an executed purchase ~~{money}~~ contract.

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

- (a) the court receives a motion to release under Subsection (1); and
- (b) after a notice and hearing if determined to be necessary by the court, the court finds that the claimant has not established by a preponderance of the evidence the ~~[probable]~~ validity of the real property claim that is the subject of the notice.

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

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

(b) the court finds that the elements necessary to require specific performance have not been ~~{met}~~ established by a preponderance of the evidence.

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

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notice of pendency.

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

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

(a) the claimant did not prevail on the real property claim; ~~[and]~~

(b) the person ~~[seeking the guarantee]~~ receiving the security suffered damages as a result of the maintenance of the notice~~[-];~~ and

(c) the amount of security required by the court does not establish or limit the amount of damages or reasonable attorney fees and costs that may be awarded to a party who is found to have been damaged by a wrongfully filed notice of pendency.

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

(a) the nonprevailing party acted with substantial justification; or

(b) other circumstances make the imposition of attorney fees and costs unjust.

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

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

Damages.

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

(1) legal action against the property has not been filed as required by Section 78B-6-1303;

(2) the notice is groundless;

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(3) the notice fails to comply with the notice requirements of Subsection

78B-6-1303(2); or

(~~3~~4) the notice contains ~~fa~~an intentional material misstatement or false claim.

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Legislative Review Note

Office of Legislative Research and General Counsel†