

ATTORNEYS LIEN AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Timothy D. Hawkes

Senate Sponsor: Todd Weiler

LONG TITLE

General Description:

This bill modifies provisions relating to attorney's liens.

Highlighted Provisions:

This bill:

- ▶ clarifies that an attorney may have an attorney's lien on intangible property;
- ▶ modifies the requirements for a notice of lien for an attorney's lien;
- ▶ addresses the methods by which an attorney may enforce an attorney's lien; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

38-2-7, as renumbered and amended by Laws of Utah 2001, Chapter 4 and repealed and reenacted by Laws of Utah 2001, Chapter 360

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

Section 1. Section **38-2-7** is amended to read:

38-2-7. Compensation -- Attorney's lien.

(1) The compensation of an attorney is governed by agreement between the attorney and a client, express or implied, which is not restrained by law.

30 (2) An attorney shall have a lien for the balance of compensation due from a client on
31 any money or property owned by the client that is the subject of or connected with work
32 performed for the client, including~~[-, but not limited to]:~~

33 (a) any real ~~[or]~~, personal, or intangible property that is the subject of or connected
34 with the work performed for the client;

35 (b) any funds held by the attorney for the client, including any amounts paid as a
36 retainer to the attorney by the client; and

37 (c) any settlement, verdict, report, decision, or judgment in the client's favor in any
38 matter or action in which the attorney assisted, including any proceeds derived from the matter
39 or action, whether or not the attorney is employed by the client at the time the settlement,
40 verdict, report, decision, or judgment is obtained.

41 (3) An attorney's lien commences at the time of employment of the attorney by the
42 client.

43 (4) (a) An attorney may enforce a lien under this section by:

44 (i) moving to intervene in a pending legal action;

45 (A) in which the attorney has assisted or performed work~~[-];~~ or

46 (B) in which the property subject to the attorney's lien may be disposed of or otherwise
47 encumbered; or

48 (ii) by filing a separate legal action.

49 (b) An attorney may not move to intervene in an action or file a separate legal action to
50 enforce a lien before 30 days has expired after a demand for payment has been made and not
51 been complied with.

52 (5) An attorney may file a notice of lien:

53 (a) in a pending legal action in which the attorney has assisted or performed work for
54 which the attorney has a lien under this section~~[-. In addition, an attorney may file a notice of~~
55 ~~lien];~~

56 (b) with the county recorder of the county in which real property that is subject to a lien
57 under this section is located~~[-];~~ or

58 (c) with the state or federal government office that receives filings that relate to the
59 ownership of the property.

60 (6) A notice of lien described in Subsection (5) shall include the following:

61 (a) the name, address, and telephone number of the attorney claiming the lien;

62 (b) the name of the client who is the owner of the property subject to the lien;

63 (c) a verification that:

64 (i) the property is the subject of or connected with work performed by the attorney for
65 the client; and [that]

66 (ii) (A) the attorney made a demand for payment of the amounts owed to the attorney
67 for the work [has been made and not been paid] and the client did not pay the amounts owed
68 within 30 days [of] after the day on which the attorney made the demand; or

69 (B) the attorney is filing the notice of lien in accordance with a written agreement
70 between the attorney and the client;

71 (d) the date on which the attorney first provided services to the client;

72 (e) a description of the property, sufficient for identification; ~~[and]~~

73 (f) the signature of the ~~[lien claimant]~~ attorney claiming the lien; and

74 (g) an acknowledgment or certificate as required under Title 57, Chapter 3, Recording
75 of Documents.

76 ~~[(6)]~~ (7) Within 30 days after ~~[filing]~~ the day on which the notice of lien is filed, the
77 attorney shall deliver or mail by certified mail to the client a copy of the notice of lien.

78 ~~[(7)]~~ (8) Any person who takes an interest in any property, other than real property, that
79 is subject to an attorney's lien with actual or constructive knowledge of the attorney's lien, takes
80 ~~[his or her]~~ the interest subject to the attorney's lien.

81 (9) An attorney's lien on real property has as its priority the date and time when a
82 notice of lien is filed with the county recorder of the county in which real property that is
83 subject to a lien under this section is located.

84 ~~[(8)]~~ (10) This section does not alter or diminish in any way an attorney's common law
85 retaining lien rights.

86 [~~9~~] (11) This section does not authorize an attorney to have a lien in the
87 representation of a client in a criminal matter or domestic relations matter where a final order
88 of divorce has not been secured unless:

89 (a) (i) the criminal matter has been concluded or the domestic relations matter has been
90 concluded by the securing of a final order of divorce; or

91 (ii) the attorney/client relationship has terminated; and

92 (b) the client has failed to fulfill the client's financial obligation to the attorney.