

West's Utah Code Annotated

Title 38. Liens

Chapter 1. Mechanics' Liens

U.C.A. 1953 T. 38, Ch. 1, Refs & Annos  
Currentness

Current through 2011 Second Special Session.

End of Document

© 2011 Thomson Reuters. No claim to original U.S. Government Works.

West's Utah Code Annotated

Title 38. Liens

Chapter 1. Mechanics' Liens (Refs & Annos)

U.C.A. 1953 § 38-1-1

§ 38-1-1. Public buildings not subject to act

**Currentness**

Except as provided in [Sections 38-1-27, 38-1-30](#) through [38-1-36](#), and [38-1-40](#) relating to the State Construction Registry, this chapter does not apply to any public improvement.

**Credits**

[Laws 2011, c. 299, § 3, eff. Aug. 1, 2011](#); [Laws 2011, c. 339, § 1, eff. May 10, 2011](#).

**Codifications** R.S. 1898, § 1399; C.L. 1907, § 1399; C.L. 1917, § 3751; R.S. 1933, § 52-1-1; C. 1943, § 52-1-1.

[Notes of Decisions \(8\)](#)

Current through 2011 Second Special Session.

End of Document

© 2011 Thomson Reuters. No claim to original U.S. Government Works.

West's Utah Code Annotated

Title 38. Liens

Chapter 1. Mechanics' Liens (Refs & Annos)

U.C.A. 1953 § 38-1-2

§ 38-1-2. Definitions

Currentness

As used in this chapter:

- (1) "Anticipated improvement" means the improvement:
  - (a) for which a preconstruction service is performed; and
  - (b) that is anticipated to follow the performing of the preconstruction service.
- (2) "Applicable county recorder" means the office of the recorder of each county in which any part of the property on which a claimant claims or intends to claim a lien under this chapter is located.
- (3) "Bona fide loan" means a loan to an owner or owner-builder by a lender in which the owner or owner-builder has no financial or beneficial interest greater than 5% of the voting shares or other ownership interest.
- (4) "Claimant" means a person entitled to claim a lien under this chapter.
- (5) "Compensation" means the payment of money for a service rendered or an expense incurred, whether based on:
  - (a) time and expense, lump sum, stipulated sum, percentage of cost, cost plus fixed or percentage fee, or commission; or
  - (b) a combination of the bases listed in Subsection (5)(a).
- (6) "Construction service":
  - (a) means to furnish labor, service, material, or equipment for the purpose and during the process of constructing, altering, or repairing an improvement; and
  - (b) includes the scheduling, estimating, staking, supervising, managing, materials testing, inspection, observation, and quality control or assurance involved in constructing, altering, or repairing an improvement.
- (7) "Construction service lien" means a lien under this chapter for construction service.
- (8) "General preconstruction contractor" means a claimant, other than an original contractor, who contracts with one or more subcontractors for the subcontractor or subcontractors to provide preconstruction service that the claimant is under contract to provide.
- (9) "Improvement" means:
  - (a) a building, infrastructure, utility, or other human-made structure or object constructed on or for and affixed to real property; or
  - (b) a repair, modification, or alteration of a building, infrastructure, utility, or object referred to in Subsection (9)(a).

(10) “Original contract”:

(a) means a contract between an owner of real property and an original contractor for preconstruction service or construction service; and

(b) does not include a contract between an owner-builder and another person.

(11) “Original contractor” means a person who contracts with an owner of real property to provide preconstruction service or construction service.

(12) “Owner-builder” means an owner of real property who:

(a) contracts with one or more other persons for preconstruction service or construction service for an improvement on the owner's real property; and

(b) obtains a building permit for the improvement.

(13) “Preconstruction service”:

(a) means to plan or design, or to assist in the planning or design of, an improvement or a proposed improvement:

(i) before construction of the improvement commences; and

(ii) for compensation separate from any compensation paid or to be paid for construction service for the improvement; and

(b) includes consulting, conducting a site investigation or assessment, programming, preconstruction cost or quantity estimating, preconstruction scheduling, performing a preconstruction construction feasibility review, procuring construction services, and preparing a study, report, rendering, model, boundary or topographic survey, plat, map, design, plan, drawing, specification, or contract document.

(14) “Preconstruction service lien” means a lien under this chapter for a preconstruction service.

(15) “Subcontractor” means a person who contracts to provide preconstruction service or construction service to a person other than the owner of the real property for which the preconstruction service or construction service is provided.

#### **Credits**

Laws 1999, c. 365, § 18, eff. May 3, 1999; Laws 2006, c. 297, § 1, eff. May 1, 2006; Laws 2011, c. 299, § 20, eff. Aug. 1, 2011; Laws 2011, c. 339, § 2, eff. May 10, 2011.

**Codifications** R.S. 1898, § 1383; C.L. 1907, § 1383; C.L. 1917, § 3733; R.S. 1933, § 52-1-2; C. 1943, § 52-1-2.

#### [Notes of Decisions \(9\)](#)

Current through 2011 Second Special Session.

End of Document

© 2011 Thomson Reuters. No claim to original U.S. Government Works.

West's Utah Code Annotated

Title 38. Liens

Chapter 1. Mechanics' Liens (Refs & Annos)

U.C.A. 1953 § 38-1-2.1

§ 38-1-2.1. Owner-builder original contract

**Currentness**

For purposes of this chapter, an original contract is considered to exist between an owner-builder as owner and the owner-builder as original contractor.

**Credits**

Laws 2011, c. 339, § 3, eff. May 10, 2011.

Current through 2011 Second Special Session.

End of Document

© 2011 Thomson Reuters. No claim to original U.S. Government Works.

West's Utah Code Annotated

Title 38. Liens

Chapter 1. Mechanics' Liens (Refs & Annos)

U.C.A. 1953 § 38-1-3

§ 38-1-3. Those entitled to lien--What may be attached

**Currentness**

(1) Subject to the provisions of this chapter, a person who performs preconstruction service or construction service on or for real property has a lien on the real property for the reasonable value of the preconstruction service or construction service, respectively, except as provided in [Section 38-11-107](#).

(2) A person may claim a preconstruction service lien and a separate construction service lien on the same real property.

(3)(a) A construction service lien may include an amount claimed for a preconstruction service.

(b) A preconstruction service lien may not include an amount claimed for construction service.

(4) A lien under this chapter attaches only to the interest that the owner or owner-builder has in the real property that is the subject of the lien.

**Credits**

Laws 1911, c. 27, § 12; Laws 1973, c. 73, § 1; Laws 1981, c. 170, § 1; Laws 1987, c. 170, § 1; [Laws 1994, c. 308, § 3](#); [Laws 2011, c. 339, § 4, eff. May 10, 2011](#).

**Codifications** R.S. 1898, §§ 1372, 1381, 1382, 1397; C.L. 1907, §§ 1372, 1381, 1397; C.L. 1917, §§ 286, 3722, 3731, 3732, 3747; R.S. 1933, § 52-1-3; C. 1943, § 52-1-3.

[Notes of Decisions \(134\)](#)

Current through 2011 Second Special Session.

End of Document

© 2011 Thomson Reuters. No claim to original U.S. Government Works.

West's Utah Code Annotated

Title 38. Liens

Chapter 1. Mechanics' Liens (Refs & Annos)

U.C.A. 1953 § 38-1-4

§ 38-1-4. Land covered by lien--Multiple lots occupied by improvement--What a lien attaches to

**Currentness**

- (1) A lien under this chapter extends to and covers as much of the land on which the improvement is made as necessary for the convenient use and occupation of the land.
- (2) If an improvement occupies two or more lots or other subdivisions of land, the lots or subdivisions are considered as one for the purposes of this chapter.
- (3) A lien under this chapter attaches to all franchises, privileges, appurtenances, machinery, and fixtures pertaining to or used in connection with the improvement.

**Credits**

Laws 1987, c. 170, § 2; [Laws 2011, c. 339, § 5, eff. May 10, 2011](#).

**Codifications** R.S. 1898, §§ 1377, 1379, 1381; C.L. 1907, §§ 1377, 1379, 1381; C.L. 1917, §§ 3727, 3729, 3731; R.S. 1933, § 52-1-4; C. 1943, § 52-1-4.

[Notes of Decisions \(15\)](#)

Current through 2011 Second Special Session.

End of Document

© 2011 Thomson Reuters. No claim to original U.S. Government Works.

West's Utah Code Annotated

Title 38. Liens

Chapter 1. Mechanics' Liens (Refs & Annos)

U.C.A. 1953 § 38-1-4.7

§ 38-1-4.7. Preconstruction service lien--Priority

**Currentness**

- (1) Except as otherwise provided in this chapter, a preconstruction service lien:
- (a) relates back to and takes effect as of the time a notice of retention under [Section 38-1-30.5](#) is filed; and
  - (b) has priority over:
    - (i) any lien, mortgage, or other encumbrance that attaches after the notice of retention is filed; and
    - (ii) any lien, mortgage, or other encumbrance of which the claimant had no notice and that was unrecorded at the time the notice of retention is filed.
- (2) A preconstruction service lien is subordinate to an interest securing a bona fide loan if and to the extent that the lien covers preconstruction service provided after the interest securing a bona fide loan is recorded.
- (3) Preconstruction service is considered complete for any project, project phase, or bid package as of the date that construction service for that project, project phase, or bid package, respectively, commences.

**Credits**

[Laws 2011, c. 339, § 6, eff. May 10, 2011.](#)

Current through 2011 Second Special Session.

End of Document

© 2011 Thomson Reuters. No claim to original U.S. Government Works.

West's Utah Code Annotated

Title 38. Liens

Chapter 1. Mechanics' Liens (Refs & Annos)

U.C.A. 1953 § 38-1-5

§ 38-1-5. Relation back and priority of liens

Currentness

(1) As used in this section:

(a) "First preliminary notice filing" means the filing of a preliminary notice that is:

- (i) the earliest preliminary notice filed on a private project, as defined in [Section 38-1-27](#);
- (ii) filed on or after August 1, 2011;
- (iii) not filed on a project that, according to the law in effect before August 1, 2011, commenced before August 1, 2011;
- (iv) not canceled under Subsection 38-1-32(6); and
- (v) not withdrawn under Subsection 38-1-32(8).

(b) "Project property" means the real property on which an improvement is being constructed or made.

(2) A construction service lien relates back to, and takes effect as of, the time of the first preliminary notice filing.

(3)(a) Subject to Subsection (3)(b), a construction service lien has priority over:

- (i) any lien, mortgage, or other encumbrance that attaches after the first preliminary notice filing; and
- (ii) any lien, mortgage, or other encumbrance of which the lien holder had no notice and which was unrecorded at the time of the first preliminary notice filing.

(b) A recorded mortgage or trust deed of a construction lender has priority over each construction service lien of a claimant who files a preliminary notice in accordance with [Section 38-1-32](#) before the mortgage or trust deed is recorded if the claimant:

- (i) accepts payment in full for construction service that the claimant furnishes to the project before the mortgage or trust deed is recorded; and
- (ii) withdraws the claimant's preliminary notice by filing a notice of withdrawal under Subsection 38-1-32(8).

**Credits**

[Laws 2011, c. 299, § 4, eff. Aug. 1, 2011](#); [Laws 2011, c. 339, § 7, eff. May 10, 2011](#).

**Codifications** R.S. 1898, §§ 1384, 1835; C.L. 1907, §§ 1384, 1835; C.L. 1917, §§ 3734, 3735; R.S. 1933, § 52-1-5; C. 1943, § 52-1-5.

[Notes of Decisions \(80\)](#)

Current through 2011 Second Special Session.

End of Document

© 2011 Thomson Reuters. No claim to original U.S. Government Works.

West's Utah Code Annotated

Title 38. Liens

Chapter 1. Mechanics' Liens (Refs & Annos)

U.C.A. 1953 § 38-1-6

§ 38-1-6. Priority over claims of creditors of original contractor or subcontractor

**Currentness**

No attachment, garnishment or levy under an execution upon any money due to an original contractor from the owner of any property subject to lien under this chapter shall be valid as against any lien of a subcontractor or materialman, and no such attachment, garnishment or levy upon any money due to a subcontractor or materialman from the contractor shall be valid as against any lien of a laborer employed by the day or piece.

**Credits**

**Codifications** R.S. 1898, § 1380; C.L. 1907, § 1380; C.L. 1917, § 3730; R.S. 1933, § 52-1-6; C. 1943, § 52-1-6.

Current through 2011 Second Special Session.

End of Document

© 2011 Thomson Reuters. No claim to original U.S. Government Works.

West's Utah Code Annotated

Title 38. Liens

Chapter 1. Mechanics' Liens (Refs & Annos)

U.C.A. 1953 § 38-1-6.7

§ 38-1-6.7. Notice of preconstruction service lien--Requirements

**Currentness**

(1) Within 90 days after completing a preconstruction service for which a claimant is not paid in full, the claimant shall submit for recording with the applicable county recorder a notice of preconstruction service lien.

(2) A claimant who fails to submit a notice of preconstruction service lien as provided in Subsection (1) may not claim a preconstruction service lien.

(3)(a) A notice of preconstruction service lien shall include:

- (i) the claimant's name, mailing address, and telephone number;
- (ii) a statement that the claimant claims a preconstruction service lien;
- (iii) the date the claimant's notice of retention was filed;
- (iv) the name of the person who employed the claimant;
- (v) a general description of the preconstruction service provided by the claimant;
- (vi) the date that the claimant last provided preconstruction service;
- (vii) the name, if known, of the reputed owner of the property on which the preconstruction service lien is claimed or, if not known, the name of the record owner of the property;
- (viii) a description of the property sufficient for identification;
- (ix) the principal amount, excluding interest, costs, and attorney fees, claimed by the claimant;
- (x) the claimant's signature or the signature of the claimant's authorized agent;
- (xi) an acknowledgment or certificate as required under Title 57, Chapter 3, Recording of Documents; and
- (xii) if the lien is against an owner-occupied residence, as defined in [Section 38-11-102](#), a statement meeting the requirements that the Division of Occupational and Professional Licensing has established in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, describing the steps an owner may take to require a claimant to remove the lien as provided in [Section 38-11-107](#).

(b)(i) A claimant who is a general preconstruction contractor may include in a notice of preconstruction service lien the name, address, and telephone number of each subcontractor who is under contract with the claimant to provide preconstruction service that the claimant is under contract to provide.

(ii) The inclusion of a subcontractor in a notice of preconstruction service lien filed by another claimant is not a substitute for the subcontractor's own submission of a notice of preconstruction service lien.

(4)(a) Within 30 days after a claimant's notice of preconstruction service lien is recorded, the claimant shall send by certified mail a copy of the notice to the reputed or record owner of the real property.

(b) If the record owner's address is not readily available to the claimant, the claimant may mail a copy of the notice to the owner's last-known address as it appears on the last completed assessment roll of the county in which the property is located.

(c) A claimant's failure to mail a copy of the notice as required in this Subsection (4) precludes the claimant from being awarded costs and attorney fees against the reputed or record owner in an action to enforce the lien.

(5) Nothing in this section may be construed to prohibit a claimant from recording a notice of preconstruction services lien before completing the preconstruction service the claimant contracted to provide.

#### **Credits**

[Laws 2011, c. 339, § 8, eff. May 10, 2011.](#)

Current through 2011 Second Special Session.

End of Document

© 2011 Thomson Reuters. No claim to original U.S. Government Works.

West's Utah Code Annotated

Title 38. Liens

Chapter 1. Mechanics' Liens (Refs & Annos)

U.C.A. 1953 § 38-1-7

§ 38-1-7. Notice of claim for construction service lien--Contents--Recording--Service on owner of property

Currentness

(1)(a)(i) Except as modified in [Section 38-1-27](#), a person claiming a construction service lien shall file for record with the applicable county recorder a written notice to hold and claim a lien no later than:

(A) 180 days after the day on which occurs final completion of the original contract if no notice of completion is filed under [Section 38-1-33](#); or

(B) 90 days after the day on which a notice of completion is filed under [Section 38-1-33](#) but not later than the time frame established in Subsection (1)(a)(i)(A).

(ii) For purposes of this Subsection (1), final completion of the original contract, and for purposes of [Section 38-1-33](#), final completion of the project, means:

(A) if as a result of work performed under the original contract a permanent certificate of occupancy is required for the work, the date of issuance of a permanent certificate of occupancy by the local government entity having jurisdiction over the construction project;

(B) if no certificate of occupancy is required by the local government entity having jurisdiction over the construction project, but as a result of the work performed under the original contract an inspection is required as per state-adopted building codes for the work, the date of the final inspection for the work by the local government entity having jurisdiction over the construction project;

(C) if with regard to work performed under the original contract no certificate of occupancy and no final inspection are required as per state-adopted building codes by the local government entity having jurisdiction over the construction project, the date on which there remains no substantial work to be completed to finish the work on the original contract; or

(D) if as a result of termination of the original contract prior to the completion of the work defined by the original contract, the compliance agency does not issue a certificate of occupancy or final inspection, the last date on which substantial work was performed under the original contract.

(b) Notwithstanding [Section 38-1-2](#), if a subcontractor performs substantial work after the applicable dates established by Subsections (1)(a)(ii)(A) and (B), that subcontractor's subcontract shall be considered an original contract for the sole purpose of determining:

(i) the subcontractor's time frame to file a notice of intent to hold and claim a lien under this Subsection (1); and

(ii) the original contractor's time frame to file a notice of intent to hold and claim a lien under this Subsection (1) for that subcontractor's work.

(c) For purposes of this chapter, the term "substantial work" does not include:

(i) repair work; or

(ii) warranty work.

(d) Notwithstanding Subsection (1)(a)(ii)(C), final completion of the original contract does not occur if work remains to be completed for which the owner is holding payment to ensure completion of that work.

(2)(a) The notice required by Subsection (1) shall contain a statement setting forth:

(i) the name of the reputed owner if known or, if not known, the name of the record owner;

(ii) the name of the person:

(A) by whom the claimant was employed; or

(B) to whom the claimant furnished the equipment or material;

(iii) the time when:

(A) the first and last labor or service was performed; or

(B) the first and last equipment or material was furnished;

(iv) a description of the property, sufficient for identification;

(v) the name, current address, and current phone number of the claimant;

(vi) the amount of the lien claim;

(vii) the signature of the claimant or the claimant's authorized agent;

(viii) an acknowledgment or certificate as required under Title 57, Chapter 3, Recording of Documents; and

(ix) if the lien is on an owner-occupied residence, as defined in [Section 38-11-102](#), a statement describing what steps an owner, as defined in [Section 38-11-102](#), may take to require a lien claimant to remove the lien in accordance with [Section 38-11-107](#).

(b) Substantial compliance with the requirements of this chapter is sufficient to hold and claim a lien.

(3)(a) Within 30 days after filing the notice of lien, the claimant shall deliver or mail by certified mail a copy of the notice of lien to:

(i) the reputed owner of the real property; or

(ii) the record owner of the real property.

(b) If the record owner's current address is not readily available to the claimant, the copy of the claim may be mailed to the last-known address of the record owner, using the names and addresses appearing on the last completed real property assessment rolls of the county where the affected property is located.

(c) Failure to deliver or mail the notice of lien to the reputed owner or record owner precludes the claimant from an award of costs and attorney fees against the reputed owner or record owner in an action to enforce the lien.

(4) The Division of Occupational and Professional Licensing shall make rules governing the form of the statement required under Subsection (2)(a)(ix).

**Credits**

Laws 1931, c. 6, § 1; Laws 1949, c. 63, § 1; Laws 1979, c. 143, § 1; Laws 1981, c. 169, § 1; Laws 1985, c. 197, § 1; Laws 1987, c. 170, § 3; Laws 1995, c. 172, § 1, eff. May 1, 1995; Laws 1998, c. 49, § 1, eff. July 1, 1998; Laws 1999, c. 223, § 1, eff. May 3, 1999; Laws 2004, c. 85, § 1, eff. May 3, 2004; Laws 2004, c. 250, § 3, eff. May 1, 2005; Laws 2005, c. 64, § 3, eff. May 2, 2005; Laws 2006, c. 205, § 1, eff. May 1, 2006; Laws 2006, c. 297, § 2, eff. May 1, 2006; Laws 2007, c. 332, § 1, eff. April 30, 2007; Laws 2009, c. 50, § 1, eff. May 12, 2009; Laws 2011, c. 339, § 9, eff. May 10, 2011.

[Notes of Decisions \(103\)](#)

Current through 2011 Second Special Session.

End of Document

© 2011 Thomson Reuters. No claim to original U.S. Government Works.

[West's Utah Code Annotated](#)

[Title 38. Liens](#)

[Chapter 1. Mechanics' Liens \(Refs & Annos\)](#)

U.C.A. 1953 § 38-1-8

§ 38-1-8. Liens on several separate properties in one claim

[Currentness](#)

Liens against two or more buildings or other improvements owned by the same person may be included in one claim; but in such case the person filing the claim must designate the amount claimed to be due to him on each of such buildings or other improvements.

**Credits**

Laws 1987, c. 170, § 4.

**Codifications** R.S. 1898, § 1397; C.L. 1907, § 1397; C.L. 1917, § 3737; R.S. 1933, § 52-1-8; C. 1943, § 52-1-8.

[Notes of Decisions \(12\)](#)

Current through 2011 Second Special Session.

End of Document

© 2011 Thomson Reuters. No claim to original U.S. Government Works.

West's Utah Code Annotated

Title 38. Liens

Chapter 1. Mechanics' Liens (Refs & Annos)

U.C.A. 1953 § 38-1-9

§ 38-1-9. Notice imparted by record

Currentness

(1) The recorder shall record each notice of preconstruction service lien under [Section 38-1-6.7](#) and notice to hold and claim a construction service lien under [Section 38-1-7](#) in an index maintained for that purpose.

(2) From the time a notice described in Subsection (1) is filed for record, all persons are considered to have notice of it.

**Credits**

Laws 1987, c. 50, § 5; [Laws 2011, c. 339, § 10, eff. May 10, 2011.](#)

**Codifications** R.S. 1898, § 1389; C.L. 1907, § 1389; C.L. 1917, § 3739; R.S. 1933, § 52-1-9; C. 1943, § 52-1-9.

[Notes of Decisions \(2\)](#)

Current through 2011 Second Special Session.

End of Document

© 2011 Thomson Reuters. No claim to original U.S. Government Works.

[West's Utah Code Annotated](#)

[Title 38. Liens](#)

[Chapter 1. Mechanics' Liens \(Refs & Annos\)](#)

U.C.A. 1953 § 38-1-10

§ 38-1-10. Laborers' and materialmen's lien on equal footing regardless of time of filing

[Currentness](#)

The liens for work and labor done or material furnished as provided in this chapter shall be upon an equal footing, regardless of date of filing the notice and claim of lien and regardless of the time of performing such work and labor or furnishing such material.

**Credits**

**Codifications** R.S. 1933, § 52-1-10; C. 1943, § 52-1-10.

[Notes of Decisions \(14\)](#)

Current through 2011 Second Special Session.

End of Document

© 2011 Thomson Reuters. No claim to original U.S. Government Works.

West's Utah Code Annotated

Title 38. Liens

Chapter 1. Mechanics' Liens (Refs & Annos)

U.C.A. 1953 § 38-1-11

§ 38-1-11. Enforcement--Time for--Lis pendens--Action for  
debt not affected--Instructions and form affidavit and motion

Currentness

(1) As used in this section:

(a) "Owner" is as defined in [Section 38-11-102](#).

(b) "Residence" is as defined in [Section 38-11-102](#).

(2) A claimant shall file an action to enforce the lien filed under this chapter:

(a) except as provided in Subsection (2)(b), within 180 days after the day on which the claimant files:

(i) a notice of preconstruction service lien under [Section 38-1-6.7](#), for a preconstruction service lien; or

(ii) a notice of claim under [Section 38-1-7](#), for a construction service lien; or

(b) if an owner files for protection under the bankruptcy laws of the United States before the expiration of the 180-day period under Subsection (2)(a), within 90 days after the automatic stay under the bankruptcy proceeding is lifted or expires.

(3)(a) Within the time period provided for filing in Subsection (2) the claimant shall file for record with the county recorder of each county in which the lien is recorded a notice of the pendency of the action, in the manner provided in actions affecting the title or right to possession of real property, or the lien shall be void, except as to persons who have been made parties to the action and persons having actual knowledge of the commencement of the action.

(b) The burden of proof is upon the claimant and those claiming under the claimant to show actual knowledge under Subsection (3)(a).

(4)(a) A lien filed under this chapter is automatically and immediately void if an action to enforce the lien is not filed within the time required by this section.

(b) Notwithstanding [Section 78B-2-111](#), a court has no subject matter jurisdiction to adjudicate a lien that becomes void under Subsection (4)(a).

(5) This section may not be interpreted to impair or affect the right of any person to whom a debt may be due for any work done or materials furnished to maintain a personal action to recover the debt.

(6)(a) If a claimant files an action to enforce a lien filed under this chapter involving a residence, the lien claimant shall include with the service of the complaint on the owner of the residence:

(i) instructions to the owner of the residence relating to the owner's rights under Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act; and

(ii) a form to enable the owner of the residence to specify the grounds upon which the owner may exercise available rights under Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act.

(b) The instructions and form required by Subsection (6)(a) shall meet the requirements established by rule by the Division of Occupational and Professional Licensing in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(c) If a claimant fails to provide to the owner of the residence the instructions and form required by Subsection (6)(a), the claimant is barred from maintaining or enforcing the lien upon the residence.

(d) Judicial determination of the rights and liabilities of the owner of the residence under this chapter and Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act, and Title 14, Chapter 2, Private Contracts, shall be stayed until after the owner is given a reasonable period of time to establish compliance with Subsections 38-11-204(4)(a) and (4)(b) through an informal proceeding, as set forth in Title 63G, Chapter 4, Administrative Procedures Act, commenced within 30 days of the owner being served summons in the foreclosure action, at the Division of Occupational and Professional Licensing and obtain a certificate of compliance or denial of certificate of compliance, as defined in [Section 38-11-102](#).

(e) An owner applying for a certificate of compliance under Subsection (6)(d) shall send by certified mail to all lien claimants:

(i) a copy of the application for a certificate of compliance; and

(ii) all materials filed in connection with the application.

(f) The Division of Occupational and Professional Licensing shall notify all claimants listed in an owner's application for a certificate of compliance under Subsection (6)(d) of the issuance or denial of a certificate of compliance.

(7) The written notice requirement applies to liens filed on or after July 1, 2004.

#### **Credits**

Laws 1931, c. 5, § 1; Laws 1994, c. 308, § 5; Laws 1995, c. 172, § 2, eff. May 1, 1995; Laws 2001, c. 198, § 1, eff. April 30, 2001; Laws 2004, c. 42, § 1, eff. May 3, 2004; Laws 2004, c. 85, § 2, eff. May 3, 2004; Laws 2004, c. 188, § 1, eff. May 3, 2004; Laws 2005, c. 64, § 4, eff. May 2, 2005; Laws 2006, c. 297, § 3, eff. May 1, 2006; Laws 2007, c. 332, § 2, eff. April 30, 2007; Laws 2008, c. 3, § 82, eff. Feb. 7, 2008; Laws 2008, c. 382, § 502, eff. May 5, 2008; Laws 2010, c. 31, § 1, eff. May 11, 2010; Laws 2011, c. 339, § 11, eff. May 10, 2011.

**Codifications** R.S. 1898, §§ 1390, 1395; C.L. 1907, §§ 1390, 1395; C.L. 1917, §§ 3740, 3745; R.S. 1933, § 52-1-11; C. 1943, § 52-1-11.

#### [Notes of Decisions \(74\)](#)

Current through 2011 Second Special Session.

End of Document

© 2011 Thomson Reuters. No claim to original U.S. Government Works.

West's Utah Code Annotated

Title 38. Liens

Chapter 1. Mechanics' Liens (Refs & Annos)

U.C.A. 1953 § 38-1-12

§ 38-1-12. Repealed by Laws 1981, c. 173, § 1

**Currentness**

Current through 2011 Second Special Session.

End of Document

© 2011 Thomson Reuters. No claim to original U.S. Government Works.

[West's Utah Code Annotated](#)

[Title 38. Liens](#)

[Chapter 1. Mechanics' Liens \(Refs & Annos\)](#)

U.C.A. 1953 § 38-1-13

§ 38-1-13. Parties--Joinder--Intervention

[Currentness](#)

Lienors not contesting the claims of each other may join as plaintiffs, and when separate actions are commenced the court may consolidate them and make all persons having claims filed parties to the action. Those claiming liens who fail or refuse to become parties plaintiff may be made parties defendant, and any one not made a party may at any time before the final hearing intervene.

**Credits**

**Codifications** R.S. 1933, § 52-1-13; C. 1943, § 52-1-13.

[Notes of Decisions \(7\)](#)

Current through 2011 Second Special Session.

End of Document

© 2011 Thomson Reuters. No claim to original U.S. Government Works.

West's Utah Code Annotated

Title 38. Liens

Chapter 1. Mechanics' Liens (Refs & Annos)

U.C.A. 1953 § 38-1-14

§ 38-1-14. Decree--Order of satisfaction

**Currentness**

In every case in which liens are claimed against the same property the decree shall provide for their satisfaction in the following order:

- (1) Subcontractors who are laborers or mechanics working by the day or piece, but without furnishing materials therefor;
- (2) All other subcontractors and all materialmen;
- (3) The original contractors.

**Credits**

**Codifications** R.S. 1898, § 1391; C.L. 1907, § 1391; C.L. 1917, § 3741; R.S. 1933, § 52-1-14; C. 1943, § 52-1-14.

Current through 2011 Second Special Session.

End of Document

© 2011 Thomson Reuters. No claim to original U.S. Government Works.

West's Utah Code Annotated

Title 38. Liens

Chapter 1. Mechanics' Liens (Refs & Annos)

U.C.A. 1953 § 38-1-15

§ 38-1-15. Sale--Redemption--Disposition of proceeds

**Currentness**

The court shall cause the property to be sold in satisfaction of the liens and costs as in the case of foreclosure of mortgages, subject to the same right of redemption. If the proceeds of sale after the payment of costs shall not be sufficient to satisfy the whole amount of liens included in the decree, then such proceeds shall be paid in the order above designated, and pro rata to the persons claiming in each class where the sum realized is insufficient to pay the persons of such class in full. Any excess shall be paid to the owner.

**Credits**

**Codifications** R.S. 1898, § 1392; C.L. 1907, § 1392; C.L. 1917, § 3742; R.S. 1933, § 52-1-15; C. 1943, § 52-1-15.

[Notes of Decisions \(8\)](#)

Current through 2011 Second Special Session.

End of Document

© 2011 Thomson Reuters. No claim to original U.S. Government Works.

West's Utah Code Annotated

Title 38. Liens

Chapter 1. Mechanics' Liens (Refs & Annos)

U.C.A. 1953 § 38-1-16

§ 38-1-16. Deficiency judgment

**Currentness**

Every person whose claim is not satisfied as herein provided may have judgment docketed for the balance unpaid, and execution therefor against the party personally liable.

**Credits**

**Codifications** R.S. 1898, § 1393; C.L. 1907, § 1393; C.L. 1917, § 3743; R.S. 1933, § 52-1-16; C. 1943, § 52-1-16.

Notes of Decisions (15)

Current through 2011 Second Special Session.

End of Document

© 2011 Thomson Reuters. No claim to original U.S. Government Works.

[West's Utah Code Annotated](#)

[Title 38. Liens](#)

[Chapter 1. Mechanics' Liens \(Refs & Annos\)](#)

U.C.A. 1953 § 38-1-17

§ 38-1-17. Costs--Apportionment--Costs and attorneys' fee to subcontractor

**Currentness**

Except as provided in [Section 38-11-107](#), as between the owner and the contractor the court shall apportion the costs according to the right of the case, but in all cases each subcontractor exhibiting a lien shall have his costs awarded to him, including the costs of preparing and recording the notice of claim of lien and such reasonable attorneys' fee as may be incurred in preparing and recording said notice of claim of lien.

**Credits**

Laws 1961, c. 76, § 1; [Laws 1995, c. 172, § 3, eff. May 1, 1995](#); [Laws 1996, c. 79, § 56, eff. April 29, 1996](#).

**Codifications** R.S. 1898, § 1394; C.L. 1907, § 1394; C.L. 1917, § 3744; R.S. 1933, § 52-1-17; C. 1943, § 52-1-17.

[Notes of Decisions \(2\)](#)

Current through 2011 Second Special Session.

End of Document

© 2011 Thomson Reuters. No claim to original U.S. Government Works.

West's Utah Code Annotated

Title 38. Liens

Chapter 1. Mechanics' Liens (Refs & Annos)

U.C.A. 1953 § 38-1-18

§ 38-1-18. Attorneys' fees--Offer of judgment

**Currentness**

(1) Except as provided in [Section 38-11-107](#) and in Subsection (2), in any action brought to enforce any lien under this chapter the successful party shall be entitled to recover a reasonable attorneys' fee, to be fixed by the court, which shall be taxed as costs in the action.

(2) A person who files a wrongful lien as provided in [Section 38-1-25](#) is not entitled to recover attorneys' fees under Subsection (1).

(3) A party against whom any action is brought to enforce a lien under this chapter may make an offer of judgment pursuant to [Rule 68 of the Utah Rules of Civil Procedure](#). If the offer is not accepted and the judgment finally obtained by the offeree is not more favorable than the offer, the offeree shall pay the costs and attorneys' fees incurred by the offeror after the offer was made.

**Credits**

Laws 1899, c. 58, § 1; Laws 1961, c. 76, § 2; [Laws 1995, c. 172, § 4, eff. May 1, 1995](#); [Laws 2001, c. 257, § 1, eff. April 30, 2001](#).

**Codifications** R.S. 1898, § 1400; C.L. 1907, § 1400; C.L. 1914, § 3750; R.S. 1933, § 52-1-18; C. 1943, § 52-1-18.

[Notes of Decisions \(77\)](#)

Current through 2011 Second Special Session.

End of Document

© 2011 Thomson Reuters. No claim to original U.S. Government Works.

West's Utah Code Annotated

Title 38. Liens

Chapter 1. Mechanics' Liens (Refs & Annos)

U.C.A. 1953 § 38-1-19

§ 38-1-19. Payment by owner to contractor--Subcontractor's lien not affected

**Currentness**

(1) If a subcontractor has actually begun to perform preconstruction service or furnish construction service for which the subcontractor is entitled to a lien, a payment to the original contractor may not impair or defeat the lien.

(2) An alteration of a contract may not affect a lien acquired under this chapter.

**Credits**

Laws 2011, c. 299, § 20, eff. Aug. 1, 2011; Laws 2011, c. 339, § 12, eff. May 10, 2011.

**Codifications** R.S. 1898, §§ 1376, 1378; C.L. 1907, §§ 1376, 1378; C.L. 1917, §§ 3726, 3728; R.S. 1933, § 52-1-19; C. 1943, § 52-1-19.

Notes of Decisions (7)

Current through 2011 Second Special Session.

End of Document

© 2011 Thomson Reuters. No claim to original U.S. Government Works.

[West's Utah Code Annotated](#)

[Title 38. Liens](#)

[Chapter 1. Mechanics' Liens \(Refs & Annos\)](#)

U.C.A. 1953 § 38-1-20

§ 38-1-20. When contract price not payable in cash--Notice

[Currentness](#)

As to all liens, except that of the contractor, the whole contract price shall be payable in money, except as herein provided, and shall not be diminished by any prior or subsequent indebtedness, offset or counterclaim in favor of the owner and against the contractor, except when the owner has contracted to pay otherwise than in cash, in which case the owner shall post in a conspicuous place on the premises a statement of the terms and conditions of the contract before materials are furnished or labor is performed, which notice must be kept posted, and when so posted shall give notice to all parties interested of the terms and conditions of the contract. Any person willfully tearing down or defacing such notice is guilty of a misdemeanor.

**Credits**

**Codifications** R.S. 1898, § 1375; C.L. 1907, § 1375; C.L. 1917, § 3725; R.S. 1933, § 52-1-20; C. 1943, § 52-1-20.

[Notes of Decisions \(1\)](#)

Current through 2011 Second Special Session.

End of Document

© 2011 Thomson Reuters. No claim to original U.S. Government Works.

[West's Utah Code Annotated](#)

[Title 38. Liens](#)

[Chapter 1. Mechanics' Liens \(Refs & Annos\)](#)

U.C.A. 1953 § 38-1-21

§ 38-1-21. Advance payments--Effect on subcontractor's lien

[Currentness](#)

No payment made prior to the time when the same is due under the terms and conditions of the contract shall be valid for the purpose of defeating, diminishing or discharging any lien in favor of any person except the contractor; but as to any such lien such payment shall be deemed as if not made, notwithstanding that the contractor to whom it was paid may thereafter abandon his contract or be or become indebted to the owner for damages for nonperformance of his contract or otherwise.

**Credits**

**Codifications** R.S. 1898, § 1374; C.L. 1907, § 1374; C.L. 1917, § 3724; R.S. 1933, § 52-1-21; C. 1943, § 52-1-21.

[Notes of Decisions \(4\)](#)

Current through 2011 Second Special Session.

End of Document

© 2011 Thomson Reuters. No claim to original U.S. Government Works.

West's Utah Code Annotated

Title 38. Liens

Chapter 1. Mechanics' Liens (Refs & Annos)

U.C.A. 1953 § 38-1-22

§ 38-1-22. Advance payments under terms of contract--Effect on liens

#### Currentness

The subcontractors' liens provided for in this chapter shall extend to the full contract price, but if at the time of the commencement to do work or furnish materials the owner has paid upon the contract, in accordance with the terms thereof, any portion of the contract price, either in money or property, the lien of the contractor shall extend only to such unpaid balance, and the lien of any subcontractor who has notice of such payment shall be limited to the unpaid balance of the contract price. No part of the contract price shall by the terms of any contract be made payable, nor shall the same or any part thereof be paid in advance of the commencement of the work, for the purpose of evading or defeating the provisions of this chapter.

#### Credits

**Codifications** R.S. 1898, § 1373; C.L. 1907, § 1373; C.L. 1917, § 3723; R.S. 1933, § 52-1-22; C. 1943, § 52-1-22.

Notes of Decisions (10)

Current through 2011 Second Special Session.

End of Document

© 2011 Thomson Reuters. No claim to original U.S. Government Works.

West's Utah Code Annotated

Title 38. Liens

Chapter 1. Mechanics' Liens (Refs & Annos)

U.C.A. 1953 § 38-1-23

§ 38-1-23. Creditors cannot reach materials furnished, except for purchase price

**Currentness**

Whenever materials have been furnished for use in the construction, alteration or repair of any building, work or other improvement mentioned in [Section 38-1-3](#) such materials shall not be subject to attachment, execution or other legal process to enforce any debt due by the purchaser of such materials, other than a debt due for the purchase money thereof, so long as in good faith the same are about to be applied to the construction, alteration or repair of such building or improvement.

**Credits**

**Codifications** R.S. 1898, § 1395; C.L. 1907, § 1395; C.L. 1917, § 3745; R.S. 1933, § 52-1-23; C. 1943, § 52-1-23.

Current through 2011 Second Special Session.

End of Document

© 2011 Thomson Reuters. No claim to original U.S. Government Works.

West's Utah Code Annotated

Title 38. Liens

Chapter 1. Mechanics' Liens (Refs & Annos)

U.C.A. 1953 § 38-1-24

§ 38-1-24. Cancellation of record--Penalty

**Currentness**

The claimant of any lien filed as provided herein, on the payment of the amount thereof together with the costs incurred and the fees for cancellation, shall at the request of any person interested in the property charged therewith cause said lien to be canceled of record within 10 days from the request, and upon failure to so cancel his lien within the time aforesaid shall forfeit and pay to the person making the request the sum of \$100 per day or actual damages, whichever is greater, until the same shall be canceled, to be recovered in the same manner as other debts.

**Credits**

Laws 2006, c. 297, § 4, eff. May 1, 2006.

Notes of Decisions (12)

Current through 2011 Second Special Session.

End of Document

© 2011 Thomson Reuters. No claim to original U.S. Government Works.

West's Utah Code Annotated

Title 38. Liens

Chapter 1. Mechanics' Liens (Refs & Annos)

U.C.A. 1953 § 38-1-25

§ 38-1-25. Abuse of lien right--Penalty

**Currentness**

(1) Any person entitled to record or file a lien under [Section 38-1-3](#) is guilty of a class B misdemeanor who intentionally causes a claim of lien against any property containing a greater demand than the sum due to be recorded or filed:

- (a) with the intent to cloud the title;
- (b) to exact from the owner or person liable by means of the excessive claim of lien more than is due; or
- (c) to procure any unjustified advantage or benefit.

(2) In addition to any criminal penalties under Subsection (1), a person who violates Subsection (1) is liable to the owner of the property or an original contractor or subcontractor who is affected by the lien for the greater of:

- (a) twice the amount by which the abusive lien exceeds the amount actually due; or
- (b) the actual damages incurred by the owner of the property.

**Credits**

[Laws 1997, c. 125, § 1, eff. May 5, 1997](#); [Laws 2001, c. 257, § 2, eff. April 30, 2001](#); [Laws 2007, c. 332, § 3, eff. April 30, 2007](#).

**Codifications** R.S. 1898, § 1399; C.L. 1907, § 1399; C.L. 1917, § 3749; R.S. 1933, § 52-1-25; C. 1943, § 52-1-25.

[Notes of Decisions \(2\)](#)

Current through 2011 Second Special Session.

End of Document

© 2011 Thomson Reuters. No claim to original U.S. Government Works.

West's Utah Code Annotated

Title 38. Liens

Chapter 1. Mechanics' Liens (Refs & Annos)

U.C.A. 1953 § 38-1-26

§ 38-1-26. Assignment of lien

**Currentness**

All liens under this chapter shall be assignable as other choses in action, and the assignee may commence and prosecute actions thereon in his own name in the manner herein provided.

**Credits**

**Codifications** R.S. 1898, § 1396; C.L. 1907, § 1396; C.L. 1917, § 3746; R.S. 1933, § 52-1-26; C. 1943, § 52-1-26.

**Notes of Decisions (1)**

Current through 2011 Second Special Session.

End of Document

© 2011 Thomson Reuters. No claim to original U.S. Government Works.

West's Utah Code Annotated

Title 38. Liens

Chapter 1. Mechanics' Liens (Refs & Annos)

U.C.A. 1953 § 38-1-27

§ 38-1-27. State Construction Registry

Currentness

- (1) As used in this section, [Sections 38-1-30](#) through [38-1-36](#), and [Section 38-1-40](#):
- (a) “Alternate filing” means a legible and complete filing made in a manner established by the division under Subsection (2)(e) other than an electronic filing.
  - (b) “Cancel” means to indicate that a filing is no longer given effect.
  - (c) “Construction lender” means a lender who provides construction financing for a private project.
  - (d) “Construction project” or “project” means all labor, service, equipment, and materials provided under an original contract.
  - (e) “Database” means the State Construction Registry created in this section.
  - (f)(i) “Designated agent” means the third party the division contracts with to create and maintain the State Construction Registry.
    - (ii) The designated agent is not an agency, instrumentality, or a political subdivision of the state.
  - (g) “Division” means the Division of Occupational and Professional Licensing.
  - (h) “Entry number” means the reference number that:
    - (i) the designated agent assigns to each notice or other document filed with the database; and
    - (ii) is unique for each notice or other document.
  - (i) “Government project” means a construction project undertaken by or for:
    - (i) the state, including a department, division, or other agency of the state; or
    - (ii) a county, city, town, school district, local district, special service district, community development and renewal agency, or other political subdivision of the state.
  - (j) “Government project-identifying information” means:
    - (i) the lot or parcel number of each lot included in the project property that has a lot or parcel number; and
    - (ii) the unique project number assigned by the designated agent.
  - (k) “Interested person” means a person who may be affected by a construction project.
  - (l) “Private project” means a construction project that is not a government project.

(m) "Program" means the State Construction Registry Program created in this section.

(n) "Project property" means the real property on which a construction project occurs or will occur.

(2) Subject to receiving adequate funding through a legislative appropriation and contracting with an approved third party vendor who meets the requirements of Sections 38-1-30 through 38-1-36, there is created the State Construction Registry Program that shall:

(a)(i) assist in protecting public health, safety, and welfare; and

(ii) promote a fair working environment;

(b) be overseen by the division with the assistance of the designated agent;

(c) provide a central repository for all notices filed with the database under Section 38-1-30.5, 38-1-30.7, 38-1-31.5, 38-1-32, 38-1-32.5, 38-1-32.7, 38-1-33, or 38-1-40;

(d) make accessible, by way of the program Internet website:

(i) the filing and review of notices described in Subsection (2)(c); and

(ii) the transmitting of building permit information under Subsection 38-1-31(2)(a) and the reviewing of that information;

(e) accommodate:

(i) electronic filing of the notices described in Subsection (2)(c) and electronic transmitting of building permit information described in Subsection (2)(d)(ii); and

(ii) alternate filing of the notices described in Subsection (2)(d) by U.S. mail, telefax, or any other alternate method as provided by rule made by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(f)(i) provide electronic notification for up to three email addresses for each interested person or company who requests notice from the construction notice registry; and

(ii) provide alternate means of notification for a person who makes an alternate filing, including U.S. mail, telefax, or any other method as prescribed by rule made by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(g) provide hard-copy printing of electronic receipts for an individual filing evidencing the date and time of the individual filing and the content of the individual filing.

(3)(a) The designated agent shall provide notice of all other filings for a project to any person who files a notice of commencement, preliminary notice, or notice of completion for that project, unless the person:

(i) requests that the person not receive notice of other filings; or

(ii) does not provide the designated agent with the person's contact information in a manner that adequately informs the designated agent.

(b) An interested person may request notice of filings related to a project.

(c) The database shall be indexed by:

(i) the name of the property owner;

- (ii) the name of the original contractor;
- (iii) subdivision, development, or other project name, if any;
- (iv) lot or parcel number;
- (v) the address of the project property;
- (vi) entry number;
- (vii) the name of the county in which the project property is located;
- (viii) for private projects:
  - (A) the tax parcel identification number of each parcel included in the project property; and
  - (B) the building permit number;
- (ix) for government projects, the government project-identifying information; and
- (x) any other identifier that the division considers reasonably appropriate in collaboration with the designated agent.

(4)(a) In accordance with the process required by [Section 63J-1-504](#), the division shall establish the fees for:

- (i) notices described in Subsection (2)(c);
- (ii) a request for notice;
- (iii) providing a required notice by an alternate filing;
- (iv) a duplicate receipt of a filing; and
- (v) account setup for a person who wishes to be billed periodically for filings with the database.

(b) The fees allowed under Subsection (4)(a) may not exceed the amount reasonably necessary to create and maintain the database.

(c) The fees established by the division may vary by method of filing if one form of filing is more costly to process than another form of filing.

(d) The division may provide by contract that the designated agent may retain all fees collected by the designated agent except that the designated agent shall remit to the division the cost of the division's oversight under Subsection (2)(b).

(5)(a) The database is classified as a public record under Title 63G, Chapter 2, Government Records Access and Management Act, unless otherwise classified by the division.

(b) A request for information submitted to the designated agent is not subject to Title 63G, Chapter 2, Government Records Access and Management Act.

(c) Information contained in a public record contained in the database shall be requested from the designated agent.

(d) The designated agent may charge a commercially reasonable fee allowed by the designated agent's contract with the division for providing information under Subsection (5)(c).

- (e) Notwithstanding Title 63G, Chapter 2, Government Records Access and Management Act, if information is available in a public record contained in the database, a person may not request the information from the division.
- (f)(i) A person may request information that is not a public record contained in the database from the division in accordance with Title 63G, Chapter 2, Government Records Access and Management Act.
- (ii) The division shall inform the designated agent of how to direct inquiries made to the designated agent for information that is not a public record contained in the database.
- (6) The following are not an adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act:
- (a) the filing of a notice permitted by this chapter;
- (b) the rejection of a filing permitted by this chapter; or
- (c) other action by the designated agent in connection with a filing of any notice permitted by this chapter.
- (7) The division and the designated agent need not determine the timeliness of any notice before filing the notice in the database.
- (8)(a) A person who is delinquent on the payment of a fee established under Subsection (4) may not file a notice with the database.
- (b) A determination that a person is delinquent on the payment of a fee for filing established under Subsection (4) shall be made in accordance with Title 63G, Chapter 4, Administrative Procedures Act.
- (c) Any order issued in a proceeding described in Subsection (8)(b) may prescribe the method of that person's payment of fees for filing notices with the database after issuance of the order.
- (9) If a notice is filed by a third party on behalf of another, the notice is considered to be filed by the person on whose behalf the notice is filed.
- (10) A person filing a notice of commencement, preliminary notice, or notice of completion is responsible for verifying the accuracy of information entered into the database, whether the person files electronically or by alternate or third party filing.
- (11) Each notice or other document submitted for inclusion in the database and for which this chapter does not specify information required to be included in the notice or other document shall contain:
- (a) the name of the county in which the project property to which the notice or other document applies is located;
- (b) for a private project:
- (i) the tax parcel identification number of each parcel included in the project property; or
- (ii) the number of the building permit for the construction project on the project property; and
- (c) for a government project, the government project-identifying information.

#### **Credits**

Laws 2004, c. 85, § 3, eff. May 3, 2004; Laws 2004, c. 250, § 4, eff. May 1, 2005; Laws 2005, c. 64, § 5, eff. May 2, 2005; Laws 2006, c. 297, § 5, eff. May 1, 2006; Laws 2007, c. 306, § 26, eff. April 30, 2007; Laws 2008, c. 382, § 503, eff. May 5, 2008; Laws 2009, c. 183, § 75, eff. May 12, 2009; Laws 2009, c. 239, § 1, eff. Oct. 1, 2009; Laws 2011, c. 299, § 5, eff. Aug. 1, 2011; Laws 2011, c. 339, § 13, eff. May 10, 2011.

[Notes of Decisions \(1\)](#)

Current through 2011 Second Special Session.

End of Document

© 2011 Thomson Reuters. No claim to original U.S. Government Works.

West's Utah Code Annotated

Title 38. Liens

Chapter 1. Mechanics' Liens (Refs & Annos)

U.C.A. 1953 § 38-1-27.2

§ 38-1-27.2. Notice to subcontractor

**Currentness**

(1) As used in this section, “project” means a project or improvement for which a preliminary notice has been filed pursuant to [Section 38-1-32](#).

(2) If a subcontractor requests a notice described in this section, an original contractor shall provide notice:

- (a) to the subcontractor who requests the notice described in this section;
- (b) within 14 calendar days after the day on which the subcontractor requests the notice described in this section; and
- (c) informing the subcontractor of each preliminary notice the original contractor has received for the project.

**Credits**

[Laws 2004, c. 148, § 1, eff. May 3, 2004](#); [Laws 2005, c. 71, § 23, eff. May 2, 2005](#).

Current through 2011 Second Special Session.

End of Document

© 2011 Thomson Reuters. No claim to original U.S. Government Works.

West's Utah Code Annotated

Title 38. Liens

Chapter 1. Mechanics' Liens (Refs & Annos)

U.C.A. 1953 § 38-1-28

§ 38-1-28. Notice of release of lien and substitution of alternate security

**Currentness**

(1) The owner of any interest in real property that is subject to a mechanics' lien recorded under this chapter, or any original contractor or subcontractor affected by the lien, who disputes the correctness or validity of the lien may record a notice of release of lien and substitution of alternate security:

(a) that meets the requirements of Subsection (2);

(b) in the office of the county recorder where the lien was recorded; and

(c) at any time before the expiration of 90 days after the day on which the person filing a notice of release of lien and substitution of alternate security is served with a summons and lien foreclosure complaint.

(2) A notice of release of lien and substitution of alternate security recorded under Subsection (1) shall:

(a) meet the requirements for the recording of documents in Title 57, Chapter 3, Recording of Documents;

(b) reference the lien sought to be released, including an entry number, book number, and page number; and

(c) have as an attachment a surety bond or evidence of a cash deposit that:

(i)(A) if a surety bond, is executed by a surety company that is treasury listed, A-rated by AM Best Company, and authorized to issue surety bonds in this state; or

(B) if evidence of a cash deposit, meets the requirements established by rule by the Department of Commerce in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(ii) is in an amount equal to:

(A) 150% of the amount claimed by the lien claimant on a notice of lien or determined under Subsection (7), if the lien claim is for \$25,000 or more;

(B) 175% of the amount claimed by the lien claimant on a notice of lien or determined under Subsection (7), if the lien claim is for at least \$15,000 but less than \$25,000; or

(C) 200% of the amount claimed by the lien claimant on a notice of lien or determined under Subsection (7), if the lien claim is for less than \$15,000;

(iii) is made payable to the lien claimant;

(iv) is conditioned for the payment of:

(A) the judgment that would have been rendered, or has been rendered against the property in the action to enforce the lien; and

(B) any costs and attorneys' fees awarded by the court; and

(v) has as principal:

(A) the owner of the interest in the real property; or

(B) the original contractor or subcontractor affected by the lien.

(3)(a) Upon the recording of the notice of release of lien and substitution of alternate security under Subsection (1), the real property described in the notice shall be released from the mechanics' lien to which the notice applies.

(b) A recorded notice of release of lien and substitution of alternate security is effective as to any amendment to the lien being released if the bond amount remains enough to satisfy the requirements of Subsection (2)(c)(ii).

(4)(a) Upon the recording of a notice of release of lien and substitution of alternate security under Subsection (1), the person recording the notice shall serve a copy of the notice, together with any attachments, within 30 days upon the lien claimant.

(b) If a suit is pending to foreclose the lien at the time the notice is served upon the lien claimant under Subsection (4)(a), the lien claimant shall, within 90 days from the receipt of the notice, institute proceedings to add the alternate security as a party to the lien foreclosure suit.

(5) The alternate security attached to a notice of release of lien shall be discharged and released upon:

(a) the failure of the lien claimant to commence a suit against the alternate security within the same time as an action to enforce the lien under [Section 38-1-11](#);

(b) the failure of the lien claimant to institute proceedings to add the alternate security as a party to a lien foreclosure suit within the time required by Subsection (4)(b);

(c) the dismissal with prejudice of the lien foreclosure suit or suit against the alternate security as to the lien claimant; or

(d) the entry of judgment against the lien claimant in:

(i) a lien foreclosure suit; or

(ii) suit against the alternate security.

(6) If a copy of the notice of release of lien and substitution of alternate security is not served upon the lien claimant as provided in Subsection (4)(a), the lien claimant shall have six months after the discovery of the notice to commence an action against the alternate security, except that no action may be commenced against the alternate security after two years from the date the notice was recorded.

(7)(a) The owner of any interest in real property that is subject to a mechanics' lien recorded under this chapter or an original contractor or subcontractor affected by a mechanics' lien recorded under this chapter who disputes the amount claimed in a notice of lien may petition the district court in the county in which the notice of lien is recorded for a summary determination of the correct amount of a lien claim for the sole purpose of providing alternate security.

(b) A petition under this Subsection (7) shall:

(i) state with specificity the factual and legal bases for disputing the amount of the lien claim; and

- (ii) be supported by a sworn affidavit and any other evidence supporting the petition.
- (c) A petitioner under Subsection (7)(a) shall, under Utah Rules of [Civil Procedure, Rule 4](#), serve on the lien claimant:
  - (i) a copy of the petition; and
  - (ii) a notice of hearing if a hearing is scheduled.
- (d) If a court finds a petition under Subsection (7)(a) insufficient, the court may dismiss the petition without a hearing.
- (e) If a court finds a petition under Subsection (7)(a) sufficient, the court shall schedule a hearing within 10 days to determine the correct amount of the lien claim for the sole purpose of providing alternate security.
- (f) A lien claimant may:
  - (i) attend a hearing held under this Subsection (7); and
  - (ii) contest the petition.
- (g) A determination under this section is limited to a determination of the amount of the lien claim for the sole purpose of providing alternate security and does not conclusively establish:
  - (i) the amount to which the lien claimant is entitled;
  - (ii) the validity of the lien claim; or
  - (iii) any person's right to any other legal remedy.
- (h) If a court, in a proceeding under this Subsection (7), determines that the amount claimed in a notice of claim is excessive, the court shall set the amount of the lien claim for the sole purpose of providing alternate security.
- (i) In an order under Subsection (7)(h), the court shall include a legal description of the property.
- (j) A petitioner under this Subsection (7) may record a certified copy of any order issued under this Subsection (7) in the county in which the lien is recorded.
- (k) Attorneys' fees may not be awarded for a proceeding under this Subsection (7), but shall be considered in any award of attorneys' fees under any other provision of this chapter.

**Credits**

[Laws 2001, c. 229, § 2, eff. April 30, 2001](#); [Laws 2002, c. 44, § 1, May 6, 2002](#); [Laws 2005, c. 140, § 1, eff. May 2, 2005](#); [Laws 2008, c. 382, § 504, eff. May 5, 2008](#).

[Notes of Decisions \(1\)](#)

Current through 2011 Second Special Session.

End of Document

© 2011 Thomson Reuters. No claim to original U.S. Government Works.

West's Utah Code Annotated

Title 38. Liens

Chapter 1. Mechanics' Liens (Refs & Annos)

U.C.A. 1953 § 38-1-29

§ 38-1-29. No waiver of rights--Exception--Payment applied first to preconstruction service lien

**Currentness**

(1)(a) A right or privilege under this chapter may not be waived or limited by contract.

(b) A provision of a contract purporting to waive or limit a right or privilege under this chapter is void.

(2) Notwithstanding Subsection (1), a claimant may waive or limit, in whole or in part, a lien right under this chapter in consideration of payment as provided in [Section 38-1-39](#).

(3) Unless an agreement waiving or limiting a lien right expressly provides that a payment is required to be applied to a specific lien, mortgage, or encumbrance, a payment to a person claiming or included within a preconstruction service lien and a construction service lien shall be applied first to the preconstruction service lien until paid in full.

**Credits**

[Laws 2001, c. 229, § 3, eff. April 30, 2001](#); [Laws 2011, c. 339, § 14, eff. May 10, 2011](#).

**Notes of Decisions (1)**

Current through 2011 Second Special Session.

End of Document

© 2011 Thomson Reuters. No claim to original U.S. Government Works.

West's Utah Code Annotated

Title 38. Liens

Chapter 1. Mechanics' Liens (Refs & Annos)

U.C.A. 1953 § 38-1-30

§ 38-1-30. Third party contract--Designated agent

Currentness

(1) The division shall contract in accordance with Title 63G, Chapter 6, Utah Procurement Code, with a third party to establish and maintain the database for the purposes established under this section, [Section 38-1-27](#), and [Sections 38-1-31 through 38-1-36](#).

(2)(a) The third party under contract under this section is the division's designated agent, and shall develop and maintain a database from the information provided by:

- (i) local government entities issuing building permits;
- (ii) original contractors;
- (iii) subcontractors; and
- (iv) other interested persons.

(b) The database shall accommodate filings by third parties on behalf of clients.

(c) The division and the designated agent shall design, develop, and test the database for full implementation on May 1, 2005.

(3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall make rules and develop procedures for:

- (a) the division to oversee and enforce this section, [Section 38-1-27](#), and [Sections 38-1-31 through 38-1-36](#);
- (b) the designated agent to administer this section, [Section 38-1-27](#), and [Sections 38-1-31 through 38-1-36](#); and
- (c) the form of submission of an alternate filing, which may include procedures for rejecting an illegible or incomplete filing.

(4)(a) The designated agent shall archive computer data files at least semiannually for auditing purposes.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall make rules to allow the designated agent to periodically archive projects from the database.

(c) A project shall be archived no earlier than:

- (i) one year after the day on which a notice of completion is filed for a project;
- (ii) if no notice of completion is filed, two years after the last filing activity for a project; or
- (iii) one year after the day on which a filing is cancelled under Subsection 38-1-32 (6)(c) or 38-1-33(2)(c).

(d) The division may audit the designated agent's administration of the database as often as the division considers necessary.

(5) The designated agent shall carry errors and omissions insurance in the amounts established by rule made by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(6)(a) The designated agent shall make reasonable efforts to assure the accurate entry into the database of information provided in alternate filings.

(b) The designated agent shall meet or exceed standards established by the division for the accuracy of data entry for alternate filings.

(7) The designated agent is not liable for the correctness of the information contained in an alternate filing it enters into the database.

**Credits**

Laws 2004, c. 250, § 5, eff. May 3, 2004; Laws 2005, c. 64, § 6, eff. May 2, 2005; Laws 2006, c. 297, § 6, eff. May 1, 2006; Laws 2008, c. 382, § 505, eff. May 5, 2008; Laws 2011, c. 299, § 6, eff. Aug. 1, 2011.

Current through 2011 Second Special Session.

End of Document

© 2011 Thomson Reuters. No claim to original U.S. Government Works.

West's Utah Code Annotated

Title 38. Liens

Chapter 1. Mechanics' Liens (Refs & Annos)

U.C.A. 1953 § 38-1-30.5

§ 38-1-30.5. Notice of retention

Currentness

(1)(a) A person who, under [Section 38-1-3](#), is entitled to a preconstruction service lien on real property under this chapter shall file a notice of retention with the database no later than 20 days after the person commences performing preconstruction service for the anticipated improvement on the real property.

(b) A person who fails to file a timely notice of retention as required in this section may not hold a valid preconstruction service lien under this chapter.

(c) A timely filed notice of retention is effective as to each preconstruction service that the person filing the notice performs for the anticipated improvement under an original contract, including preconstruction service that the person performs for more than one general preconstruction contractor under the same original contract.

(d) A notice of retention filed for preconstruction service performed or to be performed under an original contract for an anticipated improvement on real property is not valid for preconstruction service performed or to be performed under a separate original contract for an anticipated improvement on the same real property.

(e) A notice of retention that is timely filed with the database with respect to an anticipated improvement is considered to have been filed at the same time as the earliest timely filed preliminary notice for that anticipated improvement.

(f) A notice of retention shall include:

(i) the name, address, telephone number, and email address of the person performing the preconstruction service;

(ii) the name, address, telephone number, and email address of the person who employed the person performing the preconstruction service;

(iii) a general description of the preconstruction service the person provided or will provide;

(iv) the name of the record or reputed owner of the property for which the preconstruction service is or will be provided;

(v) the name of the county in which the property on which the anticipated improvement will occur is located;

(vi)(A) the tax parcel identification number of each parcel included in that property; or

(B) the entry number of a previously filed notice of retention that includes the tax parcel identification number of each parcel included in that property; and

(vii) a statement that the person filing the notice intends to hold and claim a preconstruction service lien if the person is not paid for the preconstruction service the person performs.

(g)(i) A claimant who is a general preconstruction contractor may include in a notice of retention the name, address, and telephone number of each subcontractor who is under contract with the claimant to provide preconstruction service that the claimant is under contract to provide.

(ii) The inclusion of a subcontractor in a notice of retention filed by another claimant is not a substitute for the subcontractor's own submission of a notice of retention.

(2)(a) Unless a person indicates to the division or designated agent that the person does not wish to receive a notice under this section, the designated agent shall provide electronic notification of the filing of a notice of retention or alternate filing to:

(i) the person filing the notice of retention; and

(ii) each person who has requested a notice concerning the anticipated improvement.

(b) A person to whom notice is required to be provided under Subsection (2)(a) is responsible to provide an email address, mailing address, or telefax number to which notice may be sent and for the accuracy of the email address, mailing address, or telefax number.

(c) The designated agent fulfills the notice requirement of Subsection (2)(a) by sending the notice to the email address, mailing address, or telefax number provided to the designated agent, whether or not the notice is actually received.

(3) The burden is on the person filing the notice of retention to prove that the person has substantially complied with the requirements of this section.

(4)(a) Subject to Subsection (4)(b), a person required by this section to file a notice of retention is required to give only one notice for each anticipated improvement.

(b) If a person performs preconstruction service under more than one original contract, the person shall file a notice of retention for preconstruction service performed under each original contract.

(5)(a) An owner of property that is the subject of an anticipated improvement, an original contractor, a subcontractor, or another interested person who believes that a notice of retention has been erroneously filed may request from the person who filed the notice evidence establishing the validity of the notice of retention.

(b) Within 10 days after a request under Subsection (5)(a), the person who filed the notice of retention shall provide the requesting person proof that the notice of retention is valid.

(c) If the person who filed the notice of retention does not provide timely proof of the validity of the notice of retention, that person shall immediately cancel the notice of retention from the database in the manner prescribed by the division by rule.

(6) A person filing a notice of retention by alternate filing is responsible for verifying and changing any incorrect information in the notice of retention before the expiration of the period during which the notice is required to be filed.

#### **Credits**

[Laws 2011, c. 339, § 15, eff. May 10, 2011.](#)

Current through 2011 Second Special Session.

West's Utah Code Annotated

Title 38. Liens

Chapter 1. Mechanics' Liens (Refs & Annos)

U.C.A. 1953 § 38-1-30.7

§ 38-1-30.7. Notice of construction loan

**Currentness**

- (1) As used in this section, “construction loan” does not include a consumer loan secured by the equity in the consumer's home.
- (2) After recording a mortgage or trust deed securing a construction loan on a private project, the construction lender on the loan shall promptly, in conjunction with the closing of the construction loan, file with the database a notice of construction loan.
- (3) A notice under Subsection (2) shall accurately state:
  - (a) the lender's name, address, and telephone number;
  - (b) the name of the trustor on the trust deed securing the loan;
  - (c) the tax parcel identification number of each parcel included or to be included in the construction project for which the loan was given;
  - (d) the address of the project property; and
  - (e) the name of the county in which the project property is located.
- (4) A construction lender that files a notice of construction loan containing incomplete or inaccurate information may not be held liable for damages suffered by any other person who relies on the inaccurate or incomplete information in filing a preliminary notice.

**Credits**

Laws 2011, c. 299, § 7, eff. Aug. 1, 2011.

Current through 2011 Second Special Session.

End of Document

© 2011 Thomson Reuters. No claim to original U.S. Government Works.

West's Utah Code Annotated

Title 38. Liens

Chapter 1. Mechanics' Liens (Refs & Annos)

U.C.A. 1953 § 38-1-31

§ 38-1-31. Building permit--Transmission to database--Posting at project site

**Currentness**

(1)(a) A county, city, or town issuing a building permit for a private project:

(i) shall, no later than 15 days after issuing the permit, input the building permit application and transmit the building permit information to the database electronically by way of the Internet or computer modem or by any other means; and

(ii) may collect a building permit fee related to the issuance of the building permit, but may not spend or otherwise use the building permit fee until the county, city, or town complies with Subsection (1)(a)(i) with respect to the building permit for which the fee is charged.

(b) The person to whom a building permit, filed under Subsection (1)(a), is issued is responsible for the accuracy of the information in the building permit.

(c) For the purposes of classifying a record under Title 63G, Chapter 2, Government Records Access and Management Act, building permit information transmitted from a county, city, or town to the database shall be classified in the database by the division notwithstanding the classification of the building permit information by the county, city, or town.

(2) At the time a building permit is obtained, each original contractor for construction service shall conspicuously post at the project site a copy of the building permit obtained for the project.

**Credits**

Laws 2004, c. 250, § 6, eff. May 1, 2005; Laws 2005, c. 64, § 7, eff. May 2, 2005; Laws 2006, c. 297, § 7, eff. May 1, 2006; Laws 2007, c. 332, § 4, eff. April 30, 2007; Laws 2008, c. 382, § 506, eff. May 5, 2008; Laws 2009, c. 50, § 2, eff. May 12, 2009; Laws 2011, c. 299, § 8, eff. Aug. 1, 2011; Laws 2011, c. 339, § 16, eff. May 10, 2011.

Notes of Decisions (8)

Current through 2011 Second Special Session.

End of Document

© 2011 Thomson Reuters. No claim to original U.S. Government Works.

[West's Utah Code Annotated](#)

[Title 38. Liens](#)

[Chapter 1. Mechanics' Liens \(Refs & Annos\)](#)

U.C.A. 1953 § 38-1-31.5

§ 38-1-31.5. Notice of commencement for a government project

[Currentness](#)

- (1) No later than 15 days after commencement of physical construction work at a government project site, the original contractor, owner, or owner-builder shall file a notice of commencement with the database.
- (2) An original contractor, owner, or owner-builder on a government project may file a notice of commencement with the designated agent before the commencement of physical construction work on the project property.
- (3)(a) If duplicate notices of commencement are filed, they shall be combined into one notice for each government project, and any notices filed relate back to the date of the earliest-filed notice of commencement for the project.
- (b) A duplicate notice of commencement that is untimely filed relates back under Subsection (3)(a) if the earlier filed notice of commencement is timely filed.
- (c) Duplicate notices of commencement shall be automatically linked by the designated agent.
- (4) The designated agent shall assign each government project a unique project number that:
- (a) identifies the project; and
- (b) can be associated with all notices of commencement, preliminary notices, and notices of completion filed in connection with the project.
- (5) A notice of commencement is effective only as to any labor, service, equipment, and material that is furnished after the notice of commencement is filed.
- (6)(a) A notice of commencement shall include:
- (i) the name, address, and email address of the owner of the project;
- (ii) the name, address, and email address of the original contractor;
- (iii) the name, address, and email address of the surety providing any payment bond for the project or, if none exists, a statement that a payment bond was not required for the work being performed;
- (iv)(A) the project address if the project can be reasonably identified by an address; or
- (B) the name and general description of the location of the project, if the project cannot be reasonably identified by an address; and
- (v) the government project-identifying information.
- (b) A notice of commencement may include a general description of the project.

(7) If a notice of commencement for a government project is not filed within the time set forth in Subsection (1), [Sections 38-1-32.5](#) and [38-1-33](#) do not apply.

(8)(a) Notwithstanding any other provision of this chapter, a notice of commencement need not be filed for a private project.

(b) A provision of this chapter does not apply to a private project if the provision depends for its effectiveness upon the filing of a notice of commencement.

(9)(a) Unless a person indicates to the division or designated agent that the person does not wish to receive a notice under this section, the designated agent shall provide electronic notice of the filing of a notice of commencement or alternate filing to:

(i) all persons who have filed notices of commencement for the project; and

(ii) all interested persons who have requested notices concerning the project.

(b) A person to whom notice is required under Subsection (9)(a) is responsible for:

(i) providing an email address, mailing address, or telefax number to which a notice required by Subsection (9)(a) is to be sent; and

(ii) the accuracy of any email address, mailing address, or telefax number to which notice is to be sent.

(c) The designated agent fulfills the notice requirement of Subsection (9)(a) by sending the notice to the email address, mailing address, or telefax number provided to the designated agent, whether or not the notice is actually received.

(10)(a) The burden is upon any person seeking to enforce a notice of commencement to verify the accuracy of information in the notice of commencement and prove that the notice of commencement is filed timely and meets all of the requirements of this section.

(b) A substantial inaccuracy in a notice of commencement renders the notice of commencement invalid.

(c) A person filing a notice of commencement by alternate filing is responsible for verifying and changing any incorrect information in the notice of commencement before the expiration of the time period during which the notice is required to be filed.

#### **Credits**

[Laws 2011, c. 299, § 9, eff. Aug. 1, 2011.](#)

Current through 2011 Second Special Session.

End of Document

© 2011 Thomson Reuters. No claim to original U.S. Government Works.

West's Utah Code Annotated

Title 38. Liens

Chapter 1. Mechanics' Liens (Refs & Annos)

U.C.A. 1953 § 38-1-32

§ 38-1-32. Preliminary notice for a private project

Currentness

(1) As used in this section:

(a) "Pre-lender claimant" means a person whose lien under this chapter is made subject to a construction lender's mortgage or trust deed, as provided in Subsection 38-1-5(3)(b), by the person's acceptance of payment in full and the person's withdrawal of the person's preliminary notice.

(b) "Refiled preliminary notice" means a preliminary notice that a pre-lender claimant files under Subsection (2)(a)(ii) with the database on a project after withdrawing a preliminary notice that the claimant previously filed for the same project.

(2)(a)(i) A person who, under [Section 38-1-3](#), is entitled to a construction service lien with respect to a private project shall file a preliminary notice with the database no later than 20 days after the person commences furnishing construction service to the project.

(ii) A pre-lender claimant who, under [Section 38-1-3](#), is entitled to claim a construction service lien for construction service the claimant furnishes to a private project after the recording of a construction lender's mortgage or trust deed on the project property shall file a preliminary notice within 20 days after the recording of the mortgage or trust deed.

(b) Subject to Subsection (2)(c), a preliminary notice is effective as to all construction service that the person filing the notice furnishes to the private project, including construction service that the person furnishes to more than one contractor or subcontractor on that same project.

(c) A preliminary notice filed after the period provided in Subsection (2)(a):

(i) becomes effective five days after the day the preliminary notice is filed; and

(ii) is not effective for construction service that the person who files the preliminary notice furnishes to the construction project before five days after the preliminary notice is filed.

(d)(i)(A) A person who fails to file a preliminary notice as required in this section may not hold a valid construction service lien under this chapter.

(B) A person who files a preliminary notice after the period provided in Subsection (2)(a) may not hold a valid construction service lien for construction service the person furnishes to the construction project before five days after the preliminary notice is filed.

(ii) A county recorder need not verify that a valid preliminary notice is filed when a person files a notice to hold and claim a lien under [Section 38-1-7](#).

(e)(i) Except as provided in Subsection (2)(e)(ii), a preliminary notice that is timely filed with the database with respect to a private project is considered to be filed at the time of the first preliminary notice filing, as defined in [Section 38-1-5](#).

(ii) A timely filed preliminary notice that is a refiled preliminary notice is considered to be filed immediately after the recording of a mortgage or trust deed of the construction lender that paid the pre-lender claimant in full for construction service the claimant furnished before the recording of the mortgage or trust deed.

(f) If a preliminary notice filed with the database includes the tax parcel identification number of a parcel not previously associated in the database with a private project, the designated agent shall promptly notify the person who filed the preliminary notice that:

(i) the preliminary notice includes a tax parcel identification number of a parcel not previously associated in the database with a private project; and

(ii) the likely explanation is that:

(A) the preliminary notice is the first filing for the project; or

(B) the tax parcel identification number is incorrectly stated in the preliminary notice.

(g) A preliminary notice for a private project shall include:

(i) the name, address, telephone number, and email address of the person furnishing the construction service for which the preliminary notice is filed;

(ii) the name and address of the person who contracted with the claimant for the furnishing of the construction service;

(iii) the name of the record or reputed owner of the project property;

(iv) the name of the original contractor for construction service under which the claimant is furnishing or will furnish construction service;

(v) the address of the project property or a description of the location of the project;

(vi) the name of the county in which the project property is located; and

(vii)(A) the tax parcel identification number of each parcel included in the project property;

(B) the entry number of a previously filed notice of construction loan under [Section 38-1-30.7](#) on the same project;

(C) the entry number of a previously filed preliminary notice on the same project that includes the tax parcel identification number of each parcel included in the project property; or

(D) the entry number of the building permit issued for the project.

(h) A preliminary notice for a private project may include:

(i) the subdivision, development, or other project name applicable to the construction project for which the preliminary notice is filed; and

(ii) the lot or parcel number of each lot or parcel that is included in the project property.

(3)(a) Unless a person indicates to the division or designated agent that the person does not wish to receive a notice under this section, electronic notification of the filing of a preliminary notice or alternate filing shall be provided to:

(i) the person filing the preliminary notice; and

(ii) each person who has requested a notice concerning the project.

(b) A person to whom notice is required to be provided under Subsection (2)(a) is responsible for:

(i) providing an email address, mailing address, or telefax number to which a notice required by Subsection (2)(a) is to be sent; and

(ii) the accuracy of any email address, mailing address, or telefax number to which notice is to be sent.

(c) The designated agent fulfills the notice requirement of Subsection (2)(a) by sending the notice to the email address, mailing address, or telefax number provided to the designated agent, whether or not the notice is actually received.

(4)(a) The burden is upon the person filing the preliminary notice to prove that the person has substantially complied with the requirements of this section.

(b) Substantial compliance with the requirements of Subsection (2)(g) may be established by a person's reasonable reliance on information in the database provided by a previously filed:

(i) notice of construction loan under [Section 38-1-30.7](#);

(ii) preliminary notice; or

(iii) building permit.

(5)(a) Subject to Subsection (5)(b), a person required by this section to give preliminary notice is only required to give one notice for each project.

(b) If the construction service is furnished pursuant to contracts under more than one original contract for construction service, the notice requirements shall be met with respect to the construction service furnished under each original contract.

(6)(a) A construction project owner, original contractor, or subcontractor for construction service, or other interested person who believes that a preliminary notice has been filed erroneously may request from the person who filed the preliminary notice evidence establishing the validity of the preliminary notice.

(b) Within 10 days after the request described in Subsection (6)(a), the person or entity that filed the preliminary notice shall provide the requesting person or entity proof that the preliminary notice is valid.

(c) If the person or entity that filed the preliminary notice does not provide proof of the validity of the preliminary notice, that person or entity shall immediately cancel the preliminary notice from the database in any manner prescribed by the division pursuant to rule.

(7) A person filing a preliminary notice by alternate filing is responsible for verifying and changing any incorrect information in the preliminary notice before the expiration of the time period during which the notice is required to be filed.

(8)(a) A person who files a preliminary notice before the recording of a construction lender's mortgage or trust deed may withdraw the preliminary notice by filing with the database a notice of withdrawal as provided in Subsection (8)(b).

(b) A notice of withdrawal shall include:

(i) the information required for a preliminary notice under Subsection (2)(g); and

(ii) the entry number of the preliminary notice being withdrawn.

(9) A person who files a preliminary notice that contains inaccurate or incomplete information may not be held liable for damages suffered by any other person who relies on the inaccurate or incomplete information in filing a preliminary notice.

**Credits**

Laws 2004, c. 250, § 7, eff. May 1, 2005; Laws 2005, c. 64, § 8, eff. May 2, 2005; Laws 2006, c. 297, § 8, eff. May 1, 2006; Laws 2007, c. 332, § 5, eff. April 30, 2007; Laws 2009, c. 50, § 3, eff. May 12, 2009; Laws 2011, c. 299, § 10, eff. Aug. 1, 2011; Laws 2011, c. 339, § 17, eff. May 10, 2011.

Current through 2011 Second Special Session.

End of Document

© 2011 Thomson Reuters. No claim to original U.S. Government Works.

[West's Utah Code Annotated](#)

[Title 38. Liens](#)

[Chapter 1. Mechanics' Liens \(Refs & Annos\)](#)

U.C.A. 1953 § 38-1-32.5

§ 38-1-32.5. Preliminary notice on government project

[Currentness](#)

(1) Except for a person who has a contract with an owner or an owner-builder or a laborer compensated with wages, a subcontractor on a government project shall file a preliminary notice with the database by the later of:

- (a) 20 days after the subcontractor commences the subcontractor's own work or commences furnishing labor, service, equipment, or material to the construction project; and
- (b) 20 days after the filing of a notice of commencement, if the subcontractor's work commences before the filing of the first notice of commencement.

(2) A preliminary notice filed within the period described in Subsection (1) is effective as to all labor, service, equipment, and material that the subcontractor furnishes to the construction project, including labor, service, equipment, and material provided that the subcontractor furnishes to more than one contractor or subcontractor.

(3)(a) If more than one notice of commencement is filed for a project, a person may attach a preliminary notice to any notice of commencement filed for the project.

- (b) A preliminary notice attached to an untimely notice of commencement is valid if there is also a valid and timely notice of commencement for the project.

(4) If a person files a preliminary notice after the period prescribed by Subsection (1), the preliminary notice becomes effective five days after the day on which the preliminary notice is filed.

(5) Except as provided in Subsection (8), failure to file a preliminary notice within the period required by Subsection (1) precludes a person from maintaining any claim for compensation earned for labor, service, material, or equipment furnished to the construction project before the expiration of five days after the late filing of a preliminary notice, except as against the person with whom the person contracted.

(6) A preliminary notice on a government project shall include:

- (a) the government project-identifying information;
- (b) the name, address, and telephone number of the person furnishing the labor, service, equipment, or material;
- (c) the name and address of the person who contracted with the claimant for the furnishing of the labor, service, equipment, or material;
- (d) the name of the record or reputed owner of the project;
- (e) the name of the original contractor under which the claimant is performing or will perform its work; and
- (f) the address of the project or a description of the location of the project.

(7) Upon request, an original contractor shall provide a subcontractor with the number assigned to the project by the designated agent.

(8) A person who provides labor, service, equipment, or material before the filing of a notice of commencement need not file a preliminary notice to maintain any right the person would otherwise have, if the notice of commencement is filed more than 15 days after the day on which the person begins work on the project.

(9) Subsections 38-1-32(2), (3), (4), (5), and (6) apply to a preliminary notice on a government project under this section to the same extent that those subsections apply to a preliminary notice on a private project under [Section 38-1-32](#).

**Credits**

[Laws 2011, c. 299, § 11, eff. Aug. 1, 2011.](#)

Current through 2011 Second Special Session.

End of Document

© 2011 Thomson Reuters. No claim to original U.S. Government Works.

West's Utah Code Annotated

Title 38. Liens

Chapter 1. Mechanics' Liens (Refs & Annos)

U.C.A. 1953 § 38-1-32.7

§ 38-1-32.7. Notice concerning construction loan default

**Currentness**

(1) Within five business days after a notice of default is filed for recording under [Section 57-1-24](#) with respect to a trust deed on the project property securing a construction loan, the construction lender under the loan shall file a notice with the database.

(2) A notice under Subsection (1) shall:

(a) include:

(i) the information required to be included in a notice of construction loan under Subsections 38-1-30.7(3)(a), (b), (c), (d), and (e); and

(ii) the entry number of the notice of construction loan;

(b) state that a notice of default with respect to the construction loan has been recorded; and

(c) state the date that the notice of default was recorded.

**Credits**

[Laws 2011, c. 299, § 12, eff. Aug. 1, 2011.](#)

Current through 2011 Second Special Session.

End of Document

© 2011 Thomson Reuters. No claim to original U.S. Government Works.

West's Utah Code Annotated

Title 38. Liens

Chapter 1. Mechanics' Liens (Refs & Annos)

U.C.A. 1953 § 38-1-33

§ 38-1-33. Notice of completion

Currentness

(1)(a) Upon final completion of a construction project, and in accordance with [Section 38-1-40](#), the following with a construction project registered with the database may file a notice of completion with the database:

- (i) an owner of the construction project;
- (ii) an original contractor for construction service;
- (iii) a lender that has provided financing for the construction project;
- (iv) a surety that has provided bonding for the construction project; or
- (v) a title company issuing a title insurance policy on the construction project.

(b) Notwithstanding [Section 38-1-2](#), if a subcontractor for construction service performs substantial work after the applicable dates established by Subsection (1)(a), that subcontractor's subcontract is considered an original contract for construction service for the sole purpose of determining:

- (i) the subcontractor's time frame to file a notice to hold and claim a lien under Subsection 38-1-7(1); and
- (ii) the original contractor's time frame to file a notice to hold and claim a lien under Subsection 38-1-7(1) for that subcontractor's work.

(c) A notice of completion shall include:

- (i) the name, address, telephone number, and email address of the person filing the notice of completion;
- (ii) the name of the county in which the project property is located;
- (iii) for a private project:
  - (A) the tax parcel identification number of each parcel included in the project property;
  - (B) the entry number of a preliminary notice on the same project that includes the tax parcel identification number of each parcel included in the project property; or
  - (C) the entry number of the building permit issued for the project;
- (iv) for a government project, the government project-identifying information;
- (v) the date on which final completion is alleged to have occurred; and
- (vi) the method used to determine final completion.

(d) For purposes of this section, final completion of the original contract does not occur if work remains to be completed for which the owner is holding payment to ensure completion of the work.

(e)(i) Unless a person indicates to the division or designated agent that the person does not wish to receive a notice under this section, electronic notification of the filing of a notice of completion or alternate filing shall be provided to:

- (A) each person that filed a notice of commencement for the project;
- (B) each person that filed preliminary notice for the project; and
- (C) all interested persons who have requested notices concerning the project.

(ii) A person to whom notice is required under this Subsection (1)(e) is responsible for:

- (A) providing an email address, mailing address, or telefax number to which a notice required by this Subsection (1)(e) is to be sent; and
- (B) the accuracy of any email address, mailing address, or telefax number to which notice is to be sent.

(iii) The designated agent fulfills the notice requirement of Subsection (1)(e)(i) when it sends the notice to the email address, mailing address, or telefax number provided to the designated agent, whether or not the notice is actually received.

(iv) Upon the filing of a notice of completion, the time periods for filing a preliminary notice stated in [Section 38-1-32](#) or [38-1-32.5](#) are modified such that all preliminary notices shall be filed subsequent to the notice of completion and within 10 days from the day on which the notice of completion is filed.

(f) A subcontract that is considered an original contract for construction service for purposes of this section does not create a requirement for an additional preliminary notice if a preliminary notice has already been given for the labor, service, equipment, and material furnished to the subcontractor who performs substantial work.

(2)(a) If a construction project owner, original contractor, or subcontractor for construction service, or other interested person believes that a notice of completion has been filed erroneously, that owner, original contractor, subcontractor, or other interested person can request from the person who filed the notice of completion evidence establishing the validity of the notice of completion.

(b) Within 10 days after the request described in Subsection (2)(a), the person who filed the notice of completion shall provide the requesting person proof that the notice of completion is valid.

(c) If the person that filed the notice of completion does not provide proof of the validity of the notice of completion, that person shall immediately cancel the notice of completion from the database in any manner prescribed by the division pursuant to rule.

(3) A person filing a notice of completion by alternate filing is responsible for verifying and changing any incorrect information in the notice of completion before the expiration of the time period during which the notice is required to be filed.

### Credits

Laws 2004, c. 250, § 8, eff. May 1, 2005; Laws 2005, c. 64, § 9, eff. May 2, 2005; Laws 2006, c. 297, § 9, eff. May 1, 2006; Laws 2007, c. 332, § 6, eff. April 30, 2007; Laws 2009, c. 239, § 2, eff. Oct. 1, 2009; Laws 2010, c. 76, § 1, eff. May 11, 2010; Laws 2011, c. 299, § 13, eff. Aug. 1, 2011; Laws 2011, c. 339, § 18, eff. May 10, 2011.

Current through 2011 Second Special Session.

West's Utah Code Annotated

Title 38. Liens

Chapter 1. Mechanics' Liens (Refs & Annos)

U.C.A. 1953 § 38-1-34

§ 38-1-34. Abuse of database--Penalty

Currentness

(1) A person abuses the database if that person records a notice in the database:

- (a) without a good faith basis for doing so;
- (b) with the intent to exact more than is due from the project owner or any other interested party; or
- (c) to procure an unjustified advantage or benefit.

(2) A person who violates Subsection (1) is liable to the owner of the construction project, an original contractor, a subcontractor, or any interested party who is affected by the notice for twice the amount of the actual damages incurred by such party or \$2,000, whichever is greater.

**Credits**

Laws 2004, c. 250, § 9, eff. May 1, 2005.

Current through 2011 Second Special Session.

End of Document

© 2011 Thomson Reuters. No claim to original U.S. Government Works.

West's Utah Code Annotated

Title 38. Liens

Chapter 1. Mechanics' Liens (Refs & Annos)

U.C.A. 1953 § 38-1-35

§ 38-1-35. Limitation of liability

**Currentness**

(1) The state and the state's agencies, instrumentalities, political subdivisions, and an employee of a governmental entity are immune from suit for any injury resulting from the state construction registry.

(2) The designated agent and its principals, agents, and employees are not liable to any person for the accuracy, coherence, suitability, completeness, or legal effectiveness of information filed or searched in the database if the designated agent:

(a) develops and maintains the database in compliance with reliability, availability, and security standards established by the division; and

(b) meets data entry accuracy standards established by the division under Subsection 38-1-30(6)(b).

(3) The designated agent and its principals, agents, and employees are not liable for their inability to perform obligations under this chapter to the extent performance of those obligations is prevented by:

(a) an act of God;

(b) a fire;

(c) a storm;

(d) an earthquake;

(e) an accident;

(f) governmental interference; or

(g) any other event or cause beyond the designated agent's control.

**Credits**

Laws 2004, c. 250, § 10, eff. May 1, 2005; Laws 2006, c. 297, § 10, eff. May 1, 2006.

Current through 2011 Second Special Session.

End of Document

© 2011 Thomson Reuters. No claim to original U.S. Government Works.

West's Utah Code Annotated

Title 38. Liens

Chapter 1. Mechanics' Liens (Refs & Annos)

U.C.A. 1953 § 38-1-36

§ 38-1-36. Construction notice does not impart notice

**Currentness**

The filing of a document in the database is not intended to give notice to all persons of the content of the document within the meaning of [Section 57-3-102](#) and does not constitute constructive notice of matters relating to real property to purchasers for value and without knowledge.

**Credits**

[Laws 2004, c. 250, § 11, eff. May 1, 2005.](#)

Current through 2011 Second Special Session.

End of Document

© 2011 Thomson Reuters. No claim to original U.S. Government Works.

West's Utah Code Annotated

Title 38. Liens

Chapter 1. Mechanics' Liens (Refs & Annos)

U.C.A. 1953 § 38-1-37

§ 38-1-37. Repealed by Laws 2011, c. 299, § 16, eff. Aug. 1, 2011

**Currentness**

Current through 2011 Second Special Session.

End of Document

© 2011 Thomson Reuters. No claim to original U.S. Government Works.

West's Utah Code Annotated

Title 38. Liens

Chapter 1. Mechanics' Liens (Refs & Annos)

U.C.A. 1953 § 38-1-38

§ 38-1-38. Repealed by Laws 2005, c. 64, § 13, eff. May 2, 2005

**Currentness**

Current through 2011 Second Special Session.

End of Document

© 2011 Thomson Reuters. No claim to original U.S. Government Works.

West's Utah Code Annotated

Title 38. Liens

Chapter 1. Mechanics' Liens (Refs & Annos)

U.C.A. 1953 § 38-1-39

§ 38-1-39. Waiver or impairment of a lien right--Forms--Scope

Currentness

(1) As used in this section:

(a) "Check" means a payment instrument on a depository institution including:

- (i) a check;
- (ii) a draft;
- (iii) an order; or
- (iv) other instrument.

(b) "Depository institution" is as defined in [Section 7-1-103](#).

(c) "Lien claimant" means a person that claims a lien under this chapter.

(d) "Receives payment" means, in the case of a restrictive endorsement, a payee has endorsed a check and the check is presented to and paid by the depository institution on which it is drawn.

(2) Notwithstanding [Section 38-1-29](#), a written consent given by a lien claimant that waives or limits the lien claimant's lien rights is enforceable only if the lien claimant:

(a)(i) executes a waiver and release that is signed by the lien claimant or the lien claimant's authorized agent; or

(ii) for a restrictive endorsement on a check, includes a restrictive endorsement on a check that is:

- (A) signed by the lien claimant or the lien claimant's authorized agent; and
- (B) in substantially the same form set forth in Subsection (4)(d); and

(b) receives payment of the amount identified in the waiver and release or check that includes the restrictive endorsement:

- (i) including payment by a joint payee check; and
- (ii) for a progress payment, only to the extent of the payment.

(3)(a) Notwithstanding the language of a waiver and release described in Subsection (2), Subsection (3)(b) applies if:

- (i) the payment given in exchange for any waiver and release of lien is made by check; and
- (ii) the check fails to clear the depository institution on which it is drawn for any reason.

(b) If the conditions of Subsection (3)(a) are met:

(i) the waiver and release described in Subsection (3)(a) is null, void, and of no legal effect; and

(ii) the following will not be affected by the lien claimant's execution of the waiver and release:

(A) any lien;

(B) any lien right;

(C) any bond right;

(D) any contract right; or

(E) any other right to recover payment afforded to the lien claimant in law or equity.

(4)(a) A waiver and release given by a lien claimant meets the requirements of this section if it is in substantially the form provided in this Subsection (4) for the circumstance provided in this Subsection (4).

(b) A waiver and release may be in substantially the following form if the lien claimant is required to execute a waiver and release in exchange for or to induce the payment of a progress billing:

**“UTAH CONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT**

Property Name: \_\_\_\_\_

Property Location: \_\_\_\_\_

Undersigned's Customer: \_\_\_\_\_

Invoice/Payment Application Number: \_\_\_\_\_

Payment Amount: \_\_\_\_\_

Payment Period: \_\_\_\_\_

To the extent provided below, this document becomes effective to release and the undersigned is considered to waive any notice of lien or right under Utah Code Ann., Title 38, Chapter 1, Mechanics' Liens, or any bond right under Utah Code Ann., Title 14, Contractors' Bonds, or [Section 63G-6-505](#) related to payment rights the undersigned has on the above described Property once:

(1) the undersigned endorses a check in the above referenced Payment Amount payable to the undersigned; and

(2) the check is paid by the depository institution on which it is drawn.

This waiver and release applies to a progress payment for the work, materials, equipment, or a combination of work, materials, and equipment furnished by the undersigned to the Property or to the Undersigned's Customer which are the subject of the Invoice or Payment Application, but only to the extent of the Payment Amount. This waiver and release does not apply to any retention withheld; any items, modifications, or changes pending approval; disputed items and claims; or items furnished or invoiced after the Payment Period.

The undersigned warrants that the undersigned either has already paid or will use the money the undersigned receives from this progress payment promptly to pay in full all the undersigned's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or combination of work, materials, and equipment that are the subject of this waiver and release.

Dated: \_\_\_\_\_

\_\_\_\_\_(Company Name)

\_\_\_\_\_  
By: \_\_\_\_\_

\_\_\_\_\_  
Its: \_\_\_\_\_”

(c) A waiver and release may be in substantially the following form if the lien claimant is required to execute a waiver and release in exchange for or to induce the payment of a final billing:

**“UTAH WAIVER AND RELEASE UPON FINAL PAYMENT**

Property Name: \_\_\_\_\_

Property Location: \_\_\_\_\_

Undersigned's Customer: \_\_\_\_\_

Invoice/Payment Application Number: \_\_\_\_\_

Payment Amount: \_\_\_\_\_

To the extent provided below, this document becomes effective to release and the undersigned is considered to waive any notice of lien or right under Utah Code Ann., Title 38, Chapter 1, Mechanics' Liens, or any bond right under Utah Code Ann., Title 14, Contractors' Bonds, or [Section 63G-6-505](#) related to payment rights the undersigned has on the above described Property once:

- (1) the undersigned endorses a check in the above referenced Payment Amount payable to the undersigned; and
- (2) the check is paid by the depository institution on which it is drawn.

This waiver and release applies to the final payment for the work, materials, equipment, or combination of work, materials, and equipment furnished by the undersigned to the Property or to the Undersigned's Customer.

The undersigned warrants that the undersigned either has already paid or will use the money the undersigned receives from the final payment promptly to pay in full all the undersigned's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or combination of work, materials, and equipment that are the subject of this waiver and release.

Dated: \_\_\_\_\_

\_\_\_\_\_(Company Name)

\_\_\_\_\_  
By: \_\_\_\_\_

\_\_\_\_\_  
Its: \_\_\_\_\_”

(d) A restrictive endorsement placed on a check to effectuate a waiver and release described in this Subsection (4) meets the requirements of this section if it is in substantially the following form:

“This check is a progress/ final payment for property described on this check sufficient for identification. Endorsement of this check is an acknowledgment by the endorser that the waiver and release to which the payment applies is effective to the extent provided in Utah Code Ann. Subsection 38-1-39(4)(b) or (c) respectively.”

(e)(i) If using a restrictive endorsement under Subsection (4)(d), the person preparing the check shall indicate whether the check is for a progress payment or a final payment by circling the word “progress” if the check is for a progress payment, or the word “final” if the check is for a final payment.

(ii) If a restrictive endorsement does not indicate whether the check is for a progress payment or a final payment, it is considered to be for a progress payment.

(5)(a) If the conditions of Subsection (5)(b) are met, this section does not affect the enforcement of:

- (i) an accord and satisfaction regarding a bona fide dispute; or
- (ii) an agreement made in settlement of an action pending in any court or arbitration.

(b) Pursuant to Subsection (5)(a), this section does not affect enforcement of an accord and satisfaction or settlement described in Subsection (5)(a) if the accord and satisfaction or settlement:

- (i) is in a writing signed by the lien claimant; and
- (ii) specifically references the lien rights waived or impaired.

**Credits**

Laws 2006, c. 203, § 1, eff. Jan. 1, 2007; Laws 2006, 5th Sp.Sess., c. 2, § 1, eff. May 1, 2007; Laws 2007, c. 226, § 1, eff. April 30, 2007; Laws 2008, c. 382, § 507, eff. May 5, 2008.

Current through 2011 Second Special Session.

End of Document

© 2011 Thomson Reuters. No claim to original U.S. Government Works.

West's Utah Code Annotated

Title 38. Liens

Chapter 1. Mechanics' Liens (Refs & Annos)

U.C.A. 1953 § 38-1-40

§ 38-1-40. Notice of intent to obtain final completion

Currentness

(1) An owner, as defined in [Section 14-2-1](#), of a nonresidential construction project that is registered with the database, or a contractor of a commercial nonresidential construction project that is registered with the database under [Section 38-1-33](#), shall file with the database a notice of intent to obtain final completion as provided in this section if:

- (a) the completion of performance time under the original contract for construction service is greater than 120 days;
- (b) the total original construction contract price exceeds \$500,000; and
- (c) the contractor or owner has not obtained a payment bond in accordance with [Section 14-2-1](#).

(2) The notice of intent described in Subsection (1) shall be filed at least 45 days before the day on which the owner or contractor of a commercial nonresidential construction project files or could have filed a notice of completion under [Section 38-1-33](#).

(3) A person supplying labor, materials, or services to an owner, a contractor, or subcontractor who files a notice of intent in accordance with Subsection (1) shall file an amendment to the person's preliminary notice previously filed by the person as required in [Section 38-1-32](#):

- (a) that includes:
  - (i) a good faith estimate of the total amount remaining due to complete the contract, purchase order, or agreement relating to the person's approved labor, approved materials, and approved services;
  - (ii) the identification of each contractor or subcontractor with whom the person has a contract or contracts for supplying project labor, materials, or services; and
  - (iii) a separate statement of all known amounts or categories of work in dispute; and
- (b) no later than 20 days after the day on which the owner or contractor files a notice of intent.

(4)(a) A person identified in accordance with Subsection (3)(a)(i) who has complied with, or is exempt from, the provisions of [Section 38-1-22](#), may demand a statement of adequate assurance from the owner, contractor, or subcontractor with whom the person has privity of contract no later than 10 days after the day on which the person files a balance statement in accordance with Subsection (3) from an owner, contractor, or subcontractor who is in privity of contract with the person.

- (b) A demand for adequate assurance as described in Subsection (4)(a) may include a request for a statement from the owner, contractor, or subcontractor that the owner, contractor, or subcontractor has sufficient funds dedicated and available to pay for all sums due to the person filing for the adequate assurances or that will become due in order to complete a construction project.

(c) A person who demands adequate assurance under Subsection (4)(a) shall deliver copies of the demand to the owner and contractor:

- (i) by hand delivery with a responsible party's acknowledgment of receipt;
- (ii) by certified mail with a return receipt; or
- (iii) as provided under [Rule 4, Utah Rules of Civil Procedure](#).

(5)(a) A person identified in accordance with Subsection (3)(a)(i) who has complied with, or is exempt from, the provisions of [Section 38-1-32](#) may bring a legal action against a party with whom the person is in privity of contract, including a request for injunctive or declaratory relief, to determine the adequacy of an owner's, with whom the demanding person contracted, contractor's, with whom the demanding person contracted, or subcontractor's, with whom the demanding person contracted, funds if, after the person demands adequate assurance in accordance with the requirements of this section:

- (i) the owner, contractor, or subcontractor fails to provide adequate assurance that the owner, contractor, or subcontractor has sufficient available funds, or access to financing or other sufficient available funds, to pay for the completion of the demanding person's approved work on the construction project; or
- (ii) the parties disagree, in good faith, as to whether there are adequate funds, or access to financing or other sufficient available funds, to pay for the completion of the demanding person's approved work on the construction project.

(b) If a court finds that an owner, contractor, or subcontractor has failed to provide adequate assurance in accordance with Subsection (4)(a), the court may require the owner, contractor, or subcontractor to post adequate security with the court sufficient to assure timely payment of the remaining contract balance for the approved work of the person seeking adequate assurance, including:

- (i) cash;
- (ii) a bond;
- (iii) an irrevocable letter of credit;
- (iv) property;
- (v) financing; or
- (vi) another form of security approved by the court.

(6)(a) A person is subject to the civil penalty described in Subsection (6)(b), if the person files a balance statement described in Subsection (3):

- (i) that misrepresents the amount due under the contract; and
- (ii) with the intent to:
  - (A) charge an owner, contractor, or subcontractor more than the actual amount due; or
  - (B) procure any other unfair advantage or benefit on the person's behalf.

(b) The civil penalty described in Subsection (6)(a) is the greater of:

- (i) twice the amount by which the balance statement filed under Subsection (3) exceeds the amount actually remaining due under the contract for completion of construction; or

(ii) the actual damages incurred by the owner, contractor, or subcontractor.

(7) A court shall award reasonable attorney fees to a prevailing party for an action brought under this section.

(8) Failure to comply with the requirements established in this section does not affect any other requirement or right under this chapter.

(9) A person who has not complied with, or is not exempt from, the provisions of [Section 38-1-32](#) may not be entitled to a right or a remedy provided in this section.

(10) This section does not create a cause of action against a person with whom the demanding party is not in privity of contract.

**Credits**

[Laws 2009, c. 239, § 3, eff. Oct. 1, 2009](#); [Laws 2010, c. 31, § 2, eff. May 11, 2010](#); [Laws 2011, c. 339, § 19, eff. May 10, 2011](#).

Current through 2011 Second Special Session.

End of Document

© 2011 Thomson Reuters. No claim to original U.S. Government Works.