

BRIEF OVERVIEW OF UTAH'S STATE CONSTRUCTION REGISTRY

A. Statutory History and Background

During the 2004 State legislative session, House Bill 136, Sixth Substitute, Electronic Filing of Preliminary Lien Documents was passed and put into law. The new legislation modified the Mechanics' Lien statute and called for the development of a standardized, statewide system for filing and managing preliminary notices, as well as notices of commencement and notices of completion.

The concept behind HB 136 was to establish, in essence, an online project "bulletin board" providing full disclosure to property owners, contractors, and other interested parties, of people providing goods and services to a construction project. By providing a centralized resource for project participant information, the State Construction Registry ("SCR") (www.utah.gov/cnr) helps property owners minimize unknown project liability and risk.

Another function of the SCR program is to implement an efficient and standardized system for protecting lien rights associated with all types of construction projects - residential, public and commercial projects. The SCR is the exclusive system for filing and managing preliminary notices and provides a suite of automated and streamlined services.

The full SCR system was implemented for commercial projects on May 1, 2005, and for residential projects on November 1, 2005, and is administered by a designated agent, Utah Interactive, under the oversight of the Division of Occupational and Professional Licensing.

- c. The payment bond surety's name and address or a statement that a payment bond was not required; and
- d. The project's address, if it reasonably identifies the project, or the name and general description of the location of the project if the address does not reasonably identify the project.

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Utah Code Ann. § 38-1-31.

The notice of commencement may include:

- e. A general description of the project; or
- f. The lot or parcel number and any subdivision, development, or other project name of the property if the property is subject to mechanic's liens.

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Id.

The notice of commencement need not include all of the items listed in "a" through "d," above, if (1) a building permit is issued for the project and (2) all items listed in "a" through "d," above, that are available on the building permit are included in the notice of commencement.

C. State Construction Registry – Preliminary Notice

A preliminary notice is required from those potentially making mechanic's lien and payment bond claims on certain construction projects. If a preliminary notice is not given, a contractor or supplier waives its right to file a mechanic's lien on the project and to make a payment bond claim.

Subcontractors and suppliers of all tiers must file a preliminary notice within 20 days of its first furnishing labor, equipment, or material to a project or

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within 20 days of the filing of the notice of commencement, whichever is later.

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Preliminary notices filed after this timeframe only become effective 5 days after which they are filed and preclude a subcontractor or supplier from filing a claim

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for compensation for labor, equipment, or materials furnished prior to the

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effective date of the preliminary notice, except for claims against the person with

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whom the subcontractor or supplier contracted. Therefore, it is important for

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subcontractors and suppliers to timely file preliminary notices. Furthermore, as

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described below, these timeframes change once a notice of completion is filed. It

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is the burden of the filer of the preliminary notice to prove that it was timely filed

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and substantially meets the filing requirements.

Only one preliminary notice is required for each project, unless a person is performing work for or supplying materials to two or more subcontractors on the project. In such a situation, a preliminary notice is required for the work performed for or the materials supplied to each subcontractor.

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The preliminary notice must include:

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a. The building permit number for the project or the number assigned to the project by the designated agent;

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b. The claimant's name, address, and telephone number;

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c. The name and address of the person who contracted for the labor, equipment, service, equipment, or materials;

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d. The name of the record or reputed owner of the project;

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e. The name of the original contract under which the work is performed;

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and

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f. The project address or a description of the location of the project.

Utah Code Ann. § 38-1-32.

There are exemptions to the preliminary notice requirement. Persons who have a direct contract with the owner or owner-builder are exempt from the preliminary notice requirement.

While the revised preliminary notice statute does not specifically exempt persons performing labor for wages, the literal language of the statute only includes subcontractors and suppliers. It is anticipated that those who would be eligible for this exemption would be true employees. Thus, a person who contracted on a piece-work basis would still be required to comply with the preliminary notice provisions.

As a final matter, since November 1, 2005, the Utah preliminary notice requirements no longer exempt residential construction. Therefore, even subcontractors and suppliers on residential projects must comply with the statute to preserve their mechanic's lien filing rights.

D. State Construction Registry – Notice of Completion

Upon final completion of a project, an owner, lender, surety, or title company related to the project may file a notice of completion with the SCR.

The notice of completion must include:

- a. The building permit number for the project, or the number assigned to the project by the designated agent;
- b. The name, address, and telephone number of the person filing the notice of completion;

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- c. The name of the original contractor for the project;
- d. The address of the project or a description of the location of the project;
- e. The date on which final completion is alleged to have occurred; and
- f. The method used to determine final completion.

“Final completion” means (1) issuance of a permanent certificate of occupancy, if required; (2) the date of final inspection by the local government entity, if a permanent certificate of occupancy is not required; or (3) if neither a permanent certificate of occupancy nor final inspection are required, the date on which there remains no substantial work to be completed to finish work on the original contract. *Id.* However, final completion “does not occur if work remains to be completed for which the owner is holding payment to ensure completions of that work.” Utah Code Ann. § 38-1-33.

If a subcontractor performs substantial work—that is, work other than repair or warranty work—after the date of final completion as above defined, the subcontract shall be considered an original contract for determining the timeframe for filing a Notice of Mechanic’s Lien for the subcontractor and the original contractor, but only to the extent the original contractor is responsible for that subcontractors’ work.

Upon the filing of the notice of completion, the timeframes for filing preliminary notices change so that any subsequent preliminary notices shall be filed within 10 days of the date on which the notice of completion is filed. If a

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notice of completion is not filed, a lien claimant has 180 days—in place of the standard 90 days—from final completion to file its mechanic's lien.

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While the preliminary notice statute only requires that the preliminary notice be sent to the registry, there may likely be benefits obtained by sending a copy of the preliminary notice to the owner and all subcontractors between the original contractor and the person sending the preliminary notice. The more that people in control of the money on a project know that a person is working and expecting to be paid, the more likely that the person will get paid without having to file a mechanic's lien or make a payment bond claim.