

**MECHANICS' LIENS AMENDMENTS**

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Michael T. Morley**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies provisions relating to mechanics' liens.

**Highlighted Provisions:**

This bill:

- ▶ clarifies the applicability of mechanics' liens provisions;
- ▶ modifies definitions;
- ▶ provides for liens for preconstruction service, establishes a procedure for perfecting and enforcing the liens, and provides for the priority of the liens;
- ▶ modifies a provision relating to the waiver or limitation of lien rights;
- ▶ provides that a person who knowingly falsifies information for the purpose of obtaining priority of a preconstruction service lien is guilty of a misdemeanor; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**38-1-1**, Utah Code Annotated 1953

**38-1-4**, as last amended by Laws of Utah 1987, Chapter 170



- 28           **38-1-5**, Utah Code Annotated 1953
- 29           **38-1-7**, as last amended by Laws of Utah 2009, Chapter 50
- 30           **38-1-9**, as last amended by Laws of Utah 1987, Chapter 50
- 31           **38-1-11**, as last amended by Laws of Utah 2010, Chapter 31
- 32           **38-1-19**, Utah Code Annotated 1953
- 33           **38-1-27**, as last amended by Laws of Utah 2009, Chapters 183 and 239
- 34           **38-1-31**, as last amended by Laws of Utah 2009, Chapter 50
- 35           **38-1-32**, as last amended by Laws of Utah 2009, Chapter 50
- 36           **38-1-33**, as last amended by Laws of Utah 2010, Chapter 76
- 37           **38-1-40**, as last amended by Laws of Utah 2010, Chapter 31

38 ENACTS:

- 39           **38-1-2.1**, Utah Code Annotated 1953
- 40           **38-1-4.7**, Utah Code Annotated 1953
- 41           **38-1-6.5**, Utah Code Annotated 1953
- 42           **38-1-6.7**, Utah Code Annotated 1953
- 43           **38-1-30.5**, Utah Code Annotated 1953
- 44           **76-6-524**, Utah Code Annotated 1953

45 REPEALS AND REENACTS:

- 46           **38-1-2**, as last amended by Laws of Utah 2006, Chapter 297
- 47           **38-1-3**, as last amended by Laws of Utah 1994, Chapter 308
- 48           **38-1-29**, as enacted by Laws of Utah 2001, Chapter 229



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

51           Section 1. Section **38-1-1** is amended to read:

52           **38-1-1. Public improvements not subject to chapter -- Exception.**

53           [~~The provisions of this~~]

54           Except as provided in Sections 38-1-27, 38-1-30 through 38-1-37, and 38-1-40 relating  
55 to the State Construction Registry, this chapter [shall] does not apply to any public [building,  
56 structure or] improvement.

57           Section 2. Section **38-1-2** is repealed and reenacted to read:

58           **38-1-2. Definitions.**

59 As used in this chapter:

60 (1) "Applicable county recorder" means the office of the recorder of each county in  
61 which any part of the property on which a claimant claims or intends to claim a lien under this  
62 chapter is located.

63 (2) "Bona fide loan" means a loan to an owner or owner-builder by a lender in which  
64 the owner or owner-builder has no financial or beneficial interest greater than 5% of the voting  
65 shares or other ownership interest.

66 (3) "Claimant" means a person entitled to claim a lien under this chapter.

67 (4) "Compensation" means the payment of money for a service rendered or an expense  
68 incurred, whether based on:

69 (a) time and expense, lump sum, stipulated sum, percentage of cost, cost plus fixed or  
70 percentage fee, or commission; or

71 (b) a combination of the bases listed in Subsection (4)(a).

72 (5) "Construction service":

73 (a) means to provide labor, material, or equipment for the purpose and during the  
74 process of constructing, altering, or repairing an improvement; and

75 (b) includes the scheduling, estimating, staking, supervising, managing, materials  
76 testing, inspection, observation, and quality control or assurance involved in constructing,  
77 altering, or repairing an improvement.

78 (6) "Construction service lien" means a lien under this chapter for construction service.

79 (7) "General preconstruction contractor" means a claimant, whether an original  
80 contractor or subcontractor, who contracts with one or more subcontractors for the  
81 subcontractor or subcontractors to provide preconstruction service that the claimant is under  
82 contract to provide.

83 (8) "Improvement" means:

84 (a) a building, infrastructure, utility, or other human-made structure or object  
85 constructed on or for and affixed to real property; or

86 (b) a repair, modification, or alteration of a building, infrastructure, utility, or object  
87 referred to in Subsection (8)(a).

88 (9) "Included preconstruction subcontractor" means a subcontractor who is:

89 (a) under contract with a general preconstruction contractor to provide preconstruction

90 service; and

91 (b) included in the general preconstruction contractor's initial or amended notice of  
92 intent to claim a preconstruction service lien under Section 38-1-6.7.

93 (10) "Original contract":

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

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

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

99 (12) "Owner-builder" means an owner of real property who:

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

102 (b) obtains a building permit for the improvement.

103 (13) "Preconstruction service":

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

106 (i) before construction of the improvement commences; and

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

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

114 (14) "Preconstruction service lien" means a lien under this chapter for a  
115 preconstruction service.

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

119 Section 3. Section **38-1-2.1** is enacted to read:

120 **38-1-2.1. Owner-builder original contract.**

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

123 Section 4. Section **38-1-3** is repealed and reenacted to read:

124 **38-1-3. Those entitled to lien -- What may be attached.**

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

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

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

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

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

137 Section 5. Section **38-1-4** is amended to read:

138 **38-1-4. Land covered by lien -- Multiple lots occupied by improvement -- What a**  
 139 **lien attaches to.**

140 [~~The liens granted by~~]

141 (1) A lien under this chapter [~~shall extend~~] extends to and [~~cover so~~] covers as much of  
 142 the land [~~whereon such building, structure, or~~] on which the improvement [~~shall be~~] is made as  
 143 [~~may be~~] necessary for the convenient use and occupation of the land. [~~In case any such~~  
 144 building shall occupy]

145 (2) If an improvement occupies two or more lots or other subdivisions of land, [~~such~~]  
 146 the lots or subdivisions [~~shall be~~] are considered as one for the purposes of this chapter. [~~The~~  
 147 liens provided for in]

148 (3) A lien under this chapter [~~shall attach~~] attaches to all franchises, privileges,  
 149 appurtenances, [~~and to all~~] machinery, and fixtures[;] pertaining to or used in connection with  
 150 [~~any such lands, buildings, structures, or improvements~~] the improvement.

151 Section 6. Section **38-1-4.7** is enacted to read:

152 **38-1-4.7. Preconstruction service lien -- Priority.**

153 (1) Except as otherwise provided in this chapter, a preconstruction service lien:

154 (a) relates back to and takes effect as of the time a notice of intent to claim a  
155 preconstruction service lien under Section 38-1-6.5 is recorded; and

156 (b) has priority over:

157 (i) any lien, mortgage, or other encumbrance that attaches after the notice of intent to  
158 claim a preconstruction service lien is recorded; and

159 (ii) any lien, mortgage, or other encumbrance of which the claimant had no notice and  
160 that was unrecorded at the time the notice of intent to claim a preconstruction service lien is  
161 recorded.

162 (2) A preconstruction service lien is subordinate to an interest securing a bona fide loan  
163 if and to the extent that the lien covers preconstruction service provided after the interest  
164 securing a bona fide loan is recorded.

165 (3) Preconstruction service is considered complete for any project, project phase, or bid  
166 package as of the date that construction service for that project, project phase, or bid package,  
167 respectively, commences.

168 Section 7. Section **38-1-5** is amended to read:

169 **38-1-5. Priority of construction service lien.**

170 [~~The liens herein provided for shall relate~~]

171 A construction service lien:

172 (1) relates back to, and [~~take~~] takes effect as of, the time of the commencement [~~to do~~  
173 ~~work or furnish materials~~] of construction service on the ground for the [structure or]  
174 improvement[;]; and [shall have]

175 (2) has priority over:

176 (a) any lien, mortgage, or other encumbrance [~~which may have attached subsequently~~  
177 ~~to the time when the building, improvement or structure was commenced, work begun, or first~~  
178 ~~material furnished~~] that attaches after the construction service for the improvement commences  
179 on the ground; [also over] and

180 (b) any lien, mortgage, or other encumbrance of which the [~~lien holder~~] claimant had  
181 no notice and [~~which~~] that was unrecorded at the time the [~~building, structure or~~] construction  
182 service for the improvement [was commenced, work begun, or first material furnished]

183 commences on the ground.

184 Section 8. Section **38-1-6.5** is enacted to read:

185 **38-1-6.5. Notice of intent to claim a preconstruction service lien -- Requirements.**

186 (1) (a) On or after the date a claimant first provides a preconstruction service but no  
187 later than the date the claimant completes the service, a claimant shall submit for recording  
188 with the applicable county recorder a notice of intent to claim a preconstruction service lien.

189 (b) A claimant who is an included preconstruction subcontractor is considered to have  
190 submitted a notice of intent to claim a preconstruction service lien at the same time that the  
191 claimant's general preconstruction contractor submits a notice of intent or amended notice of  
192 intent that includes the claimant as a subcontractor.

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

195 (3) A notice of intent to claim a preconstruction service lien shall include:

196 (a) the claimant's name, mailing address, and telephone number;

197 (b) if the claimant is a general preconstruction contractor, the name, mailing address,  
198 and telephone number of each subcontractor under contract with the claimant at the time the  
199 notice is filed;

200 (c) a statement that the claimant intends to hold and claim a preconstruction service  
201 lien if the claimant is not paid for the preconstruction service the claimant and, if the claimant  
202 is a general contractor, the claimant's subcontractors provide;

203 (d) a general description of the preconstruction service the claimant and any  
204 subcontractor of the claimant provided or will provide;

205 (e) the name of the person who employed the claimant;

206 (f) the name, if known, of the reputed owner of the property on which the  
207 preconstruction service lien is intended to be claimed or, if not known, the name of the record  
208 owner of the property;

209 (g) a description of the property sufficient for identification;

210 (h) the claimant's signature or the signature of the claimant's authorized agent; and

211 (i) an acknowledgment or certificate as required under Title 57, Chapter 3, Recording  
212 of Documents.

213 (4) A claimant who is a general preconstruction contractor shall submit for recording

214 with the applicable county recorder an amended notice of intent to claim a preconstruction  
215 service lien that complies with Subsection (3) if, after filing the initial notice of intent, the  
216 claimant contracts with a subcontractor to provide preconstruction service who was not  
217 included in the initial notice of intent.

218 Section 9. Section **38-1-6.7** is enacted to read:

219 **38-1-6.7. Notice of preconstruction service lien -- Requirements.**

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

223 (b) A claimant who is an included preconstruction subcontractor is considered to have  
224 submitted a notice of preconstruction service lien at the same time that the claimant's general  
225 preconstruction contractor submits a notice of preconstruction service lien that includes the  
226 claimant as a subcontractor.

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

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

230 (a) the claimant's name, mailing address, and telephone number;

231 (b) if the claimant is a general preconstruction contractor, the name, mailing address,  
232 and telephone number of each included preconstruction subcontractor;

233 (c) a statement that the claimant claims a preconstruction service lien;

234 (d) the date the claimant's notice of intent to claim a preconstruction service lien was  
235 recorded and, if the claimant submitted an amended notice of intent to claim a preconstruction  
236 service lien, the date the amended notice of intent was recorded;

237 (e) the name of the person who employed the claimant;

238 (f) a general description of the preconstruction service provided by the claimant and  
239 any included preconstruction subcontractor;

240 (g) the date that the claimant last provided preconstruction service;

241 (h) the name, if known, of the reputed owner of the property on which the  
242 preconstruction service lien is claimed or, if not known, the name of the record owner of the  
243 property;

244 (i) a description of the property sufficient for identification;



245 (j) the principal amount, excluding interest, costs, and attorney fees, claimed by the  
 246 claimant and by each included preconstruction subcontractor;

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

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

250 (m) if the lien is against an owner-occupied residence, as defined in Section 38-11-102,  
 251 a statement meeting the requirements that the Division of Occupational and Professional  
 252 Licensing has established in accordance with Title 63G, Chapter 3, Utah Administrative  
 253 Rulemaking Act, describing the steps an owner may take to require a claimant to remove the  
 254 lien as provided in Section 38-11-107.

255 (4) A general preconstruction contractor's notice of lien may include an amount  
 256 claimed by a subcontractor, regardless of tier, who was required under Subsection  
 257 38-1-6.5(3)(a) to be listed in the general preconstruction contractor's notice of intent to claim a  
 258 preconstruction service lien only if the subcontractor was listed in the notice of intent.

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

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

265 (c) A claimant's failure to mail a copy of the notice as required in this Subsection (5)  
 266 precludes the claimant from being awarded costs and attorney fees against the reputed or record  
 267 owner in an action to enforce the lien.

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

271 Section 10. Section **38-1-7** is amended to read:

272 **38-1-7. Notice of claim for construction service lien -- Contents -- Recording --**  
 273 **Service on owner of property.**

274 (1) (a) (i) Except as modified in Section 38-1-27, a person claiming [~~benefits under this~~  
 275 ~~chapter~~] a construction service lien shall file for record with the applicable county recorder [~~of~~

276 ~~the county in which the property, or some part of the property, is situated,]~~ a written notice to  
277 hold and claim a lien no later than:

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

280 (B) 90 days after the day on which a notice of completion is filed under Section  
281 38-1-33 but not later than the time frame established in Subsection (1)(a)(i)(A).

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

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

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

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

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

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

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

306 (ii) the original contractor's time frame to file a notice of intent to hold and claim a lien

307 under this Subsection (1) for that subcontractor's work.

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

309 (i) repair work; or

310 (ii) warranty work.

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

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

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

317 (ii) the name of the person:

318 (A) by whom the [lien] claimant was employed; or

319 (B) to whom the [lien] claimant furnished the equipment or material;

320 (iii) the time when:

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

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

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

324 (v) the name, current address, and current phone number of the [lien] claimant;

325 (vi) the amount of the lien claim;

326 (vii) the signature of the [lien] claimant or the [lien] claimant's authorized agent;

327 (viii) an acknowledgment or certificate as required under Title 57, Chapter 3,

328 Recording of Documents; and

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

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

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

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

337 (ii) the record owner of the real property.

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

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

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

347 Section 11. Section **38-1-9** is amended to read:

348 **38-1-9. Notice imparted by record.**

349 (1) The recorder [must] shall record [~~the claim~~] each notice of intent under Subsection  
350 38-1-6.5(1), notice of preconstruction service lien under Section 38-1-6.7, and notice to hold  
351 and claim a construction service lien under Section 38-1-7 in an index maintained for that  
352 purpose.

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

355 Section 12. Section **38-1-11** is amended to read:

356 **38-1-11. Enforcement -- Time for -- Lis pendens -- Action for debt not affected --**  
357 **Instructions and form affidavit and motion.**

358 (1) As used in this section:

359 (a) "Owner" is as defined in Section 38-11-102.

360 (b) "Residence" is as defined in Section 38-11-102.

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

362 (a) except as provided in Subsection (2)(b), within 180 days after the day on which the  
363 [lien] claimant [~~filed~~] files:

364 (i) a notice of preconstruction service lien under Section 38-1-6.7, for a preconstruction  
365 service lien; or

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

367 (b) if an owner files for protection under the bankruptcy laws of the United States  
368 before the expiration of the 180-day period under Subsection (2)(a), within 90 days after the

369 automatic stay under the bankruptcy proceeding is lifted or expires.

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

376 (b) The burden of proof is upon the [~~lien~~] claimant and those claiming under the [~~lien~~]  
377 claimant to show actual knowledge under Subsection (3)(a).

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

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

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

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

388 (i) instructions to the owner of the residence relating to the owner's rights under Title  
389 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act; and

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

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

396 (c) If a [~~lien~~] claimant fails to provide to the owner of the residence the instructions  
397 and form required by Subsection (6)(a), the [~~lien~~] claimant [~~shall be~~] is barred from  
398 maintaining or enforcing the lien upon the residence.

399 (d) Judicial determination of the rights and liabilities of the owner of the residence

400 under this chapter and Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery  
 401 Fund Act, and Title 14, Chapter 2, Private Contracts, shall be stayed until after the owner is  
 402 given a reasonable period of time to establish compliance with Subsections 38-11-204(4)(a)  
 403 and (4)(b) through an informal proceeding, as set forth in Title 63G, Chapter 4, Administrative  
 404 Procedures Act, commenced within 30 days of the owner being served summons in the  
 405 foreclosure action, at the Division of Occupational and Professional Licensing and obtain a  
 406 certificate of compliance or denial of certificate of compliance, as defined in Section  
 407 38-11-102.

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

- 410 (i) a copy of the application for a certificate of compliance; and
- 411 (ii) all materials filed in connection with the application.

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

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

416 Section 13. Section **38-1-19** is amended to read:

417 **38-1-19. Payment by owner to contractor -- Subcontractor's lien not affected.**

418 ~~[When any]~~ (1) If a subcontractor ~~[shall have]~~ has actually begun to furnish ~~[labor or~~  
 419 ~~materials]~~ preconstruction service or construction service for which ~~[he]~~ the subcontractor is  
 420 entitled to a lien ~~[no]~~, a payment to the original contractor ~~[shall]~~ may not impair or defeat  
 421 ~~[such] the lien[; and no]~~.

422 (2) An alteration of ~~[any]~~ a contract ~~[shall]~~ may not affect ~~[any]~~ a lien acquired under  
 423 ~~[the provisions of]~~ this chapter.

424 Section 14. Section **38-1-27** is amended to read:

425 **38-1-27. State Construction Registry -- Form and contents of notice of**  
 426 **commencement, preliminary notice, and notice of completion.**

427 (1) As used in this section, Sections 38-1-30 through 38-1-37, and Section 38-1-40:

428 (a) "Alternate filing" means a legible and complete filing made in a manner established  
 429 by the division under Subsection (2)(e) other than an electronic filing.

430 (b) "Cancel" means to indicate that a filing is no longer given effect.

- 431 (c) "Construction project," "project," or "improvement" means all labor, equipment,  
 432 and materials provided:
- 433 (i) under an original contract; or  
 434 (ii) by, or under contracts with, an owner-builder.
- 435 (d) "Database" means the State Construction Registry created in this section.
- 436 (e) (i) "Designated agent" means the third party the Division of Occupational and  
 437 Professional Licensing contracts with to create and maintain the State Construction Registry.  
 438 (ii) The designated agent is not an agency, instrumentality, or a political subdivision of  
 439 the state.
- 440 (f) "Division" means the Division of Occupational and Professional Licensing.
- 441 (g) "Interested person" means a person who may be affected by a construction project.
- 442 (h) "Program" means the State Construction Registry Program created in this section.
- 443 (2) Subject to receiving adequate funding through a legislative appropriation and  
 444 contracting with an approved third party vendor who meets the requirements of Sections  
 445 38-1-30 through 38-1-37, there is created the State Construction Registry Program that shall:
- 446 (a) (i) assist in protecting public health, safety, and welfare; and  
 447 (ii) promote a fair working environment;
- 448 (b) be overseen by the division with the assistance of the designated agent;
- 449 (c) provide a central repository for notices of commencement, preliminary notices, and  
 450 notices of completion filed in connection with all privately owned construction projects as well  
 451 as all state and local government owned construction projects throughout Utah;
- 452 (d) ~~[be] make accessible [for filing and review]~~, by way of the program Internet  
 453 website, the filing and review of:
- 454 (i) notices of retention;  
 455 ~~[(i)]~~ (ii) notices of commencement;  
 456 ~~[(ii)]~~ (iii) preliminary notices;  
 457 ~~[(iii)]~~ (iv) a notice of intent to file notice of final completion;  
 458 ~~[(iv)]~~ (v) a notice for remaining amounts due to complete the contract; and  
 459 ~~[(v)]~~ (vi) notices of completion;
- 460 (e) accommodate:  
 461 (i) electronic filing of the notices described in Subsection (2)(d); and

462 (ii) alternate filing of the notices described in Subsection (2)(d) by U.S. mail, telefax,  
463 or any other alternate method as provided by rule made by the division in accordance with Title  
464 63G, Chapter 3, Utah Administrative Rulemaking Act;

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

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

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

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

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

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

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

479 (c) The database shall be indexed by:

480 (i) owner name;

481 (ii) original contractor name;

482 (iii) subdivision, development, or other project name, if any;

483 (iv) project address;

484 (v) lot or parcel number;

485 (vi) unique project number assigned by the designated agent; and

486 (vii) any other identifier that the division considers reasonably appropriate in  
487 collaboration with the designated agent.

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

490 (i) a notice of retention;

491 [~~(i)~~] (ii) a notice of commencement;

492 [~~(i)~~] (iii) a preliminary notice;



493            [~~(iii)~~] (iv) a notice of intent to file notice of final completion;  
494            [~~(iv)~~] (v) a notice for remaining amounts due to complete the contract;  
495            [~~(v)~~] (vi) a notice of completion;  
496            [~~(vi)~~] (vii) a request for notice;  
497            [~~(vii)~~] (viii) providing a required notice by an alternate method of delivery;  
498            [~~(viii)~~] (ix) a duplicate receipt of a filing; and  
499            [~~(ix)~~] (x) account setup for a person who wishes to be billed periodically for filings  
500 with the database.

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

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

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

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

510            (b) A request for information submitted to the designated agent is not subject to Title  
511 63G, Chapter 2, Government Records Access and Management Act.

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

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

516            (e) Notwithstanding Title 63G, Chapter 2, Government Records Access and  
517 Management Act, if information is available in a public record contained in the database, a  
518 person may not request the information from the division.

519            (f) (i) A person may request information that is not a public record contained in the  
520 database from the division in accordance with Title 63G, Chapter 2, Government Records  
521 Access and Management Act.

522            (ii) The division shall inform the designated agent of how to direct inquiries made to  
523 the designated agent for information that is not a public record contained in the database.

524 (6) The following are not an adjudicative proceeding under Title 63G, Chapter 4,  
525 Administrative Procedures Act:

- 526 (a) the filing of a notice permitted by this chapter;
- 527 (b) the rejection of a filing permitted by this chapter; or
- 528 (c) other action by the designated agent in connection with a filing of any notice  
529 permitted by this chapter.

530 (7) The division and the designated agent need not determine the timeliness of any  
531 notice before filing the notice in the database.

532 (8) (a) A person who is delinquent on the payment of a fee established under  
533 Subsection (4) may not file a notice with the database.

534 (b) A determination that a person is delinquent on the payment of a fee for filing  
535 established under Subsection (4) shall be made in accordance with Title 63G, Chapter 4,  
536 Administrative Procedures Act.

537 (c) Any order issued in a proceeding described in Subsection (8)(b) may prescribe the  
538 method of that person's payment of fees for filing notices with the database after issuance of the  
539 order.

540 (9) If a notice is filed by a third party on behalf of another, the notice is considered to  
541 be filed by the person on whose behalf the notice is filed.

542 (10) A person filing a notice of commencement, preliminary notice, or notice of  
543 completion is responsible for verifying the accuracy of information entered into the database,  
544 whether the person files electronically or by alternate or third party filing.

545 Section 15. Section **38-1-29** is repealed and reenacted to read:

546 **38-1-29. No waiver of rights.**

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

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

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

552 (3) Unless an agreement waiving or limiting a lien right expressly provides that a  
553 payment is required to be applied to a specific lien, mortgage, or encumbrance, a payment to a  
554 person claiming or included within a preconstruction service lien and a construction service

555 lien shall be applied first to the preconstruction service lien until paid in full.

556 Section 16. Section **38-1-30.5** is enacted to read:

557 **38-1-30.5. Notice of retention.**

558 (1) A person under contract to provide a preconstruction service may file a notice of  
559 retention with the database.

560 (2) A notice of retention shall include:

561 (a) the name, mailing address, email address, and telephone number of the person filing  
562 the notice;

563 (b) a general description of the preconstruction service the person is under contract to  
564 provide; and

565 (c) (i) the street address of the property for which the person is under contract to  
566 provide preconstruction service; or

567 (ii) if the property cannot reasonably be identified by a street address, a general  
568 description of the location of the property sufficient for reasonable identification of its location.

569 Section 17. Section **38-1-31** is amended to read:

570 **38-1-31. Building permit -- Construction -- Notice registry -- Notice of**  
571 **commencement of work.**

572 (1) (a) (i) (A) For a construction project where a building permit is issued to an original  
573 contractor or owner-builder, no later than 15 days after the issuance of the building permit:

574 (I) the local government entity issuing that building permit shall input the building  
575 permit application and transmit the building permit information to the database electronically  
576 by way of the Internet or computer modem or by any other means; or

577 (II) the original contractor for construction service, owner, or owner-builder may file a  
578 notice of commencement with the database whether or not a building permit is issued or a  
579 notice of commencement is filed under Subsection (1)(a)(i)(A)(I).

580 (B) The information submitted under Subsection (1)(a)(i)(A) forms the basis of a  
581 notice of commencement.

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

584 (iii) For the purposes of classifying a record under Title 63G, Chapter 2, Government  
585 Records Access and Management Act, building permit information transmitted from a local

586 governmental entity to the database shall be classified in the database by the division  
587 notwithstanding the local governmental entity's classification of the building permit  
588 information.

589 (b) No later than 15 days after commencement of physical construction work at the  
590 project site, the original contractor for construction service, owner, or owner-builder may file a  
591 notice of commencement with the database whether or not a building permit is issued or a  
592 notice of commencement is filed under Subsection (1)(a).

593 (c) An original contractor for construction service, owner, or owner-builder may file a  
594 notice of commencement with the designated agent prior to the time frames established in  
595 Subsections (1)(a) and (b).

596 (d) An owner of construction or an original contractor for construction service may file  
597 a notice of commencement with the designated agent within the time prescribed by Subsections  
598 (1)(a) and (b).

599 (e) (i) If duplicate notices of commencement are filed, they shall be combined into one  
600 notice for each project and any notices filed relate back to the date of the earliest-filed notice of  
601 commencement for the project.

602 (ii) A duplicate notice of commencement that is untimely filed relates back under  
603 Subsection (1)(e)(i) if the earlier filed notice of commencement is timely filed.

604 (iii) Duplicate notices of commencement shall be automatically linked by the  
605 designated agent.

606 (f) The designated agent shall assign each construction project a unique project number  
607 that:

608 (i) identifies each construction project; and

609 (ii) can be associated with all notices of commencement, preliminary notices, and  
610 notices of completion.

611 (g) A notice of commencement is effective only as to any labor, service, equipment,  
612 and material furnished to the construction project that is furnished subsequent to the filing of  
613 the notice of commencement.

614 (2) (a) A notice of commencement shall include the following:

615 (i) the name and address of the owner of the project;

616 (ii) the name and address of the:

- 617 (A) original contractor for construction service; and
- 618 (B) surety providing any payment bond for the project, or if none exists, a statement  
619 that a payment bond was not required for the work being performed; and
- 620 (iii) (A) the project address if the project can be reasonably identified by an address; or  
621 (B) the name and general description of the location of the project if the project cannot  
622 be reasonably identified by an address.
- 623 (b) A notice of commencement may include:
- 624 (i) a general description of the project; or  
625 (ii) the lot or parcel number, and any subdivision, development, or other project name,  
626 of the real property upon which the project is to be constructed if the project is subject to  
627 mechanics' liens.
- 628 (c) A notice of commencement need not include all of the items listed in Subsection  
629 (2)(a) if:
- 630 (i) a building permit is issued for the project; and  
631 (ii) all items listed in Subsection (2)(a) that are available on the building permit are  
632 included in the notice of commencement.
- 633 (3) If a notice of commencement for a construction project is not filed within the time  
634 set forth in Subsections(1)(a) and (b), the following do not apply:
- 635 (a) Section 38-1-32; and  
636 (b) Section 38-1-33.
- 637 (4) (a) Unless a person indicates to the division or designated agent that the person  
638 does not wish to receive a notice under this section, electronic notice of the filing of a notice of  
639 commencement or alternate notice as prescribed in Subsection (1), shall be provided to:
- 640 (i) all persons who have filed notices of commencement for the project; and  
641 (ii) all interested persons who have requested notices concerning the project.
- 642 (b) (i) A person to whom notice is required under Subsection (4)(a) is responsible for:  
643 (A) providing an email address, mailing address, or telefax number to which a notice  
644 required by Subsection (4)(a) is to be sent; and  
645 (B) the accuracy of any email address, mailing address, or telefax number to which  
646 notice is to be sent.
- 647 (ii) The designated agent fulfills the notice requirement of Subsection (4)(a) when it

648 sends the notice to the email address, mailing address, or telefax number provided to the  
649 designated agent whether or not the notice is actually received.

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

653 (b) A substantial inaccuracy in a notice of commencement renders the notice of  
654 commencement unenforceable.

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

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

661 Section 18. Section **38-1-32** is amended to read:

662 **38-1-32. Preliminary notice by subcontractor.**

663 (1) (a) (i) Except for a person who has a contract with an owner or an owner-builder or  
664 a laborer compensated with wages, a subcontractor for construction service shall file a  
665 preliminary notice with the database by the later of:

666 (A) 20 days after commencement of its own work or the commencement of furnishing  
667 labor, service, equipment, and material to a construction project; or

668 (B) 20 days after the filing of a notice of commencement if the subcontractor's work  
669 commences before the filing of the first notice of commencement.

670 (ii) A preliminary notice filed within the period described in Subsection (1)(a)(i) is  
671 effective as to all labor, service, equipment, and material furnished to the construction project,  
672 including labor, service, equipment, and material provided to more than one contractor or  
673 subcontractor.

674 (iii) (A) If more than one notice of commencement is filed for a project, a person may  
675 attach a preliminary notice to any notice of commencement filed for the project by a party  
676 authorized in Section 38-1-31.

677 (B) A preliminary notice attached to an untimely notice of commencement is valid if  
678 there is also a valid and timely notice of commencement for the project filed by a party

679 authorized in Section 38-1-31.

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

683 (c) Except as provided in Subsection (1)(e), failure to file a preliminary notice within  
684 the period required by Subsection (1)(a) precludes a person from maintaining any claim for  
685 compensation earned for performance of labor or service or supply of materials or equipment  
686 furnished to the construction project before the expiration of five days after the late filing of a  
687 preliminary notice, except as against the person with whom the person contracted.

688 (d) (i) (A) If a person who is required to file a preliminary notice under this chapter  
689 fails to file the preliminary notice, that person may not hold a valid lien under this chapter.

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

692 (ii) The content of a preliminary notice shall include:

693 (A) the building permit number for the project, or the number assigned to the project  
694 by the designated agent;

695 (B) the name, address, and telephone number of the person furnishing the labor,  
696 service, equipment, or material;

697 (C) the name and address of the person who contracted with the claimant for the  
698 furnishing of the labor, service, equipment, or material;

699 (D) the name of the record or reputed owner of the project;

700 (E) the name of the original contractor for construction service under which the  
701 claimant is performing or will perform its work; and

702 (F) the address of the project or a description of the location of the project.

703 (iii) Upon request by person identified in Subsection (1)(a)(i), an original contractor for  
704 construction service shall provide the person with the building permit number for the project,  
705 or the number assigned to the project by the designated agent.

706 (e) If a person provides labor, service, equipment, or material before the filing of a  
707 notice of commencement and the notice of commencement is filed more than 15 days after the  
708 day on which the person providing labor, service, equipment, or material begins work on the  
709 project, the person providing labor, service, equipment, or material need not file a preliminary

710 notice to maintain the person's right to hold a lien under this chapter or any other right,  
711 including a right referenced under Subsection (1)(c).

712 (2) (a) (i) Unless a person indicates to the division or designated agent that the person  
713 does not wish to receive a notice under this section, electronic notification of the filing of a  
714 preliminary notice or alternate notice as prescribed in Subsection (1), shall be provided to:

715 (A) the person filing the preliminary notice;

716 (B) each person that filed a notice of commencement for the project; and

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

718 (ii) A person to whom notice is required under Subsection (2)(a)(i) is responsible for:

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

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

723 (iii) The designated agent fulfills the notice requirement of Subsection (2)(a)(i) when it  
724 sends the notice to the email address, mailing address, or telefax number provided to the  
725 designated agent whether or not the notice is actually received.

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

728 (c) Subject to Subsection (2)(d), a person required by this section to give preliminary  
729 notice is only required to give one notice for each project.

730 (d) If the labor, service, equipment, or material is furnished pursuant to contracts under  
731 more than one original contract for construction service, the notice requirements must be met  
732 with respect to the labor, service, equipment, or material furnished under each original contract.

733 (3) (a) If a construction project owner, original contractor, or subcontractor for  
734 construction service, or other interested person believes that a preliminary notice has been filed  
735 erroneously, that owner, original contractor, subcontractor, or other interested person can  
736 request from the person who filed the preliminary notice evidence establishing the validity of  
737 the preliminary notice.

738 (b) Within 10 days after the request described in Subsection (3)(a), the person or entity  
739 that filed the preliminary notice shall provide the requesting person or entity proof that the  
740 preliminary notice is valid.



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

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

747 (5) Until June 1, 2008, nothing in this section affects a person's rights under Title 38,  
748 Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act.

749 Section 19. Section **38-1-33** is amended to read:

750 **38-1-33. Notice of completion.**

751 (1) (a) Upon final completion of a construction project, and in accordance with Section  
752 38-1-40, the following with a construction project registered with the database may file a notice  
753 of completion with the database:

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

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

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

767 (c) A notice of completion shall include:

- 768 (i) the building permit number for the project, or the number assigned to the project by  
769 the designated agent;  
770 (ii) the name, address, and telephone number of the person filing the notice of  
771 completion;

- 772 (iii) the name of the original contractor for [~~the project~~] construction service;
- 773 (iv) the address of the project or a description of the location of the project;
- 774 (v) the date on which final completion is alleged to have occurred; and
- 775 (vi) the method used to determine final completion.

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

779 (e) (i) Unless a person indicates to the division or designated agent that the person does  
780 not wish to receive a notice under this section, electronic notification of the filing of a notice of  
781 completion or alternate notice as prescribed in Subsection (1)(a), shall be provided to:

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

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

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

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

793 (iv) Upon the filing of a notice of completion, the time periods for filing preliminary  
794 notices stated in Section 38-1-27 are modified such that all preliminary notices shall be filed  
795 subsequent to the notice of completion and within 10 days from the day on which the notice of  
796 completion is filed.

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

801 (2) (a) If a construction project owner, original contractor, or subcontractor for  
802 construction service, or other interested person believes that a notice of completion has been

803 filed erroneously, that owner, original contractor, subcontractor, or other interested person can  
804 request from the person who filed the notice of completion evidence establishing the validity of  
805 the notice of completion.

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

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

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

815 Section 20. Section **38-1-40** is amended to read:

816 **38-1-40. Notice of intent to obtain final completion.**

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

821 (a) the completion of performance time under the original contract for construction  
822 service is greater than 120 days;

823 (b) the total original construction contract price exceeds \$500,000; and

824 (c) the contractor or owner has not obtained a payment bond in accordance with  
825 Section 14-2-1.

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

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

833 (a) that includes:

834 (i) a good faith estimate of the total amount remaining due to complete the contract,  
835 purchase order, or agreement relating to the person's approved labor, approved materials, and  
836 approved services;

837 (ii) the identification of each contractor or subcontractor with whom the person has a  
838 contract or contracts for supplying project labor, materials, or services; and

839 (iii) a separate statement of all known amounts or categories of work in dispute; and

840 (b) no later than 20 days after the day on which the owner or contractor files a notice of  
841 intent.

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

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

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

855 (i) by hand delivery with a responsible party's acknowledgment of receipt;

856 (ii) by certified mail with a return receipt; or

857 (iii) as provided under Rule 4, Utah Rules of Civil Procedure.

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

865 (i) the owner, contractor, or subcontractor fails to provide adequate assurance that the  
866 owner, contractor, or subcontractor has sufficient available funds, or access to financing or  
867 other sufficient available funds, to pay for the completion of the demanding person's approved  
868 work on the construction project; or

869 (ii) the parties disagree, in good faith, as to whether there are adequate funds, or access  
870 to financing or other sufficient available funds, to pay for the completion of the demanding  
871 person's approved work on the construction project.

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

877 (i) cash;

878 (ii) a bond;

879 (iii) an irrevocable letter of credit;

880 (iv) property;

881 (v) financing; or

882 (vi) another form of security approved by the court.

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

885 (i) that misrepresents the amount due under the contract; and

886 (ii) with the intent to:

887 (A) charge an owner, contractor, or subcontractor more than the actual amount due; or

888 (B) procure any other unfair advantage or benefit on the person's behalf.

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

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

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

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

895 (8) Failure to comply with the requirements established in this section does not affect

896 any other requirement or right under this chapter.

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

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

901 Section 21. Section **76-6-524** is enacted to read:

902 **76-6-524. Falsifying information for preconstruction service lien purposes.**

903 A person who knowingly falsifies information for the purpose of obtaining priority of a  
904 preconstruction service lien under Title 38, Chapter 1, Mechanics' Liens, is guilty of a class B  
905 misdemeanor.

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**Legislative Review Note**  
**as of 2-3-11 9:47 AM**

**Office of Legislative Research and General Counsel**

# FISCAL NOTE

H.B. 115

SHORT TITLE: **Mechanics' Liens Amendments**

SPONSOR: **Morley, M.**

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill likely will not materially impact the state budget.

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.