

1                   **LIENS FOR PRECONSTRUCTION SERVICE AND**  
2   **CONSTRUCTION WORK**

3   2012 GENERAL SESSION

4   STATE OF UTAH

5   **Chief Sponsor: Michael T. Morley**

6   Senate Sponsor: J. Stuart Adams

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8                   **LONG TITLE**

9                   **General Description:**

10                   This bill modifies provisions relating to liens for preconstruction service and  
11 construction work.

12                   **Highlighted Provisions:**

13                   This bill:

- 14                   ▶ reorganizes and modifies provisions relating to liens for preconstruction service and  
15 construction work;
- 16                   ▶ modifies provisions relating to contesting the validity of certain notices;
- 17                   ▶ modifies some terminology relating to liens for preconstruction service and  
18 construction work;
- 19                   ▶ modifies the time when a preconstruction lien takes effect;
- 20                   ▶ repeals redundant and obsolete provisions; and
- 21                   ▶ makes technical changes.

22                   **Money Appropriated in this Bill:**

23                   None

24                   **Other Special Clauses:**

25                   None

26                   **Utah Code Sections Affected:**

27                   AMENDS:

28                   **13-8-4**, as enacted by Laws of Utah 1997, Chapter 86

29                   **13-8-5**, as last amended by Laws of Utah 2001, Chapter 9

- 30           **14-1-20**, as last amended by Laws of Utah 2011, Chapter 299
- 31           **14-2-5**, as last amended by Laws of Utah 2011, Chapter 299
- 32           **15A-1-209**, as enacted by Laws of Utah 2011, Chapter 14 and last amended by
- 33 Coordination Clause, Laws of Utah 2011, Chapter 299
- 34           **38-3-2**, as last amended by Laws of Utah 1977, Chapter 272
- 35           **38-9-2**, as last amended by Laws of Utah 2008, Chapters 3 and 223
- 36           **38-10-105**, as last amended by Laws of Utah 1990, Chapter 203
- 37           **38-10-106**, as enacted by Laws of Utah 1987, Chapter 170
- 38           **38-10-110**, as enacted by Laws of Utah 1987, Chapter 170
- 39           **38-10-111**, as enacted by Laws of Utah 1987, Chapter 170
- 40           **38-10-112**, as enacted by Laws of Utah 1987, Chapter 170
- 41           **38-10-114**, as enacted by Laws of Utah 1987, Chapter 170
- 42           **38-11-107**, as last amended by Laws of Utah 2010, Chapter 31
- 43           **38-11-204**, as last amended by Laws of Utah 2010, Chapter 31
- 44           **38-12-102**, as last amended by Laws of Utah 2005, Chapter 187
- 45           **40-6-8**, as enacted by Laws of Utah 1983, Chapter 205
- 46           **58-55-501**, as last amended by Laws of Utah 2011, Chapters 195 and 413
- 47           **63G-6-506**, as last amended by Laws of Utah 2011, Chapter 299
- 48           **73-22-7**, as last amended by Laws of Utah 1988, Chapter 72
- 49           **76-6-524**, as enacted by Laws of Utah 2011, Chapter 339

50 ENACTS:

- 51           **38-1a-101**, Utah Code Annotated 1953
- 52           **38-1a-203**, Utah Code Annotated 1953
- 53           **38-1a-204**, Utah Code Annotated 1953
- 54           **38-1a-206**, Utah Code Annotated 1953
- 55           **38-1a-207**, Utah Code Annotated 1953
- 56           **38-1a-208**, Utah Code Annotated 1953
- 57           **38-1a-303**, Utah Code Annotated 1953

- 58           **38-1a-305**, Utah Code Annotated 1953
- 59           **38-1a-306**, Utah Code Annotated 1953
- 60           **38-1a-307**, Utah Code Annotated 1953
- 61           **38-1a-404**, Utah Code Annotated 1953
- 62           **38-1a-504**, Utah Code Annotated 1953
- 63           **38-1a-505**, Utah Code Annotated 1953
- 64           **38-1a-702**, Utah Code Annotated 1953
- 65           **38-1a-705**, Utah Code Annotated 1953
- 66           **38-1a-706**, Utah Code Annotated 1953
- 67           **38-1a-801**, Utah Code Annotated 1953
- 68           **38-1a-803**, Utah Code Annotated 1953
- 69           **38-1b-101**, Utah Code Annotated 1953
- 70           **38-1b-102**, Utah Code Annotated 1953
- 71           **38-1b-203**, Utah Code Annotated 1953

72 RENUMBERS AND AMENDS:

- 73           **38-1a-102**, (Renumbered from 38-1-2, as repealed and reenacted by Laws of Utah
- 74 2011, Chapter 339 and last amended by Coordination Clause, Laws of Utah 2011,
- 75 Chapter 299)
- 76           **38-1a-103**, (Renumbered from 38-1-1, as last amended by Laws of Utah 2011, Chapters
- 77 299 and 339)
- 78           **38-1a-104**, (Renumbered from 38-1-2.1, as enacted by Laws of Utah 2011, Chapter
- 79 339)
- 80           **38-1a-105**, (Renumbered from 38-1-29, as repealed and reenacted by Laws of Utah
- 81 2011, Chapter 339)
- 82           **38-1a-201**, (Renumbered from 38-1-27, as last amended by Laws of Utah 2011,
- 83 Chapters 299, 339 and last amended by Coordination Clause, Laws of Utah 2011,
- 84 Chapter 299)
- 85           **38-1a-202**, (Renumbered from 38-1-30, as last amended by Laws of Utah 2011,

86 Chapter 299)  
87           **38-1a-205**, (Renumbered from 38-1-31, as last amended by Laws of Utah 2011,  
88 Chapters 299, 339 and last amended by Coordination Clause, Laws of Utah 2011,  
89 Chapter 299)  
90           **38-1a-209**, (Renumbered from 38-1-34, as enacted by Laws of Utah 2004, Chapter 250)  
91           **38-1a-210**, (Renumbered from 38-1-35, as last amended by Laws of Utah 2006,  
92 Chapter 297)  
93           **38-1a-211**, (Renumbered from 38-1-36, as enacted by Laws of Utah 2004, Chapter 250)  
94           **38-1a-301**, (Renumbered from 38-1-3, as repealed and reenacted by Laws of Utah  
95 2011, Chapter 339)  
96           **38-1a-302**, (Renumbered from 38-1-4, as last amended by Laws of Utah 2011, Chapter  
97 339)  
98           **38-1a-304**, (Renumbered from 38-1-8, as last amended by Laws of Utah 1987, Chapter  
99 170)  
100           **38-1a-308**, (Renumbered from 38-1-25, as last amended by Laws of Utah 2007,  
101 Chapter 332)  
102           **38-1a-401**, (Renumbered from 38-1-30.5, as enacted by Laws of Utah 2011, Chapter  
103 339)  
104           **38-1a-402**, (Renumbered from 38-1-6.7, as enacted by Laws of Utah 2011, Chapter  
105 339)  
106           **38-1a-403**, (Renumbered from 38-1-4.7, as enacted by Laws of Utah 2011, Chapter  
107 339)  
108           **38-1a-501**, (Renumbered from 38-1-32, as last amended by Laws of Utah 2011,  
109 Chapters 299, 339 and last amended by Coordination Clause, Laws of Utah 2011,  
110 Chapter 299)  
111           **38-1a-502**, (Renumbered from 38-1-7, as last amended by Laws of Utah 2011, Chapter  
112 339)  
113           **38-1a-503**, (Renumbered from 38-1-5, as last amended by Laws of Utah 2011, Chapters

114 299, 339 and last amended by Coordination Clause, Laws of Utah 2011, Chapter 299)  
115           **38-1a-506**, (Renumbered from 38-1-40, as last amended by Laws of Utah 2011,  
116 Chapter 339)  
117           **38-1a-507**, (Renumbered from 38-1-33, as last amended by Laws of Utah 2011,  
118 Chapters 299, 339 and last amended by Coordination Clause, Laws of Utah 2011,  
119 Chapter 299)  
120           **38-1a-601**, (Renumbered from 38-1-30.7, as enacted by Laws of Utah 2011, Chapter  
121 299)  
122           **38-1a-602**, (Renumbered from 38-1-32.7, as enacted by Laws of Utah 2011, Chapter  
123 299)  
124           **38-1a-701**, (Renumbered from 38-1-11, as last amended by Laws of Utah 2011,  
125 Chapter 339)  
126           **38-1a-703**, (Renumbered from 38-1-14, Utah Code Annotated 1953)  
127           **38-1a-704**, (Renumbered from 38-1-15, Utah Code Annotated 1953)  
128           **38-1a-707**, (Renumbered from 38-1-18, as last amended by Laws of Utah 2001,  
129 Chapter 257)  
130           **38-1a-802**, (Renumbered from 38-1-39, as last amended by Laws of Utah 2008,  
131 Chapter 382)  
132           **38-1a-804**, (Renumbered from 38-1-28, as last amended by Laws of Utah 2008,  
133 Chapter 382)  
134           **38-1b-201**, (Renumbered from 38-1-31.5, as enacted by Laws of Utah 2011, Chapter  
135 299)  
136           **38-1b-202**, (Renumbered from 38-1-32.5, as enacted by Laws of Utah 2011, Chapter  
137 299)  
138 REPEALS:  
139           **38-1-6**, Utah Code Annotated 1953  
140           **38-1-9**, as last amended by Laws of Utah 2011, Chapter 339  
141           **38-1-10**, Utah Code Annotated 1953

- 142           **38-1-13**, Utah Code Annotated 1953
- 143           **38-1-16**, Utah Code Annotated 1953
- 144           **38-1-17**, as last amended by Laws of Utah 1996, Chapter 79
- 145           **38-1-19**, as last amended by Laws of Utah 2011, Chapter 339 and last amended by
- 146   Coordination Clause, Laws of Utah 2011, Chapter 299
- 147           **38-1-20**, Utah Code Annotated 1953
- 148           **38-1-21**, Utah Code Annotated 1953
- 149           **38-1-22**, Utah Code Annotated 1953
- 150           **38-1-23**, Utah Code Annotated 1953
- 151           **38-1-24**, as last amended by Laws of Utah 2006, Chapter 297
- 152           **38-1-26**, Utah Code Annotated 1953
- 153           **38-1-27.2**, as last amended by Laws of Utah 2005, Chapter 71

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

156           Section 1. Section **13-8-4** is amended to read:

157           **13-8-4. Obligation to pay under construction contracts -- Rights of parties under**  
158 **contingent payment provisions.**

159           (1) For purposes of this section:

160           (a) "Construction contract" means a contract or agreement to provide services, labor, or  
161 materials for the design, construction, installation, or repair of an improvement to real property  
162 located in Utah.

163           (b) "Contingent payment contract" means a construction contract between a contractor  
164 and a subcontractor that makes a payment from the contractor to the subcontractor contingent  
165 on the contractor receiving a corresponding payment from any other public or private party,  
166 including a private owner.

167           (c) "Contractor" means a person who is or may be awarded a contract for the  
168 construction, alteration, or repair of any building, structure, or improvement to real property.

169           (d) "Subcontractor" means any person engaged by a contractor to provide services,

170 labor, or materials for the design, construction, installation, or repair of an improvement to real  
171 property and includes a trade contractor or specialty contractor.

172 (2) A party to a construction contract shall make all scheduled payments under the  
173 terms of the construction contract.

174 (3) (a) The existence of a contingent payment contract is not a defense to a claim to  
175 enforce a [~~mechanics'~~] preconstruction or construction lien [~~filed~~] under Title 38, Chapter [~~1~~,  
176 ~~Mechanics'~~] 1a, Preconstruction and Construction Liens.

177 (b) Subsection (3) does not apply to contracts for private construction work for the  
178 building, improvement, repair, or remodeling of residential property consisting of four units or  
179 less.

180 (4) If a construction contract is a contingent payment contract:

181 (a) the subcontractor may request from the contractor the financial information that the  
182 contractor has received from the public or private party regarding:

183 (i) the project financing; and

184 (ii) the public or private party; and

185 (b) if information is requested by the subcontractor under Subsection (4)(a), the  
186 contractor shall provide the information prior to the subcontractor signing the construction  
187 contract between the contractor and the subcontractor.

188 (5) This section applies to a contract executed on or after May 5, 1997.

189 Section 2. Section **13-8-5** is amended to read:

190 **13-8-5. Definitions -- Limitation on retention proceeds withheld -- Deposit in**  
191 **interest-bearing escrow account -- Release of proceeds -- Payment to subcontractors --**  
192 **Penalty -- No waiver.**

193 (1) As used in this section:

194 (a) (i) "Construction contract" means a written agreement between the parties relative  
195 to the design, construction, alteration, repair, or maintenance of a building, structure, highway,  
196 appurtenance, appliance, or other improvements to real property, including moving,  
197 demolition, and excavating for nonresidential commercial or industrial construction projects.

198 (ii) If the construction contract is for construction of a project that is part residential  
199 and part nonresidential, this section applies only to that portion of the construction project that  
200 is nonresidential as determined pro rata based on the percentage of the total square footage of  
201 the project that is nonresidential.

202 (b) "Construction lender" means any person, including a bank, trust company, savings  
203 bank, industrial bank, land bank, safe deposit company, private banker, savings and loan  
204 association, credit union, cooperative bank, small loan company, sales finance company,  
205 investment company, or any other financial institution that advances money to a borrower for  
206 the purpose of making alterations or improvements to real property. A construction lender  
207 does not include a person or entity who is acting in the capacity of contractor, original  
208 contractor, or subcontractor.

209 (c) "Contractor" means a person who, for compensation other than wages as an  
210 employee, undertakes any work in a construction trade, as defined in Section 58-55-102 and  
211 includes:

212 (i) any person engaged as a maintenance person who regularly engages in activities set  
213 forth in Section 58-55-102 as a construction trade; or

214 (ii) a construction manager who performs management and counseling services on a  
215 construction project for a fee.

216 (d) "Original contractor" [~~is~~] has the same meaning as provided in Section [~~38-1-2~~]  
217 38-1a-102.

218 (e) "Owner" means the person who holds any legal or equitable title or interest in  
219 property. Owner does not include a construction lender unless the construction lender has an  
220 ownership interest in the property other than solely as a construction lender.

221 (f) "Public agency" means any state agency or political subdivision of the state that  
222 enters into a construction contract for an improvement of public property.

223 (g) "Retention payment" means release of retention proceeds as defined in Subsection  
224 (1)(h).

225 (h) "Retention proceeds" means money earned by a contractor or subcontractor but



226 retained by the owner or public agency pursuant to the terms of a construction contract to  
227 guarantee payment or performance by the contractor or subcontractor of the construction  
228 contract.

229 (i) "Subcontractor" ~~is~~ has the same meaning as defined in Section ~~[38-1-2]~~  
230 38-1a-102.

231 ~~[(j) "Successful party" has the same meaning as it does under Section 38-1-18.]~~

232 (2) (a) This section is applicable to all construction contracts relating to construction  
233 work or improvements entered into on or after July 1, 1999, between:

- 234 (i) an owner or public agency and an original contractor;
- 235 (ii) an original contractor and a subcontractor; and
- 236 (iii) subcontractors under a contract described in Subsection (2)(a)(i) or (ii).

237 (b) This section does not apply to a construction lender.

238 (3) (a) Notwithstanding Section 58-55-603, the retention proceeds withheld and  
239 retained from any payment due under the terms of the construction contract may not exceed 5%  
240 of the payment:

- 241 (i) by the owner or public agency to the original contractor;
- 242 (ii) by the original contractor to any subcontractor; or
- 243 (iii) by a subcontractor.

244 (b) The total retention proceeds withheld may not exceed 5% of the total construction  
245 price.

246 (c) The percentage of the retention proceeds withheld and retained pursuant to a  
247 construction contract between the original contractor and a subcontractor or between  
248 subcontractors shall be the same retention percentage as between the owner and the original  
249 contractor if:

250 (i) the retention percentage in the original construction contract between an owner and  
251 the original contractor is less than 5%; or

252 (ii) after the original construction contract is executed but before completion of the  
253 construction contract the retention percentage is reduced to less than 5%.

254 (4) (a) If any payment on a contract with a private contractor, firm, or corporation to do  
255 work for an owner or public agency is retained or withheld by the owner or the public agency,  
256 as retention proceeds, it shall be placed in an interest-bearing account.

257 (b) The interest accrued under Subsection (4)(a) shall be:

258 (i) for the benefit of the contractor and subcontractors; and

259 (ii) paid after the project is completed and accepted by the owner or the public agency.

260 (c) The contractor shall ensure that any interest accrued on the retainage is distributed  
261 by the contractor to subcontractors on a pro rata basis.

262 (5) Any retention proceeds retained or withheld pursuant to this section and any  
263 accrued interest shall be released pursuant to a billing statement from the contractor within 45  
264 days from the later of:

265 (a) the date the owner or public agency receives the billing statement from the  
266 contractor;

267 (b) the date that a certificate of occupancy or final acceptance notice is issued to:

268 (i) the original contractor who obtained the building permit from the building inspector  
269 or public agency;

270 (ii) the owner or architect; or

271 (iii) the public agency;

272 (c) the date that a public agency or building inspector having authority to issue its own  
273 certificate of occupancy does not issue the certificate but permits partial or complete occupancy  
274 of a newly constructed or remodeled building; or

275 (d) the date the contractor accepts the final pay quantities.

276 (6) If only partial occupancy of a building is permitted, any retention proceeds withheld  
277 and retained pursuant to this section and any accrued interest shall be partially released within  
278 45 days under the same conditions as provided in Subsection (5) in direct proportion to the  
279 value of the part of the building occupied.

280 (7) The billing statement from the contractor as provided in Subsection (5)(a) shall  
281 include documentation of lien releases or waivers.

282 (8) (a) Notwithstanding Subsection (3):

283 (i) if a contractor or subcontractor is in default or breach of the terms and conditions of  
284 the construction contract documents, plans, or specifications governing construction of the  
285 project, the owner or public agency may withhold from payment for as long as reasonably  
286 necessary an amount necessary to cure the breach or default of the contractor or subcontractor;  
287 or

288 (ii) if a project or a portion of the project has been substantially completed, the owner  
289 or public agency may retain until completion up to twice the fair market value of the work of  
290 the original contractor or of any subcontractor that has not been completed:

291 (A) in accordance with the construction contract documents, plans, and specifications;  
292 or

293 (B) in the absence of plans and specifications, to generally accepted craft standards.

294 (b) An owner or public agency that refuses payment under Subsection (8)(a) shall  
295 describe in writing within 45 days of withholding such amounts what portion of the work was  
296 not completed according to the standards specified in Subsection (8)(a).

297 (9) (a) Except as provided in Subsection (9)(b), an original contractor or subcontractor  
298 who receives retention proceeds shall pay each of its subcontractors from whom retention has  
299 been withheld each subcontractor's share of the retention received within 10 days from the day  
300 that all or any portion of the retention proceeds is received:

301 (i) by the original contractor from the owner or public agency; or

302 (ii) by the subcontractor from:

303 (A) the original contractor; or

304 (B) a subcontractor.

305 (b) Notwithstanding Subsection (9)(a), if a retention payment received by the original  
306 contractor is specifically designated for a particular subcontractor, payment of the retention  
307 shall be made to the designated subcontractor.

308 (10) (a) In any action for the collection of the retained proceeds withheld and retained  
309 in violation of this section, the successful party is entitled to:

310 (i) ~~attorney's~~ attorney fees; and

311 (ii) other allowable costs.

312 (b) (i) Any owner, public agency, original contractor, or subcontractor who knowingly  
313 and wrongfully withholds a retention shall be subject to a charge of 2% per month on the  
314 improperly withheld amount, in addition to any interest otherwise due.

315 (ii) The charge described in Subsection (10)(b)(i) shall be paid to the contractor or  
316 subcontractor from whom the retention proceeds have been wrongfully withheld.

317 (11) A party to a construction contract may not require any other party to waive any  
318 provision of this section.

319 Section 3. Section **14-1-20** is amended to read:

320 **14-1-20. Preliminary notice requirement.**

321 (1) Any person furnishing labor, service, equipment, or material for which a payment  
322 bond claim may be made under this chapter shall provide preliminary notice to the designated  
323 agent as prescribed by Section ~~[38-1-32.5]~~ 38-1b-202, except that this section does not apply:

324 (a) to a person performing labor for wages; or

325 (b) if a notice of commencement is not filed as prescribed in Section ~~[38-1-31.5]~~  
326 38-1b-201 for the project or improvement for which labor, service, equipment, or material is  
327 furnished.

328 (2) Any person who fails to provide the preliminary notice required by Subsection (1)  
329 may not make a payment bond claim under this chapter.

330 (3) The preliminary notice required by Subsection (1) shall be provided prior to  
331 commencement of any action on the payment bond.

332 Section 4. Section **14-2-5** is amended to read:

333 **14-2-5. Preliminary notice requirement.**

334 (1) Any person furnishing labor, service, equipment, or material for which a payment  
335 bond claim may be made under this chapter shall provide preliminary notice to the designated  
336 agent as prescribed by Section ~~[38-1-32]~~ 38-1a-501, except that this section does not apply to a  
337 person performing labor for wages.

338 (2) Any person who fails to provide the preliminary notice required by Subsection (1)  
339 may not make a payment bond claim under this chapter.

340 (3) The preliminary notice required by Subsection (1) shall be provided prior to  
341 commencement of any action on the payment bond.

342 Section 5. Section **15A-1-209** is amended to read:

343 **15A-1-209. Building permit requirements.**

344 (1) As used in this section, "project" means a "construction project" as defined in  
345 Section [~~38-1-27~~] 38-1a-102.

346 (2) (a) The division shall develop a standardized building permit numbering system for  
347 use by any compliance agency in the state that issues a permit for construction.

348 (b) The standardized building permit numbering system described under Subsection  
349 (2)(a) shall include a combination of alpha or numeric characters arranged in a format  
350 acceptable to the compliance agency.

351 (c) A compliance agency issuing a permit for construction shall use the standardized  
352 building permit numbering system described under Subsection (2)(a).

353 (d) A compliance agency may not use a numbering system other than the system  
354 described under Subsection (2)(a) to define a building permit number.

355 (3) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,  
356 the division shall adopt a standardized building permit form by rule.

357 (b) The standardized building permit form created under this Subsection (3) shall  
358 include fields for indicating the following information:

359 (i) the name and address of the owner of each parcel of property on which the project  
360 will occur;

361 (ii) the name and address of the contractor for the project;

362 (iii) (A) the address of the project; or

363 (B) a general description of the project;

364 (iv) the county in which the property on which the project will occur is located;

365 (v) the tax parcel identification number of each parcel of the property; and

366 (vi) whether the permit applicant is an original contractor or owner-builder.

367 (c) The standardized building permit form created under this Subsection (3) may  
368 include any other information the division considers useful.

369 (d) A compliance agency shall issue a permit for construction only on a standardized  
370 building permit form approved by the division.

371 (e) A permit for construction issued by a compliance agency under Subsection (3)(d)  
372 shall print the standardized building permit number assigned under Subsection (2) in the upper  
373 right-hand corner of the building permit form in at least 12-point font.

374 (f) (i) Except as provided in Subsection (3)(f)(ii), a compliance agency may not issue a  
375 permit for construction if the information required by Subsection (3)(b) is not completed on the  
376 building permit form.

377 (ii) If a compliance agency does not issue a separate permit for different aspects of the  
378 same project, the compliance agency may issue a permit for construction without the  
379 information required by Subsection (3)(b)(vi).

380 (g) A compliance agency may require additional information for the issuance of a  
381 permit for construction.

382 (4) A local regulator issuing a single-family residential building permit application  
383 shall include in the application or attach to the building permit the following notice  
384 prominently placed in at least 14-point font: "Decisions relative to this application are subject  
385 to review by the chief executive officer of the municipal or county entity issuing the  
386 single-family residential building permit and appeal under the International Residential Code as  
387 adopted by the Legislature."

388 (5) (a) A compliance agency shall:

389 (i) charge a 1% surcharge on a building permit it issues; and

390 (ii) transmit 80% of the amount collected to the division to be used by the division in  
391 accordance with Subsection (5)(c).

392 (b) The portion of the surcharge transmitted to the division shall be deposited as a  
393 dedicated credit.

394 (c) The division shall use the money received under this Subsection (5) to provide  
395 education:

396 (i) regarding the codes and code amendments that under Section 15A-1-204 are  
397 adopted, approved, or being considered for adoption or approval; and

398 (ii) to:

399 (A) building inspectors; and

400 (B) individuals engaged in construction-related trades or professions.

401 Section 6. Section **38-1a-101** is enacted to read:

402 **CHAPTER 1a. PRECONSTRUCTION AND CONSTRUCTION LIENS**

403 **Part 1. General Provisions**

404 **38-1a-101. Title.**

405 This chapter is known as "Preconstruction and Construction Liens."

406 Section 7. Section **38-1a-102**, which is renumbered from Section 38-1-2 is renumbered  
407 and amended to read:

408 ~~[38-1-2].~~ **38-1a-102. Definitions.**

409 As used in this chapter:

410 (1) "Alternate means" means a method of filing a legible and complete notice or other  
411 document with the registry other than electronically, as established by the division by rule.

412 [~~(1)~~] (2) "Anticipated improvement" means the improvement:

413 (a) for which [a] preconstruction service is performed; and

414 (b) that is anticipated to follow the performing of [~~the~~] preconstruction service.

415 [~~(2)~~] (3) "Applicable county recorder" means the office of the recorder of each county  
416 in which any part of the property on which a claimant claims or intends to claim a  
417 preconstruction or construction lien [~~under this chapter~~] is located.

418 [~~(3)~~] (4) "Bona fide loan" means a loan to an owner or owner-builder by a lender in  
419 which the owner or owner-builder has no financial or beneficial interest greater than 5% of the  
420 voting shares or other ownership interest.

421 [~~(4)~~] (5) "Claimant" means a person entitled to claim a preconstruction or construction

422 lien [~~under this chapter~~].

423 [~~(5)~~] (6) "Compensation" means the payment of money for a service rendered or an  
424 expense incurred, whether based on:

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

427 (b) a combination of the bases listed in Subsection [~~(5)~~] (6)(a).

428 (7) "Construction [~~service~~] lien" means a lien under this chapter for construction  
429 [~~service~~] work.

430 (8) "Construction loan" does not include a consumer loan secured by the equity in the  
431 consumer's home.

432 (9) "Construction project" means construction work provided under an original  
433 contract.

434 [~~(6)~~] (10) "Construction [~~service~~] work":

435 (a) means [~~to furnish~~] labor, service, material, or equipment provided for the purpose  
436 and during the process of constructing, altering, or repairing an improvement; and

437 (b) includes [~~the~~] scheduling, estimating, staking, supervising, managing, materials  
438 testing, inspection, observation, and quality control or assurance involved in constructing,  
439 altering, or repairing an improvement.

440 (11) "Contestable notice" means a notice of retention under Section 38-1a-401, a  
441 preliminary notice under Section 38-1a-501, or a notice of completion under Section  
442 38-1a-506.

443 (12) "Contesting person" means an owner, original contractor, subcontractor, or other  
444 interested person.

445 (13) "Designated agent" means the third party the division contracts with as provided  
446 in Section 38-1a-202 to create and maintain the registry.

447 (14) "Division" means the Division of Occupational and Professional Licensing created  
448 in Section 58-1-103.

449 (15) "Entry number" means the reference number that:



450 (a) the designated agent assigns to each notice or other document filed with the  
451 registry; and

452 (b) is unique for each notice or other document.

453 (16) "Final completion" means:

454 (a) the date of issuance of a permanent certificate of occupancy by the local  
455 government entity having jurisdiction over the construction project, if a permanent certificate  
456 of occupancy is required;

457 (b) the date of the final inspection of the construction work by the local government  
458 entity having jurisdiction over the construction project, if an inspection is required under a  
459 state-adopted building code applicable to the construction work, but no certificate of occupancy  
460 is required;

461 (c) unless the owner is holding payment to ensure completion of construction work, the  
462 date on which there remains no substantial work to be completed to finish the construction  
463 work under the original contract, if a certificate of occupancy is not required and a final  
464 inspection is not required under an applicable state-adopted building code; or

465 (d) the last date on which substantial work was performed under the original contract,  
466 if, because the original contract is terminated before completion of the construction work  
467 defined by the original contract, the local government entity having jurisdiction over the  
468 construction project does not issue a certificate of occupancy or perform a final inspection.

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

470 (a) the earliest preliminary notice filed on a construction project;

471 (b) filed on or after August 1, 2011;

472 (c) not filed on a project that, according to the law in effect before August 1, 2011,  
473 commenced before August 1, 2011;

474 (d) not canceled under Section 38-1a-307; and

475 (e) not withdrawn under Subsection 38-1a-501(5).

476 ~~[(8) "General preconstruction contractor" means a claimant, other than an original~~  
477 ~~contractor, who contracts with one or more subcontractors for the subcontractor or~~

478 subcontractors to provide preconstruction service that the claimant is under contract to  
479 provide.]

480 (18) "Government project-identifying information" has the same meaning as defined in  
481 Section 38-1b-102.

482 [~~9~~] (19) "Improvement" means:

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

485 (b) a repair, modification, or alteration of a building, infrastructure, utility, or object  
486 referred to in Subsection [~~9~~] (19)(a).

487 (20) "Interested person" means a person who may be affected by a construction project.

488 (21) "Notice of commencement" means a notice required under Section 38-1b-201 for  
489 a government project, as defined in Section 38-1b-102.

490 [~~10~~] (22) "Original contract":

491 (a) means a contract between an owner [~~of real property~~] and an original contractor for  
492 preconstruction service or construction [~~service~~] work; and

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

494 [~~11~~] (23) "Original contractor" means a person who contracts with an owner [~~of real~~  
495 ~~property~~], other than an owner-builder, to provide preconstruction service or construction  
496 [~~service~~] work.

497 (24) "Owner" means the person who owns the project property.

498 [~~12~~] (25) "Owner-builder" means an owner [~~of real property~~] who:

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

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

502 [~~13~~] (26) "Preconstruction service":

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

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

506 (ii) for compensation separate from any compensation paid or to be paid for  
507 construction [~~service~~] work for the improvement; and

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

513 [~~(14)~~] (27) "Preconstruction [~~service~~] lien" means a lien under this chapter for a  
514 preconstruction service.

515 (28) "Prelender claimant" means a person whose construction lien is made subject to a  
516 construction lender's mortgage or trust deed, as provided in Section 38-1a-503, by the person's  
517 acceptance of payment in full and the person's withdrawal of the person's preliminary notice.

518 (29) "Private project" means a construction project that is not a government project.

519 (30) "Project property" means the real property on or for which preconstruction service  
520 or construction work is or will be provided.

521 (31) "Refiled preliminary notice" means a preliminary notice that a prelender claimant  
522 files with the registry on a construction project after withdrawing a preliminary notice that the  
523 claimant previously filed for the same project.

524 (32) "Registry" means the State Construction Registry under Part 2, State Construction  
525 Registry.

526 (33) "Required notice" means:

527 (a) a notice of retention under Section 38-1a-401;

528 (b) a preliminary notice under Section 38-1a-501 or Section 38-1b-202;

529 (c) a notice of commencement;

530 (d) a notice of construction loan under Section 38-1a-601;

531 (e) a notice under Section 38-1a-602 concerning a construction loan default;

532 (f) a notice of intent to obtain final completion under Section 38-1a-506; or

533 (g) a notice of completion under Section 38-1a-507.

534 ~~[(15)]~~ (34) "Subcontractor" means a person who contracts to provide preconstruction  
535 service or construction ~~[service]~~ work to:

536 (a) a person other than the owner ~~[of the real property for which the preconstruction~~  
537 ~~service or construction service is provided.];~~ or

538 (b) the owner, if the owner is an owner-builder.

539 (35) "Substantial work" does not include repair work or warranty work.

540 (36) "Supervisory subcontractor" means a person who:

541 (a) is a subcontractor under contract to provide preconstruction service or construction  
542 work; and

543 (b) contracts with one or more other subcontractors for the other subcontractor or  
544 subcontractors to provide preconstruction service or construction work that the person is under  
545 contract to provide.

546 Section 8. Section **38-1a-103**, which is renumbered from Section 38-1-1 is renumbered  
547 and amended to read:

548 ~~[38-1-1].~~ **38-1a-103. Government projects not subject to chapter -- Exception.**

549 Except as provided in ~~[Sections 38-1-27, 38-1-30 through 38-1-36, and 38-1-40 relating~~  
550 ~~to the]~~ Section 38-1a-102, Part 2, State Construction Registry, and Chapter 1b, Government  
551 Construction Projects, this chapter does not apply to ~~[any public improvement]~~ a government  
552 project, as defined in Section 38-1b-102.

553 Section 9. Section **38-1a-104**, which is renumbered from Section 38-1-2.1 is  
554 renumbered and amended to read:

555 ~~[38-1-2.1].~~ **38-1a-104. Owner-builder original contract -- Owner-builder as**  
556 **original contractor.**

557 For purposes of this chapter~~[-];~~:

558 (1) an original contract is considered to exist between an owner-builder as owner and  
559 the owner-builder as original contractor~~[-];~~ and

560 (2) in addition to being an owner, an owner-builder is considered to be an original  
561 contractor.

562 Section 10. Section **38-1a-105**, which is renumbered from Section 38-1-29 is  
563 renumbered and amended to read:

564 ~~[38-1-29].~~ **38-1a-105. No waiver of rights -- Exception.**

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

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

568 (2) Notwithstanding Subsection (1), a claimant may waive or limit, in whole or in part,  
569 a lien right under this chapter in consideration of payment as provided in Section ~~[38-1-39]~~  
570 38-1a-802.

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

575 Section 11. Section **38-1a-201**, which is renumbered from Section 38-1-27 is  
576 renumbered and amended to read:

577 **Part 2. State Construction Registry**

578 ~~[38-1-27].~~ **38-1a-201. Establishment of State Construction Registry -- Filing**  
579 **index.**

580 ~~[(1) As used in this section, Sections 38-1-30 through 38-1-36, and Section 38-1-40:]~~

581 ~~[(a) "Alternate filing" means a legible and complete filing made in a manner~~  
582 ~~established by the division under Subsection (2)(c) other than an electronic filing.]~~

583 ~~[(b) "Cancel" means to indicate that a filing is no longer given effect.]~~

584 ~~[(c) "Construction lender" means a lender who provides construction financing for a~~  
585 ~~private project.]~~

586 ~~[(d) "Construction project" or "project" means all labor, service, equipment, and~~  
587 ~~materials provided under an original contract.]~~

588 ~~[(e) "Database" means the State Construction Registry created in this section.]~~

589 ~~[(f) (i) "Designated agent" means the third party the division contracts with to create~~

590 and maintain the State Construction Registry.]

591 ~~[(ii) The designated agent is not an agency, instrumentality, or a political subdivision of~~  
592 ~~the state.]~~

593 ~~[(g) "Division" means the Division of Occupational and Professional Licensing.]~~

594 ~~[(h) "Entry number" means the reference number that:]~~

595 ~~[(i) the designated agent assigns to each notice or other document filed with the~~  
596 ~~database; and]~~

597 ~~[(ii) is unique for each notice or other document.]~~

598 ~~[(i) "Government project" means a construction project undertaken by or for:]~~

599 ~~[(i) the state, including a department, division, or other agency of the state; or]~~

600 ~~[(ii) a county, city, town, school district, local district, special service district,~~  
601 ~~community development and renewal agency, or other political subdivision of the state.]~~

602 ~~[(j) "Government project-identifying information" means:]~~

603 ~~[(i) the lot or parcel number of each lot included in the project property that has a lot or~~  
604 ~~parcel number; and]~~

605 ~~[(ii) the unique project number assigned by the designated agent.]~~

606 ~~[(k) "Interested person" means a person who may be affected by a construction~~  
607 ~~project.]~~

608 ~~[(l) "Private project" means a construction project that is not a government project.]~~

609 ~~[(m) "Program" means the State Construction Registry Program created in this~~  
610 ~~section.]~~

611 ~~[(n) "Project property" means the real property on which a construction project occurs~~  
612 ~~or will occur.]~~

613 ~~[(2)]~~ (1) Subject to receiving adequate funding through a legislative appropriation and  
614 contracting with an approved third party vendor ~~[who meets the requirements of Sections~~  
615 ~~38-1-30 through 38-1-36, there is created]~~ as provided in Section 38-1a-202, the division shall  
616 establish and maintain the State Construction Registry ~~[Program that shall]~~ to:

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

618 (ii) promote a fair working environment;

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

620 (c) provide a central repository for all required notices [~~filed with the database under~~

621 ~~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~~];

622 (d) make accessible, by way of [~~the program~~] an Internet website:

623 (i) the filing and review of required notices [~~described in Subsection (2)(c)~~]; and

624 (ii) the transmitting of building permit information under Subsection [~~38-1-31(2)(a)~~

625 38-1a-205(1) and the reviewing of that information;

626 (e) accommodate:

627 (i) electronic filing of [~~the~~] required notices [~~described in Subsection (2)(c)~~] and

628 electronic transmitting of building permit information described in Subsection [~~(2)~~] (1)(d)(ii);

629 and

630 (ii) [~~alternate~~] the filing of [~~the~~] required notices [~~described in Subsection (2)(d)~~] by

631 alternate means, including [U.S.] United States mail, telefax, or any other [~~alternate~~] method as

632 [~~provided by rule made by~~] the division [~~in accordance with Title 63G, Chapter 3, Utah~~

633 ~~Administrative Rulemaking Act~~] provides by rule;

634 (f) (i) provide electronic notification for up to three email addresses for each interested

635 person [~~or company~~] who requests [~~notice~~] to receive notification under Section 38-1a-204

636 from the [~~construction notice registry~~] designated agent; and

637 (ii) provide alternate means of providing notification [~~for~~] to a person who makes [~~an~~

638 ~~alternate~~] a filing by alternate means, including [~~U.S.:~~] United States mail, telefax, or any other

639 method as [~~prescribed by rule made by~~] the division [~~in accordance with Title 63G, Chapter 3,~~

640 ~~Utah Administrative Rulemaking Act~~] prescribes by rule; and

641 (g) provide hard-copy printing of electronic receipts for an individual filing evidencing

642 the date and time of the individual filing and the content of the individual filing.

643 [~~(3)(a) The designated agent shall provide notice of all other filings for a project to any~~

644 ~~person who files a notice of commencement, preliminary notice, or notice of completion for~~

645 ~~that project, unless the person.;~~]

646 ~~[(i) requests that the person not receive notice of other filings; or]~~  
647 ~~[(ii) does not provide the designated agent with the person's contact information in a~~  
648 ~~manner that adequately informs the designated agent.]~~  
649 ~~[(b) An interested person may request notice of filings related to a project.]~~  
650 ~~[(c)] (2) The ~~[database shall be indexed]~~ designated agent shall index filings in the~~  
651 ~~registry by:~~  
652 ~~[(i)] (a) the name of the ~~[property]~~ owner;~~  
653 ~~[(ii)] (b) the name of the original contractor;~~  
654 ~~[(iii)] (c) subdivision, development, or other project name, if any;~~  
655 ~~[(iv)] (d) lot or parcel number;~~  
656 ~~[(v)] (e) the address of the project property;~~  
657 ~~[(vi)] (f) entry number;~~  
658 ~~[(vii)] (g) the name of the county in which the project property is located;~~  
659 ~~[(viii)] (h) for ~~[private]~~ construction projects that are not government projects:~~  
660 ~~[(A)] (i) the tax parcel identification number of each parcel included in the project~~  
661 ~~property; and~~  
662 ~~[(B)] (ii) the building permit number;~~  
663 ~~[(ix)] (i) for government projects, the government project-identifying information; and~~  
664 ~~[(x)] (j) any other identifier that the division considers reasonably appropriate in~~  
665 ~~collaboration with the designated agent.~~  
666 ~~[(4) (a) In accordance with the process required by Section 63J-1-504, the division~~  
667 ~~shall establish the fees for:]~~  
668 ~~[(i) notices described in Subsection (2)(c);]~~  
669 ~~[(ii) a request for notice;]~~  
670 ~~[(iii) providing a required notice by an alternate filing;]~~  
671 ~~[(iv) a duplicate receipt of a filing; and]~~  
672 ~~[(v) account setup for a person who wishes to be billed periodically for filings with the~~  
673 ~~database.]~~



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

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

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

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

684           ~~[(b) A request for information submitted to the designated agent is not subject to Title~~  
685 ~~63G, Chapter 2, Government Records Access and Management Act.]~~

686           ~~[(c) Information contained in a public record contained in the database shall be~~  
687 ~~requested from the designated agent.]~~

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

691           ~~[(e) Notwithstanding Title 63G, Chapter 2, Government Records Access and~~  
692 ~~Management Act, if information is available in a public record contained in the database, a~~  
693 ~~person may not request the information from the division.]~~

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

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

699           ~~[(6) The following are not an adjudicative proceeding under Title 63G, Chapter 4,~~  
700 ~~Administrative Procedures Act:]~~

701           ~~[(a) the filing of a notice permitted by this chapter;]~~

702 ~~[(b) the rejection of a filing permitted by this chapter; or]~~

703 ~~[(c) other action by the designated agent in connection with a filing of any notice~~  
704 ~~permitted by this chapter.]~~

705 ~~[(7) The division and the designated agent need not determine the timeliness of any~~  
706 ~~notice before filing the notice in the database.]~~

707 ~~[(8) (a) A person who is delinquent on the payment of a fee established under~~  
708 ~~Subsection (4) may not file a notice with the database.]~~

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

712 ~~[(c) Any order issued in a proceeding described in Subsection (8)(b) may prescribe the~~  
713 ~~method of that person's payment of fees for filing notices with the database after issuance of the~~  
714 ~~order.]~~

715 ~~[(9) If a notice is filed by a third party on behalf of another, the notice is considered to~~  
716 ~~be filed by the person on whose behalf the notice is filed.]~~

717 ~~[(10) A person filing a notice of commencement, preliminary notice, or notice of~~  
718 ~~completion is responsible for verifying the accuracy of information entered into the database,~~  
719 ~~whether the person files electronically or by alternate or third party filing.]~~

720 ~~[(11) Each notice or other document submitted for inclusion in the database and for~~  
721 ~~which this chapter does not specify information required to be included in the notice or other~~  
722 ~~document shall contain:]~~

723 ~~[(a) the name of the county in which the project property to which the notice or other~~  
724 ~~document applies is located;]~~

725 ~~[(b) for a private project;]~~

726 ~~[(i) the tax parcel identification number of each parcel included in the project property;~~  
727 ~~or]~~

728 ~~[(ii) the number of the building permit for the construction project on the project~~  
729 ~~property; and]~~

730 ~~[(c) for a government project, the government project-identifying information.]~~

731 Section 12. Section **38-1a-202**, which is renumbered from Section 38-1-30 is

732 renumbered and amended to read:

733 ~~[38-1-30].~~ **38-1a-202. Contract to establish and maintain registry -- Designated**  
 734 **agent -- Rules -- Duties of designated agent -- Limit of liability.**

735 (1) (a) The division shall contract, in accordance with Title 63G, Chapter 6, Utah  
 736 Procurement Code, with a third party to establish and maintain the ~~[database]~~ registry for the  
 737 purposes established under this ~~[section, Section 38-1-27, and Sections 38-1-31 through~~  
 738 ~~38-1-36]~~ part.

739 (b) The designated agent is not an agency, instrumentality, or political subdivision of  
 740 the state.

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

743 (i) local government entities issuing building permits;

744 (ii) original contractors;

745 (iii) subcontractors; ~~[and]~~

746 (iv) construction lenders; and

747 ~~[(iv)]~~ (v) other interested persons.

748 (b) The ~~[database]~~ registry shall accommodate filings by third parties on behalf of  
 749 clients.

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

752 (3) (a) ~~[In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,~~  
 753 ~~the]~~ The division shall make rules and develop procedures for:

754 ~~[(a)]~~ (i) the division to oversee and enforce this [section, Section 38-1-27, and Sections  
 755 38-1-31 through 38-1-36] chapter and Chapter 1b, Government Construction Projects;

756 ~~[(b)]~~ (ii) the designated agent to administer this [section, Section 38-1-27, and Sections  
 757 38-1-31 through 38-1-36] chapter and Chapter 1b, Government Construction Projects; and

758           ~~[(e)]~~ (iii) the form of submission of ~~[an alternate]~~ a filing by alternate means, which  
759 may include procedures for rejecting an illegible or incomplete filing.

760           (b) If this chapter directs or authorizes the division to make a rule or adopt a procedure  
761 to implement the provisions of this chapter or Chapter 1b, Government Construction Projects,  
762 the division shall make the rule or adopt the procedure in accordance with Title 63G, Chapter  
763 3, Utah Administrative Rulemaking Act.

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

766           (b) ~~[In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,~~  
767 ~~the]~~ The division shall make rules to allow the designated agent to periodically archive projects  
768 from the ~~[database]~~ registry.

769           (c) ~~[A project shall be archived no]~~ The designated agent may not archive a project  
770 earlier than:

771           (i) one year after the day on which a notice of completion is filed for a construction  
772 project;

773           (ii) if no notice of completion is filed, two years after the last filing activity for a  
774 project; or

775           (iii) one year after the day on which a ~~[filing]~~ contestable notice is cancelled under  
776 ~~[Subsection 38-1-32(6)(c) or 38-1-33(2)(c)]~~ Section 38-1a-307.

777           (d) The division may audit the designated agent's administration of the ~~[database]~~  
778 registry as often as the division considers necessary.

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

782           (6) (a) The designated agent shall make reasonable efforts to assure the accurate entry  
783 into the ~~[database]~~ registry of information provided ~~[in]~~ by alternate ~~[filings]~~ means.

784           (b) The designated agent shall meet or exceed standards established by the division for  
785 the accuracy of data entry for information on documents filed by alternate ~~[filings]~~ means.

786 (7) The designated agent is not liable for the correctness of the information contained  
787 in ~~[an]~~ a document filed by alternate [filing it] means which the registered agent enters into the  
788 database.

789 Section 13. Section **38-1a-203** is enacted to read:

790 **38-1a-203. Filings with the registry.**

791 (1) The division and the designated agent need not determine the timeliness of any  
792 notice before filing the notice in the registry.

793 (2) A notice filed by a third party on behalf of another is considered to be filed by the  
794 person on whose behalf the notice is filed.

795 (3) A person filing a notice of commencement, preliminary notice, or notice of  
796 completion is responsible for verifying the accuracy of information entered into the registry,  
797 whether the person files electronically, by alternate means, or through a third party.

798 (4) Each notice or other document submitted for inclusion in the registry and for which  
799 this chapter does not specify information required to be included in the notice or other  
800 document shall contain:

801 (a) the name of the county in which the project property to which the notice or other  
802 document applies is located;

803 (b) for a private project:

804 (i) the tax parcel identification number of each parcel included in the project property;

805 or

806 (ii) the number of the building permit for the construction project on the project  
807 property; and

808 (c) for a government project, the government project-identifying information.

809 Section 14. Section **38-1a-204** is enacted to read:

810 **38-1a-204. Notification of filings with the registry.**

811 (1) The designated agent shall provide notification of the filing of a required notice  
812 relating to an anticipated improvement or construction project to:

813 (a) the person filing the required notice, unless the person indicates to the division or

814 designated agent that the person does not want to receive notification; and  
815 (b) each person who requests notification of the filing of a required notice for that  
816 anticipated improvement or construction project.

817 (2) (a) A person may request the designated agent to provide the person notification of  
818 the filing of a required notice for any anticipated improvement or construction project.

819 (b) A person requesting notification under Subsection (2)(a) is responsible:

820 (i) to provide an email address, mailing address, or telefax number to which  
821 notification may be sent; and

822 (ii) for the accuracy of the email address, mailing address, or telefax number.

823 (c) A person is considered to have requested notification under Subsection (2)(a) if the  
824 person files, with respect to the same anticipated improvement or construction project that  
825 relates to the required notice that is the subject of the notification:

826 (i) a notice of retention;

827 (ii) a notice of commencement;

828 (iii) a preliminary notice;

829 (iv) a notice of construction loan; or

830 (v) a notice of completion.

831 (3) The designated agent fulfills the notification requirement under Subsection (1) by  
832 sending the notification to the email address, mailing address, or telefax number that the person  
833 provides to the designated agent, whether or not the person actually receives the notification.

834 Section 15. Section **38-1a-205**, which is renumbered from Section 38-1-31 is  
835 renumbered and amended to read:

836 **[38-1-31]. 38-1a-205. Building permit -- Transmission to registry -- Posting at**  
837 **project site.**

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

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

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

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

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

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

855 Section 16. Section **38-1a-206** is enacted to read:

856 **38-1a-206. Registry fees.**

857 (1) In accordance with the process required by Section 63J-1-504, the division shall  
858 establish the fees for:

859 (a) required notices, whether filed electronically or by alternate means;

860 (b) a request for notification under Section 38-1a-204;

861 (c) providing notification of a required notice, whether electronically or by alternate  
862 means;

863 (d) a duplicate receipt of a filing; and

864 (e) account setup for a person who wishes to be billed periodically for filings with the  
865 registry.

866 (2) The fees allowed under Subsection (1) may not in the aggregate exceed the amount  
867 reasonably necessary to create and maintain the registry.

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

870 (4) The division may provide by contract that the designated agent may retain all fees  
871 collected by the designated agent, except that the designated agent shall remit to the division  
872 the cost of the division's oversight.

873 (5) (a) A person who is delinquent on the payment of a fee established under this  
874 section may not file a notice with the registry.

875 (b) The division shall make a determination whether a person is delinquent on the  
876 payment of a fee for filing established under this section in accordance with Title 63G, Chapter  
877 4, Administrative Procedures Act.

878 (c) Any order that the division issues in a proceeding described in Subsection (5)(b)  
879 may prescribe the method of that person's payment of fees for filing notices with the registry  
880 after issuance of the order.

881 Section 17. Section **38-1a-207** is enacted to read:

882 **38-1a-207. Registry classification.**

883 (1) The registry is classified as a public record under Title 63G, Chapter 2,  
884 Government Records Access and Management Act, unless the division classifies it otherwise.

885 (2) A request for information submitted to the designated agent is not subject to Title  
886 63G, Chapter 2, Government Records Access and Management Act.

887 (3) A person desiring information contained in a public record in the registry shall  
888 request the information from the designated agent.

889 (4) The designated agent may charge a commercially reasonable fee allowed by the  
890 designated agent's contract with the division for providing information under Subsection (3).

891 (5) Notwithstanding Title 63G, Chapter 2, Government Records Access and  
892 Management Act, if information is available in a public record contained in the registry, a  
893 person may not request the information from the division.

894 (6) (a) A person may request information that is not a public record contained in the  
895 registry from the division in accordance with Title 63G, Chapter 2, Government Records  
896 Access and Management Act.

897 (b) The division shall inform the designated agent of how to direct an inquiry made to



898 the designated agent for information that is not a public record contained in the registry.

899 Section 18. Section **38-1a-208** is enacted to read:

900 **38-1a-208. Actions that are not adjudicative proceedings.**

901 None of the following is an adjudicative proceeding under Title 63G, Chapter 4,

902 Administrative Procedures Act:

903 (1) the filing of a notice permitted or required by this chapter;

904 (2) the rejection of a filing permitted or required by this chapter; or

905 (3) other action by the designated agent in connection with a filing of any notice

906 permitted or required by this chapter.

907 Section 19. Section **38-1a-209**, which is renumbered from Section 38-1-34 is

908 renumbered and amended to read:

909 **[38-1-34]. 38-1a-209. Abuse of registry -- Penalty.**

910 (1) As used in this section, "third party" means an owner, an original contractor, a

911 subcontractor, or any interested party.

912 ~~[(+)]~~ (2) A person abuses the [database] registry if that person [records] files a notice in

913 the [database] registry:

914 (a) without a good faith basis for doing so;

915 (b) with the intent to exact more than is due from the [project] owner or any other

916 interested party; or

917 (c) to procure an unjustified advantage or benefit.

918 ~~[(2)]~~ (3) A person who [violates] abuses the registry as described in Subsection [(+)]

919 (2) is liable to [the owner of the construction project, an original contractor, a subcontractor, or

920 any interested] a third party who is affected by the notice for twice the amount of the actual

921 damages incurred by [such] the third party or \$2,000, whichever is greater.

922 Section 20. Section **38-1a-210**, which is renumbered from Section 38-1-35 is

923 renumbered and amended to read:

924 **[38-1-35]. 38-1a-210. Limitation of liability.**

925 (1) The state and the state's agencies, instrumentalities, political subdivisions, and an

926 employee of a governmental entity are immune from suit for any injury resulting from the  
 927 [~~state construction~~] registry.

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

931 (a) develops and maintains the [~~database~~] registry in compliance with reliability,  
 932 availability, and security standards established by the division; and

933 (b) meets data entry accuracy standards established by the division under Subsection  
 934 [~~38-1-30(6)(b)~~] 38-1a-202(6)(b).

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

938 (a) [~~an~~] a storm, earthquake, or other act of God;

939 (b) a fire;

940 [~~(c) a storm;~~]

941 [~~(d) an earthquake;~~]

942 [~~(e)~~] (c) an accident;

943 [~~(f)~~] (d) governmental interference; or

944 [~~(g)~~] (e) any other event or cause beyond the designated agent's control.

945 Section 21. Section **38-1a-211**, which is renumbered from Section 38-1-36 is  
 946 renumbered and amended to read:

947 **[~~38-1-36~~]. 38-1a-211. Limit on notice effect of document filing in the registry.**

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

952 Section 22. Section **38-1a-301**, which is renumbered from Section 38-1-3 is  
 953 renumbered and amended to read:

**Part 3. Provisions Applicable to Preconstruction Liens and Construction Liens****[38-1-3]. 38-1a-301. Those entitled to lien -- What may be attached.**

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

(2) A person may claim a preconstruction ~~[service]~~ lien and a separate construction ~~[service]~~ lien on the same ~~[real]~~ project 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]~~ work.

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

Section 23. Section **38-1a-302**, which is renumbered from Section 38-1-4 is renumbered and amended to read:

**[38-1-4]. 38-1a-302. Land covered by lien -- Multiple lots occupied by improvement -- What a lien attaches to.**

(1) A preconstruction or construction 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 preconstruction or construction lien ~~[under this chapter]~~ attaches to all franchises, privileges, appurtenances, machinery, and fixtures pertaining to or used in connection with the improvement.

982 Section 24. Section **38-1a-303** is enacted to read:

983 **38-1a-303. Limits on attachment, garnishment, and execution levy --**

984 **Subcontractor lien not affected by payments, debts, offsets, and counterclaims involving**  
985 **other parties.**

986 (1) An assignment, attachment, or garnishment of or encumbrance or execution levy on  
987 money that an owner owes to an original contractor is not valid as against a subcontractor's  
988 preconstruction or construction lien.

989 (2) An assignment, attachment, or garnishment of or encumbrance or execution levy on  
990 money that an original contractor owes to a subcontractor is not valid as against a lien of a  
991 laborer employed by the day or piece.

992 (3) The preconstruction or construction lien of a subcontractor may not be diminished,  
993 impaired, or otherwise affected by:

994 (a) a payment, whether in cash or in-kind, to the original contractor or another  
995 subcontractor;

996 (b) a debt owed by the original contractor to the owner;

997 (c) a debt owed by another subcontractor to the original contractor or to a third  
998 subcontractor; or

999 (d) an offset or counterclaim in favor of the owner against the original contractor, or in  
1000 favor of the original contractor against another subcontractor, or in favor of another  
1001 subcontractor against a third subcontractor.

1002 Section 25. Section **38-1a-304**, which is renumbered from Section 38-1-8 is  
1003 renumbered and amended to read:

1004 ~~[38-1-8].~~ **38-1a-304. Liens on multiple properties in one claim.**

1005 ~~[Liens]~~ (1) A claimant may claim a preconstruction or construction lien against two or  
1006 more ~~[buildings or other]~~ improvements owned by the same person ~~[may be included in one~~  
1007 claim; but in such case the person filing the claim must].

1008 (2) If a claimant claims a preconstruction or construction lien against two or more  
1009 improvements owned by the same person, the claimant shall designate the amount claimed to

1010 be due ~~[to him]~~ on each of ~~[such buildings or other]~~ the improvements.

1011 Section 26. Section **38-1a-305** is enacted to read:

1012 **38-1a-305. Payments applied first to preconstruction lien.**

1013 Unless an agreement waiving or limiting a right under a preconstruction or construction  
1014 lien expressly provides that a payment is required to be applied to a specific lien, mortgage, or  
1015 encumbrance, a payment to a person claiming both a preconstruction lien and a construction  
1016 lien shall be applied first to the preconstruction lien until paid in full.

1017 Section 27. Section **38-1a-306** is enacted to read:

1018 **38-1a-306. Substantial compliance.**

1019 (1) Substantial compliance with the requirements of this chapter is sufficient to claim,  
1020 as applicable, a preconstruction lien or a construction lien.

1021 (2) Subsection (1) may not be construed to excuse compliance with or affect the  
1022 requirement to file:

1023 (a) a notice of retention as provided in Section 38-1a-401 in order to claim a  
1024 preconstruction lien; or

1025 (b) a preliminary notice as provided in Section 38-1a-501 in order to claim a  
1026 construction lien.

1027 Section 28. Section **38-1a-307** is enacted to read:

1028 **38-1a-307. Contesting certain notices.**

1029 (1) A contesting person who believes that a contestable notice lacks proper basis and is  
1030 therefore invalid may request from the person who filed the notice evidence establishing the  
1031 validity of the notice.

1032 (2) Within 10 days after receiving a request under Subsection (1), the person who filed  
1033 the contestable notice shall provide the requesting person evidence that the notice is valid.

1034 (3) If the person who filed the notice does not provide timely evidence of the validity  
1035 of the contestable notice, the person who filed the notice shall immediately cancel the notice  
1036 from the registry in the manner prescribed by the division by rule.

1037 Section 29. Section **38-1a-308**, which is renumbered from Section 38-1-25 is

1038 renumbered and amended to read:

1039 ~~[38-1-25].~~ **38-1a-308. Intentional submission of excessive lien notice --**

1040 **Criminal and civil liability.**

1041 (1) ~~[Any]~~ A person [entitled to record or file a lien under Section 38-1-3] is guilty of a  
1042 class B misdemeanor ~~[who]~~ if:

1043 (a) the person intentionally [causes a claim of] submits for recording a notice of  
1044 preconstruction lien or notice of construction lien against any property containing a greater  
1045 demand than the sum due [to be recorded or filed:(a) with the intent]; and

1046 (b) by submitting the notice, the person intends:

1047 (i) to cloud the title;

1048 ~~[(b)]~~ (ii) to exact from the owner or person liable by means of the excessive [claim of]  
1049 notice of preconstruction or construction lien more than is due; or

1050 ~~[(c)]~~ (iii) to procure any unjustified advantage or benefit.

1051 (2) (a) As used in this Subsection (2), "third party" means an owner, original contractor,  
1052 or subcontractor.

1053 ~~[(2)]~~ (b) In addition to any criminal [penalties] penalty under Subsection (1), a person  
1054 who [violates] submits a notice of preconstruction lien or notice of construction lien as  
1055 described in Subsection (1) is liable to [the owner of the property or an original contractor or  
1056 subcontractor] a third party who is affected by the lien for [the greater of: (a)] twice the amount  
1057 by which the [abusive] excessive lien notice exceeds the amount actually due[;] or [(b)] the  
1058 actual damages incurred by the owner [of the property], original contractor, or subcontractor,  
1059 whichever is greater.

1060 Section 30. Section **38-1a-401**, which is renumbered from Section 38-1-30.5 is  
1061 renumbered and amended to read:

1062 **Part 4. Preconstruction Lien Provisions**

1063 ~~[38-1-30.5].~~ **38-1a-401. Notice of retention.**

1064 (1) (a) A person who ~~[, under Section 38-1-3, is entitled to]~~ desires to claim a  
1065 preconstruction [service] lien on real property [under this chapter] shall file a notice of

1066 retention with the [~~database~~] registry no later than 20 days after the person commences  
1067 [~~performing~~] providing preconstruction service for the anticipated improvement on the real  
1068 property.

1069 (b) A person who fails to file a timely notice of retention as required in this section  
1070 may not [~~hold~~] claim a valid preconstruction [~~service~~] lien [~~under this chapter~~].

1071 (c) A timely filed notice of retention is effective as to each preconstruction service that  
1072 the person filing the notice [~~performs~~] provides for the anticipated improvement under [~~an~~] a  
1073 single original contract, including preconstruction service that the person [~~performs for~~]  
1074 provides to more than one [~~general preconstruction contractor~~] supervising subcontractor under  
1075 [~~the same~~] that original contract.

1076 (d) A notice of retention filed for preconstruction service [~~performed~~] provided or to be  
1077 [~~performed~~] provided under an original contract for an anticipated improvement on real  
1078 property is not valid for preconstruction service [~~performed~~] provided or to be [~~performed~~]  
1079 provided under a separate original contract for an anticipated improvement on the same real  
1080 property.

1081 (e) A notice of retention that is timely filed with the database with respect to an  
1082 anticipated improvement is considered to have been filed at the same time as the earliest timely  
1083 filed [~~preliminary~~] notice of retention for that anticipated improvement.

1084 (f) A notice of retention shall include:

1085 (i) the name, address, telephone number, and email address of the person [~~performing~~]  
1086 providing the preconstruction service;

1087 (ii) the name, address, telephone number, and email address of the person who  
1088 employed the person [~~performing~~] providing the preconstruction service;

1089 (iii) a general description of the preconstruction service the person provided or will  
1090 provide;

1091 (iv) the name of the record or reputed owner [~~of the property for which the~~  
1092 ~~preconstruction service is or will be provided~~];

1093 (v) the name of the county in which the property on which the anticipated improvement

1094 will occur is located;

1095 (vi) (A) the tax parcel identification number of each parcel included in that property; or

1096 (B) the entry number of a previously filed notice of retention that includes the tax  
1097 parcel identification number of each parcel included in that property; and

1098 (vii) a statement that the person filing the notice intends to ~~hold and~~ claim a  
1099 preconstruction ~~service~~ lien if the person is not paid for the preconstruction service the person  
1100 ~~performs~~ provides.

1101 (g) (i) A claimant who is an original contractor or a ~~general preconstruction~~  
1102 ~~contractor~~ supervisory subcontractor may include in a notice of retention the name, address,  
1103 and telephone number of each subcontractor who is under contract with the claimant to provide  
1104 preconstruction service that the claimant is under contract to provide.

1105 (ii) The inclusion of a subcontractor in a notice of retention filed by another claimant is  
1106 not a substitute for the subcontractor's own submission of a notice of retention.

1107 ~~[(2) (a) Unless a person indicates to the division or designated agent that the person~~  
1108 ~~does not wish to receive a notice under this section, the designated agent shall provide~~  
1109 ~~electronic notification of the filing of a notice of retention or alternate filing to:]~~

1110 ~~[(i) the person filing the notice of retention; and]~~

1111 ~~[(ii) each person who has requested a notice concerning the anticipated improvement.]~~

1112 ~~[(b) A person to whom notice is required to be provided under Subsection (2)(a) is~~  
1113 ~~responsible to provide an email address, mailing address, or telefax number to which notice~~  
1114 ~~may be sent and for the accuracy of the email address, mailing address, or telefax number.]~~

1115 ~~[(c) The designated agent fulfills the notice requirement of Subsection (2)(a) by~~  
1116 ~~sending the notice to the email address, mailing address, or telefax number provided to the~~  
1117 ~~designated agent, whether or not the notice is actually received.]~~

1118 ~~[(3)]~~ (2) The burden is on the person filing the notice of retention to prove that the  
1119 person has substantially complied with the requirements of this section.

1120 ~~[(4)]~~ (3) (a) Subject to Subsection ~~[(4)]~~ (3)(b), a person required by this section to file a  
1121 notice of retention is required to give only one notice for each anticipated improvement.



1122 (b) ~~[If a]~~ A person [performs] who provides preconstruction service under more than  
 1123 one original contract~~[-, the person]~~ for the same anticipated improvement and desires to claim a  
 1124 preconstruction lien for preconstruction service provided under each original contract shall file  
 1125 a separate notice of retention for preconstruction service ~~[performed]~~ provided under each  
 1126 original contract.

1127 ~~[(5) (a) An owner of property that is the subject of an anticipated improvement, an~~  
 1128 ~~original contractor, a subcontractor, or another interested person who believes that a notice of~~  
 1129 ~~retention has been erroneously filed may request from the person who filed the notice evidence~~  
 1130 ~~establishing the validity of the notice of retention.]~~

1131 ~~[(b) Within 10 days after a request under Subsection (5)(a), the person who filed the~~  
 1132 ~~notice of retention shall provide the requesting person proof that the notice of retention is~~  
 1133 ~~valid.]~~

1134 ~~[(c) If the person who filed the notice of retention does not provide timely proof of the~~  
 1135 ~~validity of the notice of retention, that person shall immediately cancel the notice of retention~~  
 1136 ~~from the database in the manner prescribed by the division by rule.]~~

1137 ~~[(6)]~~ (4) A person filing a notice of retention by alternate ~~[filing]~~ means is responsible  
 1138 for verifying and changing any incorrect information in the notice of retention before the  
 1139 expiration of the period during which the notice is required to be filed.

1140 Section 31. Section **38-1a-402**, which is renumbered from Section 38-1-6.7 is  
 1141 renumbered and amended to read:

**~~[38-1-6.7].~~ 38-1a-402. Notice of preconstruction lien -- Requirements.**

1143 (1) Within 90 days after completing a preconstruction service for which a claimant is  
 1144 not paid in full, ~~[the]~~ a claimant who desires to claim a preconstruction lien shall submit for  
 1145 recording with ~~[the]~~ each applicable county recorder a notice of preconstruction ~~[service]~~ lien.

1146 (2) A claimant who fails to submit a notice of preconstruction ~~[service]~~ lien as  
 1147 provided in Subsection (1) may not claim a preconstruction ~~[service]~~ lien.

1148 (3) (a) A notice of preconstruction service lien shall include:

1149 (i) the claimant's name, mailing address, and telephone number;

- 1150 (ii) a statement that the claimant claims a preconstruction [service] lien;
- 1151 (iii) the date the claimant's notice of retention was filed;
- 1152 (iv) the name of the person who employed the claimant;
- 1153 (v) a general description of the preconstruction service provided by the claimant;
- 1154 (vi) the date that the claimant last provided preconstruction service;
- 1155 (vii) the name, if known, of the reputed owner [~~of the property on which the~~
- 1156 ~~preconstruction service lien is claimed~~] or, if not known, the name of the record owner [~~of the~~
- 1157 ~~property~~];
- 1158 (viii) a description of the project property sufficient for identification;
- 1159 (ix) the principal amount, excluding interest, costs, and attorney fees, claimed by the
- 1160 claimant;
- 1161 (x) the claimant's signature or the signature of the claimant's authorized agent;
- 1162 (xi) an acknowledgment or certificate as required under Title 57, Chapter 3, Recording
- 1163 of Documents; and
- 1164 (xii) if the lien is against an owner-occupied residence, as defined in Section
- 1165 38-11-102, a statement meeting the requirements that the [~~Division of Occupational and~~
- 1166 ~~Professional Licensing~~] division has established [~~in accordance with Title 63G, Chapter 3,~~
- 1167 ~~Utah Administrative Rulemaking Act~~] by rule, describing the steps [~~an~~] the owner of the
- 1168 owner-occupied residence may take to require a claimant to remove the lien as provided in
- 1169 Section 38-11-107.
- 1170 (b) (i) A claimant who is an original contractor or a [~~general preconstruction~~
- 1171 ~~contractor~~] supervising subcontractor may include in a notice of preconstruction [service] lien
- 1172 the name, address, and telephone number of each subcontractor who is under contract with the
- 1173 claimant to provide preconstruction service that the claimant is under contract to provide.
- 1174 (ii) The inclusion of a subcontractor in a notice of preconstruction [service] lien filed
- 1175 by another claimant is not a substitute for the subcontractor's own submission of a notice of
- 1176 preconstruction [service] lien.
- 1177 (4) (a) A county recorder:

1178 (i) shall record each notice of preconstruction lien in an index maintained for that  
1179 purpose; and

1180 (ii) need not verify that a valid notice of retention is filed with respect to the claimed  
1181 preconstruction lien.

1182 (b) All persons are considered to have notice of a notice of preconstruction lien from  
1183 the time it is recorded.

1184 [~~4~~] (5) (a) Within 30 days after a claimant's notice of preconstruction [~~service~~] lien is  
1185 recorded, the claimant shall send by certified mail a copy of the notice to the reputed or record  
1186 owner [~~of the real property~~].

1187 (b) If the record owner's address is not readily available to the claimant, the claimant  
1188 may mail a copy of the notice to the owner's last-known address as it appears on the last  
1189 completed assessment roll of the county in which the property is located.

1190 (c) A claimant's failure to mail a copy of the notice as required in this Subsection [~~4~~]  
1191 (5) precludes the claimant from being awarded costs and attorney fees against the reputed or  
1192 record owner in an action to enforce the lien.

1193 [~~5~~] (6) Nothing in this section may be construed to prohibit a claimant from recording  
1194 a notice of preconstruction [~~service~~] lien before completing the preconstruction service the  
1195 claimant contracted to provide.

1196 Section 32. Section **38-1a-403**, which is renumbered from Section 38-1-4.7 is  
1197 renumbered and amended to read:

1198 [~~38-1-4.7~~]. **38-1a-403. Effective time and priority of preconstruction lien --**  
1199 **Subordination to bona fide loan.**

1200 (1) Except as otherwise provided in this chapter, a preconstruction [~~service~~] lien:

1201 (a) relates back to and takes effect as of the time [a] of filing of the earliest timely filed  
1202 notice of retention under Section [~~38-1-30.5 is filed~~] 38-1a-401 for the anticipated  
1203 improvement for which the preconstruction lien is claimed; and

1204 (b) has priority over:

1205 (i) any lien, mortgage, or other encumbrance that attaches after the earliest timely filed

1206 notice of retention is filed; and

1207 (ii) any lien, mortgage, or other encumbrance of which the claimant had no notice and  
1208 that was unrecorded at the time the earliest timely filed notice of retention is filed.

1209 (2) A preconstruction [~~service~~] lien is subordinate to an interest securing a bona fide  
1210 loan if and to the extent that the lien covers preconstruction service provided after the interest  
1211 securing a bona fide loan is recorded.

1212 [~~(3) Preconstruction service is considered complete for any project, project phase, or  
1213 bid package as of the date that construction service for that project, project phase, or bid  
1214 package, respectively, commences.~~]

1215 Section 33. Section **38-1a-404** is enacted to read:

1216 **38-1a-404. When preconstruction service considered complete.**

1217 Preconstruction service is considered complete for any project, project phase, or bid  
1218 package as of the date that construction work for that project, project phase, or bid package,  
1219 respectively, commences.

1220 Section 34. Section **38-1a-501**, which is renumbered from Section 38-1-32 is  
1221 renumbered and amended to read:

1222 **Part 5. Construction Lien Provisions**

1223 [~~38-1-32~~]. **38-1a-501. Preliminary notice.**

1224 [~~(1) As used in this section:~~]

1225 [~~(a) "Pre-lender claimant" means a person whose lien under this chapter is made  
1226 subject to a construction lender's mortgage or trust deed, as provided in Subsection  
1227 38-1-5(3)(b), by the person's acceptance of payment in full and the person's withdrawal of the  
1228 person's preliminary notice.~~]

1229 [~~(b) "Refiled preliminary notice" means a preliminary notice that a pre-lender claimant  
1230 files under Subsection (2)(a)(ii) with the database on a project after withdrawing a preliminary  
1231 notice that the claimant previously filed for the same project.~~]

1232 [~~(2)~~] (1) (a) (i) A person who [~~under Section 38-1-3, is entitled to~~] desires to claim a  
1233 construction [~~service~~] lien [~~with respect to a private project~~] on real property shall file a

1234 preliminary notice with the ~~[database]~~ registry no later than 20 days after the person  
1235 commences ~~[furnishing]~~ providing construction ~~[service to the project]~~ work on the real  
1236 property.

1237 (ii) A preliender claimant who ~~[under Section 38-1-3, is entitled to claim a construction~~  
1238 ~~service lien for construction service the claimant furnishes]~~ provides construction work to a  
1239 ~~[private]~~ construction project after the recording of a construction lender's mortgage or trust  
1240 deed on the project property and who desires to claim a construction lien for that construction  
1241 work shall file a preliminary notice ~~[within]~~ with the registry no later than 20 days after the  
1242 recording of the mortgage or trust deed.

1243 (b) Subject to Subsection ~~[(2)]~~ (1)(c), a preliminary notice is effective as to all  
1244 construction ~~[service]~~ work that the person filing the notice ~~[furnishes]~~ provides to the ~~[private]~~  
1245 construction project under a single original contract, including construction ~~[service]~~ work that  
1246 the person ~~[furnishes]~~ provides to more than one ~~[contractor or]~~ supervisory subcontractor ~~[on~~  
1247 that same project] under that original contract.

1248 ~~[(c) A preliminary notice filed after the period provided in Subsection (2)(a):]~~  
1249 ~~[(i) becomes effective five days after the day the preliminary notice is filed; and]~~  
1250 ~~[(ii) is not effective for construction service that the person who files the preliminary~~  
1251 ~~notice furnishes to the construction project before five days after the preliminary notice is~~  
1252 ~~filed.]~~

1253 (c) (i) A person who desires to claim a construction lien on real property but fails to  
1254 file a timely preliminary notice within the period specified in Subsection (1)(a) may, subject to  
1255 Subsection (1)(d), file a preliminary notice with the registry after the period specified in  
1256 Subsection (1)(a).

1257 (ii) A person who files a preliminary notice under Subsection (1)(c)(i) may not claim a  
1258 construction lien for construction work the person provides to the construction project before  
1259 the date that is five days after the preliminary notice is filed.

1260 (d) Notwithstanding Subsections (1)(a) and (c), a preliminary notice has no effect if it  
1261 is filed more than 10 days after the filing of a notice of completion under Section 38-1a-507 for

1262 the construction project for which the preliminary notice is filed.

1263 ~~[(d)(i)(A)]~~ (e) A person who fails to file a preliminary notice as required in this  
1264 section may not ~~hold~~ claim a ~~valid~~ construction ~~[service]~~ lien ~~[under this chapter].~~

1265 ~~[(B) A person who files a preliminary notice after the period provided in Subsection~~  
1266 ~~(2)(a) may not hold a valid construction service lien for construction service the person~~  
1267 ~~furnishes to the construction project before five days after the preliminary notice is filed.]~~

1268 ~~[(ii) A county recorder need not verify that a valid preliminary notice is filed when a~~  
1269 ~~person files a notice to hold and claim a lien under Section 38-1-7.]~~

1270 ~~[(e)]~~ (f) (i) Except as provided in Subsection ~~[(2)(e)]~~ (1)(f)(ii), a preliminary notice that  
1271 is ~~[timely]~~ filed with the ~~[database with respect to a private project]~~ registry as provided in this  
1272 section is considered to be filed at the time of the first preliminary notice filing~~[-as defined in~~  
1273 ~~Section 38-1-5].~~

1274 (ii) A timely filed preliminary notice that is a refiled preliminary notice is considered to  
1275 be filed immediately after the recording of a mortgage or trust deed of the construction lender  
1276 that paid the pre-lender claimant in full for construction ~~[service]~~ work the claimant ~~[furnished]~~  
1277 provided before the recording of the mortgage or trust deed.

1278 ~~[(f)]~~ (g) If a preliminary notice filed with the ~~[database]~~ registry includes the tax parcel  
1279 identification number of a parcel not previously associated in the ~~[database]~~ registry with a  
1280 ~~[private]~~ construction project, the designated agent shall promptly notify the person who filed  
1281 the preliminary notice that:

1282 (i) the preliminary notice includes a tax parcel identification number of a parcel not  
1283 previously associated in the ~~[database]~~ registry with a ~~[private]~~ construction project; and

1284 (ii) the likely explanation is that:

1285 (A) the preliminary notice is the first filing for the project; or

1286 (B) the tax parcel identification number is incorrectly stated in the preliminary notice.

1287 ~~[(g)]~~ (h) A preliminary notice ~~[for a private project]~~ shall include:

1288 (i) the name, address, telephone number, and email address of the person ~~[furnishing]~~  
1289 providing the construction ~~[service]~~ work for which the preliminary notice is filed;

- 1290 (ii) the name and address of the person who contracted with the claimant for the
- 1291 ~~[furnishing of the]~~ construction ~~[service]~~ work;
- 1292 (iii) the name of the record or reputed owner ~~[of the project property]~~;
- 1293 (iv) the name of the original contractor for construction ~~[service]~~ work under which the
- 1294 claimant is ~~[furnishing]~~ providing or will ~~[furnish]~~ provide construction ~~[service]~~ work;
- 1295 (v) the address of the project property or a description of the location of the project;
- 1296 (vi) the name of the county in which the project property is located; and
- 1297 (vii) (A) the tax parcel identification number of each parcel included in the project
- 1298 property;
- 1299 (B) the entry number of a previously filed notice of construction loan under Section
- 1300 ~~[38-1-30.7]~~ 38-1a-601 on the same project;
- 1301 (C) the entry number of a previously filed preliminary notice on the same project that
- 1302 includes the tax parcel identification number of each parcel included in the project property; or
- 1303 (D) the entry number of the building permit issued for the project.
- 1304 ~~[(h)]~~ (i) A preliminary notice ~~[for a private project]~~ may include:
- 1305 (i) the subdivision, development, or other project name applicable to the construction
- 1306 project for which the preliminary notice is filed; and
- 1307 (ii) the lot or parcel number of each lot or parcel that is included in the project
- 1308 property.
- 1309 ~~[(3)(a) Unless a person indicates to the division or designated agent that the person~~
- 1310 ~~does not wish to receive a notice under this section, electronic notification of the filing of a~~
- 1311 ~~preliminary notice or alternate filing shall be provided to:]~~
- 1312 ~~[(i) the person filing the preliminary notice; and]~~
- 1313 ~~[(ii) each person who has requested a notice concerning the project.]~~
- 1314 ~~[(b) A person to whom notice is required to be provided under Subsection (2)(a) is~~
- 1315 ~~responsible for:]~~
- 1316 ~~[(i) providing an email address, mailing address, or telefax number to which a notice~~
- 1317 ~~required by Subsection (2)(a) is to be sent; and]~~

1318 ~~[(ii) the accuracy of any email address, mailing address, or telefax number to which~~  
1319 ~~notice is to be sent.]~~

1320 ~~[(c) The designated agent fulfills the notice requirement of Subsection (2)(a) by~~  
1321 ~~sending the notice to the email address, mailing address, or telefax number provided to the~~  
1322 ~~designated agent, whether or not the notice is actually received.]~~

1323 ~~[(4)] (2) (a) The burden is upon the person filing the preliminary notice to prove that~~  
1324 ~~the person has substantially complied with the requirements of this section.~~

1325 (b) Substantial compliance with the requirements of ~~[Subsection (2)(g)]~~ Subsections  
1326 (1)(h)(iii) through (vii) may be established by a person's reasonable reliance on information in  
1327 the ~~[database]~~ registry provided by a previously filed:

1328 (i) notice of construction loan under Section ~~[38-1-30.7]~~ 38-1a-601;

1329 (ii) preliminary notice; or

1330 (iii) building permit.

1331 ~~[(5)] (3) (a) Subject to Subsection (3)(b), a person required by this section to give~~  
1332 ~~preliminary notice is [only] required to give only one notice for each construction project.~~

1333 (b) If the construction ~~[service is furnished]~~ work is provided pursuant to contracts  
1334 under more than one original contract for construction ~~[service]~~ work, the notice requirements  
1335 shall be met with respect to the construction ~~[service furnished]~~ work provided under each  
1336 original contract.

1337 ~~[(6) (a) A construction project owner, original contractor, or subcontractor for~~  
1338 ~~construction service, or other interested person who believes that a preliminary notice has been~~  
1339 ~~filed erroneously may request from the person who filed the preliminary notice evidence~~  
1340 ~~establishing the validity of the preliminary notice.]~~

1341 ~~[(b) Within 10 days after the request described in Subsection (6)(a), the person or entity~~  
1342 ~~that filed the preliminary notice shall provide the requesting person or entity proof that the~~  
1343 ~~preliminary notice is valid.]~~

1344 ~~[(c) If the person or entity that filed the preliminary notice does not provide proof of~~  
1345 ~~the validity of the preliminary notice, that person or entity shall immediately cancel the~~



1346 preliminary notice from the database in any manner prescribed by the division pursuant to  
 1347 rule.]

1348 [(7)] (4) A person filing a preliminary notice by alternate [filing] means is responsible  
 1349 for verifying and changing any incorrect information in the preliminary notice before the  
 1350 expiration of the time period during which the notice is required to be filed.

1351 [(8)] (5) (a) A person who files a preliminary notice before the recording of a  
 1352 construction lender's mortgage or trust deed may withdraw the preliminary notice by filing with  
 1353 the [database] registry a notice of withdrawal as provided in Subsection [(8)] (5)(b).

1354 (b) A notice of withdrawal shall include:

1355 (i) the information required for a preliminary notice under Subsection [(2)] (1)(g); and

1356 (ii) the entry number of the preliminary notice being withdrawn.

1357 [(9)] (6) A person who files a preliminary notice that contains inaccurate or incomplete  
 1358 information may not be held liable for damages suffered by any other person who relies on the  
 1359 inaccurate or incomplete information in filing a preliminary notice.

1360 Section 35. Section **38-1a-502**, which is renumbered from Section 38-1-7 is  
 1361 renumbered and amended to read:

1362 [~~38-1-7~~]. **38-1a-502. Notice of construction lien -- Contents -- Recording --**  
 1363 **Service on owner.**

1364 (1) (a) [(i) Except as modified in Section 38-1-27, a] A person [claiming] who desires  
 1365 to claim a construction [service] lien shall [file for record with the] submit for recording in the  
 1366 office of each applicable county recorder a [written] notice [to hold and claim a] of  
 1367 construction lien no later than, except as provided in Subsection (1)(b):

1368 [(A)] (i) 180 days after the [day] date on which [occurs] final completion of the  
 1369 original contract occurs, if no notice of completion is filed under Section [38-1-33] 38-1a-507;  
 1370 or

1371 [(B)] (ii) 90 days after the [day] date on which a notice of completion is filed under  
 1372 Section [38-1-33] 38-1a-507, but not later than [the time frame established in Subsection  
 1373 (1)(a)(i)(A)] 180 days after the date on which final completion of the original contract occurs.

1374           ~~[(ii) For purposes of this Subsection (1), final completion of the original contract, and~~  
1375 ~~for purposes of Section 38-1-33, final completion of the project, means:]~~

1376           ~~[(A) if as a result of work performed under the original contract a permanent certificate~~  
1377 ~~of occupancy is required for the work, the date of issuance of a permanent certificate of~~  
1378 ~~occupancy by the local government entity having jurisdiction over the construction project;]~~

1379           ~~[(B) if no certificate of occupancy is required by the local government entity having~~  
1380 ~~jurisdiction over the construction project, but as a result of the work performed under the~~  
1381 ~~original contract an inspection is required as per state-adopted building codes for the work, the~~  
1382 ~~date of the final inspection for the work by the local government entity having jurisdiction over~~  
1383 ~~the construction project;]~~

1384           ~~[(C) if with regard to work performed under the original contract no certificate of~~  
1385 ~~occupancy and no final inspection are required as per state-adopted building codes by the local~~  
1386 ~~government entity having jurisdiction over the construction project, the date on which there~~  
1387 ~~remains no substantial work to be completed to finish the work on the original contract; or]~~

1388           ~~[(D) if as a result of termination of the original contract prior to the completion of the~~  
1389 ~~work defined by the original contract, the compliance agency does not issue a certificate of~~  
1390 ~~occupancy or final inspection, the last date on which substantial work was performed under the~~  
1391 ~~original contract.]~~

1392           (b) ~~[Notwithstanding Section 38-1-2, if a] A subcontractor [performs] who provides~~  
1393 ~~substantial work after [the applicable dates established by Subsections (1)(a)(ii)(A) and (B);~~  
1394 ~~that subcontractor's subcontract shall be considered an original contract for the sole purpose of~~  
1395 ~~determining:] a certificate of occupancy is issued or a required final inspection is completed~~  
1396 ~~and desires to claim a construction lien shall submit for recording in the office of each~~  
1397 ~~applicable county recorder a notice of construction lien no later than 180 days after final~~  
1398 ~~completion of that subcontractor's work.~~

1399           ~~[(i) the subcontractor's time frame to file a notice of intent to hold and claim a lien~~  
1400 ~~under this Subsection (1); and]~~

1401           ~~[(ii) the original contractor's time frame to file a notice of intent to hold and claim a~~

1402 ~~lien under this Subsection (1) for that subcontractor's work.]~~  
1403       ~~[(c) For purposes of this chapter, the term "substantial work" does not include:]~~  
1404       ~~[(i) repair work, or]~~  
1405       ~~[(ii) warranty work.]~~  
1406       ~~[(d) Notwithstanding Subsection (1)(a)(ii)(C), final completion of the original contract~~  
1407 ~~does not occur if work remains to be completed for which the owner is holding payment to~~  
1408 ~~ensure completion of that work.]~~  
1409       (2) ~~[(a) The]~~ A notice ~~[required by Subsection (1)]~~ of construction lien shall contain [a  
1410 statement setting forth]:  
1411       ~~[(i)]~~ (a) the name of the reputed owner if known or, if not known, the name of the  
1412 record owner;  
1413       ~~[(ii)]~~ (b) the name of the person~~[:-(A)]~~ by whom the claimant was employed~~[:]~~ or ~~[(B)]~~  
1414 to whom the claimant ~~[furnished the equipment or material]~~ provided construction work;  
1415       ~~[(iii)]~~ (c) the time when~~[:-(A)]~~ the claimant first and last ~~[labor or service was~~  
1416 ~~performed]~~ provided construction work; ~~[or]~~  
1417       ~~[(B) the first and last equipment or material was furnished;]~~  
1418       ~~[(iv)]~~ (d) a description of the project property, sufficient for identification;  
1419       ~~[(v)]~~ (e) the name, current address, and current phone number of the claimant;  
1420       ~~[(vi)]~~ (f) the amount ~~[of]~~ claimed under the construction lien ~~[claim]~~;  
1421       ~~[(vii)]~~ (g) the signature of the claimant or the claimant's authorized agent;  
1422       ~~[(viii)]~~ (h) an acknowledgment or certificate as required under Title 57, Chapter 3,  
1423 Recording of Documents; and  
1424       ~~[(ix)]~~ (i) if the construction lien is on an owner-occupied residence, as defined in  
1425 Section 38-11-102, a statement describing what steps an owner, as defined in Section  
1426 38-11-102, may take to require a lien claimant to remove the lien in accordance with Section  
1427 38-11-107.  
1428       ~~[(b) Substantial compliance with the requirements of this chapter is sufficient to hold~~  
1429 ~~and claim a lien.]~~

1430 (3) (a) A county recorder:

1431 (i) shall record each notice of construction lien in an index maintained for that purpose;

1432 and

1433 (ii) need not verify that a valid preliminary notice is filed with respect to the claimed

1434 construction lien.

1435 (b) All persons are considered to have notice of a notice of construction lien from the

1436 time it is recorded.

1437 ~~[(3)]~~ (4) (a) Within 30 days after filing ~~[the]~~ a notice of construction lien, the claimant

1438 shall deliver or mail by certified mail a copy of the notice ~~[of lien]~~ to ~~[(i)]~~ the reputed owner

1439 ~~[of the real property;]~~ or ~~[(ii)]~~ the record owner ~~[of the real property].~~

1440 (b) If the record owner's current address is not readily available to the claimant, the

1441 ~~[copy of the claim may be mailed]~~ claimant may mail a copy of the notice to the last known

1442 address of the record owner, using the names and addresses appearing on the last completed

1443 real property assessment rolls of the county where the ~~[affected]~~ project property is located.

1444 (c) Failure to deliver or mail the notice of lien to the reputed owner or record owner

1445 precludes the claimant from an award of costs and attorney fees against the reputed owner or

1446 record owner in an action to enforce the construction lien.

1447 ~~[(4)]~~ (5) The ~~[Division of Occupational and Professional Licensing]~~ division shall

1448 make rules governing the form of the statement required under Subsection (2)~~[(a)(ix)]~~(i).

1449 Section 36. Section **38-1a-503**, which is renumbered from Section 38-1-5 is

1450 renumbered and amended to read:

1451 ~~[38-1-5].~~ **38-1a-503. Relation back and priority of liens.**

1452 ~~[(1) As used in this section:]~~

1453 ~~[(a) "First preliminary notice filing" means the filing of a preliminary notice that is:]~~

1454 ~~[(i) the earliest preliminary notice filed on a private project, as defined in Section~~

1455 ~~38-1-27;]~~

1456 ~~[(ii) filed on or after August 1, 2011;]~~

1457 ~~[(iii) not filed on a project that, according to the law in effect before August 1, 2011;~~

1458 commenced before August 1, 2011;]

1459 [(iv) not canceled under Subsection 38-1-32(6); and]

1460 [(v) not withdrawn under Subsection 38-1-32(8).]

1461 [(b) "Project property" means the real property on which an improvement is being  
1462 constructed or made.]

1463 [(2)] (1) A construction [service] lien relates back to, and takes effect as of, the time of  
1464 the first preliminary notice filing.

1465 [(3)] (2) (a) Subject to Subsection [(3)](2)(b), a construction [service] lien has priority  
1466 over:

1467 (i) any lien, mortgage, or other encumbrance that attaches after the first preliminary  
1468 notice filing; and

1469 (ii) any lien, mortgage, or other encumbrance of which the [lien holder] claimant had  
1470 no notice and which was unrecorded at the time of the first preliminary notice filing.

1471 (b) A recorded mortgage or trust deed of a construction lender has priority over [each]  
1472 a construction [service] lien of a claimant who files a preliminary notice in accordance with  
1473 Section [38-1-32] 38-1a-501 before the mortgage or trust deed is recorded if the claimant:

1474 (i) accepts payment in full for construction [service] work that the claimant [furnishes]  
1475 provides to the construction project before the mortgage or trust deed is recorded; and

1476 (ii) withdraws the claimant's preliminary notice by filing a notice of withdrawal under  
1477 Subsection [38-1-32(8)] 38-1a-501(5).

1478 Section 37. Section **38-1a-504** is enacted to read:

1479 **38-1a-504. Construction liens on equal footing.**

1480 (1) Construction liens on a project property are on an equal footing with one another,  
1481 regardless of when the notices of construction lien relating to the construction liens are  
1482 submitted for recording and regardless of when construction work for which the liens are  
1483 claimed is provided.

1484 (2) Subsection (1) relates to the relationship between claimants' construction liens and  
1485 does not affect the priority of a construction lender's mortgage or trust deed, as established

1486 under this chapter.

1487 Section 38. Section **38-1a-505** is enacted to read:

1488 **38-1a-505. Materials for a construction project not subject to process --**

1489 **Exception.**

1490 (1) Materials provided for use in a construction project are not subject to attachment,  
1491 execution, or other legal process to enforce a debt owed by the purchaser of the materials, if the  
1492 materials are in good faith about to be applied to the construction, alteration, or repair of an  
1493 improvement that is the subject of the construction project.

1494 (2) Subsection (1) does not apply to an attachment, execution, or other legal process to  
1495 enforce a debt incurred to purchase the materials described in Subsection (1).

1496 Section 39. Section **38-1a-506**, which is renumbered from Section 38-1-40 is  
1497 renumbered and amended to read:

1498 **[38-1-40]. 38-1a-506. Notice of intent to obtain final completion.**

1499 (1) An owner, as defined in Section 14-2-1, of a nonresidential construction project  
1500 that is registered with the ~~[database]~~ registry, or ~~[a]~~ an original contractor of a commercial  
1501 nonresidential construction project that is registered with the ~~[database]~~ registry under Section  
1502 ~~[38-1-33]~~ 38-1a-501, shall file with the ~~[database]~~ registry a notice of intent to obtain final  
1503 completion as provided in this section if:

1504 (a) the completion of performance time under the original contract for construction  
1505 ~~[service]~~ work is greater than 120 days;

1506 (b) the total original construction contract price exceeds \$500,000; and

1507 (c) the original contractor or owner has not obtained a payment bond in accordance  
1508 with Section 14-2-1.

1509 (2) The notice of intent described in Subsection (1) shall be filed at least 45 days before  
1510 the day on which the owner or original contractor of a commercial nonresidential construction  
1511 project files or could have filed a notice of completion under Section ~~[38-1-33]~~ 38-1a-507.

1512 (3) A person ~~[supplying labor, materials, or services]~~ who provides construction work  
1513 to an owner~~[, a]~~ or original contractor~~[, or subcontractor]~~ who files a notice of intent in

1514 accordance with Subsection (1) shall file an amendment to the person's preliminary notice  
1515 previously filed by the person as required in Section ~~[38-1-32]~~ 38-1a-501:

1516 (a) that includes:

1517 (i) a good faith estimate of the total amount remaining due to complete the contract,  
1518 purchase order, or agreement relating to the person's approved ~~[labor, approved materials, and~~  
1519 ~~approved services]~~ construction work;

1520 (ii) the identification of each original contractor or subcontractor with whom the  
1521 person has a contract or contracts for ~~[supplying project labor, materials, or services]~~ providing  
1522 construction work; and

1523 (iii) a separate statement of all known amounts or categories of work in dispute; and

1524 (b) no later than 20 days after the day on which the owner or contractor files a notice of  
1525 intent.

1526 (4) (a) A person ~~[identified in accordance with Subsection (3)(a)(i) who has complied~~  
1527 ~~with, or is exempt from, the provisions of Section 38-1-22,]~~ described in Subsection (3) may  
1528 demand a statement of adequate assurance from the owner, contractor, or subcontractor with  
1529 whom the person has privity of contract no later than 10 days after the day on which the person  
1530 files a balance statement in accordance with Subsection (3) from an owner, contractor, or  
1531 subcontractor who is in privity of contract with the person.

1532 (b) A demand for adequate assurance as described in Subsection (4)(a) may include a  
1533 request for a statement from the owner, contractor, or subcontractor that the owner, contractor,  
1534 or subcontractor has sufficient funds dedicated and available to pay for all sums due to the  
1535 person filing for the adequate assurances or that will become due in order to complete a  
1536 construction project.

1537 (c) A person who demands adequate assurance under Subsection (4)(a) shall deliver  
1538 copies of the demand to the owner and contractor:

1539 (i) by hand delivery with a responsible party's acknowledgment of receipt;

1540 (ii) by certified mail with a return receipt; or

1541 (iii) as provided under Rule 4, Utah Rules of Civil Procedure.

1542 (5) (a) A person [~~identified in accordance with Subsection (3)(a)(i) who has complied~~  
1543 ~~with, or is exempt from, the provisions of Section 38-1-32]~~ described in Subsection (3) may  
1544 bring a legal action against a party with whom the person is in privity of contract, including a  
1545 request for injunctive or declaratory relief, to determine the adequacy of [~~an owner's, with~~  
1546 ~~whom the demanding person contracted, contractor's, with whom the demanding person~~  
1547 ~~contracted, or subcontractor's, with whom the demanding person contracted, funds]~~ the funds  
1548 of the owner, contractor, or subcontractor with whom the demanding person contracted if, after  
1549 the person demands adequate assurance in accordance with the requirements of this section:

1550 (i) the owner, contractor, or subcontractor fails to provide adequate assurance that the  
1551 owner, contractor, or subcontractor has sufficient available funds, or access to financing or  
1552 other sufficient available funds, to pay for the completion of the demanding person's approved  
1553 work on the construction project; or

1554 (ii) the parties disagree, in good faith, as to whether there are adequate funds, or access  
1555 to financing or other sufficient available funds, to pay for the completion of the demanding  
1556 person's approved work on the construction project.

1557 (b) If a court finds that an owner, contractor, or subcontractor has failed to provide  
1558 adequate assurance in accordance with Subsection (4)(a), the court may require the owner,  
1559 contractor, or subcontractor to post adequate security with the court sufficient to assure timely  
1560 payment of the remaining contract balance for the approved work of the person seeking  
1561 adequate assurance, including:

- 1562 (i) cash;
- 1563 (ii) a bond;
- 1564 (iii) an irrevocable letter of credit;
- 1565 (iv) property;
- 1566 (v) financing; or
- 1567 (vi) another form of security approved by the court.

1568 (6) (a) A person is subject to the civil penalty described in Subsection (6)(b), if the  
1569 person files a balance statement described in Subsection (3)~~[(i)]~~ that misrepresents the amount



1570 due under the contract~~;~~ ~~and (ii)]~~ with the intent to:

1571 ~~[(A)]~~ (i) charge an owner, contractor, or subcontractor more than the actual amount

1572 due; or

1573 ~~[(B)]~~ (ii) procure any other unfair advantage or benefit on the person's behalf.

1574 (b) The civil penalty described in Subsection (6)(a) is the greater of:

1575 (i) twice the amount by which the balance statement filed under Subsection (3) exceeds

1576 the amount actually remaining due under the contract for completion of construction; ~~[or]~~ and

1577 (ii) the actual damages incurred by the owner, contractor, or subcontractor.

1578 (7) A court shall award reasonable attorney fees to a prevailing party for an action

1579 brought under this section.

1580 (8) Failure to comply with the requirements established in this section does not affect

1581 any other requirement or right under this chapter.

1582 (9) A person who has not ~~[complied with, or is not exempt from, the provisions of~~

1583 ~~Section 38-1-32 may not be]~~ filed a preliminary notice as required under Section 38-1a-501 is

1584 not entitled to a right or a remedy provided in this section.

1585 (10) This section does not create a cause of action against a person with whom the

1586 demanding party is not in privity of contract.

1587 Section 40. Section **38-1a-507**, which is renumbered from Section 38-1-33 is

1588 renumbered and amended to read:

1589 **~~[38-1-33].~~ 38-1a-507. Notice of completion.**

1590 (1) (a) Upon final completion of a construction project, ~~[and in accordance with~~

1591 ~~Section 38-1-40, the following with a construction project registered with the database may~~

1592 ~~file]~~ a notice of completion may be filed with the ~~[database]~~ registry by:

1593 (i) an owner ~~[of the construction project];~~

1594 (ii) an original contractor for construction ~~[service]~~ work;

1595 (iii) a lender that has provided financing for the construction project;

1596 (iv) a surety that has provided bonding for the construction project; or

1597 (v) a title company issuing a title insurance policy on the construction project.

1598           ~~[(b) Notwithstanding Section 38-1-2, if a subcontractor for construction service~~  
1599 ~~performs substantial work after the applicable dates established by Subsection (1)(a), that~~  
1600 ~~subcontractor's subcontract is considered an original contract for construction service for the~~  
1601 ~~sole purpose of determining:]~~

1602           ~~[(i) the subcontractor's time frame to file a notice to hold and claim a lien under~~  
1603 ~~Subsection 38-1-7(1); and]~~

1604           ~~[(ii) the original contractor's time frame to file a notice to hold and claim a lien under~~  
1605 ~~Subsection 38-1-7(1) for that subcontractor's work:]~~

1606           ~~[(e)]~~ (b) A notice of completion shall include:

1607           (i) the name, address, telephone number, and email address of the person filing the  
1608 notice of completion;

1609           (ii) the name of the county in which the project property is located;

1610           (iii) for a private project:

1611           (A) the tax parcel identification number of each parcel included in the project property;

1612           (B) the entry number of a preliminary notice on the same project that includes the tax  
1613 parcel identification number of each parcel included in the project property; or

1614           (C) the entry number of the building permit issued for the project;

1615           (iv) for a government project, the government project-identifying information;

1616           (v) the date on which final completion is alleged to have occurred; and

1617           (vi) the method used to determine final completion.

1618           ~~[(d) For purposes of this section, final completion of the original contract does not~~  
1619 ~~occur if work remains to be completed for which the owner is holding payment to ensure~~  
1620 ~~completion of the work:]~~

1621           ~~[(e) (i) Unless a person indicates to the division or designated agent that the person~~  
1622 ~~does not wish to receive a notice under this section, electronic notification of the filing of a~~  
1623 ~~notice of completion or alternate filing shall be provided to:]~~

1624           ~~[(A) each person that filed a notice of commencement for the project;]~~

1625           ~~[(B) each person that filed preliminary notice for the project; and]~~

1626           ~~[(C) all interested persons who have requested notices concerning the project.]~~  
1627           ~~[(ii) A person to whom notice is required under this Subsection (1)(c) is responsible~~  
1628 ~~for:]~~  
1629           ~~[(A) providing an email address, mailing address, or telefax number to which a notice~~  
1630 ~~required by this Subsection (1)(c) is to be sent; and]~~  
1631           ~~[(B) the accuracy of any email address, mailing address, or telefax number to which~~  
1632 ~~notice is to be sent.]~~  
1633           ~~[(iii) The designated agent fulfills the notice requirement of Subsection (1)(c)(i) when~~  
1634 ~~it sends the notice to the email address, mailing address, or telefax number provided to the~~  
1635 ~~designated agent, whether or not the notice is actually received.]~~  
1636           ~~[(iv) Upon the filing of a notice of completion, the time periods for filing a preliminary~~  
1637 ~~notice stated in Section 38-1-32 or 38-1-32.5 are modified such that all preliminary notices~~  
1638 ~~shall be filed subsequent to the notice of completion and within 10 days from the day on which~~  
1639 ~~the notice of completion is filed.]~~  
1640           ~~[(f) A subcontract that is considered an original contract for construction service for~~  
1641 ~~purposes of this section does not create a requirement for an additional preliminary notice if a~~  
1642 ~~preliminary notice has already been given for the labor, service, equipment, and material~~  
1643 ~~furnished to the subcontractor who performs substantial work.]~~  
1644           ~~[(2) (a) If a construction project owner, original contractor, or subcontractor for~~  
1645 ~~construction service, or other interested person believes that a notice of completion has been~~  
1646 ~~filed erroneously, that owner, original contractor, subcontractor, or other interested person can~~  
1647 ~~request from the person who filed the notice of completion evidence establishing the validity of~~  
1648 ~~the notice of completion.]~~  
1649           ~~[(b) Within 10 days after the request described in Subsection (2)(a), the person who~~  
1650 ~~filed the notice of completion shall provide the requesting person proof that the notice of~~  
1651 ~~completion is valid.]~~  
1652           ~~[(c) If the person that filed the notice of completion does not provide proof of the~~  
1653 ~~validity of the notice of completion, that person shall immediately cancel the notice of~~

1654 completion from the database in any manner prescribed by the division pursuant to rule:]

1655 ~~[(3)]~~ (2) A person filing a notice of completion by alternate ~~[filing]~~ means is  
1656 responsible for verifying and changing any incorrect information in the notice of completion  
1657 before the expiration of the time period during which the notice is required to be filed.

1658 Section 41. Section **38-1a-601**, which is renumbered from Section 38-1-30.7 is  
1659 renumbered and amended to read:

1660 **Part 6. Construction Loans**

1661 ~~[38-1-30.7].~~ **38-1a-601. Notice of construction loan.**

1662 ~~[(1) As used in this section, "construction loan" does not include a consumer loan~~  
1663 ~~secured by the equity in the consumer's home.]~~

1664 ~~[(2)]~~ (1) After recording a mortgage or trust deed securing a construction loan on a  
1665 private project, the construction lender on the loan shall promptly, in conjunction with the  
1666 closing of the construction loan, file with the ~~[database]~~ registry a notice of construction loan.

1667 ~~[(3)]~~ (2) A notice under Subsection ~~[(2)]~~ (1) shall accurately state:

- 1668 (a) the lender's name, address, and telephone number;
- 1669 (b) the name of the trustor on the trust deed securing the loan;
- 1670 (c) the tax parcel identification number of each parcel included or to be included in the  
1671 construction project for which the loan was given;
- 1672 (d) the address of the project property; and
- 1673 (e) the name of the county in which the project property is located.

1674 ~~[(4)]~~ (3) A construction lender that files a notice of construction loan containing  
1675 incomplete or inaccurate information may not be held liable for damages suffered by any other  
1676 person who relies on the inaccurate or incomplete information in filing a preliminary notice.

1677 Section 42. Section **38-1a-602**, which is renumbered from Section 38-1-32.7 is  
1678 renumbered and amended to read:

1679 ~~[38-1-32.7].~~ **38-1a-602. Notice concerning construction loan default.**

1680 (1) Within five business days after a notice of default is filed for recording under  
1681 Section 57-1-24 with respect to a trust deed on the project property securing a construction

1682 loan, the construction lender under the loan shall file a notice with the [~~database~~] registry.

1683 (2) A notice under Subsection (1) shall:

1684 (a) include:

1685 (i) the information required to be included in a notice of construction loan under

1686 [~~Subsections 38-1-30.7(3)(a), (b), (c), (d), and (e)~~] Subsection 38-1a-601(2); and

1687 (ii) the entry number of the notice of construction loan;

1688 (b) state that a notice of default with respect to the construction loan has been recorded;

1689 and

1690 (c) state the date that the notice of default was recorded.

1691 Section 43. Section **38-1a-701**, which is renumbered from Section 38-1-11 is

1692 renumbered and amended to read:

**Part 7. Enforcement of Preconstruction and Construction Liens**

~~[38-1-11].~~ **38-1a-701. Action to enforce lien -- Time for filing action -- Notice**

**of pendency of action -- Action involving a residence.**

(1) As used in this section:

(a) "Owner" [~~is~~] has the same meaning as defined in Section 38-11-102.

(b) "Residence" [~~is~~] has the same meaning as defined in Section 38-11-102.

(2) [~~A~~] In order to enforce a preconstruction lien or construction lien, 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~~] 38-1a-402, for a preconstruction [~~service~~] lien; or

(ii) a notice of [~~claim~~] construction lien under Section [~~38-1-7~~] 38-1a-502, 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.

1710 (3) (a) (i) Within the time period provided [~~for filing~~] in Subsection (2) [~~the~~] for filing  
1711 an action, a claimant shall file for record with [~~the~~] each applicable county recorder [~~of each~~  
1712 county in which the lien is recorded] a notice of the pendency of the action, in the manner  
1713 provided [~~in~~] for actions affecting the title or right to possession of real property[~~, or the lien~~  
1714 ~~shall be~~].

1715 (ii) If a claimant fails to file for record a notice of the pendency of the action, as  
1716 required in Subsection (3)(a)(i), the preconstruction lien or construction lien, as applicable, is  
1717 void, except as to persons who have been made parties to the action and persons having actual  
1718 knowledge of the commencement of the action.

1719 (b) The burden of proof is upon the claimant and those claiming under the claimant to  
1720 show actual knowledge under Subsection (3)(a)(ii).

1721 (4) (a) A preconstruction lien [~~filed under this chapter~~] or construction lien is  
1722 automatically and immediately void if an action to enforce the lien is not filed within the time  
1723 required by this section.

1724 (b) Notwithstanding Section 78B-2-111, a court has no subject matter jurisdiction to  
1725 adjudicate a preconstruction or construction lien that becomes void under Subsection (4)(a).

1726 (5) This section may not be interpreted to impair or affect the right of any person to  
1727 whom a debt may be due for any [~~work done or materials furnished~~] preconstruction service or  
1728 construction work to maintain a personal action to recover the debt.

1729 (6) (a) If a claimant files an action to enforce a preconstruction or construction lien  
1730 [~~filed under this chapter~~] involving a residence, the [~~lien~~] claimant shall include with the  
1731 service of the complaint on the owner of the residence:

1732 (i) instructions to the owner of the residence relating to the owner's rights under Title  
1733 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act; and

1734 (ii) a form to enable the owner of the residence to specify the grounds upon which the  
1735 owner may exercise available rights under Title 38, Chapter 11, Residence Lien Restriction and  
1736 Lien Recovery Fund Act.

1737 (b) The instructions and form required by Subsection (6)(a) shall meet the requirements

1738 established by the division by rule [~~by the Division of Occupational and Professional Licensing~~  
1739 ~~in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act~~].

1740 (c) If a claimant fails to provide to the owner of the residence the instructions and form  
1741 required by Subsection (6)(a), the claimant is barred from maintaining or enforcing the  
1742 preconstruction or construction lien upon the residence.

1743 (d) [~~Judicial determination of~~] A court shall stay an action to determine the rights and  
1744 liabilities of [~~the~~] an owner of [~~the~~] a residence under this chapter [~~and~~], Title 38, Chapter 11,  
1745 Residence Lien Restriction and Lien Recovery Fund Act, and Title 14, Chapter 2, Private  
1746 Contracts, [~~shall be stayed~~] until after the owner is given a reasonable period of time to:

1747 (i) establish compliance with Subsections 38-11-204(4)(a) and (4)(b) through an  
1748 informal proceeding, as set forth in Title 63G, Chapter 4, Administrative Procedures Act,  
1749 commenced at the division within 30 days [~~of~~] after the owner [~~being~~] is served with summons  
1750 in the foreclosure action[~~, at the Division of Occupational and Professional Licensing~~]; and

1751 (ii) obtain a certificate of compliance or denial of certificate of compliance, as defined  
1752 in Section 38-11-102.

1753 (e) An owner applying for a certificate of compliance under Subsection (6)(d) shall  
1754 send by certified mail to all [~~lien~~] claimants:

1755 (i) a copy of the application for a certificate of compliance; and

1756 (ii) all materials filed in connection with the application.

1757 (f) The [~~Division of Occupational and Professional Licensing~~] division shall notify all  
1758 claimants listed in an owner's application for a certificate of compliance under Subsection  
1759 (6)(d) of the issuance or denial of a certificate of compliance.

1760 [~~(7) The written notice requirement applies to liens filed on or after July 1, 2004.~~]

1761 Section 44. Section **38-1a-702** is enacted to read:

1762 **38-1a-702. Parties -- Consolidation of separate actions.**

1763 (1) In an action under this part, subject to the time restrictions under Subsection  
1764 38-1a-701(2):

1765 (a) a claimant who is not contesting the claim of another claimant may join as a

1766 plaintiff;

1767 (b) a claimant who fails or refuses to become a plaintiff may be made a defendant; and

1768 (c) a claimant who is not made a party may intervene at any time before the final

1769 hearing.

1770 (2) If separate actions are commenced under this part to enforce preconstruction or

1771 construction liens on the same property, the court may consolidate the actions and make all

1772 claimants parties to the consolidated action.

1773 Section 45. Section **38-1a-703**, which is renumbered from Section 38-1-14 is

1774 renumbered and amended to read:

1775 **[38-1-14]. 38-1a-703. Order of satisfaction if multiple liens on same property.**

1776 ~~[In every case in which]~~ If liens are claimed against the same property the decree shall

1777 provide for their satisfaction in the following order:

1778 (1) subcontractors who are laborers or mechanics working by the day or piece, but

1779 ~~[without furnishing]~~ who have not furnished materials ~~[therefor];~~

1780 (2) all other subcontractors and all materialmen; and

1781 (3) ~~[The]~~ original contractors.

1782 Section 46. Section **38-1a-704**, which is renumbered from Section 38-1-15 is

1783 renumbered and amended to read:

1784 **[38-1-15]. 38-1a-704. Sale of property -- Redemption -- Disposition of**

1785 **proceeds.**

1786 (1) The court shall cause the property to be sold in satisfaction of the liens and costs as

1787 in the case of a foreclosure of ~~[mortgages]~~ a mortgage, subject to the same right of redemption.

1788 (2) If the proceeds of sale after the payment of costs ~~[shall]~~ are not ~~[be]~~ sufficient to

1789 satisfy the whole amount of liens included in the decree, then ~~[such]~~ the proceeds shall be paid

1790 in the order ~~[above]~~ designated in Section 38-1a-703, and pro rata to the persons claiming in

1791 each class ~~[where]~~ if the sum realized is insufficient to pay the persons of ~~[such]~~ the class in

1792 full.

1793 (3) Any excess sale proceeds remaining after the payment of all liens and costs shall be



1794 paid to the owner.

1795 Section 47. Section **38-1a-705** is enacted to read:

1796 **38-1a-705. Deficiency judgment.**

1797 A claimant whose preconstruction or construction lien is not paid in full through an  
1798 enforcement action as provided in this part may:

- 1799 (1) have judgment for the unpaid balance entered against the person liable; and
- 1800 (2) execute on the judgment in the same manner as execution on judgments generally.

1801 Section 48. Section **38-1a-706** is enacted to read:

1802 **38-1a-706. Apportionment of costs -- Costs and attorney fees to subcontractor.**

1803 (1) Except as provided in Section 38-11-107, the court shall apportion costs between  
1804 the owner and original contractor according to the right of the case.

1805 (2) The court shall award a subcontractor with a valid preconstruction or construction  
1806 lien:

1807 (a) all of the subcontractor's costs, including the costs of preparing and recording the  
1808 notice of preconstruction or construction lien; and

1809 (b) the subcontractor's reasonable attorney fees incurred in preparing and recording the  
1810 notice of preconstruction or construction lien.

1811 Section 49. Section **38-1a-707**, which is renumbered from Section 38-1-18 is  
1812 renumbered and amended to read:

1813 ~~[38-1-18].~~ **38-1a-707. Attorney fees -- Offer of judgment.**

1814 (1) Except as provided in Section 38-11-107 and in Subsection (2), in any action  
1815 brought to enforce any lien under this chapter the successful party shall be entitled to recover  
1816 [a] reasonable [attorneys' fee] attorney fees, to be fixed by the court, which shall be taxed as  
1817 costs in the action.

1818 (2) A person who files a wrongful lien as provided in Section ~~[38-1-25 is not entitled~~  
1819 ~~to]~~ 38-1a-308 may not recover [attorneys'] attorney fees under Subsection (1).

1820 (3) (a) A [party] person against whom [any] an action is brought to enforce a  
1821 preconstruction or construction lien [under this chapter] may make an offer of judgment

1822 pursuant to Rule 68 of the Utah Rules of Civil Procedure.

1823 (b) If the offer is not accepted and the judgment finally obtained by the offeree is not  
1824 more favorable than the offer, the offeree shall pay the costs and [attorneys'] attorney fees  
1825 incurred by the offeror after the offer was made.

1826 Section 50. Section **38-1a-801** is enacted to read:

1827 **Part 8. Actions Affecting Preconstruction and Construction Liens**

1828 **38-1a-801. Preconstruction and construction liens assignable -- Action by assignee**  
1829 **to enforce lien.**

1830 (1) A preconstruction lien or construction lien is assignable as any other chose in  
1831 action.

1832 (2) An assignee of a preconstruction lien or construction lien may, in the assignee's  
1833 own name, commence and prosecute an action on the lien as provided in Part 7, Enforcement  
1834 of Preconstruction and Construction Liens.

1835 Section 51. Section **38-1a-802**, which is renumbered from Section 38-1-39 is  
1836 renumbered and amended to read:

1837 ~~[38-1-39].~~ **38-1a-802. Waiver or limitation of a lien right -- Forms -- Scope.**

1838 (1) As used in this section:

1839 (a) "Check" means a payment instrument on a depository institution including:

1840 (i) a check;

1841 (ii) a draft;

1842 (iii) an order; or

1843 (iv) other instrument.

1844 (b) "Depository institution" is as defined in Section 7-1-103.

1845 [~~(c) "Lien claimant" means a person that claims a lien under this chapter.~~]

1846 [~~(d)~~] (c) "Receives payment" means, in the case of a restrictive endorsement, a payee  
1847 has endorsed a check and the check is presented to and paid by the depository institution on  
1848 which it is drawn.

1849 (2) Notwithstanding Section [~~38-1-29~~] 38-1a-105, a claimant's written consent [~~given~~

1850 ~~by a lien claimant]~~ that waives or limits the [lien] claimant's lien rights is enforceable only if  
1851 the [lien] claimant:

1852 (a) (i) executes a waiver and release that is signed by the [lien] claimant or the [lien]  
1853 claimant's authorized agent; or

1854 (ii) for a restrictive endorsement on a check, includes a restrictive endorsement on a  
1855 check that is:

1856 (A) signed by the [lien] claimant or the [lien] claimant's authorized agent; and

1857 (B) in substantially the same form set forth in Subsection (4)(d); and

1858 (b) receives payment of the amount identified in the waiver and release or check that  
1859 includes the restrictive endorsement:

1860 (i) including payment by a joint payee check; and

1861 (ii) for a progress payment, only to the extent of the payment.

1862 (3) (a) Notwithstanding the language of a waiver and release described in Subsection  
1863 (2), Subsection (3)(b) applies if:

1864 (i) the payment given in exchange for any waiver and release of lien is made by check;  
1865 and

1866 (ii) the check fails to clear the depository institution on which it is drawn for any  
1867 reason.

1868 (b) If the conditions of Subsection (3)(a) are met:

1869 (i) the waiver and release described in Subsection (3)(a) is [~~null,~~] void[~~, and of no legal~~  
1870 effect]; and

1871 (ii) the following will not be affected by the [lien] claimant's execution of the waiver  
1872 and release:

1873 (A) any lien;

1874 (B) any lien right;

1875 (C) any bond right;

1876 (D) any contract right; or

1877 (E) any other right to recover payment afforded to the [lien] claimant in law or equity.

1878 (4) (a) A waiver and release given by a [lien] claimant meets the requirements of this  
1879 section if it is in substantially the form provided in this Subsection (4) for the circumstance  
1880 provided in this Subsection (4).

1881 (b) A waiver and release may be in substantially the following form if the [lien]  
1882 claimant is required to execute a waiver and release in exchange for or to induce the payment  
1883 of a progress billing:

1884 "UTAH CONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT

1885 Property Name: \_\_\_\_\_

1886 Property Location: \_\_\_\_\_

1887 Undersigned's Customer: \_\_\_\_\_

1888 Invoice/Payment Application Number: \_\_\_\_\_

1889 Payment Amount: \_\_\_\_\_

1890 Payment Period: \_\_\_\_\_

1891 To the extent provided below, this document becomes effective to release and the  
1892 undersigned is considered to waive any notice of lien or right under Utah Code Ann., Title 38,  
1893 Chapter [~~1, Mechanics' Liens~~] 1a, Preconstruction and Construction Liens, or any bond right  
1894 under Utah Code Ann., Title 14, Contractors' Bonds, or Section 63G-6-505 related to payment  
1895 rights the undersigned has on the above described Property once:

1896 (1) the undersigned endorses a check in the above referenced Payment Amount payable  
1897 to the undersigned; and

1898 (2) the check is paid by the depository institution on which it is drawn.

1899 This waiver and release applies to a progress payment for the work, materials,  
1900 equipment, or a combination of work, materials, and equipment furnished by the undersigned  
1901 to the Property or to the Undersigned's Customer which are the subject of the Invoice or  
1902 Payment Application, but only to the extent of the Payment Amount. This waiver and release  
1903 does not apply to any retention withheld; any items, modifications, or changes pending  
1904 approval; disputed items and claims; or items furnished or invoiced after the Payment Period.

1905 The undersigned warrants that the undersigned either has already paid or will use the

1906 money the undersigned receives from this progress payment promptly to pay in full all the  
1907 undersigned's laborers, subcontractors, materialmen, and suppliers for all work, materials,  
1908 equipment, or combination of work, materials, and equipment that are the subject of this  
1909 waiver and release.

1910 Dated: \_\_\_\_\_  
1911 \_\_\_\_\_ (Company Name)  
1912 \_\_\_\_\_ By: \_\_\_\_\_  
1913 \_\_\_\_\_ Its: \_\_\_\_\_ "

1914 (c) A waiver and release may be in substantially the following form if the lien claimant  
1915 is required to execute a waiver and release in exchange for or to induce the payment of a final  
1916 billing:

1917 "UTAH WAIVER AND RELEASE UPON FINAL PAYMENT

1918 Property Name: \_\_\_\_\_  
1919 Property Location: \_\_\_\_\_  
1920 Undersigned's Customer: \_\_\_\_\_  
1921 Invoice/Payment Application Number: \_\_\_\_\_  
1922 Payment Amount: \_\_\_\_\_

1923 To the extent provided below, this document becomes effective to release and the  
1924 undersigned is considered to waive any notice of lien or right under Utah Code Ann., Title 38,  
1925 Chapter [~~1, Mechanics' Liens~~] 1a, Preconstruction and Construction Liens, or any bond right  
1926 under Utah Code Ann., Title 14, Contractors' Bonds, or Section 63G-6-505 related to payment  
1927 rights the undersigned has on the above described Property once:

1928 (1) the undersigned endorses a check in the above referenced Payment Amount payable  
1929 to the undersigned; and

1930 (2) the check is paid by the depository institution on which it is drawn.

1931 This waiver and release applies to the final payment for the work, materials, equipment,  
1932 or combination of work, materials, and equipment furnished by the undersigned to the Property  
1933 or to the Undersigned's Customer.

1934           The undersigned warrants that the undersigned either has already paid or will use the  
1935 money the undersigned receives from the final payment promptly to pay in full all the  
1936 undersigned's laborers, subcontractors, materialmen, and suppliers for all work, materials,  
1937 equipment, or combination of work, materials, and equipment that are the subject of this  
1938 waiver and release.

1939 Dated: \_\_\_\_\_

1940 \_\_\_\_\_ (Company Name)

1941 \_\_\_\_\_ By: \_\_\_\_\_

1942 \_\_\_\_\_ Its: \_\_\_\_\_ "

1943           (d) A restrictive endorsement placed on a check to effectuate a waiver and release  
1944 described in this Subsection (4) meets the requirements of this section if it is in substantially  
1945 the following form:

1946           "This check is a progress/ final payment for property described on this check sufficient  
1947 for identification. Endorsement of this check is an acknowledgment by the endorser that the  
1948 waiver and release to which the payment applies is effective to the extent provided in Utah  
1949 Code Ann. Subsection [~~38-1-39~~] 38-1a-802(4)(b) or (c) respectively."

1950           (e) (i) If using a restrictive endorsement under Subsection (4)(d), the person preparing  
1951 the check shall indicate whether the check is for a progress payment or a final payment by  
1952 circling the word "progress" if the check is for a progress payment, or the word "final" if the  
1953 check is for a final payment.

1954           (ii) If a restrictive endorsement does not indicate whether the check is for a progress  
1955 payment or a final payment, it is considered to be for a progress payment.

1956           (5) (a) If the conditions of Subsection (5)(b) are met, this section does not affect the  
1957 enforcement of:

1958           (i) an accord and satisfaction regarding a bona fide dispute; or

1959           (ii) an agreement made in settlement of an action pending in any court or arbitration.

1960           (b) Pursuant to Subsection (5)(a), this section does not affect enforcement of an accord  
1961 and satisfaction or settlement described in Subsection (5)(a) if the accord and satisfaction or

1962 settlement:

- 1963 (i) is in a writing signed by the [~~lien~~] claimant; and
- 1964 (ii) specifically references the lien rights waived or impaired.

1965 Section 52. Section **38-1a-803** is enacted to read:

1966 **38-1a-803. Cancellation of preconstruction or construction lien -- Penalty for**  
1967 **failure to cancel timely.**

1968 (1) After the full amount owing under a preconstruction or construction lien, including  
1969 costs and cancellation fees, has been paid, a person interested in the property that is the subject  
1970 of the lien may request the claimant to submit for recording with the office of each applicable  
1971 county recorder a cancellation of the lien.

1972 (2) Within 10 days after receiving a request under Subsection (1), the claimant shall  
1973 submit to the office of each applicable county recorder a cancellation of the preconstruction or  
1974 construction lien, as applicable.

1975 (3) A claimant who fails to submit a cancellation within the time prescribed in  
1976 Subsection (2) is liable to the person who requested the cancellation for \$100 for each day after  
1977 the time prescribed in Subsection (2) that the cancellation is not submitted, or the person's  
1978 actual damages, whichever is greater.

1979 Section 53. Section **38-1a-804**, which is renumbered from Section 38-1-28 is  
1980 renumbered and amended to read:

1981 ~~[38-1-28].~~ **38-1a-804. Notice of release of lien and substitution of alternate**  
1982 **security.**

1983 (1) The owner of any interest in [~~real~~] a project property that is subject to a  
1984 [~~mechanics'~~] recorded preconstruction or construction lien [~~recorded under this chapter~~], or any  
1985 original contractor or subcontractor affected by the lien, who disputes the correctness or  
1986 validity of the lien may [~~record~~] submit for recording a notice of release of lien and substitution  
1987 of alternate security:

- 1988 (a) that meets the requirements of Subsection (2);
- 1989 (b) in the office of [~~the~~] each applicable county recorder where the lien was recorded;

1990 and

1991 (c) at any time before ~~[the expiration of 90 days after the day on which the person~~  
1992 ~~filing a notice of release of lien and substitution of alternate security is served with a summons~~  
1993 ~~and lien foreclosure complaint.]~~ the date that is 90 days after the first summons is served in an  
1994 action to foreclose the preconstruction or construction lien for which the notice under this  
1995 section is submitted for recording.

1996 (2) A notice of release of lien and substitution of alternate security recorded under  
1997 Subsection (1) shall:

1998 (a) meet the requirements for the recording of documents in Title 57, Chapter 3,  
1999 Recording of Documents;

2000 (b) reference the preconstruction or construction lien sought to be released, including  
2001 ~~[an]~~ the applicable entry number, book number, and page number; and

2002 (c) have as an attachment a surety bond or evidence of a cash deposit that:

2003 (i) (A) if a surety bond, is executed by a surety company that is treasury listed, A-rated  
2004 by AM Best Company, and authorized to issue surety bonds in this state; or

2005 (B) if evidence of a cash deposit, meets the requirements established by rule by the  
2006 Department of Commerce in accordance with Title 63G, Chapter 3, Utah Administrative  
2007 Rulemaking Act;

2008 (ii) is in an amount equal to:

2009 (A) 150% of the amount claimed by the ~~[lien]~~ claimant ~~[on a notice of]~~ under the  
2010 preconstruction or construction lien or as determined under Subsection (7), if the lien claim is  
2011 for \$25,000 or more;

2012 (B) 175% of the amount claimed by the ~~[lien]~~ claimant ~~[on a notice of]~~ under the  
2013 preconstruction or construction lien or as determined under Subsection (7), if the lien claim is  
2014 for at least \$15,000 but less than \$25,000; or

2015 (C) 200% of the amount claimed by the ~~[lien]~~ claimant ~~[on a notice of]~~ under the  
2016 preconstruction or construction lien or as determined under Subsection (7), if the lien claim is  
2017 for less than \$15,000;



2018 (iii) is made payable to the [lien] claimant;

2019 (iv) is conditioned for the payment of:

2020 (A) the judgment that would have been rendered, or has been rendered against the

2021 project property in the action to enforce the lien; and

2022 (B) any costs and [attorneys'] attorney fees awarded by the court; and

2023 (v) has as principal:

2024 (A) the owner of the interest in the [real] project property; or

2025 (B) the original contractor or subcontractor affected by the lien.

2026 (3) (a) Upon the recording of the notice of release of lien and substitution of alternate

2027 security under Subsection (1), the real property described in the notice shall be released from

2028 the [mechanics'] preconstruction lien or construction lien to which the notice applies.

2029 (b) A recorded notice of release of lien and substitution of alternate security is effective

2030 as to any amendment to the preconstruction or construction lien being released if the bond

2031 amount remains enough to satisfy the requirements of Subsection (2)(c)(ii).

2032 (4) (a) Upon the recording of a notice of release of lien and substitution of alternate

2033 security under Subsection (1), the person recording the notice shall serve a copy of the notice,

2034 together with any attachments, within 30 days upon the [lien] claimant.

2035 (b) If a suit is pending to foreclose the preconstruction or construction lien at the time

2036 the notice is served upon the [lien] claimant under Subsection (4)(a), the [lien] claimant shall,

2037 within 90 days [~~from~~] after the receipt of the notice, institute proceedings to add the alternate

2038 security as a party to the lien foreclosure suit.

2039 (5) The alternate security attached to a notice of release of lien shall be discharged and

2040 released upon:

2041 (a) the failure of the [lien] claimant to commence a suit against the alternate security

2042 within the same time as an action to enforce the lien under Section [~~38-1-11~~] 38-1a-701;

2043 (b) the failure of the lien claimant to institute proceedings to add the alternate security

2044 as a party to a lien foreclosure suit within the time required by Subsection (4)(b);

2045 (c) the dismissal with prejudice of the lien foreclosure suit or suit against the alternate

2046 security as to the ~~[lien]~~ claimant; or  
2047 (d) the entry of judgment against the ~~[lien]~~ claimant in:  
2048 (i) a lien foreclosure suit; or  
2049 (ii) suit against the alternate security.  
2050 (6) If a copy of the notice of release of lien and substitution of alternate security is not  
2051 served upon the ~~[lien]~~ claimant as provided in Subsection (4)(a), the ~~[lien]~~ claimant ~~[shall~~  
2052 ~~have]~~ has six months after the discovery of the notice to commence an action against the  
2053 alternate security, except that no action may be commenced against the alternate security after  
2054 two years from the date the notice was recorded.  
2055 (7) (a) The owner of any interest in ~~[real]~~ a project property that is subject to a  
2056 ~~[mechanics']~~ recorded preconstruction or construction lien ~~[recorded under this chapter]~~, or an  
2057 original contractor or subcontractor affected by ~~[a mechanics']~~ the lien ~~[recorded under this~~  
2058 ~~chapter]~~, who disputes the amount claimed ~~[in a notice of]~~ under a preconstruction or  
2059 construction lien may petition the district court in the county in which the notice of lien is  
2060 recorded for a summary determination of the correct amount ~~[of a]~~ owing under the lien ~~[claim]~~  
2061 for the sole purpose of providing alternate security.  
2062 (b) A petition under this Subsection (7) shall:  
2063 (i) state with specificity the factual and legal bases for disputing the amount ~~[of]~~  
2064 claimed under the preconstruction or construction lien ~~[claim]~~; and  
2065 (ii) be supported by a sworn affidavit and any other evidence supporting the petition.  
2066 (c) A petitioner under Subsection (7)(a) shall, ~~[under]~~ as provided in Utah Rules of  
2067 Civil Procedure, Rule 4, serve on the ~~[lien]~~ claimant:  
2068 (i) a copy of the petition; and  
2069 (ii) a notice of hearing if a hearing is scheduled.  
2070 (d) If a court finds a petition under Subsection (7)(a) insufficient, the court may  
2071 dismiss the petition without a hearing.  
2072 (e) If a court finds a petition under Subsection (7)(a) sufficient, the court shall schedule  
2073 a hearing within 10 days to determine the correct amount ~~[of the lien claim]~~ claimed under the

2074 preconstruction or construction lien for the sole purpose of providing alternate security.

2075 (f) A [~~lien~~] claimant may:

2076 (i) attend a hearing held under this Subsection (7); and

2077 (ii) contest the petition.

2078 (g) A determination under this section is limited to a determination of the amount [~~of~~

2079 ~~the lien claim~~] claimed under a preconstruction or construction lien for the sole purpose of

2080 providing alternate security and does not conclusively establish:

2081 (i) the amount to which the [~~lien~~] claimant is entitled;

2082 (ii) the validity of the [~~lien~~] claim; or

2083 (iii) any person's right to any other legal remedy.

2084 (h) If a court, in a proceeding under this Subsection (7), determines that the amount

2085 claimed [~~in a notice of claim~~] under a preconstruction or construction lien is excessive, the

2086 court shall set the amount [~~of the lien claim~~] for the sole purpose of providing alternate

2087 security.

2088 (i) In an order under Subsection (7)(h), the court shall include a legal description of the

2089 project property.

2090 (j) A petitioner under this Subsection (7) may record a certified copy of any order

2091 issued under this Subsection (7) in the county in which the lien is recorded.

2092 (k) [~~Attorneys' fees~~] A court may not [~~be awarded~~] award attorney fees for a

2093 proceeding under this Subsection (7), but shall [~~be considered~~] consider those attorney fees in

2094 any award of [~~attorneys'~~] attorney fees under any other provision of this chapter.

2095 Section 54. Section **38-1b-101** is enacted to read:

2096 **CHAPTER 1b. GOVERNMENT CONSTRUCTION PROJECTS**

2097 **38-1b-101. Title.**

2098 This chapter is known as "Government Construction Projects."

2099 Section 55. Section **38-1b-102** is enacted to read:

2100 **38-1b-102. Definitions.**

2101 As used in this chapter:

- 2102 (1) "Alternate means" has the same meaning as defined in Section 38-1a-102.
- 2103 (2) "Construction project" has the same meaning as defined in Section 38-1a-102.
- 2104 (3) "Construction work" has the same meaning as defined in Section 38-1a-102.
- 2105 (4) "Designated agent" has the same meaning as defined in Section 38-1a-102.
- 2106 (5) "Division" means the Division of Occupational and Professional Licensing created
- 2107 in Section 58-1-103.
- 2108 (6) "Government project" means a construction project undertaken by or for:
- 2109 (a) the state, including a department, division, or other agency of the state; or
- 2110 (b) a county, city, town, school district, local district, special service district,
- 2111 community development and renewal agency, or other political subdivision of the state.
- 2112 (7) "Government project-identifying information" means:
- 2113 (a) the lot or parcel number of each lot included in the project property that has a lot or
- 2114 parcel number; or
- 2115 (b) the unique project number assigned by the designated agent.
- 2116 (8) "Original contractor" has the same meaning as defined in Section 38-1a-102.
- 2117 (9) "Owner" has the same meaning as defined in Section 38-1a-102.
- 2118 (10) "Owner-builder" has the same meaning as defined in Section 38-1a-102.
- 2119 (11) "Private project" means a construction project that is not a government project.
- 2120 (12) "Project property" has the same meaning as defined in Section 38-1a-102.
- 2121 (13) "Registry" has the same meaning as defined in Section 38-1a-102.

2122 Section 56. Section **38-1b-201**, which is renumbered from Section 38-1-31.5 is  
 2123 renumbered and amended to read:

**Part 2. Notices Relating to Government Projects**

**[38-1-31.5]. 38-1b-201. Notice of commencement for a government project.**

- 2126 (1) No later than 15 days after commencement of physical construction work at a
- 2127 government project site, the original contractor, owner, or owner-builder shall file a notice of
- 2128 commencement with the ~~[database]~~ registry.
- 2129 (2) An original contractor, owner, or owner-builder on a government project may file a

2130 notice of commencement with the designated agent before the commencement of physical  
2131 construction work on the project property.

2132 (3) (a) If duplicate notices of commencement are filed, they shall be combined into one  
2133 notice for each government project, and any notices filed relate back to the date of the  
2134 earliest-filed notice of commencement for the project.

2135 (b) A duplicate notice of commencement that is untimely filed relates back under  
2136 Subsection (3)(a) if the earlier filed notice of commencement is timely filed.

2137 (c) Duplicate notices of commencement shall be automatically linked by the designated  
2138 agent.

2139 (4) The designated agent shall assign each government project a unique project number  
2140 that:

2141 (a) identifies the project; and

2142 (b) can be associated with all notices of commencement, preliminary notices, and  
2143 notices of completion filed in connection with the project.

2144 (5) A notice of commencement is effective only as to any [~~labor, service, equipment,~~  
2145 ~~and material~~] construction work that is [~~furnished~~] provided after the notice of commencement  
2146 is filed.

2147 (6) (a) A notice of commencement shall include:

2148 (i) the name, address, and email address of the owner [~~of the project~~];

2149 (ii) the name, address, and email address of the original contractor;

2150 (iii) the name, address, and email address of the surety providing any payment bond for  
2151 the project or, if none exists, a statement that a payment bond was not required for the work  
2152 being performed;

2153 (iv) (A) the [~~project~~] address of the project property if the project property can be  
2154 reasonably identified by an address; or

2155 (B) the name and general description of the location of the project property, if the  
2156 project property cannot be reasonably identified by an address; and

2157 (v) the government project-identifying information.

2158 (b) A notice of commencement may include a general description of the project.

2159 (7) If a notice of commencement for a government project is not filed within the time  
2160 set forth in Subsection (1), ~~[Sections 38-1-32.5]~~ then Section 38-1b-202 and ~~[38-1-33]~~ Section  
2161 38-1b-203, with respect to the filing of a notice of completion, do not apply.

2162 ~~[(8)(a) Notwithstanding any other provision of this chapter, a notice of~~  
2163 ~~commencement need not be filed for a private project.]~~

2164 ~~[(b) A provision of this chapter does not apply to a private project if the provision~~  
2165 ~~depends for its effectiveness upon the filing of a notice of commencement.]~~

2166 ~~[(9)(a) Unless a person indicates to the division or designated agent that the person~~  
2167 ~~does not wish to receive a notice under this section, the designated agent shall provide~~  
2168 ~~electronic notice of the filing of a notice of commencement or alternate filing to:]~~

2169 ~~[(i) all persons who have filed notices of commencement for the project; and]~~

2170 ~~[(ii) all interested persons who have requested notices concerning the project.]~~

2171 ~~[(b) A person to whom notice is required under Subsection (9)(a) is responsible for:]~~

2172 ~~[(i) providing an email address, mailing address, or telefax number to which a notice~~  
2173 ~~required by Subsection (9)(a) is to be sent; and]~~

2174 ~~[(ii) the accuracy of any email address, mailing address, or telefax number to which~~  
2175 ~~notice is to be sent.]~~

2176 ~~[(c) The designated agent fulfills the notice requirement of Subsection (9)(a) by~~  
2177 ~~sending the notice to the email address, mailing address, or telefax number provided to the~~  
2178 ~~designated agent, whether or not the notice is actually received.]~~

2179 ~~[(10)]~~ (8) (a) The burden is upon any person seeking to enforce a notice of  
2180 commencement to verify the accuracy of information in the notice of commencement and  
2181 prove that the notice of commencement is filed timely and meets all of the requirements of this  
2182 section.

2183 (b) A substantial inaccuracy in a notice of commencement renders the notice of  
2184 commencement invalid.

2185 (c) A person filing a notice of commencement by alternate ~~[filing]~~ means is responsible

2186 for verifying and changing any incorrect information in the notice of commencement before the  
2187 expiration of the time period during which the notice is required to be filed.

2188 Section 57. Section **38-1b-202**, which is renumbered from Section 38-1-32.5 is  
2189 renumbered and amended to read:

2190 ~~[38-1-32.5].~~ **38-1b-202. Preliminary notice on government project.**

2191 (1) Except for a person who has a contract with an owner or an owner-builder or a  
2192 laborer compensated with wages, a subcontractor on a government project shall file a  
2193 preliminary notice with the ~~[database]~~ registry by the later of:

2194 (a) 20 days after the subcontractor commences ~~[the subcontractor's own work or~~  
2195 ~~commences furnishing labor, service, equipment, or material]~~ providing construction work to  
2196 the construction project; and

2197 (b) 20 days after the filing of a notice of commencement, if the subcontractor's work  
2198 commences before the filing of the first notice of commencement.

2199 (2) A preliminary notice filed within the period described in Subsection (1) is effective  
2200 as to all ~~[labor, service, equipment, and material]~~ construction work that the subcontractor  
2201 ~~[furnishes]~~ provides to the construction project, including ~~[labor, service, equipment, and~~  
2202 ~~material provided]~~ construction work that the subcontractor ~~[furnishes]~~ provides to more than  
2203 one contractor or subcontractor.

2204 (3) (a) If more than one notice of commencement is filed for a project, a person may  
2205 attach a preliminary notice to any notice of commencement filed for the project.

2206 (b) A preliminary notice attached to an untimely notice of commencement is valid if  
2207 there is also a valid and timely notice of commencement for the project.

2208 (4) ~~[If a person files a]~~ A preliminary notice filed after the period prescribed by  
2209 Subsection (1)~~[, the preliminary notice]~~ becomes effective on the date that is five days after the  
2210 ~~[day]~~ date on which the preliminary notice is filed.

2211 (5) Except as provided in Subsection (8), failure to file a preliminary notice within the  
2212 period required by Subsection (1) precludes a person from maintaining any claim for  
2213 compensation earned for ~~[labor, service, material, or equipment furnished]~~ construction work

2214 provided to the construction project before the ~~[expiration of]~~ the date that is five days after the  
2215 ~~[late filing of a]~~ preliminary notice was filed, except as against the person with whom the  
2216 person contracted.

2217 (6) A preliminary notice on a government project shall include:

2218 (a) the government project-identifying information;

2219 (b) the name, address, and telephone number of the person ~~[furnishing the labor,  
2220 service, equipment, or material]~~ providing the construction work;

2221 (c) the name and address of the person who contracted with the claimant for the  
2222 ~~[furnishing of the labor, service, equipment, or material]~~ providing of construction work;

2223 (d) the name of the record or reputed owner ~~[of the project]~~;

2224 (e) the name of the original contractor under which the claimant is performing or will  
2225 perform its work; and

2226 (f) the address of the project property or a description of the location of the project  
2227 property.

2228 (7) Upon request, an original contractor shall provide a subcontractor with the number  
2229 assigned to the project by the designated agent.

2230 (8) A person who provides ~~[labor, service, equipment, or material]~~ construction work  
2231 before the filing of a notice of commencement need not file a preliminary notice to maintain  
2232 any right the person would otherwise have, if the notice of commencement is filed more than  
2233 15 days after the day on which the person begins work on the project.

2234 (9) The burden is upon the person filing a preliminary notice to prove that the person  
2235 has substantially complied with the requirements of this section.

2236 ~~[(9)]~~ (10) Subsections ~~[38-1-32(2), (3), (4), (5), and (6)]~~ 38-1a-501(1)(e) and (f) and  
2237 (3) apply to a preliminary notice on a government project under this section to the same extent  
2238 that those subsections apply under Section 38-1a-501 to a preliminary notice on a ~~[private]~~  
2239 project ~~[under Section 38-1-32]~~ that is not a government project.

2240 Section 58. Section **38-1b-203** is enacted to read:

2241 **38-1b-203. Notice of intent to obtain final completion and notice of completion.**



2242 Sections 38-1a-506 and 38-1a-507 apply to a government project to the same extent as  
 2243 those sections apply to a construction project that is subject to Chapter 1a, Preconstruction and  
 2244 Construction Liens.

2245 Section 59. Section **38-3-2** is amended to read:

2246 **38-3-2. Preference of lessor's lien over other liens and claims -- Exceptions --**  
 2247 **Limit.**

2248 [~~The lien provided for in this chapter shall be preferred to]~~

2249 (1) A lien under this chapter has preference over all other liens or claims except:

2250 (a) claims for taxes [and liens of mechanics];

2251 (b) preconstruction or construction liens under Title 38, Chapter [4,] 1a.

2252 Preconstruction and Construction Liens:

2253 (c) perfected security interests[;]; and

2254 (d) claims of employees for wages which are preferred by law[; provided, that when].

2255 (2) If a lessee [~~shall be~~] is adjudicated [a] as bankrupt[;] or [~~shall make~~] makes an  
 2256 assignment for the benefit of creditors, or [~~when his~~] if the lessee's property [~~shall be~~] is put  
 2257 into the possession of a receiver, [~~the~~] a lien [~~herein provided for shall be~~] under this chapter is  
 2258 limited to the rent for 90 days [~~prior thereto~~] before the adjudication, assignment, or  
 2259 receivership.

2260 Section 60. Section **38-9-2** is amended to read:

2261 **38-9-2. Scope.**

2262 (1) (a) The provisions of Sections 38-9-1, 38-9-3, 38-9-4, and 38-9-6 apply to any  
 2263 recording or filing or any rejected recording or filing of a lien pursuant to this chapter on or  
 2264 after May 5, 1997.

2265 (b) The provisions of Sections 38-9-1 and 38-9-7 apply to all liens of record regardless  
 2266 of the date the lien was recorded or filed.

2267 (c) Notwithstanding Subsections (1)(a) and (b), the provisions of this chapter  
 2268 applicable to the filing of a notice of interest do not apply to a notice of interest filed before  
 2269 May 5, 2008.

2270 (2) The provisions of this chapter shall not prevent a person from filing a lis pendens in  
2271 accordance with Section 78B-6-1303 or seeking any other relief permitted by law.

2272 (3) This chapter does not apply to a person entitled to a preconstruction or construction  
2273 lien under Section [~~38-1-3~~] 38-1a-301 who files a lien pursuant to Title 38, Chapter [~~1~~;  
2274 ~~Mechanics' Liens~~] 1a, Preconstruction and Construction.

2275 Section 61. Section **38-10-105** is amended to read:

2276 **38-10-105. Notice of lien -- Recording -- Service on owner of interest -- Failure to**  
2277 **serve notice -- Time of filing.**

2278 (1) To perfect the lien provided by this chapter, a notice of lien as required by  
2279 Subsection [~~38-1-7~~] 38-1a-502(2) [~~and Section 38-1-8~~] shall be filed with the county recorder  
2280 in any county where any part of the land to which the lien may attach is situated. The notice of  
2281 lien shall be filed within 180 days after the last day work was performed or materials or  
2282 equipment were furnished by the lien claimant, except as provided in Subsection (3).

2283 (2) Within 30 days after filing the notice of lien, the lien claimant shall deliver or mail  
2284 a copy of the notice by certified mail, return receipt requested, to the owner of the interest  
2285 lien. If the owner's current address is not readily available, a copy of the notice may be  
2286 mailed to the last-known address of the owner, as shown by the records of the county recorder  
2287 in any county where the land is situated. Failure to deliver or mail the notice of lien to the  
2288 owner shall not cause the lien to be void but precludes the lien claimant from an award of costs  
2289 and [~~attorneys'~~] attorney fees against the owner in an action to enforce the lien.

2290 (3) The notice of lien by a nonoperating owner pursuant to Subsection 38-10-102(3)  
2291 shall be filed within 60 days after receipt by such owner of a notice of lien claim filed by a lien  
2292 claimant with respect to work performed or materials or equipment furnished by the lien  
2293 claimant for which such owner has paid or advanced funds to a contractor or operator.

2294 Section 62. Section **38-10-106** is amended to read:

2295 **38-10-106. Enforcement -- Time for -- Lis pendens -- Action for debt not affected**  
2296 **-- Execution on an interest.**

2297 (1) Actions to enforce the liens created by this chapter shall be commenced within 180

2298 days after the filing of the notice of lien required by Section 38-10-105. The lien claimant  
 2299 shall, within 10 working days after commencement of the action, file a notice of the pendency  
 2300 of the action with the county recorder of each county in which the lien is recorded or the lien  
 2301 shall be void, except as to persons who have been served and made parties to the action.  
 2302 Nothing in this chapter shall be construed to impair or affect the right of any person to whom a  
 2303 debt may be due for any work performed or materials or equipment furnished to maintain an  
 2304 action to recover the debt.

2305 (2) In any action to enforce a lien under this chapter, the provisions of Sections  
 2306 [~~38-1-13~~] 38-1a-702 and [~~38-1-16~~] 38-1a-705 apply.

2307 (3) Upon the entry of a judgment foreclosing the lien, execution on an interest shall be  
 2308 governed as follows:

- 2309 (a) upon real property by Section [~~38-1-15~~] 38-1a-704; and
- 2310 (b) upon personalty by the Utah Rules of Civil Procedure.

2311 Section 63. Section **38-10-110** is amended to read:

2312 **38-10-110. Cancellation of lien.**

2313 Cancellation of the liens provided for in this chapter shall be in accordance with the  
 2314 provisions of Section [~~38-1-24~~] 38-1a-803.

2315 Section 64. Section **38-10-111** is amended to read:

2316 **38-10-111. Abuse of lien right -- Penalty.**

2317 [~~Abuses~~] An abuse of the lien rights provided for in this chapter [~~shall be~~] is governed  
 2318 by Section [~~38-1-25~~] 38-1a-308.

2319 Section 65. Section **38-10-112** is amended to read:

2320 **38-10-112. Assignment of lien.**

2321 [~~Assignments~~] An assignment of the liens provided for in this chapter [~~shall be~~] is  
 2322 governed by Section [~~38-1-26~~] 38-1a-801.

2323 Section 66. Section **38-10-114** is amended to read:

2324 **38-10-114. Attorney fees.**

2325 An award of [~~attorney's~~] attorney fees in an action to enforce any lien in this chapter

2326 [~~shall be~~] is governed by Section [~~38-1-18~~] 38-1a-707.

2327 Section 67. Section **38-11-107** is amended to read:

2328 **38-11-107. Restrictions upon maintaining a lien against residence or owner's**  
2329 **interest in the residence.**

2330 (1) (a) A person qualified to file a lien upon an owner-occupied residence and the real  
2331 property associated with that residence under Chapter [~~1, Mechanics~~] 1a, Preconstruction and  
2332 Construction Liens, who provides qualified services under an agreement, other than directly  
2333 with the owner, is barred from maintaining a lien upon that residence and real property or  
2334 recovering a judgment in any civil action against the owner or the owner-occupied residence to  
2335 recover money owed for qualified services provided by that person if:

2336 (i) an owner meets the conditions described in Subsections 38-11-204(4)(a) and (b); or

2337 (ii) (A) a subsequent owner purchases a residence from an owner;

2338 (B) the subsequent owner who purchased the residence under Subsection (1)(a)(ii)(A)  
2339 occupies the residence as a primary or secondary residence within 180 days from the date of  
2340 transfer or the residence is occupied by the subsequent owner's tenant or lessee as a primary or  
2341 secondary residence within 180 days from the date of transfer; and

2342 (C) the owner from whom the subsequent owner purchased the residence met the  
2343 conditions described in Subsections 38-11-204(4)(a) and (b).

2344 (b) (i) As used in this Subsection (1)(b):

2345 (A) "Contract residence":

2346 (I) means the owner-occupied residence for which a subcontractor provides service,  
2347 labor, or materials; and

2348 (II) includes the real property associated with that owner-occupied residence.

2349 (B) "General contract" means an oral or written contract between an owner and an  
2350 original contractor for providing service, labor, or materials for construction on an  
2351 owner-occupied residence.

2352 (C) "Subcontractor" means a person who provides service, labor, or materials for  
2353 construction on an owner-occupied residence under an agreement other than directly with the

2354 owner.

2355 (ii) A subcontractor qualified to file a lien upon a contract residence under Chapter [~~1~~;  
2356 ~~Mechanics~~] 1a, Preconstruction and Construction Liens, is barred from maintaining a lien upon  
2357 that contract residence or from recovering a judgment in a civil action against the owner, the  
2358 contract residence, or, as provided in Subsection (1)(b)(iii), a subsequent owner to recover for  
2359 service, labor, or materials provided by the subcontractor:

2360 (A) if the amount of the general contract under which the subcontractor provides  
2361 service, labor, or materials totals no more than \$5,000; and

2362 (B) whether or not the original contractor is licensed under Title 58, Chapter 55, Utah  
2363 Construction Trades Licensing Act.

2364 (iii) A subsequent owner is protected under Subsection (1)(b)(ii) to the same extent as  
2365 an owner if:

2366 (A) the subsequent owner purchases the contract residence from the owner; and

2367 (B) (I) the subsequent owner occupies the residence as a primary or secondary  
2368 residence within 180 days after the date of transfer; or

2369 (II) the subsequent owner's tenant or lessee occupies the residence as a primary or  
2370 secondary residence within 180 days after the date of the transfer.

2371 (2) If a residence is constructed under conditions that do not meet all of the provisions  
2372 of Subsection (1)(a) or (b), that residence and the real property associated with that residence as  
2373 provided in Section [~~38-1-4 shall be~~] 38-1a-302 is subject to any [~~mechanics~~] lien as provided  
2374 in Section [~~38-1-3~~] 38-1a-301.

2375 (3) A lien claimant who files a [~~mechanics~~] preconstruction or construction lien under  
2376 Chapter [~~1, Mechanics~~] 1a, Preconstruction and Construction Liens, or a foreclosure action  
2377 upon an owner-occupied residence is not liable for costs and attorney fees under Sections  
2378 [~~38-1-17~~] 38-1a-706 and [~~38-1-18~~] 38-1a-707 or for any damages arising from a civil action  
2379 related to the lien filing or foreclosure action if the lien claimant removes the lien within 15  
2380 days from the date the owner obtains a certificate of compliance and mails a copy of the  
2381 certificate of compliance by certified mail to the lien claimant at the address provided for by

2382 Subsection [~~38-1-7(2)(a)(v)~~] 38-1a-502(2)(e). The 15-day period begins accruing from the date  
2383 postmarked on the certificate of compliance sent to the lien claimant.

2384 Section 68. Section **38-11-204** is amended to read:

2385 **38-11-204. Claims against the fund -- Requirement to make a claim --**

2386 **Qualifications to receive compensation -- Qualifications to receive a certificate of**  
2387 **compliance.**

2388 (1) To claim recovery from the fund a person shall:

2389 (a) meet the requirements of Subsection (4) or (6);

2390 (b) pay an application fee determined by the division under Section 63J-1-504; and

2391 (c) file with the division a completed application on a form provided by the division

2392 accompanied by supporting documents establishing:

2393 (i) that the person meets the requirements of Subsection (4) or (6);

2394 (ii) that the person was a qualified beneficiary or laborer during the construction on the

2395 owner-occupied residence; and

2396 (iii) the basis for the claim.

2397 (2) To recover from the fund, the application required by Subsection (1) shall be filed

2398 no later than one year:

2399 (a) from the date the judgment required by Subsection (4)(d) is entered;

2400 (b) from the date the nonpaying party filed bankruptcy, if the claimant is precluded

2401 from obtaining a judgment or from satisfying the requirements of Subsection (4)(d) because the

2402 nonpaying party filed bankruptcy within one year after the entry of judgment; or

2403 (c) from the date the laborer, trying to recover from the fund, completed the laborer's

2404 qualified services.

2405 (3) The issuance of a certificate of compliance is governed by Section 38-11-110.

2406 (4) To recover from the fund, regardless of whether the residence is occupied by the

2407 owner, a subsequent owner, or the owner or subsequent owner's tenant or lessee, a qualified

2408 beneficiary shall establish that:

2409 (a) (i) the owner of the owner-occupied residence or the owner's agent entered into a

2410 written contract with an original contractor licensed or exempt from licensure under Title 58,  
2411 Chapter 55, Utah Construction Trades Licensing Act:

2412 (A) for the performance of qualified services;

2413 (B) to obtain the performance of qualified services by others; or

2414 (C) for the supervision of the performance by others of qualified services in  
2415 construction on that residence;

2416 (ii) the owner of the owner-occupied residence or the owner's agent entered into a  
2417 written contract with a real estate developer for the purchase of an owner-occupied residence;

2418 or

2419 (iii) the owner of the owner-occupied residence or the owner's agent entered into a  
2420 written contract with a factory built housing retailer for the purchase of an owner-occupied  
2421 residence;

2422 (b) the owner has paid in full the original contractor, licensed or exempt from licensure  
2423 under Title 58, Chapter 55, Utah Construction Trades Licensing Act, real estate developer, or  
2424 factory built housing retailer under Subsection (4)(a) with whom the owner has a written  
2425 contract in accordance with the written contract and any amendments to the contract;

2426 (c) (i) the original contractor, licensed or exempt from licensure under Title 58,  
2427 Chapter 55, Utah Construction Trades Licensing Act, the real estate developer, or the factory  
2428 built housing retailer subsequently failed to pay a qualified beneficiary who is entitled to  
2429 payment under an agreement with that original contractor or real estate developer licensed or  
2430 exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, for  
2431 services performed or materials supplied by the qualified beneficiary;

2432 (ii) a subcontractor who contracts with the original contractor, licensed or exempt from  
2433 licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, the real estate  
2434 developer, or the factory built housing retailer failed to pay a qualified beneficiary who is  
2435 entitled to payment under an agreement with that subcontractor or supplier; or

2436 (iii) a subcontractor who contracts with a subcontractor or supplier failed to pay a  
2437 qualified beneficiary who is entitled to payment under an agreement with that subcontractor or

2438 supplier;

2439 (d) (i) unless precluded from doing so by the nonpaying party's bankruptcy filing  
2440 within the applicable time, the qualified beneficiary filed an action against the nonpaying party  
2441 to recover money owed to the qualified beneficiary within the earlier of:

2442 (A) 180 days from the date the qualified beneficiary filed a notice of claim under  
2443 Section [~~38-1-7~~] 38-1a-502; or

2444 (B) 270 days from the completion of the original contract pursuant to Subsection  
2445 [~~38-1-7~~] 38-1a-502(1);

2446 (ii) the qualified beneficiary has obtained a judgment against the nonpaying party who  
2447 failed to pay the qualified beneficiary under an agreement to provide qualified services for  
2448 construction of that owner-occupied residence;

2449 (iii) (A) the qualified beneficiary has:

2450 (I) obtained from a court of competent jurisdiction the issuance of an order requiring  
2451 the judgment debtor, or if a corporation any officer of the corporation, to appear before the  
2452 court at a specified time and place to answer concerning the debtor's or corporation's property;

2453 (II) received return of service of the order from a person qualified to serve documents  
2454 under the Utah Rules of Civil Procedure, Rule 4(b); and

2455 (III) made reasonable efforts to obtain asset information from the supplemental  
2456 proceedings; and

2457 (B) if assets subject to execution are discovered as a result of the order required under  
2458 Subsection (4)(d)(iii)(A) or for any other reason, to obtain the issuance of a writ of execution  
2459 from a court of competent jurisdiction; or

2460 (iv) the qualified beneficiary timely filed a proof of claim where permitted in the  
2461 bankruptcy action, if the nonpaying party has filed bankruptcy;

2462 (e) the qualified beneficiary is not entitled to reimbursement from any other person;

2463 and

2464 (f) the qualified beneficiary provided qualified services to a contractor, licensed or  
2465 exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act.



2466 (5) The requirements of Subsections (4)(d)(ii) and (iii) need not be met if the qualified  
2467 beneficiary is prevented from compliance because the nonpaying party files bankruptcy.

2468 (6) To recover from the fund a laborer shall:

2469 (a) establish that the laborer has not been paid wages due for the work performed at the  
2470 site of a construction on an owner-occupied residence; and

2471 (b) provide any supporting documents or information required by rule by the division.

2472 (7) A fee determined by the division under Section 63J-1-504 shall be deducted from  
2473 any recovery from the fund received by a laborer.

2474 (8) The requirements of Subsections (4)(a) and (b) may be satisfied if an owner or  
2475 agent of the owner establishes to the satisfaction of the director that the owner of the  
2476 owner-occupied residence or the owner's agent entered into a written contract with an original  
2477 contractor who:

2478 (a) was a business entity that was not licensed under Title 58, Chapter 55, Utah  
2479 Construction Trades Licensing Act, but was solely or partly owned by an individual who was  
2480 licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act; or

2481 (b) was a natural person who was not licensed under Title 58, Chapter 55, Utah  
2482 Construction Trades Licensing Act, but who was the sole or partial owner and qualifier of a  
2483 business entity that was licensed under Title 58, Chapter 55, Utah Construction Trades  
2484 Licensing Act.

2485 (9) The director shall have equitable power to determine if the requirements of  
2486 Subsections (4)(a) and (b) have been met, but any decision by the director under this chapter  
2487 shall not alter or have any effect on any other decision by the division under Title 58,  
2488 Occupations and Professions.

2489 Section 69. Section **38-12-102** is amended to read:

2490 **38-12-102. Notice requirements for lien filings -- Exceptions.**

2491 (1) A lien claimant or the lien claimant's agent shall send by certified mail a written  
2492 copy of the notice of lien to the last-known address of the person against whom the notice of  
2493 lien is filed no later than 30 days after the day on which a lien claimant or the lien claimant's

2494 authorized agent files a notice of lien meeting the requirements of Subsection (2):

2495 (a) for recordation with:

2496 (i) a county recorder;

2497 (ii) a county clerk; or

2498 (iii) a clerk of the court; or

2499 (b) in the case of a lien on an aircraft under Section 38-13-201, with the Federal

2500 Aviation Administration.

2501 (2) The notice of lien described in Subsection (1) shall contain the following

2502 information:

2503 (a) the name and address of the person against whom the lien is filed;

2504 (b) (i) a statement that certain property owned by the person against whom the lien is  
2505 filed is subject to a lien;

2506 (ii) the amount of the judgment, settlement, or compromise if the lien is based on a  
2507 charge against or interest in a judgment, settlement, or compromise; or

2508 (iii) the amount of state taxes owed;

2509 (c) the article number contained on the certified mail receipt;

2510 (d) the date the notice of lien was filed; and

2511 (e) the name and address of the lien claimant.

2512 (3) The notice requirements of Subsections (1) and (2) do not apply to:

2513 (a) a [~~mechanics'~~] preconstruction or construction lien as provided in Title 38, Chapter  
2514 [~~1, Mechanics'~~] 1a, Preconstruction and Construction Liens;

2515 (b) a lessors' lien as provided in Title 38, Chapter 3, Lessors' Liens;

2516 (c) a federal tax lien as provided in Title 38, Chapter 6, Federal Tax Liens;

2517 (d) a hospital lien as provided in Title 38, Chapter 7, Hospital Lien Law;

2518 (e) a self-service storage facilities lien as provided in Title 38, Chapter 8, Self-Service  
2519 Storage Facilities;

2520 (f) an oil, gas, or mining lien as provided in Title 38, Chapter 10, Oil, Gas, and Mining  
2521 Liens;

- 2522 (g) a claim against the Residence Lien Recovery Fund as provided in Title 38, Chapter
- 2523 11, Residence Lien Restriction and Lien Recovery Fund Act;
- 2524 (h) a trust deed;
- 2525 (i) a mortgage;
- 2526 (j) any interests subject to a security agreement as defined in Section 70A-9a-102;
- 2527 (k) any other liens subject to the same or stricter notice requirements than those
- 2528 imposed by Subsections (1) and (2); or
- 2529 (l) a court judgment or abstract of a court judgment presented for recording in the
- 2530 office of a county recorder.

2531 Section 70. Section **40-6-8** is amended to read:

2532 **40-6-8. Field or pool units -- Procedure for establishment -- Operation.**

2533 (1) The board may hold a hearing to consider the need for the operation as a unit of one

2534 or more pools or parts of them in a field.

2535 (2) The board shall make an order providing for the unit operation of a pool or part of

2536 it, if the board finds that:

2537 (a) Such operation is reasonably necessary for the purposes of this chapter; and

2538 (b) The value of the estimated additional recovery of oil or gas substantially exceeds

2539 the estimated additional cost incident to conducting such operations.

2540 (3) The order shall prescribe a plan for unit operations that shall include:

2541 (a) a description of the lands and of the pool or pools or parts of them to be so

2542 operated, termed the unit area;

2543 (b) a statement of the nature of the operations contemplated;

2544 (c) an allocation to the separately owned tracts in the unit area of all the oil and gas that

2545 is produced from the unit area and is saved, being the production that is not used in the conduct

2546 of operations on the unit area or not unavoidably lost. The allocation shall be in accord with

2547 the agreement, if any, of the interested parties. If there is no such agreement, the board shall

2548 determine the relative value, from evidence introduced at the hearing of the separately owned

2549 tracts in the unit area, exclusive of physical equipment, for development of oil and gas by unit

2550 operations, and the production allocated to each tract shall be the proportion that the relative  
2551 value of each tract so determined bears to the relative value of all tracts in the unit area;

2552 (d) a provision for adjustment among the owners of the unit area (not including royalty  
2553 owners) of their respective investment in wells, tanks, pumps, machinery, materials,  
2554 equipment, and other things and services of value attributable to the unit operations. The  
2555 amount to be charged unit operations for any such item shall be determined by the owners of  
2556 the unit area (not including royalty owners); but if the owners of the unit area are unable to  
2557 agree upon the amount or correctness, the board shall determine them. The net amount charged  
2558 against the owner of an interest in a separately owned tract shall be considered expense of unit  
2559 operation chargeable against his interest in the tract. The adjustments provided for may be  
2560 treated separately and handled by agreements separate from the unitization agreement;

2561 (e) a provision providing how the costs of unit operations, including capital  
2562 investments, shall be determined and charged to the separately owned tracts and how these  
2563 costs shall be paid, including a provision providing a procedure for the unit production  
2564 allocated to an owner who does not pay the share of the cost of unit operations charged to such  
2565 owner, or the interest of such owner, to be sold and the proceeds applied to the payment of  
2566 such costs. The operator of the unit shall have a first and prior lien for costs incurred pursuant  
2567 to the plan of unitization upon each owner's oil and gas rights and his share of unitized  
2568 production to secure the payment of such owner's proportionate part of the cost of developing  
2569 and operating the unit area. This lien may be ~~established and~~ enforced in the same manner as  
2570 provided by ~~[Sections 38-1-8 to 38-1-26 inclusive]~~ Title 38, Chapter 1a, Part 7, Enforcement of  
2571 Preconstruction and Construction Liens. For such purposes any nonconsenting owner shall be  
2572 deemed to have contracted with the unit operator for his proportionate part of the cost of  
2573 developing and operating the unit area. A transfer or conversion of any owner's interest or any  
2574 portion of it, however accomplished, after the effective date of the order creating the unit, shall  
2575 not relieve the transferred interest of the operator's lien on said interest for the cost and expense  
2576 of unit operations;

2577 (f) a provision, if necessary, for carrying or otherwise financing any owner who elects

2578 to be carried or otherwise financed, allowing a reasonable interest charge for such service  
2579 payable out of such owner's share of the production;

2580 (g) a provision for the supervision and conduct of the unit operations, in respect to  
2581 which each owner shall have a percentage vote corresponding to the percentage of the costs of  
2582 unit operations chargeable against the interest of the owner;

2583 (h) the time when the unit operations shall commence, and the manner in which, and  
2584 the circumstances under which, the unit operations shall terminate;

2585 (i) such additional provisions that are found to be appropriate for carrying on the unit  
2586 operations, and for the protection of correlative rights; and

2587 (j) the designation of a unit operator.

2588 (4) No order of the board providing for unit operations of a pool or pools shall become  
2589 effective unless and until the plan for unit operations prescribed by the division has been  
2590 approved in writing by those owners who, under the board's order, will be required to pay 70%  
2591 of the costs of the unit operation, and also by the owners of 70% of the production or proceeds  
2592 that will be credited to interests which are free of cost, such as royalties, overriding royalties,  
2593 and production payments, and the board has made a finding, either in the order providing for  
2594 unit operations or in a supplemental order, that the plan for unit operations has been so  
2595 approved. If the persons owning required percentage of interest in that unit area do not  
2596 approve the plan for unit operations within a period of six months from the date on which the  
2597 order providing for unit operations is made, the order shall be ineffective and shall be revoked  
2598 by the board unless for good cause shown the board extends this time.

2599 (5) An order providing for unit operations may be amended by an order made by the  
2600 board in the same manner and subject to the same conditions as an original order providing for  
2601 unit operations, provided:

2602 (a) If such an amendment affects only the rights and interests of the owners, the  
2603 approval of the amendment by the owners of royalty, overriding royalty, production payments  
2604 and other such interests which are free of costs shall not be required.

2605 (b) No such order of amendment shall change the percentage for the allocation of oil

2606 and gas as established for any separately owned tract by the original order, or change the  
2607 percentage for allocation of cost as established for any separately owned tract by the original  
2608 order.

2609 (6) The board, by an order, may provide for the unit operation of a pool or pools or  
2610 parts thereof that embrace a unit area established by a previous order of the division. The  
2611 order, in providing for the allocation of unit production, shall first treat the unit area previously  
2612 established as a single tract, and the portion of the unit production allocated shall then be  
2613 allocated among the separately owned tracts included in the previously established unit area in  
2614 the same proportions of those specified in the previous order.

2615 (7) An order may provide for unit operations on less than the whole of a pool where the  
2616 unit area is of such size and shape as may be reasonably required for that purpose, and the  
2617 conduct will have no adverse effect upon other portions of the pool.

2618 (8) All operations, including, but not limited to, the commencement, drilling, or  
2619 operation of a well upon any portion of the unit area shall be deemed for all purposes the  
2620 conduct of such operations upon each separately owned tract in the unit area by the several  
2621 owners. The portions of the unit production allocated to a separately owned tract in a unit area  
2622 shall, when produced, be deemed, for all purposes, to have been actually produced from such  
2623 tract by a well drilled. Operations conducted pursuant to an order of the board providing for  
2624 unit operations shall constitute a fulfillment of all the express or implied obligations for each  
2625 lease or contract covering lands in the unit area to the extent that compliance with such  
2626 obligations cannot be had because of the order of the board.

2627 (9) The portion of the unit production allocated to any tract, and the proceeds from the  
2628 sale, shall be the property and income of the several owners, subject to the rights of royalty  
2629 owners, to whom, or to whose credit, they are allocated or payable under the order providing  
2630 for unit operations.

2631 (10) No division order or other contract relating to the sale or purchase of production  
2632 from a separately owned tract shall be terminated by the order providing for unit operations but  
2633 shall remain in force and apply to oil and gas allocated to such tract until terminated in

2634 accordance with the provisions thereof.

2635           (11) Except to the extent that the parties affected agree and as provided in [~~(e)~~ of]  
2636 Subsection (3)~~(e)~~ [of this section], no order providing for unit operations shall be construed to  
2637 result in a transfer of all or any part of the title of any person to the oil and gas rights in any  
2638 tract in the unit area. All property, whether real or personal, that may be acquired in the  
2639 conduct of unit operations hereunder shall be acquired for the account of the owners within the  
2640 unit area and shall be the property of the owners in the proportion that the expenses of unit  
2641 operations are charged, unless otherwise provided in the plan of unit operation.

2642           (12) This section shall apply only to field or pool units and shall not apply to the  
2643 unitization of interests within a drilling unit as may be authorized and governed under the  
2644 provisions of Section 40-6-6.

2645           Section 71. Section **58-55-501** is amended to read:

2646           **58-55-501. Unlawful conduct.**

2647           Unlawful conduct includes:

2648           (1) engaging in a construction trade, acting as a contractor, an alarm business or  
2649 company, or an alarm company agent, or representing oneself to be engaged in a construction  
2650 trade or to be acting as a contractor in a construction trade requiring licensure, unless the  
2651 person doing any of these is appropriately licensed or exempted from licensure under this  
2652 chapter;

2653           (2) acting in a construction trade, as an alarm business or company, or as an alarm  
2654 company agent beyond the scope of the license held;

2655           (3) hiring or employing in any manner an unlicensed person, other than an employee  
2656 for wages who is not required to be licensed under this chapter, to engage in a construction  
2657 trade for which licensure is required or to act as a contractor or subcontractor in a construction  
2658 trade requiring licensure;

2659           (4) applying for or obtaining a building permit either for oneself or another when not  
2660 licensed or exempted from licensure as a contractor under this chapter;

2661           (5) issuing a building permit to any person for whom there is no evidence of a current

- 2662 license or exemption from licensure as a contractor under this chapter;
- 2663       (6) applying for or obtaining a building permit for the benefit of or on behalf of any  
2664 other person who is required to be licensed under this chapter but who is not licensed or is  
2665 otherwise not entitled to obtain or receive the benefit of the building permit;
- 2666       (7) failing to obtain a building permit when required by law or rule;
- 2667       (8) submitting a bid for any work for which a license is required under this chapter by a  
2668 person not licensed or exempted from licensure as a contractor under this chapter;
- 2669       (9) willfully or deliberately misrepresenting or omitting a material fact in connection  
2670 with an application to obtain or renew a license under this chapter;
- 2671       (10) allowing one's license to be used by another except as provided by statute or rule;
- 2672       (11) doing business under a name other than the name appearing on the license, except  
2673 as permitted by statute or rule;
- 2674       (12) if licensed as a specialty contractor in the electrical trade or plumbing trade,  
2675 journeyman plumber, residential journeyman plumber, journeyman electrician, master  
2676 electrician, or residential electrician, failing to directly supervise an apprentice under one's  
2677 supervision or exceeding the number of apprentices one is allowed to have under the speciality  
2678 contractor's supervision;
- 2679       (13) if licensed as a contractor or representing oneself to be a contractor, receiving any  
2680 funds in payment for a specific project from an owner or any other person, which funds are to  
2681 pay for work performed or materials and services furnished for that specific project, and after  
2682 receiving the funds to exercise unauthorized control over the funds by failing to pay the full  
2683 amounts due and payable to persons who performed work or furnished materials or services  
2684 within a reasonable period of time;
- 2685       (14) employing an unlicensed alarm business or company or an unlicensed individual  
2686 as an alarm company agent, except as permitted under the exemption from licensure provisions  
2687 under Section 58-1-307;
- 2688       (15) if licensed as an alarm company or alarm company agent, filing with the division  
2689 fingerprint cards for an applicant which are not those of the applicant, or are in any other way



2690 false or fraudulent and intended to mislead the division in its consideration of the applicant for  
2691 licensure;

2692 (16) if licensed under this chapter, willfully or deliberately disregarding or violating:

2693 (a) the building or construction laws of this state or any political subdivision;

2694 (b) the safety and labor laws applicable to a project;

2695 (c) any provision of the health laws applicable to a project;

2696 (d) the workers' compensation insurance laws of the state applicable to a project;

2697 (e) the laws governing withholdings for employee state and federal income taxes,

2698 unemployment taxes, Social Security payroll taxes, or other required withholdings; or

2699 (f) reporting, notification, and filing laws of this state or the federal government;

2700 (17) aiding or abetting any person in evading the provisions of this chapter or rules  
2701 established under the authority of the division to govern this chapter;

2702 (18) engaging in the construction trade or as a contractor for the construction of  
2703 residences of up to two units when not currently registered or exempt from registration as a  
2704 qualified beneficiary under Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery  
2705 Fund Act;

2706 (19) failing, as an original contractor, as defined in Section 38-11-102, to include in a  
2707 written contract the notification required in Section 38-11-108;

2708 (20) wrongfully filing a [~~mechanics'~~ preconstruction or construction] lien in violation  
2709 of Section [~~38-1-25~~] 38-1a-308;

2710 (21) if licensed as a contractor, not completing the approved continuing education  
2711 required under Section 58-55-302.5;

2712 (22) an alarm company allowing an employee with a temporary license under Section  
2713 58-55-312 to engage in conduct on behalf of the company outside the scope of the temporary  
2714 license, as provided in Subsection 58-55-312(3)(a)(ii);

2715 (23) an alarm company agent under a temporary license under Section 58-55-312  
2716 engaging in conduct outside the scope of the temporary license, as provided in Subsection  
2717 58-55-312(3)(a)(ii);

2718 (24) (a) an unincorporated entity licensed under this chapter having an individual who  
2719 owns an interest in the unincorporated entity engage in a construction trade in Utah while not  
2720 lawfully present in the United States; or

2721 (b) an unincorporated entity providing labor to an entity licensed under this chapter by  
2722 providing an individual who owns an interest in the unincorporated entity to engage in a  
2723 construction trade in Utah while not lawfully present in the United States;

2724 (25) an unincorporated entity failing to provide the following for an individual who  
2725 engages, or will engage, in a construction trade in Utah for the unincorporated entity, or for an  
2726 individual who engages, or will engage, in a construction trade in Utah for a separate entity for  
2727 which the unincorporated entity provides the individual as labor:

2728 (a) workers' compensation coverage:

2729 (i) to the extent required by Title 34A, Chapter 2, Workers' Compensation Act, and  
2730 Title 34A, Chapter 3, Utah Occupational Disease Act; or

2731 (ii) that would be required under the chapters listed in Subsection (25)(a)(i) if the  
2732 unincorporated entity were licensed under this chapter; and

2733 (b) unemployment compensation in accordance with Title 35A, Chapter 4,  
2734 Employment Security Act, for an individual who owns, directly or indirectly, less than an 8%  
2735 interest in the unincorporated entity, as defined by rule made by the division in accordance with  
2736 Title 63G, Chapter 3, Utah Administrative Rulemaking Act; or

2737 (26) the failure of a sign installation contractor or nonelectrical outdoor advertising  
2738 sign contractor, as classified and defined in division rules, to:

2739 (a) display the contractor's license number prominently on a vehicle that:

2740 (i) the contractor uses; and

2741 (ii) displays the contractor's business name; or

2742 (b) carry a copy of the contractor's license in any other vehicle that the contractor uses  
2743 at a job site, whether or not the vehicle is owned by the contractor.

2744 Section 72. Section **63G-6-506** is amended to read:

2745 **63G-6-506. Preliminary notice requirement.**

2746 (1) Any person furnishing labor, service, equipment, or material for which a payment  
2747 bond claim may be made under this chapter shall provide preliminary notice to the designated  
2748 agent as prescribed by Section [~~38-1-32.5~~] 38-1b-202, except that this section does not apply:

2749 (a) to a person performing labor for wages; or

2750 (b) if a notice of commencement is not filed as prescribed in Section [~~38-1-31.5~~]  
2751 38-1b-201 for the project or improvement for which labor, service, equipment, or material is  
2752 furnished.

2753 (2) Any person who fails to provide the preliminary notice required by Subsection (1)  
2754 may not make a payment bond claim under this chapter.

2755 (3) The preliminary notice required by Subsection (1) must be provided before  
2756 commencement of any action on the payment bond.

2757 Section 73. Section **73-22-7** is amended to read:

2758 **73-22-7. Cooperative or unit operation of geothermal area -- Order -- Plan of**  
2759 **operation -- Approval of owners -- Amendment.**

2760 (1) The agency or any affected person may commence an adjudicative proceeding to  
2761 consider the need for cooperative or unit operation of a geothermal area.

2762 (2) The division shall order the cooperative or unit operation of part or all of a  
2763 geothermal area if the division finds that:

2764 (a) a developable resource exists; and

2765 (b) that this operation is reasonably necessary to prevent waste, to protect correlative  
2766 rights, or to prevent the drilling of unnecessary wells and will not reduce the ultimate economic  
2767 recovery of geothermal resources.

2768 (3) The division's order for cooperative or unit operations shall be upon terms and  
2769 conditions that are just and reasonable and satisfy the requirements of Subsection (2).

2770 (4) An order by the division for unit operations shall prescribe a plan, including:

2771 (a) a description of the geothermal area to be unit operated, termed the unit area;

2772 (b) a statement of the nature of the operations contemplated, the time they will  
2773 commence, and the manner and circumstances under which unit operations shall terminate;

2774 (c) an allocation to the separately-owned tracts in the unit area of the geothermal  
2775 resources produced and of the costs incurred in unit operations. The allocations shall be in  
2776 accord with the agreement, if any, of the affected parties. If there is no agreement, the division  
2777 shall determine the allocations from evidence introduced at a hearing before the division.  
2778 Production shall be allocated in proportion to the relative value that each tract bears to the  
2779 value of all tracts in the unit area. The acreage of each tract in proportion to the total unit  
2780 acreage shall be the measure of relative value, unless the division finds after public hearing that  
2781 another method is likely to result in a more equitable allocation and protection of correlative  
2782 rights. Resource temperature, pressure, fluid quality, geological conditions, distance to place  
2783 of use, and productivity are among the factors that may be considered in evaluating other  
2784 methods. The method for allocating production in unit operations shall be revised, if, after a  
2785 hearing, the division finds that the revised method is likely to result in a more equitable  
2786 allocation and protection of correlative rights. Any affected person may file a request for  
2787 agency action to consider adoption of a revised allocation method, but the request may not be  
2788 made until three years after the initial order by the division or at less than two-year intervals  
2789 after that. Upon receipt of a request for consideration of a revised allocation method, the  
2790 division shall hold a hearing;

2791 (d) a provision for adjustment among the owners of the unit area (not including royalty  
2792 owners) of their respective investment in wells, tanks, pumps, machinery, materials,  
2793 equipment, and other things and services of value attributable to the unit operations. The  
2794 amount to be charged unit operations for each item shall be determined by the owners of the  
2795 unit area (not including royalty owners). If the owners of the unit area are unable to agree upon  
2796 the amount of the charges or to agree upon the correctness of the charges, any affected party  
2797 may file a request for agency action. Upon receipt of the request, the division shall hold a  
2798 hearing to determine them. The net amount charged against the owner of a separately-owned  
2799 tract shall be considered an expense of unit operation chargeable against that tract. The  
2800 adjustments provided for in this subsection may be treated separately and handled by  
2801 agreements separate from the unitization agreement;

2802 (e) a provision providing how the costs of unit operations, including capital  
2803 investments, shall be determined and charged to the separately-owned tracts and how these  
2804 costs shall be paid, including a provision providing when, how, and by whom the unit  
2805 production allocated to an owner who does not pay the share of the cost of unit operation  
2806 charged to that owner, or the interest of that owner, may be sold and the proceeds applied to the  
2807 payment of the costs. The operator of the unit shall have a first and prior lien for costs incurred  
2808 pursuant to the plan of unitization upon each owner's geothermal rights and his share of  
2809 unitized production to secure the payment of the owner's proportionate part of the cost of  
2810 developing and operating the unit area. This lien may be ~~established and~~ enforced in the  
2811 same manner as provided by ~~[Sections 38-1-8 through 38-1-26]~~ Title 38, Chapter 1a, Part 7,  
2812 Enforcement of Preconstruction and Construction Liens. For these purposes any  
2813 nonconsenting owner is considered to have contracted with the unit operator for his  
2814 proportionate part of the cost of developing and operating the unit area. A transfer or  
2815 conversion of any owner's interest or any portion of it, however accomplished, after the  
2816 effective date of the order creating the unit, does not relieve the transferred interest of the  
2817 operator's lien on the interest for the cost and expense of unit operations;

2818 (f) a provision, if necessary, for carrying or otherwise financing any person who elects  
2819 to be carried or otherwise financed, allowing a reasonable interest charge for this service  
2820 payable out of that person's share of the production;

2821 (g) a provision for the supervision and conduct of the unit operations, in respect to  
2822 which each person shall have a vote with a value corresponding to the percentage of the costs  
2823 of unit operations chargeable against the interest of that person;

2824 (h) any additional provisions that are necessary to carry on the unit operations.

2825 (5) (a) No order of the division providing for unit operations is effective unless and  
2826 until the division finds that the plan for unit operations prescribed by the division has been  
2827 approved in writing by:

2828 (i) those persons, who under the division's order, will be required to pay 66% of the  
2829 costs of the unit operation; and

2830 (ii) the owners of 66% of the production or proceeds of the unit operation that are free  
2831 of costs, such as royalties, overriding royalties, and production payments.

2832 (b) If the persons owning the required percentage of interest in the unit area do not  
2833 approve the plan within six months from the date on which the order is made, the order is  
2834 ineffective and shall be revoked by the division unless for good cause shown the division  
2835 extends this time.

2836 (6) (a) An order providing for unit operations may be amended by an order of the  
2837 division in the same manner and subject to the same conditions as an original order for unit  
2838 operations.

2839 (b) If this amendment affects only the rights and interests of the owners, the approval  
2840 of the amendment by the owners of royalty, overriding royalty, production payments, and other  
2841 interests that are free of costs is required.

2842 (c) Production allocation may be amended only by following the procedures of  
2843 Subsection (4)(c).

2844 (7) (a) All operations, including the commencement, drilling, or operation of a well  
2845 upon any portion of the unit area are considered for all purposes to be the conduct of those  
2846 operations upon each separately-owned tract in the unit by the several owners of tracts in the  
2847 unit.

2848 (b) The portions of the unit production allocated to a separately-owned tract in a unit  
2849 area are, when produced, considered for all purposes to have been actually produced from that  
2850 tract by a well drilled on it. Good faith operations conducted pursuant to an order of the  
2851 division providing for unit operations constitutes a complete defense to any suit alleging breach  
2852 of lease or of contractual obligations covering lands in the unit area to the extent that  
2853 compliance with these obligations cannot be had because of the order of the division.

2854 (8) The portion of the unit production allocated to any tract, and the proceeds from the  
2855 sale of this production, are the property and income of the several persons to whom, or to  
2856 whose credit, they are allocated or payable under the order providing for unit operations.

2857 (9) (a) Except to the extent that the parties affected so agree, and as provided in

2858 Subsection (4)(e), no order providing for unit operations may be construed to result in a  
2859 transfer of all or any part of the title of any person to the geothermal resource rights in any tract  
2860 in the unit area.

2861 (b) All property, whether real or personal, that is acquired in the conduct of unit  
2862 operations, is acquired for the account of the owners within the unit area and is the property of  
2863 those owners in the proportion that the expenses of unit operations are charged.

2864 Section 74. Section **76-6-524** is amended to read:

2865 **76-6-524. Falsifying information for preconstruction service lien purposes.**

2866 A person who knowingly falsifies information for the purpose of obtaining priority of a  
2867 preconstruction [~~service~~] lien under Title 38, Chapter [~~1, Mechanics~~] 1a, Preconstruction and  
2868 Construction Liens, is guilty of a class B misdemeanor.

2869 Section 75. **Repealer.**

2870 This bill repeals:

2871 Section **38-1-6, Priority over claims of creditors of original contractor or**  
2872 **subcontractor.**

2873 Section **38-1-9, Notice imparted by record.**

2874 Section **38-1-10, Laborers' and materialmen's lien on equal footing regardless of**  
2875 **time of filing.**

2876 Section **38-1-13, Parties -- Joinder -- Intervention.**

2877 Section **38-1-16, Deficiency judgment.**

2878 Section **38-1-17, Costs -- Apportionment -- Costs and attorneys' fee to**  
2879 **subcontractor.**

2880 Section **38-1-19, Payment by owner to contractor -- Subcontractor's lien not**  
2881 **affected.**

2882 Section **38-1-20, When contract price not payable in cash -- Notice.**

2883 Section **38-1-21, Advance payments -- Effect on subcontractor's lien.**

2884 Section **38-1-22, Advance payments under terms of contract -- Effect on liens.**

2885 Section **38-1-23, Creditors cannot reach materials furnished, except for purchase**

2886 **price.**

2887 Section **38-1-24, Cancellation of record -- Penalty.**

2888 Section **38-1-26, Assignment of lien.**

2889 Section **38-1-27.2, Notice to subcontractor.**