



Utah

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Statutory Outline

TITLE 38. LIENS.

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CHAPTER 1a. PRECONSTRUCTION AND CONSTRUCTION LIENS

38-1a-101. Title.

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

38-1a-102. Definitions.

As used in this chapter:

- (1) "Alternate means" means a method of filing a legible and complete notice or other document with the registry other than electronically, as established by the division by rule.
- (2) "Anticipated improvement" means the improvement:
 - (a) for which preconstruction service is performed; and
 - (b) that is anticipated to follow the performing of preconstruction service.
- (3) "Applicable county recorder" means the office of the recorder of each county in which any part of the property on which a claimant claims or intends to claim a preconstruction or construction lien is located.
- (4) "Bona fide loan" means a loan to an owner or owner-builder by a lender in which the owner or owner-builder has no financial or beneficial interest greater than 5% of the voting shares or other ownership interest.
- (5) "Claimant" means a person entitled to claim a preconstruction or construction lien.
- (6) "Compensation" means the payment of money for a service rendered or an expense incurred, whether based on:
 - (a) time and expense, lump sum, stipulated sum, percentage of cost, cost plus fixed or percentage fee, or commission; or
 - (b) a combination of the bases listed in Subsection (6)(a).
- (7) "Construction lender" means a person who makes a construction loan.
- (8) "Construction lien" means a lien under this chapter for construction work.
- (9) "Construction loan" does not include a consumer loan secured by the equity in the consumer's home.
- (10) "Construction project" means an improvement that is constructed pursuant to an original contract.
- (11) "Construction work":
 - (a) means labor, service, material, or equipment provided for the purpose and during the process of constructing, altering, or repairing an improvement; and
 - (b) includes scheduling, estimating, staking, supervising, managing, materials testing, inspection, observation, and quality control or assurance involved in constructing, altering, or repairing an improvement.
- (12) "Contestable notice" means a notice of preconstruction service under Section 38-1a-401, a preliminary notice under Section 38-1a-501, or a notice of completion under Section 38-1a-506.
- (13) "Contesting person" means an owner, original contractor, subcontractor, or other interested person.
- (14) "Designated agent" means the third party the division contracts with as provided in Section 38-1a-202 to create and maintain the registry.
- (15) "Division" means the Division of Occupational and Professional Licensing created in Section 58-1-103.
- (16) "Entry number" means the reference number that:
 - (a) the designated agent assigns to each notice or other document filed with the registry; and
 - (b) is unique for each notice or other document.
- (17) "Final completion" means:
 - (a) the date of issuance of a permanent certificate of occupancy by the local government entity having jurisdiction over the construction project, if a permanent certificate of occupancy is required;

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

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

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

(18) "Final lien waiver" means a form that complies with Subsection 38-1a-802(4)(c).

(19) "First preliminary notice filing" means a preliminary notice that:

(a) is the earliest preliminary notice filed on the construction project for which the preliminary notice is filed;

(b) is filed on a construction project that, at the time the preliminary notice is filed, has not reached final completion; and

(c) is not cancelled under Section 38-1a-307.

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

(21) "Improvement" means:

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

(b) a repair, modification, or alteration of a building, infrastructure, utility, or object referred to in Subsection (21)(a).

(22) "Interested person" means a person that may be affected by a construction project.

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

(24) "Original contract":

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

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

(25) "Original contractor" means a person, including an owner-builder, that contracts with an owner to provide preconstruction service or construction work.

(26) "Owner" means the person that owns the project property.

(27) "Owner-builder" means an owner, including an owner who is also an original contractor, who:

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

(b) obtains a building permit for the improvement.

(28) "Preconstruction lien" means a lien under this chapter for a preconstruction service.

(29) "Preconstruction service":

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

(i) before construction of the improvement commences; and

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

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

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

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

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

(33) "Required notice" means:

(a) a notice of preconstruction service under Section 38-1a-401;

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

(c) a notice of commencement;

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

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

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

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

(34) "Subcontractor" means a person that contracts to provide preconstruction service or construction work to:

(a) a person other than the owner; or

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

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

(36) "Supervisory subcontractor" means a person that:

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

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

38-1a-103. Government projects not subject to chapter—Exception.

Except as provided in Section 38-1a-102, Part 2, State Construction Registry, and Chapter 1b, Government Construction Projects, this chapter does not apply to a government project, as defined in Section 38-1b-102.

38-1a-104. Owner-builder original contract—Owner-builder as original contractor.

For purposes of this chapter:

(1) an original contract is considered to exist between an owner-builder as owner and the owner-builder as original contractor; and

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

38-1a-105. No waiver of rights—Exception.

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

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

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

38-1a-201. Establishment of State Construction Registry—Filing index.

(1) Subject to receiving adequate funding through a legislative appropriation and contracting with an approved third-party vendor as provided in Section 38-1a-202, the division shall establish and maintain the State Construction Registry to:

- (a) (i) assist in protecting public health, safety, and welfare; and
 - (ii) promote a fair working environment;
- (b) be overseen by the division with the assistance of the designated agent;
- (c) provide a central repository for all required notices;
- (d) make accessible, by way of an Internet website:
 - (i) the filing and review of required notices; and
 - (ii) the transmitting of building permit information under Subsection 38-1a-205(1) and the reviewing of that information;
- (e) accommodate:
 - (i) electronic filing of required notices and electronic transmitting of building permit information described in Subsection (1)(d)(ii); and
 - (ii) the filing of required notices by alternate means, including United States mail, telefax, or any other method as the division provides by rule;
- (f) (i) provide electronic notification for up to three email addresses for each interested person who requests to receive notification under Section 38-1a-204 from the designated agent; and
 - (ii) provide alternate means of providing notification to a person who makes a filing by alternate means, including United States mail, telefax, or any other method as the division prescribes by rule; and
- (g) provide hard-copy printing of electronic receipts for an individual filing evidencing the date and time of the individual filing and the content of the individual filing.

(2) The designated agent shall index filings in the registry by:

- (a) the name of the owner;
- (b) the name of the original contractor;
- (c) subdivision, development, or other project name, if any;
- (d) lot or parcel number;
- (e) the address of the project property;
- (f) entry number;
- (g) the name of the county in which the project property is located;
- (h) for private projects:
 - (i) the tax parcel identification number of each parcel included in the project property; and
 - (ii) the building permit number;
- (i) for government projects, the government project-identifying information; and
- (j) any other identifier that the division considers reasonably appropriate in collaboration with the designated agent.

38-1a-202. Contract to establish and maintain registry—Designated agent—Rules—Duties of designated agent—Limit of liability.

(1) (a) The division shall contract, in accordance with Title 63G, Chapter 6a, Utah Procurement Code, with a third party to establish and maintain the registry for the purposes established under this part.

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

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

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

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

(3) (a) The division shall make rules and develop procedures for:

- (i) the division to oversee and enforce this chapter and Chapter 1b, Government Construction Projects;
- (ii) the designated agent to administer this chapter and Chapter 1b, Government Construction Projects; and
- (iii) the form of submission of a filing by alternate means, which may include procedures for rejecting an illegible or incomplete filing.

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

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

(b) The division shall make rules to allow the designated agent to periodically archive projects from the registry.

(c) The designated agent may not archive a project earlier than:

- (i) one year after the day on which a notice of completion is filed for a construction project;
- (ii) if no notice of completion is filed, two years after the last filing activity for a project; or
- (iii) one year after the day on which a contestable notice is cancelled under Section 38-1a-307.

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

(5) The designated agent shall carry errors and omissions insurance in the amounts that the division establishes by rule.

(6) (a) The designated agent shall make reasonable efforts to assure the accurate entry into the registry of information provided by alternate means.

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

(7) The designated agent is not liable for the correctness of the information contained in a document filed by alternate means which the registered agent enters into the database.

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

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

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

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

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

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

(b) for a private project:

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

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

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

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

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

(a) the person filing the required notice, unless the person indicates to the division or designated agent that the person does not want to receive notification; and

(b) each person that requests notification of the filing of a required notice for that anticipated improvement or construction project.

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

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

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

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

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

(i) a notice of preconstruction service;

(ii) a notice of commencement;

(iii) a preliminary notice;

(iv) a notice of construction loan; or

(v) a notice of completion.

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

38-1a-205. Building permit—Transmission to registry—Posting at project site.

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

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

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

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

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

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

38-1a-206. Registry fees.

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

- (a) required notices, whether filed electronically or by alternate means;
- (b) a request for notification under Section 38-1a-204;
- (c) providing notification of a required notice, whether electronically or by alternate means;
- (d) a duplicate receipt of a filing; and
- (e) account setup for a person who wishes to be billed periodically for filings with the registry.

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

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

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

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

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

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

38-1a-207. Registry classification.

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

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

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

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

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

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

(b) The division shall inform the designated agent of how to direct an inquiry made to the designated agent for information that is not a public record contained in the registry.

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

None of the following is an adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act:

- (1) the filing of a notice permitted or required by this chapter;
- (2) the rejection of a filing permitted or required by this chapter; or
- (3) other action by the designated agent in connection with a filing of any notice permitted or required by this chapter.

38-1a-209. Abuse of registry—Penalty.

(1) As used in this section, "third party" means an owner, an original contractor, a subcontractor, or any interested party.

(2) A person abuses the registry if that person files a notice in the registry:

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

(b) with the intent to exact more than is due from the owner or any other interested party; or

(c) to procure an unjustified advantage or benefit.

(3) A person who abuses the registry as described in Subsection (2) is liable to a third party who is affected by the notice for twice the amount of the actual damages incurred by the third party or \$2,000, whichever is greater.

38-1a-210. Limitation of liability.

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

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

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

(b) meets data entry accuracy standards established by the division under Subsection 38-1a-202(6)(b).

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

(a) a storm, earthquake, or other act of God;

(b) a fire;

(c) an accident;

(d) governmental interference; or

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

38-1a-211. Limit on notice effect of document filing in the registry.

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

38-1a-301. Those entitled to lien—What may be attached.

- (1) Except as provided in Section 38-11-107, a person who provides preconstruction service or construction work on or for a project property has a lien on the project property for the reasonable value of the preconstruction service or construction work, respectively, as provided in this chapter.
- (2) A person may claim a preconstruction lien and a separate construction lien on the same project property.
- (3) (a) A construction lien may include an amount claimed for a preconstruction service.
(b) A preconstruction lien may not include an amount claimed for construction work.
- (4) A preconstruction or construction lien attaches only to the interest that the owner has in the project property that is the subject of the lien.

38-1a-302. Land covered by lien—Multiple lots occupied by improvement—What a lien attaches to.

- (1) A preconstruction or construction lien 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 attaches to all franchises, privileges, appurtenances, machinery, and fixtures pertaining to or used in connection with the improvement.

38-1a-303. Limits on attachment, garnishment, and execution levy—Subcontractor lien not affected by payments, debts, offsets, and counterclaims involving other parties.

- (1) An assignment, attachment, or garnishment of or encumbrance or execution levy on money that an owner owes to an original contractor is not valid as against a subcontractor's preconstruction or construction lien.
- (2) An assignment, attachment, or garnishment of or encumbrance or execution levy on money that an original contractor owes to a subcontractor is not valid as against a lien of a laborer employed by the day or piece.
- (3) The preconstruction or construction lien of a subcontractor may not be diminished, impaired, or otherwise affected by:
 - (a) a payment, whether in cash or in-kind, to the original contractor or another subcontractor;
 - (b) a debt owed by the original contractor to the owner;
 - (c) a debt owed by another subcontractor to the original contractor or to a third subcontractor; or
 - (d) an offset or counterclaim in favor of the owner against the original contractor, or in favor of the original contractor against another subcontractor, or in favor of another subcontractor against a third subcontractor.

38-1a-304. Liens on multiple properties in one claim.

- (1) A claimant may claim a preconstruction or construction lien against two or more improvements owned by the same person.
- (2) If a claimant claims a preconstruction or construction lien against two or more improvements owned by the same person, the claimant shall designate the amount claimed to be due on each of the improvements.

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

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

38-1a-306. Substantial compliance.

- (1) Substantial compliance with the requirements of this chapter is sufficient to claim, as applicable, a preconstruction lien or a construction lien.
- (2) Subsection (1) may not be construed to excuse compliance with or affect the requirement to file:
 - (a) a notice of preconstruction service as provided in Section 38-1a-401 in order to claim a preconstruction lien; or
 - (b) a preliminary notice as provided in Section 38-1a-501 in order to claim a construction lien.

38-1a-307. Contesting certain notices.

- (1) A contesting person who believes that a contestable notice lacks proper basis and is therefore invalid may request from the person who filed the notice evidence establishing the validity of the notice.
- (2) Within 10 days after receiving a request under Subsection (1), the person who filed the contestable notice shall provide the requesting person evidence that the notice is valid.
- (3) If the person who filed the notice does not provide timely evidence of the validity of the contestable notice, the person who filed the notice shall immediately cancel the notice from the registry in the manner prescribed by the division by rule.

38-1a-308. Intentional submission of excessive lien notice—Criminal and civil liability.

- (1) As used in this section, "residential project" means a project on real property:
 - (a) for which a preconstruction service or construction work is provided; and
 - (b) that consists of:
 - (i) one single-family residence; or
 - (ii) one multi-family residence that contains no more than four units.
- (2) A person is guilty of a class B misdemeanor if:
 - (a) the person intentionally submits for recording a notice of preconstruction lien or notice of construction lien against any property containing a greater demand than the sum due; and
 - (b) by submitting the notice, the person intends:
 - (i) to cloud the title;
 - (ii) to exact from the owner or person liable by means of the excessive notice of preconstruction or construction lien more than is due; or
 - (iii) to procure any unjustified advantage or benefit.

(3) (a) As used in this Subsection (3), "third party" means an owner, original contractor, or subcontractor.

(b) In addition to any criminal penalty under Subsection (2), a person who submits a notice of preconstruction lien or notice of construction lien as described in Subsection (2) is liable to a third party who is affected by the notice of preconstruction lien or the notice of construction lien for twice the amount by which the lien notice exceeds the amount actually due or the actual damages incurred by the owner, original contractor, or subcontractor, whichever is greater.

(4) The parties to a claim described in Subsection (3)(b) who agree to arbitrate the claim shall arbitrate in accordance with Subsections (5) through (15) if the notice of preconstruction lien, or the notice of construction lien, that is the subject of the claim is:

- (a) for a residential project; and
- (b) for \$50,000 or less.

(5) (a) Unless otherwise agreed to by the parties, a claim that is submitted to arbitration under this section shall be resolved by a single arbitrator.

(b) All parties shall agree on the single arbitrator described in Subsection (5)(a) within 60 days after the day on which an answer is filed.

(c) If the parties are unable to agree on a single arbitrator as required under Subsection (5)(b), the parties shall select a panel of three arbitrators.

(d) If the parties select a panel of three arbitrators under Subsection (5)(c):

- (i) each side shall select one arbitrator; and
- (ii) the arbitrators selected under Subsection (5)(d)(i) shall select one additional arbitrator to be included in the panel.

(6) Unless otherwise agreed to in writing:

(a) each party shall pay an equal share of the fees and costs of the arbitrator selected under Subsection (5)(b); or

(b) if an arbitration panel is selected under Subsection (5)(d):

- (i) each party shall pay the fees and costs of that party's selected arbitrator; and
- (ii) each party shall pay an equal share of the fees and costs of the arbitrator

selected under Subsection (5)(d)(ii).

(7) Except as otherwise provided in this section or otherwise agreed to by the parties, an arbitration proceeding conducted under this section shall be governed by Title 78B, Chapter 11, Utah Uniform Arbitration Act.

(8) (a) Subject to the provisions of this section, the Utah Rules of Civil Procedure and the Utah Rules of Evidence shall apply to an arbitration proceeding under this section.

(b) The Utah Rules of Civil Procedure and the Utah Rules of Evidence shall be applied liberally with the intent of resolving the claim in a timely and cost-efficient manner.

(c) Subject to the provisions of this section, discovery shall be conducted in accordance with Rules 26 through 37 of the Utah Rules of Civil Procedure and shall be subject to the jurisdiction of the district court in which the claim is filed.

(d) Unless otherwise agreed to by the parties or ordered by the court, discovery in an arbitration proceeding under this section shall be limited to the discovery available in a tier 1 case under Rule 26 of the Utah Rules of Civil Procedure.

(9) A written decision by a single arbitrator or by a majority of the arbitration panel shall constitute a final decision.

(10) An arbitration award issued under this section:

(a) shall be the final resolution of all excessive notice claims described in Subsection (3)(b) that are:

- (i) between the parties;
 - (ii) for a residential project; and
 - (iii) for \$50,000 or less; and
- (b) may be reduced to judgment by the court upon motion and notice, unless:
- (i) any party, within 20 days after the day on which the arbitration award is served, files a notice requesting a trial de novo in district court; or
 - (ii) the arbitration award has been satisfied.
- (11) (a) Upon filing a notice requesting a trial de novo under Subsection (10):
- (i) unless otherwise stipulated to by the parties or ordered by the court, the parties are allowed an additional 60 days for discovery; and
 - (ii) the claim shall proceed through litigation pursuant to the Utah Rules of Civil Procedure and the Utah Rules of Evidence in the district court.
- (b) The additional discovery time described in Subsection (11)(a)(i) shall run from the day on which the notice requesting a trial de novo is filed.
- (12) If the plaintiff, as the moving party in a trial de novo requested under Subsection (10), does not obtain a verdict that is at least 10% greater than the arbitration award, the plaintiff is responsible for all of the nonmoving party's costs, including expert witness fees.
- (13) If a defendant, as the moving party in a trial de novo requested under Subsection (10), does not obtain a verdict that is at least 10% less than the arbitration award, the defendant is responsible for all of the nonmoving party's costs, including expert witness fees.
- (14) If a district court determines, upon a motion of the nonmoving party, that the moving party's use of the trial de novo process was filed in bad faith, as defined in Section 78B-5-825, the district court may award reasonable attorney fees to the nonmoving party.
- (15) All arbitration awards issued under this section shall bear post-judgment interest pursuant to Section 15-1-4.

38-1a-309. Interest rate -- Preconstruction service or construction contract -- Lien.

- (1) Subject to Subsection (2), the interest rate that applies to a lawful contract for preconstruction service or construction work on or for a project property, or to a lien claimed under this chapter against the project property, is, unless otherwise provided in the lawful contract, the rate described in Subsection 15-1-1(2).
- (2) If a person that claims a lien against project property under this chapter is not in privity of contract with the owner or owner-builder, the interest rate that applies to the person's lien may not exceed the rate described in Subsection 15-1-1(2).

38-1a-401. Notice of preconstruction service.

- (1) (a) A person that desires to claim a preconstruction lien on real property shall file a notice of preconstruction service with the registry no later than 20 days after the person commences providing preconstruction service for the anticipated improvement on the real property.
- (b) A person that fails to file a timely notice of preconstruction service as required in this section may not claim a valid preconstruction lien.
- (c) A timely filed notice of preconstruction service is effective as to each preconstruction service that the person filing the notice provides for the anticipated improvement under a single original contract, including preconstruction service that the person provides to more than one supervising subcontractor under that original contract.

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

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

(f) A notice of preconstruction service shall include:

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

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

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

(iv) the name of the record or reputed owner;

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

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

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

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

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

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

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

(3) (a) Subject to Subsection (3)(b), a person required by this section to file a notice of preconstruction service is required to give only one notice for each anticipated improvement.

(b) A person that provides preconstruction service under more than one original contract for the same anticipated improvement and desires to claim a preconstruction lien for preconstruction service provided under each original contract shall file a separate notice of preconstruction service for preconstruction service provided under each original contract.

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

38-1a-402. Notice of preconstruction lien—Requirements.

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

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

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

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

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

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

(4) (a) A county recorder:

- (i) shall record each notice of preconstruction lien in an index maintained for that purpose; and
- (ii) need not verify that a valid notice of preconstruction service is filed with respect to the claimed preconstruction lien.

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

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

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

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

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

38-1a-403. Effective time and priority of preconstruction lien—Subordination to bona fide loan.

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

(a) relates back to and takes effect as of the time of filing of the earliest timely filed notice of preconstruction service under Section 38-1a-401 for the anticipated improvement for which the preconstruction lien is claimed; and

(b) has priority over:

(i) any lien, mortgage, or other encumbrance that attaches after the earliest timely filed notice of preconstruction service is filed; and

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

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

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

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

38-1a-405. Preconstruction liens on equal footing.

(1) Each preconstruction lien on a project property is on equal footing with every other preconstruction lien on the project property, regardless of:

(a) when the claimant submitted the claimant's notice of preconstruction service for recording;

(b) when the claimant submitted the claimant's notice of preconstruction lien for recording; or

(c) when the preconstruction service related to the lien occurs.

(2) Subsection (1) does not affect the priority of a construction lender's mortgage or trust deed, as established under this chapter.

38-1a-501. Preliminary notice.

(1) (a) A person who desires to claim a construction lien on real property shall file a preliminary notice with the registry no later than 20 days after the day on which the person commences providing construction work on the real property.

(b) Subject to Subsection (1)(c), a preliminary notice is effective as to all construction work that the person filing the notice provides to the construction project under a single original contract, including construction work that the person provides to more than one supervisory subcontractor under that original contract.

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

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

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

(e) A person who fails to file a preliminary notice as required in this section may not claim a construction lien.

(f) A preliminary notice that is filed with the registry as provided in this section is considered to be filed at the time of the first preliminary notice filing.

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

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

(ii) the likely explanation is that:

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

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

preliminary notice.

(h) A preliminary notice shall include:

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

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

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

(iv) the name of the original contractor for construction work under which the claimant is providing or will provide construction work;

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

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

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

(B) the entry number of a previously filed notice of construction loan under Section 38-1a-601 on the same project;

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

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

(i) A preliminary notice may include:

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

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

(2) (a) Except as provided in Subsection (2)(b), the burden is upon the person filing the preliminary notice to prove that the person has substantially complied with the requirements of this section.

(b) A person has substantially complied with the requirements of this section if the person files a preliminary notice that links, within the registry, to a preliminary notice filed by an original contractor for the same construction project, using the entry number assigned to the original contractor's preliminary notice.

(c) Substantial compliance with the requirements of Subsections (1)(h)(iii) through (vii) may be established by a person's reasonable reliance on information in the registry provided by a previously filed:

- (i) notice of construction loan under Section 38-1a-601;
- (ii) preliminary notice; or
- (iii) building permit.

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

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

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

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

38-1a-502. Notice of construction lien—Contents—Recording—Service on owner.

(1) (a) A person who desires to claim a construction lien shall submit for recording in the office of each applicable county recorder a notice of construction lien no later than, except as provided in Subsection (1)(b):

- (i) 180 days after the date on which final completion of the original contract occurs, if no notice of completion is filed under Section 38-1a-507; or
- (ii) 90 days after the date on which a notice of completion is filed under Section 38-1a-507, but not later than 180 days after the date on which final completion of the original contract occurs.

(b) A subcontractor who provides substantial work after a certificate of occupancy is issued or a required final inspection is completed and desires to claim a construction lien shall submit for recording in the office of each applicable county recorder a notice of construction lien no later than 180 days after final completion of that subcontractor's work.

(2) A notice of construction lien shall contain:

- (a) the name of the reputed owner if known or, if not known, the name of the record owner;
- (b) the name of the person by whom the claimant was employed or to whom the claimant provided construction work;
- (c) the time when the claimant first and last provided construction work;
- (d) a description of the project property, sufficient for identification;
- (e) the name, current address, and current phone number of the claimant;
- (f) the amount claimed under the construction lien;
- (g) the signature of the claimant or the claimant's authorized agent;
- (h) an acknowledgment or certificate as required under Title 57, Chapter 3, Recording of Documents; and

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

(3) (a) A county recorder:

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

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

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

(4) (a) Within 30 days after filing a notice of construction lien, the claimant shall deliver or mail by certified mail a copy of the notice to the reputed owner or the record owner.

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

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

(5) The division shall make rules governing the form of the statement required under Subsection (2)(i).

38-1a-503. Relation back and priority of liens.

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

(2) (a) Subject to Subsection (2)(b), a construction lien has priority over:

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

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

(b) A recorded mortgage or trust deed that secures a construction loan attaches immediately before the first preliminary notice filing for the construction project if each claimant that has a preliminary notice on file on the construction project before the mortgage or trust deed was recorded receives full payment for all construction work the claimant performed before the mortgage or trust deed was recorded, regardless of whether the claimant receives full payment before or after the day on which the mortgage or trust deed is recorded.

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

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

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

38-1a-505. Materials for a construction project not subject to process—Exception.

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

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

38-1a-506. Notice of intent to obtain final completion.

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

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

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

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

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

(3) A person who provides construction work to an owner or original contractor who files a notice of intent in accordance with Subsection (1) shall file an amendment to the person's preliminary notice previously filed by the person as required in Section 38-1a-501:

(a) that includes:

(i) a good faith estimate of the total amount remaining due to complete the contract, purchase order, or agreement relating to the person's approved construction work;

(ii) the identification of each original contractor or subcontractor with whom the person has a contract or contracts for providing construction work; and

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

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

(4) (a) A person described in Subsection (3) may demand a statement of adequate assurance from the owner, contractor, or subcontractor with whom the person has privity of contract no later than 10 days after the day on which the person files a balance statement in accordance with Subsection (3) from an owner, contractor, or subcontractor who is in privity of contract with the person.

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

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

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

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

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

(5) (a) A person described in Subsection (3) may bring a legal action against a party with whom the person is in privity of contract, including a request for injunctive or declaratory relief, to determine the adequacy of the funds of the owner, contractor, or subcontractor with whom the demanding person contracted if, after the person demands adequate assurance in accordance with the requirements of this section:

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

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

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

(i) cash;

(ii) a bond;

(iii) an irrevocable letter of credit;

(iv) property;

(v) financing; or

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

(6) (a) A person is subject to the civil penalty described in Subsection (6)(b), if the person files a balance statement described in Subsection (3) that misrepresents the amount due under the contract with the intent to:

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

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

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

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

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

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

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

(9) A person who has not filed a preliminary notice as required under Section 38-1a-501 is not entitled to a right or a remedy provided in this section.

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

38-1a-507. Notice of completion.

(1) (a) Upon final completion of a construction project, a notice of completion may be filed with the registry by:

(i) an owner;

(ii) an original contractor for construction work;

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

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

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

(b) A notice of completion shall include:

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

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

(iii) for a private project:

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

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

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

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

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

(vi) the method used to determine final completion.

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

38-1a-601. Notice of construction loan.

(1) After recording a mortgage or trust deed securing a construction loan on a private project, the construction lender on the loan shall promptly, in conjunction with the closing of the construction loan, file with the registry a notice of construction loan.

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

(a) the lender's name, address, and telephone number;

(b) the name of the trustor on the trust deed securing the loan;

(c) the tax parcel identification number of each parcel included or to be included in the construction project for which the loan was given;

(d) the address of the project property; and

(e) the name of the county in which the project property is located.

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

38-1a-602. Notice concerning construction loan default.

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

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

(a) include:

(i) the information required to be included in a notice of construction loan under Subsection 38-1a-601(2); and

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

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

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

38-1a-603 Notice of intent to finance.

(1) An owner may file with the registry a notice of intent to finance.

(2) A notice of intent to finance under Subsection (1) shall state:

(a) the anticipated date on which financing will occur;

- (b) the anticipated lender's name, address, and telephone number;
 - (c) the name of the trustor on the trust deed securing the anticipated loan;
 - (d) the tax parcel identification number of each parcel included in the project property;
- and
- (e) the name of the county in which the project property is located.

(3) If an owner chooses to file a notice of intent to finance, the owner shall file the notice of intent to finance no less than 14 days before the date on which the financing is anticipated to occur.

(4) If the financing does not occur within 30 days after the anticipated date specified in the notice of intent to finance, the notice of intent to finance shall automatically have no effect and shall be removed from the registry.

38-1a-604 Notice of final lien waiver.

(1) After a notice of intent to finance is filed under Section 38-1a-603 on a project property, each subcontractor that has filed a preliminary notice pertaining to the project property may file with the registry a final lien waiver.

(2) The final lien waiver described in Subsection (1) may be filed on the registry even if no notice of intent to finance was filed on the registry.

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" has the same meaning as defined in Section 38-11-102.

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

(2) In order to enforce a preconstruction lien or construction lien, a claimant shall file an action to enforce the lien:

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

(i) a notice of preconstruction lien under Section 38-1a-402, for a preconstruction lien; or

(ii) a notice of construction lien under Section 38-1a-502, for a construction lien; or

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

(3) (a) (i) Within the time period provided in Subsection (2) for filing an action, a claimant shall file for record with each applicable county recorder a notice of the pendency of the action, in the manner provided for actions affecting the title or right to possession of real property.

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

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

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

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

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

(6) (a) If a claimant files an action to enforce a preconstruction or construction lien involving a residence, the claimant shall include with the service of the complaint on the owner of the residence:

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

(b) The instructions and form required by Subsection (6)(a) shall meet the requirements established by the division by rule.

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

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

- (i) establish compliance with Subsections 38-11-204(4)(a) and (4)(b) through an informal proceeding, as set forth in Title 63G, Chapter 4, Administrative Procedures Act, commenced at the division within 30 days after the owner is served with summons in the foreclosure action; and
- (ii) obtain a certificate of compliance or denial of certificate of compliance, as defined in Section 38-11-102.

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

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

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

38-1a-702. Parties—Consolidation of separate actions.

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

- (a) a claimant who is not contesting the claim of another claimant may join as a plaintiff;
- (b) a claimant who fails or refuses to become a plaintiff may be made a defendant; and
- (c) a claimant who is not made a party may intervene at any time before the final hearing.

(2) If separate actions are commenced under this part to enforce preconstruction or construction liens on the same property, the court may consolidate the actions and make all claimants parties to the consolidated action.

38-1a-703. Order of satisfaction if multiple liens on same property.

If liens are claimed against the same property the decree shall provide for their satisfaction in the following order:

- (1) subcontractors who are laborers or mechanics working by the day or piece, but who have not furnished materials;
- (2) all other subcontractors and all materialmen; and
- (3) original contractors.

38-1a-704. Sale of property—Redemption—Disposition of proceeds.

- (1) The court shall cause the property to be sold in satisfaction of the liens and costs as in the case of a foreclosure of a mortgage, subject to the same right of redemption.
- (2) If the proceeds of sale after the payment of costs are not sufficient to satisfy the whole amount of liens included in the decree, then the proceeds shall be paid in the order designated in Section 38-1a-703, and pro rata to the persons claiming in each class if the sum realized is insufficient to pay the persons of the class in full.
- (3) Any excess sale proceeds remaining after the payment of all liens and costs shall be paid to the owner.

38-1a-705. Deficiency judgment.

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

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

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

- (1) Except as provided in Section 38-11-107, the court shall apportion costs between the owner and original contractor according to the right of the case.
- (2) The court shall award a subcontractor with a valid preconstruction or construction lien:
 - (a) all of the subcontractor's costs, including the costs of preparing and recording the notice of preconstruction or construction lien; and
 - (b) the subcontractor's reasonable attorney fees incurred in preparing and recording the notice of preconstruction or construction lien.

38-1a-707. Attorney fees—Offer of judgment.

- (1) Except as provided in Section 38-11-107 and in Subsection (2), in any action brought to enforce any lien under this chapter the successful party shall be entitled to recover reasonable attorney fees, to be fixed by the court, which shall be taxed as costs in the action.
- (2) A person who files a wrongful lien as provided in Section 38-1a-308 may not recover attorney fees under Subsection (1).
- (3) (a) A person against whom an action is brought to enforce a preconstruction or construction lien may make an offer of judgment pursuant to Rule 68 of the Utah Rules of Civil Procedure.
 - (b) If the offer is not accepted and the judgment finally obtained by the offeree is not more favorable than the offer, the offeree shall pay the costs and attorney fees incurred by the offeror after the offer was made.

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

- (1) A preconstruction lien or construction lien is assignable as any other chose in action.
- (2) An assignee of a preconstruction lien or construction lien may, in the assignee's own name, commence and prosecute an action on the lien as provided in Part 7, Enforcement of Preconstruction and Construction Liens.

38-1a-802. Waiver or limitation of a lien right—Forms—Scope.

(1) As used in this section:

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

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

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

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

(2) Notwithstanding Section 38-1a-105, a claimant's written consent that waives or limits the claimant's lien rights is enforceable only if the claimant:

(a) (i) executes a waiver and release that is signed by the claimant or the claimant's authorized agent; or
(ii) for a restrictive endorsement on a check, includes a restrictive endorsement on a check that is:

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

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

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

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

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

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

- (i) the waiver and release described in Subsection (3)(a) is void; and
- (ii) the following will not be affected by the claimant's execution of the waiver

and release:

- (A) any lien;
- (B) any lien right;
- (C) any bond right;
- (D) any contract right; or
- (E) any other right to recover payment afforded to the claimant in law

or equity.

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

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

"UTAH CONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT

Property Name: _____

Property Location: _____

Undersigned's Customer:

Invoice/Payment Application Number: _____

Payment Amount: _____

Payment Period: _____

To the extent provided below, this document becomes effective to release and the undersigned is considered to waive any notice of lien or right under Utah Code Ann., Title 38, Chapter 1a, Preconstruction and Construction Liens, or any bond right under Utah Code Ann., Title 14, Contractors' Bonds, or Section 63G-6a-1103 related to payment rights the undersigned has on the above described Property once:

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

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

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

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

Dated: _____

_____ (Company Name)

_____ By: _____

_____ Its: _____ "

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

"UTAH WAIVER AND RELEASE UPON FINAL PAYMENT

Property Name: _____

Property Location: _____

Undersigned's Customer:

Invoice/Payment Application Number: _____

Payment Amount: _____

To the extent provided below, this document becomes effective to release and the undersigned is considered to waive any notice of lien or right under Utah Code Ann., Title 38, Chapter 1a, Preconstruction and Construction Liens, or any bond right under Utah Code Ann., Title 14, Contractors' Bonds, or Section 63G-6a-1103 related to payment rights the undersigned has on the above described Property once:

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

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

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

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

Dated: _____

_____ (Company Name)

By: _____

Its: _____ "

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

"This check is a progress/ final payment for property described on this check sufficient for identification. Endorsement of this check is an acknowledgment by the endorser that the waiver and release to which the payment applies is effective to the extent provided in Utah Code Ann. Subsection 38-1a-802(4)(b) or (c) respectively."

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

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

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

(i) an accord and satisfaction regarding a bona fide dispute; or

(ii) an agreement made in settlement of an action pending in any court or arbitration.

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

(i) is in a writing signed by the claimant; and

(ii) specifically references the lien rights waived or impaired.

38-1a-803. Cancellation of preconstruction or construction lien—Penalty for failure to cancel timely.

(1) After the full amount owing under a preconstruction or construction lien, including costs and cancellation fees, has been paid, a person interested in the property that is the subject of the lien may request the claimant to submit for recording with the office of each applicable county recorder a cancellation of the lien.

(2) Within 10 days after receiving a request under Subsection (1), the claimant shall submit to the office of each applicable county recorder a cancellation of the preconstruction or construction lien, as applicable.

(3) A claimant who fails to submit a cancellation within the time prescribed in Subsection (2) is liable to the person who requested the cancellation for \$100 for each day after the time prescribed in Subsection (2) that the cancellation is not submitted, or the person's actual damages, whichever is greater.

38-1a-804. Notice of release of lien and substitution of alternate security.

(1) The owner of any interest in a project property that is subject to a recorded preconstruction or construction lien, or any original contractor or subcontractor affected by the lien, who disputes the correctness or validity of the lien may submit for recording a notice of release of lien and substitution of alternate security:

- (a) that meets the requirements of Subsection (2);
- (b) in the office of each applicable county recorder where the lien was recorded; and
- (c) at any time before the date that is 90 days after the first summons is served in an

action to foreclose the preconstruction or construction lien for which the notice under this section is submitted for recording.

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

- (a) meet the requirements for the recording of documents in Title 57, Chapter 3, Recording of Documents;
- (b) reference the preconstruction or construction lien sought to be released, including the applicable entry number, book number, and page number; and
- (c) have as an attachment a surety bond or evidence of a cash deposit that:
 - (i) (A) if a surety bond, is executed by a surety company that is treasury listed, A-rated by AM Best Company, and authorized to issue surety bonds in this state; or
 - (B) if evidence of a cash deposit, meets the requirements established by rule by the Department of Commerce in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
 - (ii) is in an amount equal to:
 - (A) 150% of the amount claimed by the claimant under the preconstruction or construction lien or as determined under Subsection (7), if the lien claim is for \$25,000 or more;
 - (B) 175% of the amount claimed by the claimant under the preconstruction or construction lien or as determined under Subsection (7), if the lien claim is for at least \$15,000 but less than \$25,000; or
 - (C) 200% of the amount claimed by the claimant under the preconstruction or construction lien or as determined under Subsection (7), if the lien claim is for less than \$15,000;
 - (iii) is made payable to the claimant;
 - (iv) is conditioned for the payment of:
 - (A) the judgment that would have been rendered, or has been rendered against the project property in the action to enforce the lien; and
 - (B) any costs and attorney fees awarded by the court; and
 - (v) has as principal:
 - (A) the owner of the interest in the project property; or

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

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

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

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

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

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

(a) the failure of the claimant to commence a suit against the alternate security within the same time as an action to enforce the lien under Section 38-1a-701;

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

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

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

(i) a lien foreclosure suit; or

(ii) suit against the alternate security.

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

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

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

(i) state with specificity the factual and legal bases for disputing the amount claimed under the preconstruction or construction lien; and

(ii) be supported by a sworn affidavit and any other evidence supporting the petition.

(c) A petitioner under Subsection (7)(a) shall, as provided in Utah Rules of Civil Procedure, Rule 4, serve on the claimant:

(i) a copy of the petition; and

(ii) a notice of hearing if a hearing is scheduled.

(d) If a court finds a petition under Subsection (7)(a) insufficient, the court may dismiss the petition without a hearing.

(e) If a court finds a petition under Subsection (7)(a) sufficient, the court shall schedule a hearing within 10 days to determine the correct amount claimed under the preconstruction or construction lien for the sole purpose of providing alternate security.

(f) A claimant may:

- (i) attend a hearing held under this Subsection (7); and
- (ii) contest the petition.

(g) A determination under this section is limited to a determination of the amount claimed under a preconstruction or construction lien for the sole purpose of providing alternate security and does not conclusively establish:

- (i) the amount to which the claimant is entitled;
- (ii) the validity of the claim; or
- (iii) any person's right to any other legal remedy.

(h) If a court, in a proceeding under this Subsection (7), determines that the amount claimed under a preconstruction or construction lien is excessive, the court shall set the amount for the sole purpose of providing alternate security.

(i) In an order under Subsection (7)(h), the court shall include a legal description of the project property.

(j) A petitioner under this Subsection (7) may record a certified copy of any order issued under this Subsection (7) in the county in which the lien is recorded.

(k) A court may not award attorney fees for a proceeding under this Subsection (7), but shall consider those attorney fees in any award of attorney fees under any other provision of this chapter.

38-1a-805. Failure to file notice—Petition to nullify preconstruction or construction lien—Expedited proceeding.

(1) An owner of an interest in a project property that is subject to a recorded preconstruction lien or a recorded construction lien may petition the district court in the county in which the project property is located for summary relief to nullify the preconstruction lien or the construction lien if:

(a) the owner claims that the preconstruction lien or the construction lien is invalid because:

- (i) the lien claimant did not timely file a notice of preconstruction service under Section 38-1a-401; or
- (ii) the lien claimant did not timely file a preliminary notice under Section 38-1a-501;

(b) the owner sent the lien claimant a written request to withdraw in accordance with Subsection (2); and

(c) the lien claimant did not withdraw the preconstruction lien or the construction lien within 10 business days after the day on which the owner sent the written request to withdraw.

(2) A written request to withdraw described in Subsection (1) shall:

(a) be delivered by certified mail to the lien claimant at the lien claimant's address provided in the recorded preconstruction lien or the recorded construction lien;

(b) state the owner's name, address, and telephone number;

(c) contain:

(i) (A) the name of the county in which the property that is subject to the preconstruction lien or the construction lien is located; and

(B) the tax parcel identification number of each parcel that is subject to the preconstruction lien or the construction lien; or

(ii) a legal description of the property that is subject to the preconstruction lien or the construction lien;

(d) state that the lien claimant has failed to timely file:

(i) a notice of preconstruction service under Section 38-1a-401; or

(ii) a preliminary notice under Section 38-1a-501;

(e) request that the lien claimant withdraw the lien claimant's preconstruction lien or construction lien within 10 business days after the day on which the written request to withdraw is sent; and

(f) state that if the lien claimant does not withdraw the preconstruction lien or the construction lien within 10 business days after the day on which the written request to withdraw is sent, the owner may petition a court to nullify the lien in an expedited proceeding under this section.

(3) A petition under Subsection (1) shall:

(a) state with specificity that:

(i) the lien claimant's preconstruction lien or the lien claimant's construction lien is invalid because the lien claimant did not file a notice of preconstruction service or a preliminary notice, as applicable;

(ii) the petitioner sent the lien claimant a written request to withdraw in accordance with Subsection (2); and

(iii) the lien claimant did not withdraw the preconstruction lien or the construction lien within 10 business days after the day on which the owner sent the written request to withdraw;

(b) be supported by a sworn affidavit of the petitioner; and

(c) be served on the lien claimant, in accordance with the Rules of Civil Procedure, within three business days after the day on which the petitioner files the petition in the district court.

(4) (a) If the court finds that a petition does not meet the requirements described in Subsection (3), the court may dismiss the petition without a hearing.

(b) If the court finds that a petition meets the requirements described in Subsection (3), the court shall schedule an expedited hearing to determine whether the preconstruction lien or the construction lien is invalid because the lien claimant failed to file a notice of preconstruction service or a preliminary notice, as applicable.

(5) (a) If the court grants a hearing, within three business days after the day on which the court schedules the hearing and at least seven business days before the day on which the hearing is scheduled, the petitioner shall serve on the lien claimant, in accordance with the Rules of Civil Procedure, a copy of the petition, notice of the hearing, and a copy of the court's order granting the expedited hearing.

(b) The lien claimant may attend the hearing and contest the petition.

(6) An expedited proceeding under this section may only determine:

(a) whether the lien claimant filed a notice of preconstruction service or a preliminary notice; and

(b) if the lien claimant failed to file a notice of preconstruction service or a preliminary notice, whether the lien claimant's preconstruction lien or construction lien is valid.

(7) (a) If, following a hearing, the court determines that the preconstruction lien or the construction lien is invalid, the court shall issue an order that:

(i) contains a legal description of the property;

(ii) declares the preconstruction lien or the construction lien void ab initio;

(iii) releases the property from the lien; and

- (iv) awards costs and reasonable attorney fees to the petitioner.
- (b) The petitioner may submit a copy of an order issued under Subsection (7)(a) to the county recorder for recording.
- (8) (a) If, following a hearing, the court determines that the preconstruction lien or the construction lien is valid, the court shall:
 - (i) dismiss the petition; and
 - (ii) award costs and reasonable attorney fees to the lien claimant.
- (b) The dismissal order shall contain a legal description of the property.
- (c) The lien claimant may submit a copy of the dismissal order to the county recorder for recording.
- (9) If a petition under this section contains a claim for damages, the proceedings related to the claim for damages may not be expedited under this section.

CHAPTER 10. OIL, GAS AND MINING LIENS.

38-10-101. Definitions.

As used in this chapter:

- (1) "Contractor" means any person who, under contract with the owner or an operator designated by an owner, performs work upon or furnishes materials or equipment for any production unit.
- (2) "Lien claimant" means contractors and subcontractors who claim a lien under this chapter.
- (3) "Mine" means a mining claim, mineral deposit, ore deposit, quarry, or mining lease and any related shaft, tunnel, incline, drift, or excavation.
- (4) "Owner" means a person holding any operating right, working interest, or interest in the legal or equitable title, to any real property, mine, oil lease, gas lease, well, or any combination of these, unless otherwise provided in this chapter.
- (5) "Production unit" means:
 - (a) the drilling unit for a well-established by lawful order or rule of the Board of Oil, Gas, and Mining in which the well is located; or if not applicable, 40 acres comprising the quarter-quarter section, or equivalent legal subdivision, in which the well is located; or
 - (b) a mine, and if work is performed upon or materials or equipment furnished to any part of the mine from which two or more mines are worked, the production unit shall extend to the owner's interest in the mines so worked.
- (6) "Subcontractor" means any person, other than the contractor, who, under contract with a contractor or another subcontractor, performs work upon or furnishes materials or equipment for any production unit.

38-10-102. Those entitled to lien—What may be attached—Qualifying work, materials, equipment, and costs—Liability of nonoperating owners.

- (1) Contractors and subcontractors shall have a lien upon the interest of the owner in:
 - (a) the production unit and access rights appurtenant thereto;
 - (b) pipelines, including rights of way, buildings, wells, oil tanks, and appurtenances located on the land or leasehold within the production unit; and
 - (c) the ore, minerals, oil, gas, or associated substances in the ground, or while the same remain in storage on the production unit, which are attributable to the interest subject to the lien as the interest existed on the date work was first performed or materials or equipment were first furnished.
- (2) The lien upon the interest of the owner in property described in Subsections (1)(a) through

- (c) shall be for the value of the work performed or materials or equipment furnished for:
- (a) open pit work, field processing, construction, alteration, digging, drilling, driving, boring, operating, perforating, fracturing, testing, logging, acidizing, cementing, completion, repair, maintenance, prospecting, sampling, exploration, development, preservation, performing geophysical, geochemical, location, or assessment work, or related activities;
 - (b) work performed or materials or equipment furnished in accordance with a pooling order, or pursuant to an operating agreement, or other agreement governing joint mining, or oil, and gas operations;
 - (c) title services, designs, plats, plans, maps, specifications, drawings, estimates of cost, surveys, permitting, or regulatory compliance;
 - (d) foreclosure costs including publication, costs of sale, sheriff's fees, attorney's fees, and other costs of collection; and
 - (e) transportation and related mileage charges, for any work performed or materials or equipment furnished pursuant to Subsections (2)(a) through (d).
- (3) For purposes of this section, the operator under a joint operating agreement, unit operating agreement, or other agreement granting one owner control of operations on the production unit shall not be considered to be the agent or contractor of the nonconsenting, nonoperating owners. The operator shall, however, have the lien granted under Subsection (1) upon the interest of all nonoperating owners for work performed, or materials or equipment furnished by the operator; and the nonoperating owners shall have the lien granted under Subsection (1) upon the interest of the operator for work performed, or materials or equipment furnished by third persons to the extent the nonoperating owners have paid or advanced funds to the operator for such work, materials, or equipment.

38-10-102.1. Perfection of lien—Notice of subcontractor's claim—Information required to be provided—Payments to be held in trust.

(1) (a) To perfect a lien a subcontractor must comply with the requirements of this section and Section 38-10-105.

(b) This section shall apply only to a subcontractor's claim or a portion of a claim for amounts more than \$5,000, for work performed upon or materials or equipment furnished for each production unit.

(2) A subcontractor shall provide notice of a subcontractor's claim to the owner and operator designated by the owner within 20 days after the commencement of work or the furnishing of materials or equipment.

(3) The notice shall:

- (a) be delivered, or mailed by certified mail, return receipt requested, to the:
 - (i) owner; and
 - (ii) operator designated by the owner;
- (b) be considered delivered when deposited in the mail; and
- (c) contain a statement setting forth the following information:
 - (i) identification of the lien claimant by full name, address, and telephone number;
 - (ii) the name of the person by whom he was employed or to whom he furnished material or equipment; and
 - (iii) a description of the property comprising the production unit.

(4) Failure to deliver or mail the notice shall discharge and satisfy the lien attaching to the interest of the owner to the extent the owner pays a contractor or operator his share of all, or part, of the lien claimant's agreed contract price.

(5) (a) Any contractor or subcontractor shall provide, in writing, to each person with whom he contracts:

- (i) the full name and address of the:
 - (A) owner of the production unit; and
 - (B) the operator designated by the owner; and
- (ii) a description of the property comprising the production unit.

(b) Failure to provide the information required under this section within three days after the work is commenced or the materials and equipment are furnished shall entitle the claimant to an award of costs and attorneys' fees in an action against the person to enforce the contract.

(6) Any contractor, operator, or subcontractor who receives payment for work performed upon, or material or equipment furnished for any production unit, shall hold all payments in trust for the person with whom he contracts for work upon, or the furnishing of materials or equipment for the production unit, for any amount remaining unpaid under the contract.

38-10-103. Non-impairment of lien attached to estate less than fee or to equitable or legal contingent interest.

If a lien attaches to an interest in land:

(1) which is less than the fee interest, including the interest of an optionee or farmouttee, termination of the interest in the land does not impair any lien which attaches prior to termination as to the owner's continuing interest, if any, in appurtenances and fixtures previously located on the land; or

(2) which interest is contingent upon the happening of a condition subsequent, failure of the interest to ripen into legal title, or failure of the occurrence of the condition subsequent does not impair any lien as to the owner's continuing interest, if any, in appurtenances and fixtures located on the land to which the lien attached prior to the failure.

38-10-104. Limitation of interests covered by lien.

(1) If work is performed or materials or equipment are furnished to the owner of less than a fee interest, the lien granted by this chapter does not extend to the underlying fee interest, royalty interest, overriding royalty, net profits interest, production payment, or other nonpossessory interest, unless expressly provided for by contract with the owner of the nonpossessory interest.

(2) If work is performed for or materials or equipment furnished to an owner or part owner of only a portion of the acreage within the production unit, the lien granted by this chapter is limited to that portion of acreage.

38-10-105. Notice of lien—Recording—Service on owner of interest—Failure to serve notice—Time of filing.

(1) To perfect the lien provided by this chapter, a notice of lien as required by Subsection 38-1a-502(2) shall be filed with the county recorder in any county where any part of the land to which the lien may attach is situated. The notice of lien shall be filed within 180 days after the last day work was performed or materials or equipment were furnished by the lien claimant, except as provided in Subsection (3).

(2) Within 30 days after filing the notice of lien, the lien claimant shall deliver or mail a copy of the notice by certified mail, return receipt requested, to the owner of the interest liened. If the owner's current address is not readily available, a copy of the notice may be mailed to the last-known address of the owner, as shown by the records of the county recorder in any county

where the land is situated. Failure to deliver or mail the notice of lien to the owner shall not cause the lien to be void but precludes the lien claimant from an award of costs and attorney fees against the owner in an action to enforce the lien.

(3) The notice of lien by a nonoperating owner pursuant to Subsection 38-10-102(3) shall be filed within 60 days after receipt by such owner of a notice of lien claim filed by a lien claimant with respect to work performed or materials or equipment furnished by the lien claimant for which such owner has paid or advanced funds to a contractor or operator.

38-10-106. Enforcement—Time for—Lis pendens—Action for debt not affected—Execution on an interest.

(1) Actions to enforce the liens created by this chapter shall be commenced within 180 days after the filing of the notice of lien required by Section 38-10-105. The lien claimant shall, within 10 working days after commencement of the action, file a notice of the pendency of the action with the county recorder of each county in which the lien is recorded or the lien shall be void, except as to persons who have been served and made parties to the action. Nothing in this chapter shall be construed to impair or affect the right of any person to whom a debt may be due for any work performed or materials or equipment furnished to maintain an action to recover the debt.

(2) In any action to enforce a lien under this chapter, the provisions of Sections 38-1a-702 and 38-1a-705 apply.

(3) Upon the entry of a judgment foreclosing the lien, execution on an interest shall be governed as follows:

- (a) upon real property by Section 38-1a-704; and
- (b) upon personalty by the Utah Rules of Civil Procedure.

38-10-107. Lien priority—Proration of proceeds upon sale.

(1) Except as provided in this section, liens under this chapter shall be equal in priority without reference to the date of the filing of the lien.

(2) Any lien perfected as provided by this chapter attaches to the interest covered by Section 38-10-102 in preference to any subsequent lien, security interest, or mortgage perfected upon an interest in real or personal property against which the lien is claimed.

(3) The liens provided for in this chapter shall relate back to, and take effect as of the time of the commencement of work or the furnishing of materials or equipment which are conspicuously visible on the production unit, or as of the filing of the notice of lien, which ever first occurs.

(4) If a sale is ordered by the court upon foreclosure of any lien provided by this chapter and the proceeds from the sale are insufficient to discharge in full all of the liens, the proceeds shall be prorated among the several lien claimants who have joined in the foreclosure according to the amounts of their respective judgments.

38-10-108. Limitation upon owner's liability.

Except as provided in Section 38-10-102 and Section 38-10-114, nothing in this chapter shall be construed to fix a greater liability against the owner than the price or sum agreed by the owner to be paid for his share of the work performed or the materials or equipment furnished.

38-10-109. Limitation on liability for other owners in production unit if notice provided—Contents of notice—Filing of notice—Time for filing—Failure to file does not affect other defenses.

(1) Where work is performed or materials or equipment are furnished for any production unit under a contract with an owner of an interest in the production unit, any interest of any other owner in the production unit shall not be subject to a lien under this chapter, if such other owner gives written notice that he will not be responsible for work performed or materials or equipment provided.

(2) Written notice shall be:

(a) in recordable form;

(b) filed with the county recorder of the county where the production unit is located;

and

(c) filed within 10 working days after the latter of:

(i) the owner obtaining knowledge of the performance of such work or the providing of such materials or equipment; or

(ii) the execution by the last party of:

(A) a farmout agreement;

(B) a lease or sublease;

(C) an operating agreement;

(D) an assignment of less than 100% of the lessee's interest or operating rights under a lease;

(E) a sales contract; or

(F) an option agreement.

(3) Failure to file under this section shall not impair any other defense available to such owner.

38-10-110. Cancellation of lien.

Cancellation of the liens provided for in this chapter shall be in accordance with the provisions of Section 38-1a-803.

38-10-111. Abuse of lien right—Penalty.

An abuse of the lien rights provided for in this chapter is governed by Section 38-1a-308.

38-10-112. Assignment of lien.

An assignment of the liens provided for in this chapter is governed by Section 38-1a-801.

38-10-113. Satisfaction of lien upon filing corporate surety bond or letter of credit—Payment to lien claimant upon entry of judgment—Filing—Commencement time for action upon bond or undertaking.

(1) Any lien created under this chapter is satisfied and shall be cancelled upon the owner filing in recordable form, a corporate surety bond or letter of credit in an amount equal to 1-1/2 times the amount of the lien with the county recorder in any county where the notice of lien was filed.

(2) The bond or letter of credit shall guarantee that upon entry of final judgment in favor of the lien claimant, the principal or its sureties shall pay the lien claimant the lesser of the judgment or the full amount of the bond or letter of credit.

(3) The bond or undertaking may be filed any time prior to a final judgment in an action to foreclose the lien.

(4) A certified copy of the bond or undertaking shall also be filed with the clerk of the district court in the county in which an action to foreclose the lien is filed or pending.

(5) Upon the filing of the bond or letter of credit with the county recorder, the lien against the owner's interest shall be satisfied, and the security described in Subsection (1) shall be substituted.

(6) A lien claimant whose lien has been satisfied by the substitution of the security described in Subsection (1) may bring an action upon the bond or undertaking. The action shall be commenced within the time prescribed in Subsection 38-10-106(1).

38-10-114. Attorney fees.

An award of attorney fees in an action to enforce any lien in this chapter is governed by Section 38-1a-707.

38-10-115. Prohibition against removal of property covered by lien—Penalty.

Any person who removes or causes to be removed any property covered by a validly perfected lien created by this chapter without the written consent of the lien claimant and with the intent to defraud the lien claimant is guilty of a class A misdemeanor.

CHAPTER 11. RESIDENCE LIEN RESTRICTION AND LIEN RECOVERY FUND ACT.

38-11-101. Title.

This chapter is known as the "Residence Lien Restriction and Lien Recovery Fund Act."

38-11-102. Definitions.

(1) "Board" means the Residence Lien Recovery Fund Advisory Board established under Section 38-11-104.

(2) "Certificate of compliance" means an order issued by the director to the owner finding that the owner is in compliance with the requirements of Subsections 38-11-204(4)(a) and (4)(b) and is entitled to protection under Section 38-11-107.

(3) "Construction on an owner-occupied residence" means designing, engineering, constructing, altering, remodeling, improving, repairing, or maintaining a new or existing residence. (4) "Department" means the Department of Commerce.

(5) "Director" means the director of the Division of Occupational and Professional Licensing.

(6) "Division" means the Division of Occupational and Professional Licensing.

(7) "Duplex" means a single building having two separate living units.

(8) "Encumbered fund balance" means the aggregate amount of outstanding claims against the fund. The remainder of the money in the fund is unencumbered funds.

(9) "Executive director" means the executive director of the Department of Commerce.

(10) "Factory built housing" is as defined in Section 15A-1-302.

(11) "Factory built housing retailer" means a person that sells factory-built housing to consumers.

(12) "Fund" means the Residence Lien Recovery Fund established under Section 38-11-201.

(13) "Laborer" means a person who provides services at the site of the construction on an owner-occupied residence as an employee of an original contractor or other qualified beneficiary performing qualified services on the residence.

(14) "Licensee" means any holder of a license issued under Title 58, Chapter 3a, Architects Licensing Act; Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act; Chapter 53, Landscape Architects Licensing Act; and Chapter 55, Utah Construction Trades Licensing Act.

- (15) "Nonpaying party" means the original contractor, subcontractor, or real estate developer who has failed to pay the qualified beneficiary making a claim against the fund.
- (16) "Original contractor" means a person who contracts with the owner of real property or the owner's agent to provide services, labor, or material for the construction of an owner-occupied residence.
- (17) "Owner" means a person who:
- (a) contracts with a person who is licensed as a contractor or is exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, for the construction on an owner-occupied residence upon real property that the person:
 - (i) owns; or
 - (ii) purchases after the person enters into a contract described in this Subsection (17)(a) and before completion of the owner-occupied residence;
 - (b) contracts with a real estate developer to buy a residence upon completion of the construction on the owner-occupied residence; or
 - (c) purchases a residence from a real estate developer after completion of the construction on the owner-occupied residence.
- (18) "Owner-occupied residence" means a residence that is, or after completion of the construction on the residence will be, occupied by the owner or the owner's tenant or lessee as a primary or secondary residence within 180 days after the day on which the construction on the residence is complete.
- (19) "Qualified beneficiary" means a person who:
- (a) provides qualified services;
 - (b) pays necessary fees required under this chapter; and
 - (c) registers with the division:
 - (i) as a licensed contractor under Subsection 38-11-301(1) or (2), if that person seeks recovery from the fund as a licensed contractor; or
 - (ii) as a person providing qualified services other than as a licensed contractor under Subsection 38-11-301(3) if the person seeks recovery from the fund in a capacity other than as a licensed contractor.
- (20) (a) "Qualified services" means the following performed in construction on an owner-occupied residence:
- (i) contractor services provided by a contractor licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act;
 - (ii) architectural services provided by an architect licensed under Title 58, Chapter 3a, Architects Licensing Act;
 - (iii) engineering and land surveying services provided by a professional engineer or land surveyor licensed or exempt from licensure under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act;
 - (iv) landscape architectural services by a landscape architect licensed or exempt from licensure under Title 58, Chapter 53, Landscape Architects Licensing Act;
 - (v) design and specification services of mechanical or other systems;
 - (vi) other services related to the design, drawing, surveying, specification, cost estimation, or other like professional services;
 - (vii) providing materials, supplies, components, or similar products;
 - (viii) renting equipment or materials;
 - (ix) labor at the site of the construction on the owner-occupied residence; and
 - (x) site preparation, set up, and installation of factory-built housing.

(b) "Qualified services" does not include the construction of factory-built housing in the factory.

(21) "Real estate developer" means a person having an ownership interest in real property who:

(a) contracts with a person who is licensed as a contractor or is exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, for the construction of a residence that is offered for sale to the public; or

(b) is a licensed contractor under Title 58, Chapter 55, Utah Construction Trades Licensing Act, who engages in the construction of a residence that is offered for sale to the public.

(22) (a) "Residence" means an improvement to real property used or occupied, to be used or occupied as, or in conjunction with:

(i) a primary or secondary detached single-family dwelling; or

(ii) a multifamily dwelling up to and including duplexes.

(b) "Residence" includes factory-built housing.

(23) "Subsequent owner" means a person who purchases a residence from an owner within 180 days after the day on which the construction on the residence is completed.

38-11-103. Administration.

This chapter shall be administered by the Division of Occupational and Professional Licensing pursuant to the provisions of this chapter and consistent with Title 58, Chapter 1.

38-11-104. Board.

(1) There is created the Residence Lien Recovery Fund Advisory Board consisting of:

(a) three individuals licensed as a contractor who are actively engaged in construction on owner-occupied residences;

(b) three individuals who are employed in responsible management positions with major suppliers of materials or equipment used in the construction on owner-occupied residences; and

(c) one member from the general public who has no interest in the construction on owner-occupied residences, or supply of materials used in the construction on owner-occupied residences.

(2) The board shall be appointed and members shall serve their respective terms in accordance with Section 58-1-201.

(3) The duties and responsibilities of the board shall be to:

(a) advise the division with respect to informal adjudication of any claim for payment from the fund and any request for a certificate of compliance received by the division;

(b) act as the presiding officer, as defined by rule, in formal adjudicative proceedings held before the division with respect to any claim made for payment from the fund;

(c) advise the division with respect to:

(i) the general operation of the fund;

(ii) the amount of any fees required under this chapter; and

(iii) the limitation on the fund balance under Section 38-11-206; and

(d) review the administrative expenditures made by the division pursuant to Subsection 38-11-201(4) and report its findings regarding those expenditures to the executive director on or before the first Monday of December of each year.

(4) The attorney general shall render legal assistance as requested by the board.

38-11-105. Procedures established by rule.

In compliance with Title 63G, Chapter 4, Administrative Procedures Act, the division shall establish procedures by rule by which claims for compensation from the fund and requests for certificates of compliance shall be adjudicated.

38-11-106. State not liable.

The state and the state's agencies, instrumentalities, and political subdivisions are not liable for:

- (1) issuance or denial of any certificate of compliance;
- (2) any claims made against the fund; or
- (3) failure of the fund to pay any amounts ordered by the director to be paid from the fund, including failure of the fund to pay any amounts ordered by the director to be paid because there is insufficient money in the fund.

38-11-107. Restrictions upon maintaining a lien against residence or owner's interest in the residence.

(1) (a) A person qualified to file a lien upon an owner-occupied residence and the real property associated with that residence under Chapter 1a, Preconstruction and Construction Liens, who provides qualified services under an agreement, other than directly with the owner, is barred from maintaining a lien upon that residence and real property or recovering a judgment in any civil action against the owner or the owner-occupied residence to recover money owed for qualified services provided by that person if:

(i) an owner meets the conditions described in Subsections 38-11-204(4)(a) and (b); or

(ii) (A) a subsequent owner purchases a residence from an owner;

(B) the subsequent owner who purchased the residence under

Subsection (1)(a)(ii)(A) occupies the residence as a primary or secondary residence within 180 days from the date of transfer or the residence is occupied by the subsequent owner's tenant or lessee as a primary or secondary residence within 180 days from the date of transfer; and

(C) the owner from whom the subsequent owner purchased the residence met the conditions described in Subsections 38-11-204(4)(a) and (b).

(b) (i) As used in this Subsection (1)(b):

(A) "Contract residence":

(I) means the owner-occupied residence for which a subcontractor provides service, labor, or materials; and

(II) includes the real property associated with that owner-occupied residence.

(B) "General contract" means an oral or written contract between an owner and an original contractor for providing service, labor, or materials for construction on an owner-occupied residence.

(C) "Subcontractor" means a person who provides service, labor, or materials for construction on an owner-occupied residence under an agreement other than directly with the owner.

(ii) A subcontractor qualified to file a lien upon a contract residence under Chapter 1a, Preconstruction and Construction Liens, is barred from maintaining a lien upon that contract residence or from recovering a judgment in a civil action against the owner, the contract residence, or, as provided in Subsection (1)(b)(iii), a subsequent owner to recover for service, labor, or materials provided by the subcontractor:

(A) if the amount of the general contract under which the subcontractor provides service, labor, or materials totals no more than \$5,000; and

(B) whether or not the original contractor is licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act.

(iii) A subsequent owner is protected under Subsection (1)(b)(ii) to the same extent as an owner if:

(A) the subsequent owner purchases the contract residence from the owner; and

(B) (I) the subsequent owner occupies the residence as a primary or secondary residence within 180 days after the date of transfer; or

(II) the subsequent owner's tenant or lessee occupies the residence as a primary or secondary residence within 180 days after the date of the transfer.

(2) If a residence is constructed under conditions that do not meet all of the provisions of Subsection (1)(a) or (b), that residence and the real property associated with that residence as provided in Section 38-1a-302 is subject to any lien as provided in Section 38-1a-301.

(3) A lien claimant who files a preconstruction or construction lien under Chapter 1a, Preconstruction and Construction Liens, or a foreclosure action upon an owner-occupied residence is not liable for costs and attorney fees under Sections 38-1a-706 and 38-1a-707 or for any damages arising from a civil action related to the lien filing or foreclosure action if the lien claimant removes the lien within 15 days from the date the owner obtains a certificate of compliance and mails a copy of the certificate of compliance by certified mail to the lien claimant at the address provided for by Subsection 38-1a-502(2)(e). The 15-day period begins accruing from the date postmarked on the certificate of compliance sent to the lien claimant.

38-11-108. Notification of rights under chapter.

(1) Beginning July 1, 1995, the original contractor or real estate developer shall state in the written contract with the owner what actions are necessary for the owner to be protected under Section 38-11-107 from the maintaining of a mechanic's lien or other civil action against the owner or the owner-occupied residence to recover money owed for qualified services.

(2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division may issue rules providing for the form and content of the information required by Subsection (1).

38-11-109. Severability clause.

If any provision of this chapter is held invalid or unconstitutional by a court of competent jurisdiction, the invalidity shall not affect the other provisions of this chapter which can be given effect without the invalid or unconstitutional provision.

38-11-110. Issuance of certificates of compliance.

(1) (a) The director may issue a certificate of compliance only after determining through an informal proceeding, as set forth in Title 63G, Chapter 4, Administrative Procedures Act:

(i) that the owner is in compliance with Subsections 38-11-204(4)(a) and (b); or

(ii) subject to Subsection (2), that the owner is entitled to protection under

Subsection 38-11-107(1)(b).

(b) If the director determines through an informal proceeding under Subsection (1)(a) that an owner seeking the issuance of a certificate of compliance under Subsection (1)(a)(i) is not in compliance as provided in Subsection (1)(a)(i), the director may not issue a certificate of compliance.

(2) (a) An owner seeking the issuance of a certificate of compliance under Subsection (1)(a)(ii) shall submit an affidavit, as defined by the division by rule, affirming that the owner is entitled to protection under Subsection 38-11-107(1)(b).

(b) If an owner's affidavit under Subsection (2)(a) is disputed, the owner may file a complaint in small claims court or district court to resolve the dispute.

(c) The director may issue a certificate of compliance to an owner seeking issuance of a certificate under Subsection (1)(a)(ii) if:

(i) the owner's affidavit under Subsection (2)(a) is undisputed; or

(ii) a small claims court or district court resolves any dispute over the owner's affidavit in favor of the owner.

38-11-201. Residence Lien Recovery Fund.

(1) There is created an expendable special revenue fund called the "Residence Lien Recovery Fund."

(2) The fund shall earn interest.

(3) The division shall employ personnel and resources necessary to administer the fund and shall use fund money in accordance with Sections 38-11-203 and 38-11-204 and to pay the costs charged to the fund by the attorney general.

(4) Costs incurred by the division, on or after May 8, 2018, for administering the fund may be paid out of fund money in an amount that may be no more than a total of \$300,000 for the remaining existence of the fund.

(5) (a) The Division of Finance shall report annually to the Legislature, the division, and the board.

(b) The report shall state:

(i) amounts received by the fund;

(ii) disbursements from the fund;

(iii) interest earned and credited to the fund; and

(iv) the fund balance.

38-11-202. Payments to the fund.

Beginning on May 8, 2018, the Residence Lien Recovery Fund will no longer be supported by special assessments and will be solely supported by:

(1) fees determined by the division under Section 63J-1-504 collected from laborers under Subsection 38-11-204(7) when the laborers obtain a recovery from the fund;

(2) amounts collected by subrogation under Section 38-11-205 on behalf of the fund following a payment from the fund;

(3) application fees determined by the division under Section 63J-1-504 collected from:

(a) qualified beneficiaries or laborers under Subsection 38-11-204(1)(b) when qualified beneficiaries or laborers make a claim against the fund; or

(b) owners or agents of the owners seeking to obtain a certificate of compliance for the owner;

(4) registration fees determined by the division under Section 63J-1-504 collected from other qualified beneficiaries registering with the department in accordance with Subsection 38-11-301(3)(a)(iii);

(5) reinstatement fees determined by the division under Section 63J-1-504 collected from registrants in accordance with Subsection 38-11-302(5)(b);

(6) civil fines authorized under Subsection 38-11-205(2) collected by the attorney general for failure to reimburse the fund; and

(7) any interest earned by the fund.

38-11-203. Disbursements from the fund—Limitations.

(1) A payment of any claim upon the fund by a qualified beneficiary shall be made only upon an order issued by the director finding that:

- (a) the claimant was a qualified beneficiary during the construction on a residence;
- (b) the claimant complied with the requirements of Section 38-11-204;
- (c) there is adequate money in the fund to pay the amount ordered; and
- (d) the claimant provided the qualified services that are the basis of the claim.

(2) A payment of a claim upon the fund by a laborer shall be made only upon an order issued by the director finding that:

- (a) the laborer complied with the requirements of Subsection 38-11-204(7); and
- (b) there is adequate money in the fund to pay the amount ordered.

(3) (a) An order under this section may be issued only after the division has complied with the procedures established by rule under Section 38-11-105.

(b) The director shall order payment of the qualified services as established by evidence, or if the claimant has obtained a judgment, then in the amount awarded for qualified services in the judgment to the extent the qualified services are attributable to the owner-occupied residence at issue in the claim.

(c) The director shall order payment of interest on amounts claimed for qualified services based on the current prime interest rate at the time payment was due to the date the claim is approved for payment except for delays attributable to the claimant but not more than 10% per annum.

(d) The rate shall be the prime lending rate as published in the Wall Street Journal on the first business day of each calendar year adjusted annually.

(e) The director shall order payment of costs in the amount stated in the judgment. If the judgment does not state a sum certain for costs, or if no judgment has been obtained, the director shall order payment of reasonable costs as supported by evidence. The claim application fee as established by the division pursuant to Subsection 38-11-204(1)(b) is not a reimbursable cost.

(f) If a judgment has been obtained with attorneys' fees, notwithstanding the amount stated in a judgment, or if no judgment has been obtained but the contract provides for attorneys' fees, the director shall order payment of attorneys' fees not to exceed 15% of qualified services. If the judgment does not state a sum for attorneys' fees, no attorneys' fees will be paid by the director.

(4) (a) Payments made from the fund may not exceed \$75,000 per construction project to qualified beneficiaries and laborers who have claim against the fund for that construction project.

(b) If claims against the fund for a construction project exceed \$75,000, the \$75,000 shall be awarded proportionately so that each qualified beneficiary and laborer awarded compensation from the fund for qualified services shall receive an identical percentage of the qualified beneficiary's or laborer's award.

(5) (a) A payment of any claim upon the fund may not be made to an assignee or transferee unless an order issued by the director finds that:

- (i) the claim is assigned or transferred to a person who is a qualified beneficiary;
- and
- (ii) the person assigning or transferring the claim:
 - (A) was a qualified beneficiary during the construction on a residence; and

(B) provided the qualified services that are the basis of the claim.

(b) A claimant who is an assignee or transferee of a claim upon the fund under this Subsection (5) does not have to meet the requirements of Subsections 38-11-203(1)(a) and (d).

38-11-204. Claims against the fund—Requirement to make a claim—Qualifications to receive compensation—Qualifications to receive a certificate of compliance.

(1) To claim recovery from the fund a person shall:

(a) meet the requirements of Subsection (4) or (6);

(b) pay an application fee determined by the division under Section 63J-1-504; and

(c) file with the division a completed application on a form provided by the division accompanied by supporting documents establishing:

(i) that the person meets the requirements of Subsection (4) or (6);

(ii) that the person was a qualified beneficiary or laborer during the construction on the owner-occupied residence; and

(iii) the basis for the claim.

(2) To recover from the fund, the application required by Subsection (1) shall be filed no later than one year:

(a) from the date the judgment required by Subsection (4)(d) is entered;

(b) from the date the nonpaying party filed bankruptcy, if the claimant is precluded from obtaining a judgment or from satisfying the requirements of Subsection (4)(d) because the nonpaying party filed bankruptcy within one year after the entry of judgment; or

(c) from the date the laborer, trying to recover from the fund, completed the laborer's qualified services.

(3) The issuance of a certificate of compliance is governed by Section 38-11-110.

(4) To recover from the fund, regardless of whether the residence is occupied by the owner, a subsequent owner, or the owner or subsequent owner's tenant or lessee, a qualified beneficiary shall establish that:

(a) (i) the owner of the owner-occupied residence or the owner's agent entered into a written contract with an original contractor licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act:

(A) for the performance of qualified services;

(B) to obtain the performance of qualified services by others; or

(C) for the supervision of the performance by others of qualified services in construction on that residence;

(ii) the owner of the owner-occupied residence or the owner's agent entered into a written contract with a real estate developer for the purchase of an owner-occupied residence; or

(iii) the owner of the owner-occupied residence or the owner's agent entered into a written contract with a factory-built housing retailer for the purchase of an owner-occupied residence;

(b) the owner has paid in full the original contractor, licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, real estate developer, or factory built housing retailer under Subsection (4)(a) with whom the owner has a written contract in accordance with the written contract and any amendments to the contract;

(c) (i) the original contractor, licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, the real estate developer, or the factory built housing retailer subsequently failed to pay a qualified beneficiary who is entitled to payment under an agreement with that original contractor or real estate developer licensed or exempt

from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, for services performed or materials supplied by the qualified beneficiary;

(ii) a subcontractor who contracts with the original contractor, licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, the real estate developer, or the factory-built housing retailer failed to pay a qualified beneficiary who is entitled to payment under an agreement with that subcontractor or supplier; or

(iii) a subcontractor who contracts with a subcontractor or supplier failed to pay a qualified beneficiary who is entitled to payment under an agreement with that subcontractor or supplier;

(d) (i) unless precluded from doing so by the nonpaying party's bankruptcy filing within the applicable time, the qualified beneficiary filed an action against the nonpaying party to recover money owed to the qualified beneficiary within the earlier of:

(A) 180 days from the date the qualified beneficiary filed a notice of claim under Section 38-1a-502; or

(B) 270 days from the completion of the original contract pursuant to Subsection 38-1a-502(1);

(ii) the qualified beneficiary has obtained a judgment against the nonpaying party who failed to pay the qualified beneficiary under an agreement to provide qualified services for construction of that owner-occupied residence;

(iii) the qualified beneficiary has:

(A) obtained from a court of competent jurisdiction the issuance of an order requiring the judgment debtor, or if a corporation any officer of the corporation, to appear before the court at a specified time and place to answer concerning the debtor's or corporation's property;

(B) received return of service of the order from a person qualified to serve documents under the Utah Rules of Civil Procedure, Rule 4(b);

(C) made reasonable efforts to obtain asset information from the supplemental proceedings; and

(D) if assets subject to execution are discovered as a result of the order required under this Subsection (4)(d)(iii) or for any other reason, obtained the issuance of a writ of execution from a court of competent jurisdiction; and

(iv) if the nonpaying party has filed bankruptcy, the qualified beneficiary timely filed a proof of claim where permitted in the bankruptcy action;

(e) the qualified beneficiary is not entitled to reimbursement from any other person; and

(f) the qualified beneficiary provided qualified services to a contractor, licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act.

(5) The requirements of Subsections (4)(d)(ii) and (iii) need not be met if the qualified beneficiary is prevented from compliance because the nonpaying party files bankruptcy.

(6) To recover from the fund a laborer shall:

(a) establish that the laborer has not been paid wages due for the work performed at the site of a construction on an owner-occupied residence; and

(b) provide any supporting documents or information required by rule by the division.

(7) A fee determined by the division under Section 63J-1-504 shall be deducted from any recovery from the fund received by a laborer.

(8) The requirements of Subsections (4)(a) and (b) may be satisfied if an owner or agent of the owner establishes to the satisfaction of the director that the owner of the owner-occupied residence or the owner's agent entered into a written contract with an original contractor who:

(a) was a business entity that was not licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, but was solely or partly owned by an individual who was licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act; or

(b) was a natural person who was not licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, but who was the sole or partial owner and qualifier of a business entity that was licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act.

(9) The director shall have equitable power to determine if the requirements of Subsections (4)(a), (b), and (f) have been met, but any decision by the director under this chapter shall not alter or have any effect on any other decision by the division under Title 58, Occupations and Professions.

38-11-205. Subrogation.

(1) (a) (i) The state, on behalf of the fund, has the right of subrogation only to the extent of payments made from the fund.

(ii) Upon payment from the fund to a claimant, any payment to the claimant that was the basis of the claimant's claim against the fund shall be assigned to the fund for the enforcement of subrogation rights by the attorney general.

(iii) A claimant's judgment or bankruptcy claim against the nonpaying party shall be automatically assigned to the state, to the extent paid by the fund on a particular residence, upon the state's filing of the director's order of payment of claim with the appropriate court.

(b) The state's right of subrogation under Subsection (1)(a) has priority over any rights of the qualified beneficiary under the judgment or any civil penalties imposed.

(c) The state shall be awarded attorney's fees and court costs incurred in recovering claims paid from the fund.

(2) (a) The attorney general shall enforce all subrogation claims and may contract with private attorneys as necessary to adequately enforce subrogation claims.

(b) (i) In addition to the subrogation claims the attorney general may seek a civil fine of \$5,000 per residence for failure to reimburse the Residence Lien Recovery Fund within 90 days after any disbursement from the fund resulting from the registrant's failure to pay qualified beneficiaries under this chapter.

(ii) All claims under the judgment have priority over the civil penalty.

(3) The attorney general may charge the fund for costs incurred by the attorney general under this chapter.

38-11-206. Limitations on fund balance.

By October 1 of each year, the division shall provide a written report to the Legislature and the Business and Labor Interim Committee that describes:

(1) the amount of money in the fund, including the encumbered fund balance;

(2) an estimate of when the fund will have insufficient money to continue to pay claims under this chapter; and

(3) a recommendation to the Legislature of whether the substantive provisions of this chapter should be repealed due to insufficient money in the fund.

38-11-207. Reimbursement to the fund.

(1) If the director disburses money from the fund as a result of a person licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, or a qualified beneficiary failing to pay qualified beneficiaries:

(a) the division shall issue a notice of the disbursement from the fund and the obligation to reimburse the fund to the licensee or qualified beneficiary; and

(b) the licensee or qualified beneficiary shall reimburse the fund within 20 days from the issuance of the notice required by Subsection (1)(a).

(2) The notice required by Subsection (1)(a) shall meet the requirements established by rule by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(3) (a) A finding of fact in an administrative action that a payment of any amount has been made from the fund in settlement of a claim arising from the act, representation, transaction, or conduct of a person licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, in violation of Section 58-55-603 shall result in the immediate suspension of that person's license without further compliance with Title 63G, Chapter 4, Administrative Procedures Act.

(b) The finding of fact for Subsection (3)(a) may be made in the same administrative action as the related claim and may be included in the findings required by Section 38-11-203.

(c) The suspension required by Subsection (3)(a) shall remain in effect until the person applies for reinstatement and is issued a license in accordance with Sections 58-1-308 and 58-55-303.

38-11-301. Registration as a qualified beneficiary—Initial regular assessment—Affidavit.

(1) A person licensed as of July 1, 1995, as a contractor under the provisions of Title 58, Chapter 55, Utah Construction Trades Licensing Act, in license classifications that regularly engage in providing qualified services shall be automatically registered as a qualified beneficiary.

(2) A person applying for licensure as a contractor after July 1, 1995, in license classifications that regularly engage in providing qualified services shall be automatically registered as a qualified beneficiary upon issuance of a license.

(3) (a) After July 1, 1995, any person providing qualified services as other than a contractor as provided in Subsection (1) or any person exempt from licensure under the provisions of Title 58, Chapter 55, Utah Construction Trades Licensing Act, may register as a qualified beneficiary by:

(i) submitting an application in a form prescribed by the division;

(ii) demonstrating registration with the Division of Corporations and Commercial Code as required by state law; and

(iii) paying a registration fee determined by the division under Section 63J-1-

504.

(b) A person who does not register under Subsection (1), (2), or (3)(a) shall be prohibited from recovering under the fund as a qualified beneficiary for work performed as qualified services while not registered with the fund.

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