

Key Statute Regarding Payment of Attorneys' Fees, Interest, and Costs from the Residence Lien Recovery Fund

Utah Code Ann. § 38-11-203 addresses disbursements from the Residence Lien Recovery Fund (Fund). The Residence Lien Restriction and Lien Recovery Fund Act (Act) addresses costs and attorneys' fees in other contexts not included in Utah Code Ann. § 38-11-203. For example, the Act limits liability for attorneys' fees and costs if certain conditions are met when a lien claimant files a mechanics' lien or foreclosure action and provides for the award to the state of attorneys' fees and court costs incurred in recovering claims paid from 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; and
- (c) there is adequate money in the fund to pay the amount ordered.

(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) Subject to the limitations of Subsection (4), if on the day the order is issued there are inadequate funds to pay the entire claim and the director determines that the claimant has otherwise met the requirements of Subsection (1) or (2), the director shall order additional payments once the fund meets the balance limitations of Section 38-11-206.