

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.

Amended by Chapter 203, 1990 General Session

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.

Amended by Chapter 203, 1990 General Session

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.

Enacted by Chapter 203, 1990 General Session

38-10-103 Nonimpairment 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.

Enacted by Chapter 170, 1987 General Session

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.

Enacted by Chapter 170, 1987 General Session

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.

Amended by Chapter 278, 2012 General Session

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.

Amended by Chapter 278, 2012 General Session

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, whichever 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.

Enacted by Chapter 170, 1987 General Session

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.

Enacted by Chapter 170, 1987 General Session

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.

Enacted by Chapter 170, 1987 General Session

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.

Amended by Chapter 278, 2012 General Session

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.

Amended by Chapter 278, 2012 General Session

38-10-112 Assignment of lien.

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

Amended by Chapter 278, 2012 General Session

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).

Enacted by Chapter 170, 1987 General Session

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.

Amended by Chapter 278, 2012 General Session

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.

Amended by Chapter 241, 1991 General Session