

**RESIDENCE LIENS RECOVERY FUND AMENDMENTS**

2001 GENERAL SESSION

STATE OF UTAH

**Sponsor: Lyle W. Hillyard**

David L. Gladwell

Scott K. Jenkins

**This act modifies the Residence Lien Restriction and Lien Recovery Fund Act and related provisions of the Utah Construction Trades Licensing Act. The act adds factory built housing to the scope of the fund. The act repeals the lifetime cap on recovery from the fund. The act extends the filing deadline. The act requires the inclusion of instructions and a form affidavit and motion when serving a complaint on a homeowner.**

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

**38-1-11**, as last amended by Chapter 172, Laws of Utah 1995

**38-11-102**, as last amended by Chapter 193, Laws of Utah 1999

**38-11-107**, as last amended by Chapter 49, Laws of Utah 1998

**38-11-203**, as last amended by Chapter 193, Laws of Utah 1999

**38-11-204**, as last amended by Chapter 193, Laws of Utah 1999

**38-11-207**, as enacted by Chapter 308, Laws of Utah 1994

**38-11-301**, as last amended by Chapter 146, Laws of Utah 1996

**58-55-302**, as last amended by Chapter 317, Laws of Utah 2000

**58-55-303**, as renumbered and amended by Chapter 181, Laws of Utah 1994

**58-55-501**, as last amended by Chapters 233 and 317, Laws of Utah 2000

**58-55-502**, as last amended by Chapter 317, Laws of Utah 2000

**58-55-503**, as last amended by Chapters 100, 233, and 317, Laws of Utah 2000

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

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

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

(1) A lien claimant shall file an action to enforce the lien filed under this chapter within:

(a) [~~twelve~~] 12 months from the date of final completion of the original contract not involving a residence as defined in Section 38-11-102; or

(b) 180 days from the date the lien claimant last performed labor and services or last furnished equipment or material for a residence, as defined in Section 38-11-102.

(2) (a) Within the time period provided for filing in Subsection (1) the lien claimant shall file for record with the county recorder of each county in which the lien is recorded a notice of the pendency of the action, in the manner provided in actions affecting the title or right to possession of real property, or the lien shall be 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 shall be upon the lien claimant and those claiming under him to show actual knowledge.

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

(4) (a) If a lien claimant files an action to enforce a lien filed under this chapter involving a residence, as defined in Section 38-11-102, the lien 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 affidavit and motion for summary judgment 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 lien claimant may file a notice to submit for decision on the motion for summary judgment. The motion may be ruled upon after the service of the summons and complaint upon the nonpaying party, as defined in Section 38-11-102, and the time for the nonpaying party to respond, as provided in the Utah Rules of Civil Procedure, has elapsed.

(c) The instructions and form affidavit and motion required by Subsection (4)(a) shall meet the requirements established by rule by the Division of Occupational and Professional Licensing in

accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(d) If the nonpaying party, as defined by Section 38-11-102, files for bankruptcy protection and there is a bankruptcy stay in effect, the motion for summary judgment and the action to enforce the lien shall be stayed until resolution of the related claim under Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act.

(e) If a lien claimant fails to provide to the owner of the residence the instructions and form affidavit required by Subsection (4)(a), the lien claimant shall be barred from maintaining or enforcing the lien upon the residence.

Section 2. Section **38-11-102** is amended to read:

**38-11-102. Definitions.**

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

(2) "Construction on an owner-occupied residence" means designing, engineering, constructing, altering, remodeling, improving, repairing, or maintaining a new or existing residence.

(3) "Department" means the Department of Commerce.

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

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

(6) "Encumbered fund balance" means the aggregate amount of all outstanding claims against the fund. The remainder of monies in the fund are unencumbered funds.

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

(8) "Factory built housing" is as defined in Section 58-56-3.

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

~~[(8)]~~ (10) "Fund" means the Residence Lien Recovery Fund established under Section 38-11-201.

~~[(9)]~~ (11) "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.

~~[(10)]~~ (12) "Licensee" means any holder of a license issued under Title 58, Chapters 3a, 22, 53, and 55.

~~[(11)]~~ (13) "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.

~~[(12)]~~ (14) "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.

~~[(13)]~~ (15) "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 owned by that person;

(b) contracts with a real estate developer to buy a residence upon completion of the construction on the owner-occupied residence; or

(c) buys a residence from a real estate developer after completion of the construction on the owner-occupied residence.

~~[(14)]~~ (16) "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 from the date of the completion of the construction on the residence.

~~[(15)]~~ (17) "Qualified beneficiary" means a person who:

(a) provides qualified services;

(b) pays all necessary fees or assessment 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.

~~[(16)]~~ (18) (a) "Qualified services" means the following performed in construction on an owner-occupied residence:

~~[(a)]~~ (i) contractor services provided by a contractor licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act;

~~[(b)]~~ (ii) architectural services provided by an architect licensed under Title 58, Chapter 3a;

~~[(c)]~~ (iii) engineering and land surveying services provided by a professional engineer or land surveyor licensed or exempt from licensure under Title 58, Chapter 22;

~~[(d)]~~ (iv) landscape architectural services by a landscape architect licensed or exempt from licensure under Title 58, Chapter 53;

~~[(e)]~~ (v) design and specification services of mechanical or other systems;

~~[(f)]~~ (vi) other services related to the design, drawing, surveying, specification, cost estimation, or other like professional services;

~~[(g)]~~ (vii) providing materials, supplies, components, or similar products;

~~[(h)]~~ (viii) renting equipment or materials; ~~[and]~~

~~[(i)]~~ (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" do not include the construction of factory built housing in the factory.

~~[(17)]~~ (19) "Real estate developer" means a person having an ownership interest in real property who contracts for the construction of a residence that is offered for sale to the public.

~~[(18)]~~ (20) "Residence" means an improvement to real property used or occupied, to be used or occupied as, or in conjunction with, a primary or secondary detached single-family dwelling or multifamily dwelling up to two units, including factory built housing.

~~[(19)]~~ (21) "Subsequent owner" means a person who purchases a residence from an owner within 180 days from the date of the completion of the construction on the residence.

Section 3. Section **38-11-107** is amended to read:

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

**in the residence.**

(1) A person qualified to file a lien upon an owner-occupied residence and the real property associated with that residence under the provisions of Title 38, Chapter 1, Mechanics' Liens, who provides qualified services under an agreement effective on or after January 1, 1995, other than directly with the owner, shall be barred after January 1, 1995, 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 monies owed for qualified services provided by that person if:

(a) the conditions described in Subsections 38-11-204(3)(a) and (3)(b) are met; or

(b) (i) a subsequent owner purchases a residence from an owner;

(ii) the subsequent owner who purchased the residence under Subsection (1)(b)(i) 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

(iii) the owner from whom the subsequent owner purchased the residence met the conditions described in Subsections 38-11-204(3)(a) and (3)(b).

(2) If a residence is constructed under conditions that do not meet all of the provisions of Subsection (1), that residence and the real property associated with that residence as defined in Section 38-1-4, shall be subject to any mechanics' lien as provided in Section 38-1-3.

(3) A lien claimant who files a mechanics' lien or foreclosure action upon an owner-occupied residence is not liable for costs and attorneys' fees under Sections 38-1-17 and 38-1-18 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 ten days from the date the owner establishes compliance, through written findings of fact from a court of competent jurisdiction or, in cases where a bankruptcy has been filed, from the director, with the requirements of Subsections 38-11-204(3)(a) and (3)(b).

Section 4. Section **38-11-203** is amended to read:

**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(6); 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 all amounts claimed for qualified services at the rate of 12%, annual percentage rate, from the date payment was due to the date the claim is approved for payment except for delays attributable to the claimant.

(d) 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.

(e) The director shall order payment of attorney's fees in the amount stated in a judgment.

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

~~[(ii) \$500,000 per qualified beneficiary or laborer for payments to the qualified beneficiary over the qualified beneficiary's lifetime.]~~

(b) If claims against the fund for a ~~[residence]~~ 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.

Section 5. Section **38-11-204** is amended to read:

**38-11-204. Claims against the fund -- Requirement to make a claim -- Qualifications to receive compensation.**

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

- (a) meet the requirements of either Subsection (3) or (6);
- (b) pay an application fee determined by the division under Section 63-38-3.2; 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 either Subsection (3) 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 ~~[120 days]~~ one year:

- (a) from the date the judgment required by Subsection (3)(c) 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 (3)(c) because the nonpaying party filed bankruptcy within ~~[120 days]~~ one year after the entry of judgment; or
- (c) if a laborer, from the date the laborer completed the laborer's qualified services.

(3) 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, for the performance of qualified services, to obtain the performance of qualified services by others, or for the supervision of the performance by others of qualified services in construction on that residence; ~~[or]~~

(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 ~~[both;~~ ] factory built housing retailer under Subsection (3)(a)~~(i) or (ii)~~ with whom the owner has a written contract in accordance with the written contract and any amendments to the contract, and:

(i) the original contractor ~~[or real estate developer]~~, 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 ~~[or real estate developer]~~, 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;

(c) (i) the qualified beneficiary filed:

(A) an action against the nonpaying party to recover monies owed him within 180 days from the date the qualified beneficiary last provided qualified services, unless precluded from doing so

by the nonpaying party's bankruptcy filing within the 180 days after completion of services; and

(B) a notice of commencement of action with the division within 30 days from the date the qualified beneficiary filed the civil action if a civil action was filed as required by Subsection (3)(c)(i)(A);

(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) (A) the qualified beneficiary has 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, has received return of service of the order from a person qualified to serve documents under the Utah Rules of Civil Procedure, Rule 4(b), and has made reasonable efforts to obtain asset information from the supplemental proceedings; and

(B) if assets subject to execution are discovered as a result of the order required under Subsection (3)(c)(iii)(A) or for any other reason, to obtain the issuance of a writ of execution from a court of competent jurisdiction; or

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

(d) the qualified beneficiary is not entitled to reimbursement from any other person.

(4) The requirements of Subsection ~~[38-11-204]~~(3)(c) need not be met if the qualified beneficiary has been precluded from obtaining a judgment against the nonpaying party or from satisfying the requirements of Subsection ~~[38-11-204]~~(3)(c) because the nonpaying party filed bankruptcy.

(5) If a qualified beneficiary fails to file the notice with the division required under Subsection (3)(c)(i)(B), the claim of the qualified beneficiary shall be paid:

(a) if otherwise qualified under this chapter;

(b) to the extent that the limit of Subsection 38-11-203(4)(a)(i) has not been reached by payments from the fund to qualified beneficiaries who have complied with the notice requirements

of Subsection (3)(c)(i)(B); and

(c) in the order that the claims are filed by persons who fail to comply with Subsection (3)(c)(i)(B), not to exceed the limit of Subsection 38-11-203(4)(a)(i).

(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 63-38-3.2 shall be deducted from any recovery from the fund received by a laborer.

(8) The requirements of Subsection (3)(a)(i) may be satisfied if a claimant 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 owned by an individual that 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 owner and qualifier of a business entity that was licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act.

Section 6. Section **38-11-207** is amended to read:

**38-11-207. Reimbursement to the fund.**

(1) If the director disburses monies 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~~[, the licensee or qualified beneficiary shall reimburse the fund within 90 days from]~~:

(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 63, Chapter 46a, 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 63, Chapter 46b, 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.

Section 7. Section **38-11-301** is amended to read:

**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 upon payment of the initial assessment.

(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 and payment of the initial assessment.

(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;

(iii) paying a registration fee determined by the division under Section 63-38-3.2; and  
(iv) paying the initial assessment established under Subsection (4), and any special assessment determined by the division under Subsection 38-11-206(1).

(b) A person [~~other than a contractor~~] 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.

(4) (a) An applicant shall pay an initial assessment determined by the division under Section 63-38-3.2.

(b) The initial assessment to qualified registrants under Subsection (1) shall be made not later than July 15, 1995, and shall be paid no later than November 1, 1995.

(c) The initial assessment to qualified registrants under Subsections (2) and (3) shall be paid at the time of application for license or registration, however, beginning on May 1, 1996, only one initial assessment or special assessments thereafter shall be required for persons having multiple licenses under this section.

(5) A person shall be considered to have been registered as a qualified beneficiary on January 1, 1995, for purposes of meeting the requirements of Subsection 38-11-204(1)(c)(ii) if the person:

(a) (i) is licensed on or before 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; or

(ii) provides qualified services after July 1, 1995, as other than a contractor as provided in Subsection (5)(a)(i) or is exempt from licensure under the provisions of Title 58, Chapter 55, Utah Construction Trades Licensing Act; and

(b) registers as a qualified beneficiary under Subsection (1) or (3) on or before November 1, 1995.

Section 8. Section **58-55-302** is amended to read:

**58-55-302. Qualifications for licensure.**

(1) Each applicant for a license under this chapter shall:

(a) submit an application prescribed by the division;

- (b) pay a fee as determined by the department under Section 63-38-3.2;
- (c) (i) meet the examination requirements established by rule by the division in collaboration with the appropriate board, except for the classifications of apprentice plumber, residential apprentice plumber, and apprentice electrician for whom no examination is required; or
  - (ii) the individual qualifier must pass the required examination if the applicant is a business entity;
  - (d) if an apprentice, identify the proposed supervisor of the apprenticeship;
  - (e) if an applicant for a contractor's license:
    - (i) produce satisfactory evidence of financial responsibility, except for construction trades instructor for whom evidence of financial responsibility is not required;
    - (ii) produce satisfactory evidence of knowledge and experience in the construction industry and knowledge of the principles of the conduct of business as a contractor, reasonably necessary for the protection of the public health, safety, and welfare; and
    - (iii) be a licensed master electrician if an applicant for an electrical contractor's license or a licensed master residential electrician if an applicant for a residential electrical contractor's license; or
    - (iv) be a journeyman plumber or residential journeyman plumber if an applicant for a plumbing contractor's license; and
  - (f) if an applicant for a construction trades instructor license, satisfy any additional requirements established by rule.
- (2) After approval of an applicant for a contractor's license by the board and the division, the applicant shall file the following with the division before the division issues the license:
  - (a) proof of workers' compensation insurance which covers employees of the applicant in accordance with applicable Utah law;
  - (b) proof of public liability insurance in coverage amounts and form established by rule except for a construction trades instructor for whom public liability insurance is not required; and
  - (c) proof of registration as required by applicable law with the:
    - (i) Utah Department of Commerce;

- (ii) Division of Corporations and Commercial Code;
- (iii) Division of Workforce Information and Payment Services in the Department of Workforce Services, for purposes of Title 35A, Chapter 4, Employment Security Act;
- (iv) State Tax Commission; and
- (v) Internal Revenue Service.

(3) In addition to the general requirements for each applicant in Subsection (1), applicants shall comply with the following requirements to be licensed in the following classifications:

- (a) A journeyman plumber applicant shall produce:
  - (i) satisfactory evidence of successful completion of the equivalent of at least four years of full-time training and instruction as a licensed apprentice plumber under supervision of a licensed journeyman plumber and in accordance with a planned program of training approved by the division;
  - (ii) satisfactory evidence of at least eight years of full-time experience approved by the division in collaboration with the Plumbers Licensing Board; or
  - (iii) satisfactory evidence of meeting the qualifications determined by the division and board to be equivalent to Subsection (3)(a)(i) or (a)(ii).
- (b) A residential journeyman plumber shall produce satisfactory evidence of completion of:
  - (i) the equivalent of at least three years of full-time training and instruction as a licensed apprentice plumber under the supervision of a licensed residential journeyman plumber or licensed journeyman plumber in accordance with a planned program of training approved by the division;
  - (ii) at least six years of full-time experience in a maintenance or repair trade involving substantial plumbing work; or
  - (iii) satisfactory evidence of meeting the qualifications determined by the division and board to be equivalent to Subsection (3)(b)(i) or (b)(ii).
- (c) A master electrician applicant shall produce satisfactory evidence that he either:
  - (i) is a graduate electrical engineer of an accredited college or university approved by the division and has one year of practical electrical experience as a licensed apprentice electrician;
  - (ii) is a graduate of an electrical trade school, having received an associate of applied sciences degree following successful completion of a course of study approved by the division, and

has two years of practical experience as a licensed journeyman electrician;

(iii) is a graduate of an electrical trade school, having received a certificate of completion following successful completion of a course of study approved by the division, and has four years of practical experience as a journeyman electrician;

(iv) has at least eight years of practical experience under the supervision of a licensed journeyman or master electrician; or

(v) meets the qualifications determined by the division and board to be equivalent to these qualifications.

(d) A master residential electrician applicant shall produce satisfactory evidence that he:

(i) has at least two years of practical experience as a residential journeyman electrician; or

(ii) meets the qualifications determined by the division and board to be equivalent to this practical experience.

(e) A journeyman electrician applicant shall produce satisfactory evidence that he either:

(i) has successfully completed at least four years of full-time training and instruction as a licensed apprentice electrician under the supervision of a master electrician or journeyman electrician and in accordance with a planned training program approved by the division;

(ii) has six years of practical experience in wiring, installing, and repairing electrical apparatus and equipment for light, heat, and power under the supervision of a licensed master or journeyman electrician; or

(iii) meets the qualifications determined by the division and board to be equivalent to these qualifications.

(f) A residential journeyman electrician applicant shall produce satisfactory evidence that he:

(i) has successfully completed two years of training in an electrical training program approved by the division;

(ii) has four years of practical experience in wiring, installing, and repairing electrical apparatus and equipment for light, heat, and power under the supervision of a licensed master, journeyman, residential master, or residential journeyman electrician; or



(iii) meets the qualifications determined by the division and board to be equivalent to Subsection (3)(f)(i) or (f)(ii).

(g) The conduct of licensed apprentice electricians and their licensed supervisors shall be in accordance with the following:

(i) A licensed apprentice electrician shall be under the immediate supervision of a licensed master, journeyman, residential master, or residential journeyman electrician. An apprentice in the fourth year of training may work without supervision for a period not to exceed eight hours in any 24-hour period.

(ii) A licensed master, journeyman, residential master, or residential journeyman electrician may have under his immediate supervision on a residential project up to three licensed apprentice electricians.

(iii) A licensed master or journeyman electrician may have under his immediate supervision on nonresidential projects only one licensed apprentice electrician.

(h) An alarm company applicant shall:

(i) have a qualifying agent who is an officer, director, partner, proprietor, or manager of the applicant who:

(A) demonstrates 6,000 hours of experience in the alarm company business;

(B) demonstrates 2,000 hours of experience as a manager or administrator in the alarm company business or in a construction business; and

(C) passes an examination component established by rule by the division in collaboration with the board;

(ii) if a corporation, provide:

(A) the names, addresses, dates of birth, social security numbers, and fingerprint cards of all corporate officers, directors, and those responsible management personnel employed within the state or having direct responsibility for managing operations of the applicant within the state; and

(B) the names, addresses, dates of birth, social security numbers, and fingerprint cards of all shareholders owning 5% or more of the outstanding shares of the corporation, except this shall not be required if the stock is publicly listed and traded;

(iii) if a limited liability company, provide:

(A) the names, addresses, dates of birth, social security numbers, and fingerprint cards of all company officers, and those responsible management personnel employed within the state or having direct responsibility for managing operations of the applicant within the state; and

(B) the names, addresses, dates of birth, social security numbers, and fingerprint cards of all individuals owning 5% or more of the equity of the company;

(iv) if a partnership, the names, addresses, dates of birth, social security numbers, and fingerprint cards of all general partners, and those responsible management personnel employed within the state or having direct responsibility for managing operations of the applicant within the state;

(v) if a proprietorship, the names, addresses, dates of birth, social security numbers, and fingerprint cards of the proprietor, and those responsible management personnel employed within the state or having direct responsibility for managing operations of the applicant within the state;

(vi) be of good moral character in that officers, directors, shareholders described in Subsection (3)(h)(ii)(B), partners, proprietors, and responsible management personnel have not been convicted of a felony, a misdemeanor involving moral turpitude, or any other crime that when considered with the duties and responsibilities of an alarm company is considered by the division and the board to indicate that the best interests of the public are served by granting the applicant a license;

(vii) document that none of the applicant's officers, directors, shareholders described in Subsection (3)(h)(ii)(B), partners, proprietors, and responsible management personnel have been declared by any court of competent jurisdiction incompetent by reason of mental defect or disease and not been restored;

(viii) document that none of the applicant's officers, directors, shareholders described in Subsection (3)(h)(ii)(B), partners, proprietors, and responsible management personnel are currently suffering from habitual drunkenness or from drug addiction or dependence;

(ix) file and maintain with the division evidence of:

(A) comprehensive general liability insurance in form and in amounts to be established by

rule by the division in collaboration with the board;

(B) workers' compensation insurance that covers employees of the applicant in accordance with applicable Utah law; and

(C) registration as is required by applicable law with the:

(I) Division of Corporations and Commercial Code;

(II) Division of Workforce Information and Payment Services in the Department of Workforce Services, for purposes of Title 35A, Chapter 4, Employment Security Act;

(III) State Tax Commission; and

(IV) Internal Revenue Service; and

(x) meet with the division and board.

(i) Each applicant for licensure as an alarm company agent shall:

(i) submit an application in a form prescribed by the division accompanied by fingerprint cards;

(ii) pay a fee determined by the department under Section 63-38-3.2;

(iii) be of good moral character in that the applicant has not been convicted of a felony, a misdemeanor involving moral turpitude, or any other crime that when considered with the duties and responsibilities of an alarm company agent is considered by the division and the board to indicate that the best interests of the public are served by granting the applicant a license;

(iv) not have been declared by any court of competent jurisdiction incompetent by reason of mental defect or disease and not been restored;

(v) not be currently suffering from habitual drunkenness or from drug addiction or dependence; and

(vi) meet with the division and board if requested by the division or the board.

(4) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the division may make rules establishing when Federal Bureau of Investigation records shall be checked for applicants as an alarm company or alarm company agent.

(5) To determine if an applicant meets the qualifications of Subsections (3)(h)(vi) and (3)(i)(iii), the division shall provide an appropriate number of copies of fingerprint cards to the

Department of Public Safety with the division's request to:

(a) conduct a search of records of the Department of Public Safety for criminal history information relating to each applicant for licensure as an alarm company or alarm company agent and each applicant's officers, directors, and shareholders described in Subsection (3)(h)(ii)(B), partners, proprietors, and responsible management personnel; and

(b) forward to the Federal Bureau of Investigation a fingerprint card of each applicant requiring a check of records of the F.B.I. for criminal history information under this section.

(6) The Department of Public Safety shall send to the division:

(a) a written record of criminal history, or certification of no criminal history record, as contained in the records of the Department of Public Safety in a timely manner after receipt of a fingerprint card from the division and a request for review of Department of Public Safety records; and

(b) the results of the F.B.I. review concerning an applicant in a timely manner after receipt of information from the F.B.I.

(7) (a) The division shall charge each applicant for licensure as an alarm company or alarm company agent a fee, in accordance with Section 63-38-3.2, equal to the cost of performing the records reviews under this section.

(b) The division shall pay the Department of Public Safety the costs of all records reviews, and the Department of Public Safety shall pay the F.B.I. the costs of records reviews under this section.

(8) Information obtained by the division from the reviews of criminal history records of the Department of Public Safety and the F.B.I. shall be used or disseminated by the division only for the purpose of determining if an applicant for licensure as an alarm company or alarm company agent is qualified for licensure.

(9) (a) An application for licensure under this chapter shall be denied if:

(i) the applicant has had a previous license, which was issued under this chapter, suspended or revoked within one year prior to the date of the applicant's application;

(ii) (A) the applicant is a partnership, corporation, or limited liability company; and

(B) any corporate officer, director, shareholder holding 25% or more of the stock in the applicant, partner, member, agent acting as a qualifier, or any person occupying a similar status, performing similar functions, or directly or indirectly controlling the applicant has served in any similar capacity with any person or entity which has had a previous license, which was issued under this chapter, suspended or revoked within one year prior to the date of the applicant's application;  
or

(iii) (A) the applicant is an individual or sole proprietorship; and

(B) any owner or agent acting as a qualifier has served in any capacity listed in Subsection (9)(a)(ii)(B) in any entity which has had a previous license, which was issued under this chapter, suspended or revoked within one year prior to the date of the applicant's application.

(b) An application for licensure under this chapter shall be reviewed by the appropriate licensing board prior to approval if:

(i) the applicant has had a previous license, which was issued under this chapter, suspended or revoked more than one year prior to the date of the applicant's application;

(ii) (A) the applicant is a partnership, corporation, or limited liability company; and

(B) any corporate officer, director, shareholder holding 25% or more of the stock in the applicant, partner, member, agent acting as a qualifier, or any person occupying a similar status, performing similar functions, or directly or indirectly controlling the applicant has served in any similar capacity with any person or entity which has had a previous license, which was issued under this chapter, suspended or revoked more than one year prior to the date of the applicant's application;  
or

(iii) (A) the applicant is an individual or sole proprietorship; and

(B) any owner or agent acting as a qualifier has served in any capacity listed in Subsection (9)(b)(ii)(B) in any entity which has had a previous license, which was issued under this chapter, suspended or revoked more than one year prior to the date of the applicant's application.

Section 9. Section **58-55-303** is amended to read:

**58-55-303. Term of license -- Expiration -- Renewal.**

(1) Each license issued under this chapter shall be issued in accordance with a two-year

renewal cycle established by rule. The division may by rule extend or shorten a renewal period by as much as one year to stagger the renewal cycle it administers.

(2) At the time of renewal, the licensee shall show satisfactory evidence of continuing financial responsibility as required under Section 58-55-306.

(3) Each license automatically expires on the expiration date shown on the license unless the licensee renews the license in accordance with Section 58-1-308.

(4) The requirements of Subsection 58-55-302(9) shall also apply to applicants seeking to renew or reinstate a license.

(5) In addition to any other requirements imposed by law, if a license has been suspended or revoked for any reason, the applicant must pay in full all fines imposed by the division, resolve any outstanding citations or disciplinary actions with the division, satisfy any Section 58-55-503 judgment and sentence or nontrial resolution, complete a new financial responsibility review as required under Section 58-55-306, using only titled assets, and pay in full any reimbursement amount as provided in Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act.

Section 10. Section **58-55-501** is amended to read:

**58-55-501. Unlawful conduct.**

Unlawful conduct includes:

(1) engaging in a construction trade, acting as a contractor, an alarm business or company, or an alarm company agent, or representing oneself to be engaged in a construction trade or to be acting as a contractor in a construction trade requiring licensure, unless the person doing any of these is appropriately licensed or exempted from licensure under this chapter;

(2) acting in a construction trade, as an alarm business or company, or as an alarm company agent beyond the scope of the license held;

(3) hiring or employing in any manner an unlicensed person, other than an employee for wages who is not required to be licensed under this chapter, to engage in a construction trade for which licensure is required or to act as a contractor or subcontractor in a construction trade requiring licensure;

(4) applying for or obtaining a building permit either for oneself or another when not

licensed or exempted from licensure as a contractor under this chapter;

(5) issuing a building permit to any person for whom there is no evidence of a current license or exemption from licensure as a contractor under this chapter;

(6) applying for or obtaining a building permit for the benefit of or on behalf of any other person who is required to be licensed under this chapter but who is not licensed or is otherwise not entitled to obtain or receive the benefit of the building permit;

(7) failing to obtain a building permit when required by law or rule;

(8) submitting a bid for any work for which a license is required under this chapter by a person not licensed or exempted from licensure as a contractor under this chapter;

(9) willfully or deliberately misrepresenting or omitting a material fact in connection with an application to obtain or renew a license under this chapter;

(10) allowing one's license to be used by another except as provided by statute or rule;

(11) doing business under a name other than the name appearing on the license, except as permitted by statute or rule;

(12) if licensed as a specialty contractor in the electrical trade or plumbing trade, journeyman plumber, residential journeyman plumber, journeyman electrician, master electrician, or residential electrician, failing to directly supervise an apprentice under one's supervision or exceeding the number of apprentices one is allowed to have under his supervision;

(13) if licensed as a contractor or representing oneself to be a contractor, receiving any funds in payment for a specific project from an owner or any other person, which funds are to pay for work performed or materials and services furnished for that specific project, and after receiving the funds to exercise unauthorized control over the funds by failing to pay the full amounts due and payable to persons who performed work or furnished materials or services within a reasonable period of time;

(14) employing as an alarm company an unlicensed individual as an alarm company agent, except as permitted under the exemption from licensure provisions under Section 58-1-307;

(15) if licensed as an alarm company or alarm company agent, filing with the division fingerprint cards for an applicant which are not those of the applicant, or are in any other way false or fraudulent and intended to mislead the division in its consideration of the applicant for licensure;

- (16) if licensed under this chapter, willfully or deliberately disregarding or violating:
- (a) the building or construction laws of this state or any political subdivision;
  - (b) the safety and labor laws applicable to a project;
  - (c) any provision of the health laws applicable to a project;
  - (d) the workers' compensation insurance laws of the state applicable to a project;
  - (e) the laws governing withholdings for employee state and federal income taxes, unemployment taxes, FICA, or other required withholdings; or
  - (f) reporting, notification, and filing laws of this state or the federal government;
- (17) aiding or abetting any person in evading the provisions of this chapter or rules established under the authority of the division to govern this chapter; ~~[or]~~
- (18) engaging in the construction trade or as a contractor for the construction of residences of up to two units when not currently registered or exempt from registration as a qualified beneficiary under Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act~~[-]; or~~
- (19) failing, as an original contractor, as defined in Section 38-11-102, to include in a written contract the notification required in Section 38-11-108.

Section 11. Section **58-55-502** is amended to read:

**58-55-502. Unprofessional conduct.**

Unprofessional conduct includes:

- (1) failing to establish, maintain, or demonstrate financial responsibility while licensed as a contractor under this chapter;
- (2) disregarding or violating through gross negligence or a pattern of negligence:
- (a) the building or construction laws of this state or any political subdivision;
  - (b) the safety and labor laws applicable to a project;
  - (c) any provision of the health laws applicable to a project;
  - (d) the workers' compensation insurance laws of this state applicable to a project;
  - (e) the laws governing withholdings for employee state and federal income taxes, unemployment taxes, FICA, or other required withholdings; or
  - (f) any reporting, notification, and filing laws of this state or the federal government;



(3) any willful, fraudulent, or deceitful act by a licensee, caused by a licensee, or at a licensee's direction which causes material injury to another;

(4) contract violations that pose a threat or potential threat to the public health, safety, and welfare including:

(a) willful, deliberate, or grossly negligent departure from or disregard for plans or specifications, or abandonment or failure to complete a project without the consent of the owner or his duly authorized representative or the consent of any other person entitled to have the particular project completed in accordance with the plans, specifications, and contract terms;

(b) failure to deposit funds to the benefit of an employee as required under any written contractual obligation the licensee has to the employee;

(c) failure to maintain in full force and effect any health insurance benefit to an employee that was extended as a part of any written contractual obligation or representation by the licensee, unless the employee is given written notice of the licensee's intent to cancel or reduce the insurance benefit at least 45 days before the effective date of the cancellation or reduction;

(d) failure to reimburse the Residence Lien Recovery Fund [~~within 90 days after any disbursement from the fund resulting from the licensee's failure to pay qualified beneficiaries as provided in Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act~~] as required by Section 38-11-207;

(e) failure to provide, when applicable, the information required by Section 38-11-108; and

(f) willfully or deliberately misrepresenting or omitting a material fact in connection with an application to claim recovery from the Residence Lien Recovery Fund under Section 38-11-204;

(5) failing as an alarm company to notify the division of the cessation of performance of its qualifying agent, or failing to replace its qualifying agent as required under Section 58-55-304;

(6) failing as an alarm company agent to carry or display a copy of the licensee's license as required under Section 58-55-311; or

(7) failing to comply with operating standards established by rule in accordance with Section 58-55-308.

Section 12. Section **58-55-503** is amended to read:

**58-55-503. Penalty for unlawful conduct -- Citations.**

(1) Any person who violates Subsections 58-55-501(1), (2), (3), (9), (10), (12), or (17), or who fails to comply with a citation issued under this section after it is final, is guilty of a class A misdemeanor. Any person who violates the provisions of Subsection 58-55-501(8) may not be awarded and may not accept a contract for the performance of the work.

(2) Any person who violates the provisions of Subsection 58-55-501(13) is guilty of an infraction unless the violator did so with the intent to deprive the person to whom money is to be paid of the money received, in which case the violator is guilty of theft, as classified in Section 76-6-412.

(3) Grounds for immediate suspension of the licensee's license by the division and the board include the issuance of a citation for violation of Section 58-55-501 or the failure by a licensee to make application to, report to, or notify the division with respect to any matter for which application, notification, or reporting is required under this chapter or rules adopted under this chapter, including applying to the division for a new license to engage in a new specialty classification or to do business under a new form of organization or business structure, filing with the division current financial statements, notifying the division concerning loss of insurance coverage, or change in qualifier.

(4) (a) If upon inspection or investigation, the division concludes that a person has violated the provisions of Subsections 58-55-501(1), (2), (3), (9), (10), (12), (14), (19), or any rule or order issued with respect to these subsections, and that disciplinary action is appropriate, the director or his designee from within the division for each alternative respectively, shall, promptly issue a citation to the person according to this chapter and any pertinent rules, attempt to negotiate a stipulated settlement, or notify the person to appear before an adjudicative proceeding conducted under Title 63, Chapter 46b, Administrative Procedures Act.

(i) Any person who is in violation of the provisions of Subsection 58-55-501(1), (2), (3), (9), (10), (12), ~~or~~ (14), or (19), as evidenced by an uncontested citation, a stipulated settlement, or by a finding of violation in an adjudicative proceeding, may be assessed a fine pursuant to this Subsection (4) and may, in addition to or in lieu of, be ordered to cease and desist from violating Subsection 58-55-501(1), (2), (3), (9), (10), (12), ~~or~~ (14), or (19).

(ii) Except for a cease and desist order, the licensure sanctions cited in Section 58-55-401 may not be assessed through a citation.

(b) Each citation shall be in writing and describe with particularity the nature of the violation, including a reference to the provision of the chapter, rule, or order alleged to have been violated. The citation shall clearly state that the recipient must notify the division in writing within 20 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing conducted under Title 63, Chapter 46b, Administrative Procedures Act. The citation shall clearly explain the consequences of failure to timely contest the citation or to make payment of any fines assessed by the citation within the time specified in the citation.

(c) Each citation issued under this section, or a copy of each citation, may be served upon any person upon whom a summons may be served in accordance with the Utah Rules of Civil Procedure and may be made personally or upon his agent by a division investigator or by any person specially designated by the director or by mail.

(d) If within 20 calendar days from the service of a citation, the person to whom the citation was issued fails to request a hearing to contest the citation, the citation becomes the final order of the division and is not subject to further agency review. The period to contest a citation may be extended by the division for cause.

(e) The division may refuse to issue or renew, suspend, revoke, or place on probation the license of a licensee who fails to comply with a citation after it becomes final.

(f) The failure of an applicant for licensure to comply with a citation after it becomes final is a ground for denial of license.

(g) No citation may be issued under this section after the expiration of six months following the occurrence of any violation.

(h) Fines shall be assessed by the director or his designee according to the following:

- (i) for a first offense handled pursuant to Subsection (4)(a), a fine of up to \$1,000;
- (ii) for a second offense handled pursuant to Subsection (4)(a), a fine of up to \$2,000; and
- (iii) for any subsequent offense handled pursuant to Subsection (4)(a), a fine of up to \$2,000 for each day of continued offense.

(i) (i) For purposes of issuing a final order under this section and assessing a fine under Subsection (4)(i), an offense constitutes a second or subsequent offense if:

(A) the division previously issued a final order determining that a person committed a first or second offense in violation of Subsection 58-55-501(1), (2), (3), (9), (10), (12), ~~or~~ (14), or (19); or

(B) (I) the division initiated an action for a first or second offense;

(II) no final order has been issued by the division in the action initiated under Subsection (4) (i)(i)(B)(I);

(III) the division determines during an investigation that occurred after the initiation of the action under Subsection (4) (i)(i)(B)(I) that the person committed a second or subsequent violation of the provisions of Subsection 58-55-501(1), (2), (3), (9), (10), (12), ~~or~~ (14), or (19); and

(IV) after determining that the person committed a second or subsequent offense under Subsection (4) (i)(i)(B)(III), the division issues a final order on the action initiated under Subsection (4) (i)(i)(B)(I).

(ii) In issuing a final order for a second or subsequent offense under Subsection (4) (i)(i), the division shall comply with the requirements of this section.

(5) Any penalty imposed by the director under Subsection (4) (h) shall be deposited into the Commerce Service Fund. Any penalty which is not paid may be collected by the director by either referring the matter to a collection agency or bringing an action in the district court of the county in which the person against whom the penalty is imposed resides or in the county where the office of the director is located. Any county attorney or the attorney general of the state is to provide legal assistance and advice to the director in any action to collect the penalty. In any action brought to enforce the provisions of this section, reasonable attorney's fees and costs shall be awarded.