

MECHANICS' LIEN AMENDMENTS

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Kevin S. Garn

This act modifies the Mechanics' Lien Act. The act makes a conforming amendment to legislation enacted in the 2001 General Session.

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

AMENDS:

38-1-28, as enacted by Chapter 229, Laws of Utah 2001

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

Section 1. Section **38-1-28** is amended to read:

38-1-28. Notice of release of lien and substitution of alternate security.

(1) The owner of any interest in real property which is subject to a mechanics' lien recorded under this chapter, or any original contractor or subcontractor affected by the lien, who disputes the correctness or validity of the lien may, either before or after the commencement of an action to enforce the lien, record a notice of release of lien and substitution of alternate security, which meets the requirements of Subsection (2), in the office of the county recorder where the lien was recorded.

(2) A notice of release of lien and substitution of alternate security recorded under Subsection (1) shall meet the requirements for the recording of documents in Title 57, Chapter 3, Recording of Documents, shall reference the lien sought to be released, and shall have as an attachment a surety bond or evidence of a cash deposit which:

(a) (i) if a surety bond, is executed by a surety company which is treasury listed, A-rated by AM Best Company, and authorized to issue surety bonds in this state; or

(ii) if [~~a letter of credit or~~] evidence of a cash deposit, meets the requirements established by rule by the Department of Commerce in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act;

(b) is in an amount equal to 150% of the amount claimed by the lien claimant in connection with the parcel of real property sought to be released;

(c) is made payable to the lien claimant;

(d) is conditioned for the payment of the judgment which would have been rendered against the property in the action to enforce the lien together with any costs and attorneys' fees awarded by the court; and

(e) has as principal the owner of the interest in the real property, or the original contractor or subcontractor affected by the lien.

(3) 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 mechanics' lien to which the notice applies.

(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 cause a copy of the notice, together with any attachments, to be served within 30 days upon the lien claimant.

(b) If a suit is pending to foreclose the lien at the time the notice is served upon the lien claimant under Subsection (4)(a), the lien claimant shall, within 90 days from 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 lien claimant to commence a suit against the alternate security within the same time as an action to enforce the lien under Section 38-1-11;

(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); or

(c) the dismissal with prejudice of the foreclosure suit or suit against the alternate security as to the lien claimant or the entry of judgment against the lien claimant in such a suit.

(6) If a copy of the notice of release of lien and substitution of alternate security is not served upon the lien claimant as provided in Subsection (4)(a), the lien claimant shall have 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.

