

LIEN RECOVERY FUND AMENDMENTS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: R. Curt Webb

LONG TITLE

General Description:

This bill modifies the Residence Lien Restriction and Lien Recovery Fund Act.

Highlighted Provisions:

This bill:

- ▶ creates a certificate of compliance to be obtained by the owner of a residence when the owner has complied with provisions of the Residence Lien Restriction and Lien Recovery Fund Act and is seeking protection under the Act;
- ▶ establishes the Division of Occupational and Professional Licensing as the administrator of the certificate of compliance;
- ▶ broadens the definition of a contractor used in establishing that an owner has complied with provisions of the Residence Lien Restriction and Lien Recovery Fund Act and is seeking protection under the Act;
- ▶ delays judicial determination of the rights and responsibilities of an owner of a residence in a lien proceeding until the owner has time to establish compliance with the Residence Lien Restriction and Lien Recovery Fund Act;
- ▶ eliminates an outdated provision of the Residence Lien Restriction and Lien Recovery Fund Act requiring a study of the Lien Recovery Fund; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

- 38-1-11, as last amended by Chapter 198, Laws of Utah 2001
- 38-11-102, as last amended by Chapter 198, Laws of Utah 2001
- 38-11-104, as last amended by Chapter 172, Laws of Utah 1995
- 38-11-105, as enacted by Chapter 308, Laws of Utah 1994
- 38-11-106, as enacted by Chapter 308, Laws of Utah 1994
- 38-11-107, as last amended by Chapter 198, Laws of Utah 2001
- 38-11-202, as last amended by Chapter 193, Laws of Utah 1999
- 38-11-203, as last amended by Chapter 276, Laws of Utah 2003
- 38-11-204, as last amended by Chapter 198, Laws of Utah 2001

ENACTS:

- 38-11-110, Utah Code Annotated 1953

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.

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

(a) 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)]~~ (b) 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)]~~ (c) 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.

(d) Judicial determination of the rights and liabilities of the owner of the residence under Title 38, Chapters 1 and 11, and Title 14, Chapter 2, shall be stayed until after the owner has been

given a reasonable period of time to establish compliance with Subsections 38-11-204(4)(a) and (4)(b) through an informal proceeding, as set forth in Title 63, Chapter 46b, Administrative Procedures Act, commenced within 30 days of the owner being served summons in the foreclosure action, at the Division of Occupational and Professional Licensing and obtain a certificate of compliance or denial of certificate of compliance, as defined in Section 38-11-102.

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) "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.

~~[(2)]~~ (3) "Construction on an owner-occupied residence" means designing, engineering, constructing, altering, remodeling, improving, repairing, or maintaining a new or existing residence.

~~[(3)]~~ (4) "Department" means the Department of Commerce.

~~[(4)]~~ (5) "Director" means the director of the Division of Occupational and Professional Licensing.

~~[(5)]~~ (6) "Division" means the Division of Occupational and Professional Licensing.

~~[(6)]~~ (7) "Encumbered fund balance" means the aggregate amount of ~~[aH]~~ outstanding claims against the fund. The remainder of monies in the fund are unencumbered funds.

~~[(7)]~~ (8) "Executive director" means the executive director of the Department of Commerce.

~~[(8)]~~ (9) "Factory built housing" is as defined in Section 58-56-3.

~~[(9)]~~ (10) "Factory built housing retailer" means a person that sells factory built housing to consumers.

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

~~[(11)]~~ (12) "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.

~~[(12)]~~ (13) "Licensee" means any holder of a license issued under Title 58, Chapters 3a, 22, 53, and 55.

~~[(13)]~~ (14) "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.

~~[(14)]~~ (15) "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.

~~[(15)]~~ (16) "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.

~~[(16)]~~ (17) "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.

~~[(17)]~~ (18) "Qualified beneficiary" means a person who:

(a) provides qualified services;

(b) pays ~~[all]~~ necessary fees or ~~[assessment]~~ assessments 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.

~~[(18)]~~ (19) (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;

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

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

(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" do not include the construction of factory built housing in the factory.

~~[(19)]~~ (20) "Real estate developer" means a person having an ownership interest in real property who 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.

~~[(20)]~~ (21) "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.

~~[(21)]~~ (22) "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 is completed.

Section 3. Section **38-11-104** is amended to read:

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 ~~[claims]~~ any claim for payment from the fund ~~[by]~~ 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 ~~[claims]~~ 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 and frequency of any assessment under this chapter;

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

(iv) the availability and advisability of using funds for purchase of surety bonds to guarantee payment to qualified beneficiaries; and

(v) 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.

Section 4. Section **38-11-105** is amended to read:

38-11-105. Procedures established by rule.

In compliance with Title 63, Chapter 46b, 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 and by which assessments shall be collected.

Section 5. Section **38-11-106** is amended to read:

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 [for the]

(3) failure of the fund to pay any amounts ordered by the director to be paid from the fund.

Section 6. 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) an owner meets the conditions described in Subsections 38-11-204~~(3)~~(4)(a) and

~~[(3)]~~ (4)(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)]~~(4)(a) and ~~[(3)]~~ (4)(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]~~ 15 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)]~~ 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 38-1-7(2)(e). The 15-day period begins accruing from the date postmarked on the certificate of compliance sent to the lien claimant.

Section 7. Section **38-11-110** is enacted to read:

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

The director shall have authority to issue or deny a certificate of compliance only after determining through an informal proceeding, as set forth in Title 63, Chapter 46b, Administrative Procedures Act, that the owner is in compliance with Subsections 38-11-204(4)(a) and (4)(b).

Section 8. Section **38-11-202** is amended to read:

38-11-202. Payments to the fund.

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The Residence Lien Recovery Fund shall be supported solely from:

(1) initial and special assessments collected by the division from licensed contractors registered as qualified beneficiaries in accordance with Subsections 38-11-301(1) and (2) and Section 38-11-206;

(2) initial and special assessments collected by the division from other qualified beneficiaries registering with the division in accordance with Subsection 38-11-301(3) and Section 38-11-206;

(3) fees determined by the division under Section 63-38-3.2 collected from laborers under Subsection 38-11-204~~(7)~~(8) when the laborers obtain a recovery from the fund;

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

(5) application fees determined by the division under Section 63-38-3.2 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;

(6) registration fees determined by the division under Section 63-38-3.2 collected from other qualified beneficiaries registering with the department in accordance with Subsection 38-11-301(3)(a)(iii);

(7) reinstatement fees determined by the division under Section 63-38-3.2 collected from registrants in accordance with Subsection 38-11-302(5)(b);

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

(9) any interest earned by the fund.

Section 9. 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)~~(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 [aH] 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 [aH] 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.

~~[(6) The Executive Director of the Department of Commerce shall initiate a study to determine the viability of the Lien Recovery Fund.]~~

Section 10. Section **38-11-204** is amended to read:

**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 either Subsection [~~(3)~~] (4) or [~~(6)~~] (7);

(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)~~] (4) or [~~(6)~~] (7);

(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 [~~(3)(c)~~] (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 [~~(3)(c)~~] (4)(d) because the nonpaying party filed bankruptcy within one year after the entry of judgment; or
- (c) [~~if a laborer,~~] from the date the laborer, trying to recover from the fund, completed the laborer's qualified services.

(3) To obtain a certificate of compliance an owner or agent of the owner shall establish with the division that the owner meets the requirements of Subsections (4)(a) and (4)(b).

[~~(3)~~] (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 [~~(3)~~] (4)(a) with whom the owner has a written contract in accordance with the written contract and any amendments to the contract[~~, and~~];

(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;

~~[(e)]~~ (d) (i) the qualified beneficiary filed:

(A) an action against the nonpaying party to recover monies owed ~~[him]~~ to the qualified beneficiary 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)(e)]~~ (4)(d)(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:

(I) 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]~~;

(II) received return of service of the order from a person qualified to serve documents

under the Utah Rules of Civil Procedure, Rule 4(b)[~~7~~]; and [~~has~~]

(III) 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)~~] (4)(d)(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~~] qualified beneficiary timely filed a proof of claim where permitted in the bankruptcy action, if the nonpaying party has filed bankruptcy; [~~and~~]

[~~(d)~~] (e) the qualified beneficiary is not entitled to reimbursement from any other person[~~7~~]; 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.

[~~(4)~~] (5) The requirements of [~~Subsection (3)(c)~~] Subsections (4)(d)(i), (ii), and (iii) 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 (3)(c)~~] Subsections (4)(d)(i), (ii), and (iii) because the nonpaying party filed bankruptcy.

[~~(5)~~] (6) If a qualified beneficiary fails to file the notice with the division required under Subsection [~~(3)(c)~~] (4)(d)(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)[~~(f)~~] has not been reached by payments from the fund to qualified beneficiaries who have complied with the notice requirements of Subsection [~~(3)(c)~~] (4)(d)(i)(B); and

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

[~~(6)~~] (7) 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)]~~ (8) 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)]~~ (9) The requirements of ~~[Subsection (3)(a)(i)]~~ Subsections (4)(a) and (4)(b) may be satisfied if ~~[a claimant]~~ 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 ~~[that]~~ 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.

(10) The director shall have equitable power to determine if the requirements of Subsections (4)(a) and (4)(b) have been met, but any decision by the director under Title 38, Chapter 11, shall not alter or have any effect on any other decision by the division under Title 58.