

1                                   **MECHANICS' LIEN AND PAYMENT**

2   **AMENDMENTS**

3   2006 GENERAL SESSION

4   STATE OF UTAH

5   **Chief Sponsor: Scott K. Jenkins**

6   House Sponsor: Michael T. Morley

---

7

8   **LONG TITLE**

9   **General Description:**

10           This bill modifies the lien provisions to address mechanics' liens or payment rights  
11 including the waiver of such liens or rights.

12   **Highlighted Provisions:**

13           This bill:

- 14           ▶ repeals language related to waiver of rights or privileges under mechanics' lien
- 15 statute;
- 16           ▶ enacts language addressing waiver or impairment of mechanics' lien rights;
- 17           ▶ creates forms for waiver and release of mechanics' liens or bond rights;
- 18           ▶ creates forms for restrictive endorsements related to a waiver and release;
- 19           ▶ addresses when payments are made by checks;
- 20           ▶ addresses the enforcement of accord and satisfactions or settlements;
- 21           ▶ addresses reliance on a waiver and release; and
- 22           ▶ makes the new language applicable to a waiver and release or restrictive
- 23 endorsement signed on or after January 1, 2007.

24   **Monies Appropriated in this Bill:**

25           None

26   **Other Special Clauses:**

27           This bill takes effect on January 1, 2007.



28 **Utah Code Sections Affected:**

29 ENACTS:

30 **38-1-39**, Utah Code Annotated 1953

31 REPEALS:

32 **38-1-29**, as enacted by Chapter 229, Laws of Utah 2001



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

35 Section 1. Section **38-1-39** is enacted to read:

36 **38-1-39. Contract that attempts to waiver or impair lien rights void --**

37 **Requirements for enforcing waiver or release of lien rights of lien claimant -- Forms --**

38 **Scope.**

39 (1) As used in this section:

40 (a) "Check" means a payment instrument on a depository institution including:

41 (i) a check;

42 (ii) a draft;

43 (iii) an order; or

44 (iv) other instrument.

45 (b) "Depository institution" is as defined in Section 7-1-103.

46 (c) "Lien claimant" means a person that claims a lien under this chapter.

47 (2) (a) Except as provided in this section:

48 (i) a term of a contract that attempts to waive or impair the lien rights under this

49 chapter of a person entitled to lien under Section 38-1-3:

50 (A) is void;

51 (B) is not enforceable; and

52 (C) does not create any estoppel or impairment of a lien; and

53 (ii) an owner, contractor, or subcontractor may not obtain the waiver of, or impair the

54 lien rights of a person entitled to lien under Section 38-1-3 by:

55 (A) any term of a contract;

56 (B) any terms on a negotiable instrument; or

57 (C) other means.

58 (b) A written consent given by a lien claimant that waives or limits the lien claimant's

59 lien rights is unenforceable unless the lien claimant:

60 (i) executes a waiver and release that is:

61 (A) signed by the lien claimant or the lien claimant's authorized agent; and

62 (B) in the form set forth in Subsection (4); and

63 (ii) receives payment of the amount identified in the waiver and release:

64 (A) including payment by a joint payee check; and

65 (B) only to the extent of the payment.

66 (c) A person may include a restrictive endorsement on a check to effectuate a waiver

67 and release meeting the requirements of this Subsection (2).

68 (3) (a) Notwithstanding the language of a waiver and release, Subsection (3)(b) applies

69 if:

70 (i) the payment given in exchange for any waiver and release of lien is made by check;

71 and

72 (ii) the check fails to clear the depository institution on which it is drawn for any

73 reason.

74 (b) If the conditions of Subsection (3)(a) are met:

75 (i) the waiver and release described in Subsection (3)(a) is null, void, and of no legal

76 effect; and

77 (ii) the following will not be affected by the lien claimant's execution of the waiver and

78 release:

79 (A) any lien;

80 (B) any lien right;

81 (C) any bond right;

82 (D) any contract right; or

83 (E) any other right to recover payment afforded to the lien claimant in law or equity.

84 (4) A waiver and release given by a lien claimant is unenforceable unless it is in the

85 form provided in this Subsection (4) for the circumstance provided in this Subsection (4).

86 (a) (i) A waiver and release shall be in the form provided in Subsection (4)(a)(ii) if the

87 lien claimant is required to execute a waiver and release in exchange for or to induce the

88 payment of a progress billing.

89 (ii) Under the circumstances provided in Subsection (4)(a)(i), the waiver and release

90 shall be in the following form:

91 "UTAH CONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT

92 Property Name: \_\_\_\_\_

93 Property Location: \_\_\_\_\_

94 Undersigned's Customer: \_\_\_\_\_

95 Invoice/Payment Application Number: \_\_\_\_\_

96 Payment Amount: \_\_\_\_\_

97 Payment Period: \_\_\_\_\_

98 To the extent provided below, this document becomes effective to release and the  
99 undersigned is considered to waive any notice of lien or right under Utah Code Ann., Title 38,  
100 Chapter 1, Mechanics' Liens, or any bond right under Utah Code Ann., Title 14, Contractors'  
101 Bonds, or Section 63-56-504 related to payment rights the undersigned has on the above  
102 described Property once:

103 (1) the undersigned receives a check in the above referenced Payment Amount payable  
104 to the undersigned;

105 (2) the check is properly endorsed; and

106 (3) the check is paid by the depository institution on which it is drawn.

107 This waiver and release applies to a progress payment for the work, materials, or  
108 equipment furnished by the undersigned to the Property or to the Undersigned's Customer  
109 which are the subject of the Invoice or Payment Application, but only to the extent of the  
110 Payment Amount. This waiver and release does not apply to any retention withheld; any items,  
111 modifications, or changes pending approval; disputed items and claims; or items furnished or  
112 invoiced after the Payment Period.

113 Before a recipient of this document relies on it, the recipient must verify evidence of  
114 payment to the undersigned.

115 The undersigned warrants that the undersigned either has already paid or will use the  
116 money the undersigned receives from this progress payment promptly to pay in full all the  
117 undersigned's laborers, subcontractors, materialmen, and suppliers for all work, materials, or  
118 equipment that are the subject of this waiver and release.

119 Dated: \_\_\_\_\_

120 \_\_\_\_\_ (Company Name)

121 \_\_\_\_\_ By: \_\_\_\_\_

122 \_\_\_\_\_ Its: \_\_\_\_\_ "

123 (iii) A person may place a restrictive endorsement on a check to effectuate a waiver  
124 and release described in Subsection (4)(a)(ii) if that restrictive endorsement is in the following  
125 form:

126 "This check is a progress payment for (property description sufficient for  
127 identification). Endorsement of this check is an acknowledgment by the endorser that the  
128 waiver and release to which the payment applies is effective to the extent provided in Utah  
129 Code Ann. Subsection 38-1-39(4)(a)."

130 (b) (i) A waiver and release shall be in the form provided in Subsection (4)(b)(ii) if the  
131 lien claimant is required to execute a waiver and release in exchange for or to induce the  
132 payment of a final billing.

133 (ii) Under the circumstances provided in Subsection (4)(b)(i), the waiver and release  
134 shall be in the following form:

135 "UTAH CONDITIONAL WAIVER AND RELEASE UPON FINAL PAYMENT

136 Property Name: \_\_\_\_\_

137 Property Location: \_\_\_\_\_

138 Undersigned's Customer: \_\_\_\_\_

139 Invoice/Payment Application Number: \_\_\_\_\_

140 Payment Amount: \_\_\_\_\_

141 Amount of Disputed Claims: \_\_\_\_\_

142 To the extent provided below, this document becomes effective to release and the  
143 undersigned is considered to waive any notice of lien or right under Utah Code Ann., Title 38,  
144 Chapter 1, Mechanics' Liens, or any bond right under Utah Code Ann., Title 14, Contractors'  
145 Bonds, or Section 63-56-504 related to payment rights the undersigned has on the above  
146 described Property once:

147 (1) the undersigned receives a check in the above referenced Payment Amount payable  
148 to the undersigned;

149 (2) the check is properly endorsed; and

150 (3) the check is paid by the depository institution on which it is drawn.

151 This waiver and release applies to the final payment for the work, materials, or

152 equipment furnished by the undersigned to the Property or to the Undersigned's Customer.  
153 This waiver and release does not apply to payment of Disputed Claims, if any.

154 Before a recipient of this document relies on it, the recipient must verify evidence of  
155 payment to the undersigned.

156 The undersigned warrants that the undersigned either has already paid or will use the  
157 money the undersigned receives from the final payment promptly to pay in full all the  
158 undersigned's laborers, subcontractors, materialmen, and suppliers for all work, materials, or  
159 equipment that are the subject of this waiver and release.

160 Dated: \_\_\_\_\_

161 \_\_\_\_\_ (Company Name)

162 \_\_\_\_\_ By: \_\_\_\_\_

163 \_\_\_\_\_ Its: \_\_\_\_\_ "

164 (iii) A person may place a restrictive endorsement on a check to effectuate a waiver  
165 and release described in Subsection (4)(b)(ii) if that restrictive endorsement is in the following  
166 form:

167 "This check is a final payment for (property description sufficient for identification).

168 Endorsement of this check is an acknowledgment by the endorser that the waiver and release to  
169 which the payment applies is effective to the extent provided in Utah Code Ann. Subsection  
170 38-1-39(4)(b)."

171 (5) (a) If the conditions of Subsection (5)(b) are met, this section does not affect the  
172 enforcement of:

173 (i) an accord and satisfaction regarding a bona fide dispute; or

174 (ii) an agreement made in settlement of an action pending in any court or arbitration.

175 (b) Pursuant to Subsection (5)(a), this section does not affect enforcement of an accord  
176 and satisfaction or settlement described in Subsection (5)(a) if the accord and satisfaction or  
177 settlement:

178 (i) is in a writing signed by the lien claimant; and

179 (ii) specifically references the lien rights waived or impaired.

180 (6) Before a recipient of a waiver and release meeting the requirements of this section  
181 may rely on the waiver and release, the recipient shall verify payment to the lien claimant as  
182 provided in the waiver and release.

183 Section 2. **Repealer.**

184 This bill repeals:

185 Section **38-1-29, No waiver of rights.**

186 Section 3. **Effective date.**

187 This bill takes effect on January 1, 2007 and applies to a waiver and release or  
188 restrictive endorsement signed on or after January 1, 2007.

---

---

**Legislative Review Note**

**as of 1-19-06 9:51 AM**

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

**Office of Legislative Research and General Counsel**

---

---

**Fiscal Note**  
**Bill Number SB0161**

**Mechanics' Lien and Payment Amendments**

*24-Jan-06*

*2:21 PM*

---

---

**State Impact**

No fiscal impact.

---

**Individual and Business Impact**

No fiscal impact.

---

**Office of the Legislative Fiscal Analyst**