

1st Sub. H.B. 160

CONSTRUCTION STANDARD AMENDMENTS

HOUSE FLOOR AMENDMENTS

AMENDMENT 2

FEBRUARY 14, 2006 2:34 PM

Representative **Ross I. Romero** proposes the following amendments:

1. *Page 2, Line 36:*

36 38-1-7, as last amended by Chapter 64, Laws of Utah 2005

38-1-11, as last amended by Chapter 64, Laws of Utah 2005

2. *Page 4, Line 115:*

115 governing the form of the statement required under Subsection (2)(a)(ix).

Section 2. 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 180 days from the day on which the lien claimant filed a notice of claim under Section 38-1-7.

(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 the lien claimant to show actual knowledge.

(3) (a) A lien filed under this chapter is automatically and immediately void if an action to enforce the lien is not filed within the time required by Section 38-1-11.

(b) Notwithstanding Section 78-12-40, a court has no subject matter jurisdiction to adjudicate a lien that becomes void under Subsection (3)(a).

~~{(3)}~~ **(4)** 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)}~~ **(5)** (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 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 instructions and form affidavit required by Subsection ~~{(4)}~~ (5) (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.

(c) If a lien claimant fails to provide to the owner of the residence the instructions and form affidavit required by Subsection ~~{(4)}~~ (5) (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.

(e) An owner applying for a certificate of compliance under Subsection ~~{(4)}~~ (5) (d) shall send by certified mail to all lien claimants:

- (i) a copy of the application for a certificate of compliance; and
- (ii) all materials filed in connection with the application.

(f) The Division of Occupational and Professional Licensing shall notify all lien claimants listed in an owner's application for a certificate of compliance under Subsection ~~{(4)}~~ (5) (d) of the issuance or denial of a certificate of compliance.

~~{(5)}~~ (6) The written notice requirement applies to liens filed on or after July 1, 2004.

Renumber remaining sections accordingly.