

LIEN AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: _____

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ bars a person otherwise qualified to file a lien from maintaining a lien on residential property if the original contract is a written or oral contract for no more than \$7,500;
- ▶ limits recovery from the lien recovery fund to those claiming under a written contract of over \$7,500; and
- ▶ modifies provisions relating to the issuance of a certificate of compliance.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

38-11-107, as last amended by Laws of Utah 2006, Chapter 205

38-11-110, as last amended by Laws of Utah 2008, Chapter 382

38-11-204, as last amended by Laws of Utah 2009, Chapter 183



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

29 Section 1. Section **38-11-107** is amended to read:

30 **38-11-107. Restrictions upon maintaining a lien against residence or owner's**
31 **interest in the residence.**

32 (1) A person qualified to file a lien upon an owner-occupied residence and the real
33 property associated with that residence under the provisions of Title 38, Chapter 1, Mechanics'
34 Liens, who provides qualified services under an agreement effective on or after January 1,
35 1995, other than directly with the owner, shall be barred after January 1, 1995, from
36 maintaining a lien upon that residence and real property or recovering a judgment in any civil
37 action against the owner or the owner-occupied residence to recover monies owed for qualified
38 services provided by that person if:

39 (a) (i) an owner meets the conditions described in Subsections 38-11-204(4)(a) and
40 [~~(4)~~] (b); or

41 (ii) an owner meets the conditions described in Subsections 38-11-204(4)(a) and (b),
42 except that the contract is a written or oral contract totaling no more than \$7,500; or

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

44 (ii) the subsequent owner who purchased the residence under Subsection (1)(b)(i)
45 occupies the residence as a primary or secondary residence within 180 days from the date of
46 transfer or the residence is occupied by the subsequent owner's tenant or lessee as a primary or
47 secondary residence within 180 days from the date of transfer; and

48 (iii) the owner from whom the subsequent owner purchased the residence [~~met~~]:

49 (A) meets the conditions described in Subsections 38-11-204(4)(a) and [~~(4)~~] (b)[~~;~~]; or

50 (B) meets the conditions described in Subsections 38-11-204(4)(a) and (b), except that
51 the contract is a written or oral contract totaling no more than \$7,500.

52 (2) If a residence is constructed under conditions that do not meet all of the provisions
53 of Subsection (1), that residence and the real property associated with that residence as
54 provided in Section 38-1-4 shall be subject to any mechanics' lien as provided in Section
55 38-1-3.

56 (3) A lien claimant who files a mechanics' lien or foreclosure action upon an
57 owner-occupied residence is not liable for costs and attorneys' fees under Sections 38-1-17 and
58 38-1-18 or for any damages arising from a civil action related to the lien filing or foreclosure

59 action if the lien claimant removes the lien within 15 days from the date the owner obtains a
60 certificate of compliance and mails a copy of the certificate of compliance by certified mail to
61 the lien claimant at the address provided for by Subsection 38-1-7(2)(a)(v). The 15-day period
62 begins accruing from the date postmarked on the certificate of compliance sent to the lien
63 claimant.

64 Section 2. Section **38-11-110** is amended to read:

65 **38-11-110. Issuance of certificates of compliance.**

66 (1) (a) The director [~~shall have authority to~~] ~~may~~ issue [~~or deny~~] a certificate of
67 compliance only after determining through an informal proceeding, as set forth in Title 63G,
68 Chapter 4, Administrative Procedures Act[-];

69 (i) that the owner is in compliance with Subsections 38-11-204(4)(a) and [~~(4)~~](b)[-]; or
70 (ii) subject to Subsection (2), that the owner is in compliance with Subsections
71 38-11-204(4)(a) and (b), except that the contract is a written or oral contract totaling no more
72 than \$7,500.

73 (b) If the director determines through an informal proceeding under Subsection (1)(a)
74 that an owner seeking the issuance of a certificate of compliance under Subsection (1)(a)(i) is
75 not in compliance as provided in that subsection, the director may not issue a certificate of
76 compliance.

77 (2) (a) An owner seeking the issuance of a certificate of compliance under Subsection
78 (1)(a)(ii) shall submit an affidavit, as defined by the division by rule, affirming that the owner
79 is in compliance with Subsections 38-11-204(4)(a) and (b), except that the contract is a written
80 or oral contract totaling no more than \$7,500.

81 (b) If an owner's affidavit under Subsection (2)(a) is disputed, the owner may file a
82 complaint in small claims court or district court to resolve the dispute.

83 (c) The director may issue a certificate of compliance to an owner seeking issuance of a
84 certificate under Subsection (1)(a)(ii) if:

85 (i) the owner's affidavit under Subsection (2)(a) is undisputed; or

86 (ii) a small claims court or district court resolves any dispute over the owner's affidavit
87 in favor of the owner.

88 Section 3. Section **38-11-204** is amended to read:

89 **38-11-204. Claims against the fund -- Requirement to make a claim --**

90 **Qualifications to receive compensation -- Qualifications to receive a certificate of**
91 **compliance.**

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

93 (a) meet the requirements of [~~either~~] Subsection (4) or [~~(7)~~] (6);

94 (b) pay an application fee determined by the division under Section 63J-1-504; and

95 (c) file with the division a completed application on a form provided by the division
96 accompanied by supporting documents establishing:

97 (i) that the person meets the requirements of [~~either~~] Subsection (4) or [~~(7)~~] (6);

98 (ii) that the person was a qualified beneficiary or laborer during the construction on the
99 owner-occupied residence; and

100 (iii) the basis for the claim.

101 (2) To recover from the fund, the application required by Subsection (1) shall be filed
102 no later than one year:

103 (a) from the date the judgment required by Subsection (4)(d) is entered;

104 (b) from the date the nonpaying party filed bankruptcy, if the claimant is precluded
105 from obtaining a judgment or from satisfying the requirements of Subsection (4)(d) because the
106 nonpaying party filed bankruptcy within one year after the entry of judgment; or

107 (c) from the date the laborer, trying to recover from the fund, completed the laborer's
108 qualified services.

109 (3) [~~To obtain~~] The issuance of a certificate of compliance [an owner or agent of the
110 owner shall establish with the division that the owner meets the requirements of Subsections
111 (4)(a) and (4)(b)] is governed by Section 38-11-110.

112 (4) To recover from the fund, regardless of whether the residence is occupied by the
113 owner, a subsequent owner, or the owner or subsequent owner's tenant or lessee, a qualified
114 beneficiary shall establish that:

115 (a) (i) the owner of the owner-occupied residence or the owner's agent entered into a
116 written contract of over \$7,500 with an original contractor licensed or exempt from licensure
117 under Title 58, Chapter 55, Utah Construction Trades Licensing Act:

118 (A) for the performance of qualified services;

119 (B) to obtain the performance of qualified services by others; or

120 (C) for the supervision of the performance by others of qualified services in

121 construction on that residence;

122 (ii) the owner of the owner-occupied residence or the owner's agent entered into a
123 written contract with a real estate developer for the purchase of an owner-occupied residence;
124 or

125 (iii) the owner of the owner-occupied residence or the owner's agent entered into a
126 written contract with a factory built housing retailer for the purchase of an owner-occupied
127 residence;

128 (b) the owner has paid in full the original contractor, licensed or exempt from licensure
129 under Title 58, Chapter 55, Utah Construction Trades Licensing Act, real estate developer, or
130 factory built housing retailer under Subsection (4)(a) with whom the owner has a written
131 contract in accordance with the written contract and any amendments to the contract;

132 (c) (i) the original contractor, licensed or exempt from licensure under Title 58,
133 Chapter 55, Utah Construction Trades Licensing Act, the real estate developer, or the factory
134 built housing retailer subsequently failed to pay a qualified beneficiary who is entitled to
135 payment under an agreement with that original contractor or real estate developer licensed or
136 exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, for
137 services performed or materials supplied by the qualified beneficiary;

138 (ii) a subcontractor who contracts with the original contractor, licensed or exempt from
139 licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, the real estate
140 developer, or the factory built housing retailer failed to pay a qualified beneficiary who is
141 entitled to payment under an agreement with that subcontractor or supplier; or

142 (iii) a subcontractor who contracts with a subcontractor or supplier failed to pay a
143 qualified beneficiary who is entitled to payment under an agreement with that subcontractor or
144 supplier;

145 (d) (i) unless precluded from doing so by the nonpaying party's bankruptcy filing
146 within the applicable time, the qualified beneficiary filed an action against the nonpaying party
147 to recover monies owed to the qualified beneficiary within the earlier of:

148 (A) 180 days from the date the qualified beneficiary filed a notice of claim under
149 Section 38-1-7; or

150 (B) 270 days from the completion of the original contract pursuant to Subsection
151 38-1-7(1);

152 (ii) the qualified beneficiary has obtained a judgment against the nonpaying party who
153 failed to pay the qualified beneficiary under an agreement to provide qualified services for
154 construction of that owner-occupied residence;

155 (iii) (A) the qualified beneficiary has:

156 (I) obtained from a court of competent jurisdiction the issuance of an order requiring
157 the judgment debtor, or if a corporation any officer of the corporation, to appear before the
158 court at a specified time and place to answer concerning the debtor's or corporation's property;

159 (II) received return of service of the order from a person qualified to serve documents
160 under the Utah Rules of Civil Procedure, Rule 4(b); and

161 (III) made reasonable efforts to obtain asset information from the supplemental
162 proceedings; and

163 (B) if assets subject to execution are discovered as a result of the order required under
164 Subsection (4)(d)(iii)(A) or for any other reason, to obtain the issuance of a writ of execution
165 from a court of competent jurisdiction; or

166 (iv) the qualified beneficiary timely filed a proof of claim where permitted in the
167 bankruptcy action, if the nonpaying party has filed bankruptcy;

168 (e) the qualified beneficiary is not entitled to reimbursement from any other person;
169 and

170 (f) the qualified beneficiary provided qualified services to a contractor, licensed or
171 exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act.

172 (5) The requirements of Subsections (4)(d)(ii) and (iii) need not be met if the qualified
173 beneficiary is prevented from compliance because the nonpaying party files bankruptcy.

174 (6) To recover from the fund a laborer shall:

175 (a) establish that the laborer has not been paid wages due for the work performed at the
176 site of a construction on an owner-occupied residence; and

177 (b) provide any supporting documents or information required by rule by the division.

178 (7) A fee determined by the division under Section 63J-1-504 shall be deducted from
179 any recovery from the fund received by a laborer.

180 (8) The requirements of Subsections (4)(a) and ~~[(4)]~~(b) may be satisfied if an owner or
181 agent of the owner establishes to the satisfaction of the director that the owner of the
182 owner-occupied residence or the owner's agent entered into a written contract with an original

183 contractor who:

184 (a) was a business entity that was not licensed under Title 58, Chapter 55, Utah
185 Construction Trades Licensing Act, but was solely or partly owned by an individual who was
186 licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act; or

187 (b) was a natural person who was not licensed under Title 58, Chapter 55, Utah
188 Construction Trades Licensing Act, but who was the sole or partial owner and qualifier of a
189 business entity that was licensed under Title 58, Chapter 55, Utah Construction Trades
190 Licensing Act.

191 (9) The director shall have equitable power to determine if the requirements of
192 Subsections (4)(a) and [~~4~~](b) have been met, but any decision by the director under this
193 chapter shall not alter or have any effect on any other decision by the division under Title 58,
194 Occupations and Professions.

Legislative Review Note

as of 1-26-10 4:13 PM

Office of Legislative Research and General Counsel

S.B. 107 - Lien Amendments

Fiscal Note

2010 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments. Individuals and businesses may be impacted due to the proposed change in statute.
