

1 **RESIDENCE LIEN RESTRICTION AMENDMENTS**

2 2014 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Todd Weiler**

5 House Sponsor: Jon Cox

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies provisions relating to eligibility for claims against the Residence Lien
10 Recovery Fund.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ amends the definition of owner for purposes of the Residence Lien Restriction and
- 14 Lien Recovery Fund Act and related provisions; and
- 15 ▶ makes technical changes.

16 **Money Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 None

20 **Utah Code Sections Affected:**

21 AMENDS:

22 **38-11-102**, as last amended by Laws of Utah 2011, Chapters 14 and 342

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

25 Section 1. Section **38-11-102** is amended to read:

26 **38-11-102. Definitions.**

27 (1) "Board" means the Residence Lien Recovery Fund Advisory Board established
28 under Section **38-11-104**.

29 (2) "Certificate of compliance" means an order issued by the director to the owner

30 finding that the owner is in compliance with the requirements of Subsections 38-11-204(4)(a)
31 and (4)(b) and is entitled to protection under Section 38-11-107.

32 (3) "Construction on an owner-occupied residence" means designing, engineering,
33 constructing, altering, remodeling, improving, repairing, or maintaining a new or existing
34 residence.

35 (4) "Department" means the Department of Commerce.

36 (5) "Director" means the director of the Division of Occupational and Professional
37 Licensing.

38 (6) "Division" means the Division of Occupational and Professional Licensing.

39 (7) "Duplex" means a single building having two separate living units.

40 (8) "Encumbered fund balance" means the aggregate amount of outstanding claims
41 against the fund. The remainder of the money in the fund is unencumbered funds.

42 (9) "Executive director" means the executive director of the Department of Commerce.

43 (10) "Factory built housing" is as defined in Section 15A-1-302.

44 (11) "Factory built housing retailer" means a person that sells factory built housing to
45 consumers.

46 (12) "Fund" means the Residence Lien Recovery Fund established under Section
47 38-11-201.

48 (13) "Laborer" means a person who provides services at the site of the construction on
49 an owner-occupied residence as an employee of an original contractor or other qualified
50 beneficiary performing qualified services on the residence.

51 (14) "Licensee" means any holder of a license issued under Title 58, [~~Chapters~~
52 Chapter 3a, Architects Licensing Act[;]; Chapter 22, Professional Engineers and Professional
53 Land Surveyors Licensing Act[;]; Chapter 53, Landscape Architects Licensing Act[;]; and
54 Chapter 55, Utah Construction Trades Licensing Act.

55 (15) "Nonpaying party" means the original contractor, subcontractor, or real estate
56 developer who has failed to pay the qualified beneficiary making a claim against the fund.

57 (16) "Original contractor" means a person who contracts with the owner of real

58 property or the owner's agent to provide services, labor, or material for the construction of an
59 owner-occupied residence.

60 (17) "Owner" means a person who:

61 (a) contracts with a person who is licensed as a contractor or is exempt from licensure
62 under Title 58, Chapter 55, Utah Construction Trades Licensing Act, for the construction on an
63 owner-occupied residence upon real property [~~owned by that person;~~] that the person:

64 (i) owns; or

65 (ii) purchases after the person enters into a contract described in this Subsection (17)(a)
66 and before completion of the owner-occupied residence;

67 (b) contracts with a real estate developer to buy a residence upon completion of the
68 construction on the owner-occupied residence; or

69 (c) [~~buys~~] purchases a residence from a real estate developer after completion of the
70 construction on the owner-occupied residence.

71 (18) "Owner-occupied residence" means a residence that is, or after completion of the
72 construction on the residence will be, occupied by the owner or the owner's tenant or lessee as a
73 primary or secondary residence within 180 days [~~from the date of the completion of~~] after the
74 day on which the construction on the residence is complete.

75 (19) "Qualified beneficiary" means a person who:

76 (a) provides qualified services;

77 (b) pays necessary fees or assessments required under this chapter; and

78 (c) registers with the division:

79 (i) as a licensed contractor under Subsection 38-11-301(1) or (2), if that person seeks
80 recovery from the fund as a licensed contractor; or

81 (ii) as a person providing qualified services other than as a licensed contractor under
82 Subsection 38-11-301(3) if the person seeks recovery from the fund in a capacity other than as
83 a licensed contractor.

84 (20) (a) "Qualified services" means the following performed in construction on an
85 owner-occupied residence:

86 (i) contractor services provided by a contractor licensed or exempt from licensure
87 under Title 58, Chapter 55, Utah Construction Trades Licensing Act;

88 (ii) architectural services provided by an architect licensed under Title 58, Chapter 3a,
89 Architects Licensing Act;

90 (iii) engineering and land surveying services provided by a professional engineer or
91 land surveyor licensed or exempt from licensure under Title 58, Chapter 22, Professional
92 Engineers and Professional Land Surveyors Licensing Act;

93 (iv) landscape architectural services by a landscape architect licensed or exempt from
94 licensure under Title 58, Chapter 53, Landscape Architects Licensing Act;

95 (v) design and specification services of mechanical or other systems;

96 (vi) other services related to the design, drawing, surveying, specification, cost
97 estimation, or other like professional services;

98 (vii) providing materials, supplies, components, or similar products;

99 (viii) renting equipment or materials;

100 (ix) labor at the site of the construction on the owner-occupied residence; and

101 (x) site preparation, set up, and installation of factory built housing.

102 (b) "Qualified services" [~~do~~] does not include the construction of factory built housing
103 in the factory.

104 (21) "Real estate developer" means a person having an ownership interest in real
105 property who:

106 (a) contracts with a person who is licensed as a contractor or is exempt from licensure
107 under Title 58, Chapter 55, Utah Construction Trades Licensing Act, for the construction of a
108 residence that is offered for sale to the public; or

109 (b) is a licensed contractor under Title 58, Chapter 55, Utah Construction Trades
110 Licensing Act, who engages in the construction of a residence that is offered for sale to the
111 public.

112 (22) (a) "Residence" means an improvement to real property used or occupied, to be
113 used or occupied as, or in conjunction with:

- 114 (i) a primary or secondary detached single-family dwelling; or
115 (ii) a multifamily dwelling up to and including duplexes.
116 (b) "Residence" includes factory built housing.
117 (23) "Subsequent owner" means a person who purchases a residence from an owner
118 within 180 days [~~from the date~~] after the day on which the construction on the residence is
119 completed.