

1                   **PRECONSTRUCTION AND CONSTRUCTION LIENS**

2                                   **AMENDMENTS**

3   2021 GENERAL SESSION

4   STATE OF UTAH

5                                   **Chief Sponsor: Michael K. McKell**

6                                   House Sponsor: \_\_\_\_\_

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**LONG TITLE**

8 **General Description:**

9                   This bill amends provisions of Preconstruction and Construction Liens.

10 **Highlighted Provisions:**

11                   This bill:

- 12                   ▶ defines terms;
- 13                   ▶ removes the requirement that an owner file a notice of intent to obtain final
- 14 completion;
- 15                   ▶ amends provisions regarding a notice of intent to finance and enacts provisions
- 16 regarding a notice of intent to finance construction or advance construction funds;
- 17                   ▶ enacts provisions related to a notice of progress and a notice of final lien;
- 18                   ▶ amends provisions regarding a failure to provide notice; and
- 19                   ▶ makes technical and conforming changes.

20 **Money Appropriated in this Bill:**

21                   None

22 **Other Special Clauses:**

23                   This bill provides a special effective date.

24 **Utah Code Sections Affected:**

25 AMENDS:

26                   **38-1a-102**, as last amended by Laws of Utah 2019, Chapter 250



- 28            **38-1a-506**, as renumbered and amended by Laws of Utah 2012, Chapter 278
- 29            **38-1a-603**, as enacted by Laws of Utah 2019, Chapter 250
- 30            **38-1a-604**, as enacted by Laws of Utah 2019, Chapter 250
- 31            **38-1a-802**, as last amended by Laws of Utah 2012, Chapter 347 and renumbered and
- 32 amended by Laws of Utah 2012, Chapter 278
- 33            **38-1a-805**, as enacted by Laws of Utah 2015, Chapter 303

34 ENACTS:

- 35            **38-1a-605**, Utah Code Annotated 1953
- 36            **38-1a-606**, Utah Code Annotated 1953

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

39            Section 1. Section **38-1a-102** is amended to read:

40            **38-1a-102. Definitions.**

41            As used in this chapter:

- 42            (1) "Alternate means" means a method of filing a legible and complete notice or other
- 43 document with the registry other than electronically, as established by the division by rule.
- 44            (2) "Anticipated improvement" means the improvement:
- 45            (a) for which preconstruction service is performed; and
- 46            (b) that is anticipated to follow the performing of preconstruction service.
- 47            (3) "Applicable county recorder" means the office of the recorder of each county in
- 48 which any part of the property on which a claimant claims or intends to claim a preconstruction
- 49 or construction lien is located.
- 50            (4) "Bona fide loan" means a loan to an owner or owner-builder by a lender in which
- 51 the owner or owner-builder has no financial or beneficial interest greater than 5% of the voting
- 52 shares or other ownership interest.
- 53            (5) "Claimant" means a person entitled to claim a preconstruction or construction lien.
- 54            (6) "Compensation" means the payment of money for a service rendered or an expense
- 55 incurred, whether based on:
- 56            (a) time and expense, lump sum, stipulated sum, percentage of cost, cost plus fixed or
- 57 percentage fee, or commission; or
- 58            (b) a combination of the bases listed in Subsection (6)(a).

59 (7) "Construction lender" means a person who makes a construction loan.

60 (8) "Construction lien" means a lien under this chapter for construction work.

61 (9) "Construction loan" does not include a consumer loan secured by the equity in the  
62 consumer's home.

63 (10) "Construction project" means an improvement that is constructed pursuant to an  
64 original contract.

65 (11) "Construction work":

66 (a) means labor, service, material, or equipment provided for the purpose and during  
67 the process of constructing, altering, or repairing an improvement; and

68 (b) includes scheduling, estimating, staking, supervising, managing, materials testing,  
69 inspection, observation, and quality control or assurance involved in constructing, altering, or  
70 repairing an improvement.

71 (12) "Contestable notice" means a notice of preconstruction service under Section  
72 38-1a-401, a preliminary notice under Section 38-1a-501, or a notice of completion under  
73 Section 38-1a-506.

74 (13) "Contesting person" means an owner, original contractor, subcontractor, or other  
75 interested person.

76 (14) "Designated agent" means the third party the division contracts with as provided  
77 in Section 38-1a-202 to create and maintain the registry.

78 (15) "Division" means the Division of Occupational and Professional Licensing created  
79 in Section 58-1-103.

80 (16) "Entry number" means the reference number that:

81 (a) the designated agent assigns to each notice or other document filed with the  
82 registry; and

83 (b) is unique for each notice or other document.

84 (17) "Final completion" means:

85 (a) the date of issuance of a permanent certificate of occupancy by the local  
86 government entity having jurisdiction over the construction project, if a permanent certificate  
87 of occupancy is required;

88 (b) the date of the final inspection of the construction work by the local government  
89 entity having jurisdiction over the construction project, if an inspection is required under a

90 state-adopted building code applicable to the construction work, but no certificate of occupancy  
91 is required;

92 (c) unless the owner is holding payment to ensure completion of construction work, the  
93 date on which there remains no substantial work to be completed to finish the construction  
94 work under the original contract, if a certificate of occupancy is not required and a final  
95 inspection is not required under an applicable state-adopted building code; or

96 (d) the last date on which substantial work was performed under the original contract,  
97 if, because the original contract is terminated before completion of the construction work  
98 defined by the original contract, the local government entity having jurisdiction over the  
99 construction project does not issue a certificate of occupancy or perform a final inspection.

100 (18) "Final lien waiver" means a form that complies with Subsection 38-1a-802(4)(c).

101 (19) "First preliminary notice filing" means a preliminary notice that:

102 (a) is the earliest preliminary notice filed on the construction project for which the  
103 preliminary notice is filed;

104 (b) is filed on a construction project that, at the time the preliminary notice is filed, has  
105 not reached final completion; and

106 (c) is not cancelled under Section 38-1a-307.

107 (20) "Government project-identifying information" has the same meaning as defined in  
108 Section 38-1b-102.

109 (21) "Improvement" means:

110 (a) a building, infrastructure, utility, or other human-made structure or object  
111 constructed on or for and affixed to real property; or

112 (b) a repair, modification, or alteration of a building, infrastructure, utility, or object  
113 referred to in Subsection (21)(a).

114 (22) "Interested person" means a person that may be affected by a construction project.

115 (23) "Notice of commencement" means a notice required under Section 38-1b-201 for  
116 a government project, as defined in Section 38-1b-102.

117 (24) "Original contract":

118 (a) means a contract between an owner and an original contractor for preconstruction  
119 service or construction work; and

120 (b) does not include a contract between an owner-builder and another person.

121 (25) "Original contractor" means a person, including an owner-builder, that contracts  
122 with an owner to provide preconstruction service or construction work.

123 (26) "Owner" means the person that owns the project property.

124 (27) "Owner-builder" means an owner, including an owner who is also an original  
125 contractor, who:

126 (a) contracts with one or more other persons for preconstruction service or construction  
127 work for an improvement on the owner's real property; and

128 (b) obtains a building permit for the improvement.

129 (28) "Preconstruction lien" means a lien under this chapter for a preconstruction  
130 service.

131 (29) "Preconstruction service":

132 (a) means to plan or design, or to assist in the planning or design of, an improvement or  
133 a proposed improvement:

134 (i) before construction of the improvement commences; and

135 (ii) for compensation separate from any compensation paid or to be paid for  
136 construction work for the improvement; and

137 (b) includes consulting, conducting a site investigation or assessment, programming,  
138 preconstruction cost or quantity estimating, preconstruction scheduling, performing a  
139 preconstruction construction feasibility review, procuring construction services, and preparing  
140 a study, report, rendering, model, boundary or topographic survey, plat, map, design, plan,  
141 drawing, specification, or contract document.

142 (30) "Private project" means a construction project that is not a government project.

143 (31) "Progress waiver" means a form that complies with Subsection [38-1a-802\(4\)\(b\)](#).

144 ~~(31)~~ (32) "Project property" means the real property on or for which preconstruction  
145 service or construction work is or will be provided.

146 ~~(32)~~ (33) "Registry" means the State Construction Registry under Part 2, State  
147 Construction Registry.

148 ~~(33)~~ (34) "Required notice" means:

149 (a) a notice of preconstruction service under Section [38-1a-401](#);

150 (b) a preliminary notice under Section [38-1a-501](#) or Section [38-1b-202](#);

151 (c) a notice of commencement;

- 152 (d) a notice of construction loan under Section 38-1a-601;
- 153 (e) a notice under Section 38-1a-602 concerning a construction loan default;
- 154 (f) a notice of intent to obtain final completion under Section 38-1a-506; or
- 155 (g) a notice of completion under Section 38-1a-507.

156 [(34)] (35) "Subcontractor" means a person that contracts to provide preconstruction  
157 service or construction work to:

- 158 (a) a person other than the owner; or
- 159 (b) the owner, if the owner is an owner-builder.

160 [(35)] (36) "Substantial work" does not include repair work or warranty work.

161 [(36)] (37) "Supervisory subcontractor" means a person that:

- 162 (a) is a subcontractor under contract to provide preconstruction service or construction  
163 work; and
- 164 (b) contracts with one or more other subcontractors for the other subcontractor or  
165 subcontractors to provide preconstruction service or construction work that the person is under  
166 contract to provide.

167 Section 2. Section 38-1a-506 is amended to read:

168 **38-1a-506. Notice of intent to obtain final completion.**

169 (1) An owner, as defined in Section 14-2-1, of a nonresidential construction project  
170 that is registered with the registry, or an original contractor of a commercial nonresidential  
171 construction project that is registered with the registry under Section 38-1a-501, ~~shall~~ may  
172 file with the registry a notice of intent to obtain final completion as provided in this section if:

- 173 (a) the completion of performance time under the original contract for construction  
174 work is greater than 120 days;
- 175 (b) the total original construction contract price exceeds \$500,000; and
- 176 (c) the original contractor or owner has not obtained a payment bond in accordance  
177 with Section 14-2-1.

178 (2) The notice of intent described in Subsection (1) shall be filed at least 45 days before  
179 the day on which the owner or original contractor of a commercial nonresidential construction  
180 project files or could have filed a notice of completion under Section 38-1a-507.

181 (3) A person who provides construction work to an owner or original contractor who  
182 files a notice of intent in accordance with Subsection (1) shall file an amendment to the

183 person's preliminary notice previously filed by the person as required in Section 38-1a-501:

184 (a) that includes:

185 (i) a good faith estimate of the total amount remaining due to complete the contract,  
186 purchase order, or agreement relating to the person's approved construction work;

187 (ii) the identification of each original contractor or subcontractor with whom the  
188 person has a contract or contracts for providing construction work; and

189 (iii) a separate statement of all known amounts or categories of work in dispute; and

190 (b) no later than 20 days after the day on which the owner or contractor files a notice of  
191 intent.

192 (4) (a) A person described in Subsection (3) may demand a statement of adequate  
193 assurance from the owner, contractor, or subcontractor with whom the person has privity of  
194 contract no later than 10 days after the day on which the person files a balance statement in  
195 accordance with Subsection (3) from an owner, contractor, or subcontractor who is in privity of  
196 contract with the person.

197 (b) A demand for adequate assurance as described in Subsection (4)(a) may include a  
198 request for a statement from the owner, contractor, or subcontractor that the owner, contractor,  
199 or subcontractor has sufficient funds dedicated and available to pay for all sums due to the  
200 person filing for the adequate assurances or that will become due in order to complete a  
201 construction project.

202 (c) A person who demands adequate assurance under Subsection (4)(a) shall deliver  
203 copies of the demand to the owner and contractor:

204 (i) by hand delivery with a responsible party's acknowledgment of receipt;

205 (ii) by certified mail with a return receipt; or

206 (iii) as provided under Rule 4, Utah Rules of Civil Procedure.

207 (5) (a) A person described in Subsection (3) may bring a legal action against a party  
208 with whom the person is in privity of contract, including a request for injunctive or declaratory  
209 relief, to determine the adequacy of the funds of the owner, contractor, or subcontractor with  
210 whom the demanding person contracted if, after the person demands adequate assurance in  
211 accordance with the requirements of this section:

212 (i) the owner, contractor, or subcontractor fails to provide adequate assurance that the  
213 owner, contractor, or subcontractor has sufficient available funds, or access to financing or

214 other sufficient available funds, to pay for the completion of the demanding person's approved  
215 work on the construction project; or

216 (ii) the parties disagree, in good faith, as to whether there are adequate funds, or access  
217 to financing or other sufficient available funds, to pay for the completion of the demanding  
218 person's approved work on the construction project.

219 (b) If a court finds that an owner, contractor, or subcontractor has failed to provide  
220 adequate assurance in accordance with Subsection (4)(a), the court may require the owner,  
221 contractor, or subcontractor to post adequate security with the court sufficient to assure timely  
222 payment of the remaining contract balance for the approved work of the person seeking  
223 adequate assurance, including:

- 224 (i) cash;
- 225 (ii) a bond;
- 226 (iii) an irrevocable letter of credit;
- 227 (iv) property;
- 228 (v) financing; or
- 229 (vi) another form of security approved by the court.

230 (6) (a) A person is subject to the civil penalty described in Subsection (6)(b), if the  
231 person files a balance statement described in Subsection (3) that misrepresents the amount due  
232 under the contract with the intent to:

- 233 (i) charge an owner, contractor, or subcontractor more than the actual amount due; or
- 234 (ii) procure any other unfair advantage or benefit on the person's behalf.

235 (b) The civil penalty described in Subsection (6)(a) is the greater of:

- 236 (i) twice the amount by which the balance statement filed under Subsection (3) exceeds  
237 the amount actually remaining due under the contract for completion of construction; and
- 238 (ii) the actual damages incurred by the owner, contractor, or subcontractor.

239 (7) A court shall award reasonable attorney fees to a prevailing party for an action  
240 brought under this section.

241 (8) Failure to comply with the requirements established in this section does not affect  
242 any other requirement or right under this chapter.

243 (9) A person who has not filed a preliminary notice as required under Section  
244 [38-1a-501](#) is not entitled to a right or a remedy provided in this section.



245 (10) This section does not create a cause of action against a person with whom the  
 246 demanding party is not in privity of contract.

247 Section 3. Section **38-1a-603** is amended to read:

248 **38-1a-603. Notice of intent to finance.**

249 (1) An owner or an owner's agent may file with the registry a notice of intent to  
 250 finance.

251 (2) A notice of intent to finance under Subsection (1) shall state:

252 (a) the anticipated date on which financing will occur;

253 (b) the anticipated lender's name, address, and telephone number;

254 (c) the name of the trustor on the trust deed securing the [~~anticipated loan~~] financing;

255 (d) the tax parcel identification number of each parcel included in the project property;

256 and

257 (e) the name of the county in which the project property is located.

258 (3) If an owner chooses to file a notice of intent to finance, the owner or owner's agent  
 259 shall file the notice of intent to finance no less than 14 days before the date on which the  
 260 financing is anticipated to occur.

261 (4) If the financing does not occur within 30 days after the anticipated date specified in  
 262 the notice of intent to finance[;]:

263 (a) the notice of intent to finance shall automatically have no effect and shall be  
 264 removed from the registry[;]; and

265 (b) a final lien waiver or progress waiver filed in connection with the notice of intent to  
 266 finance shall automatically have no effect.

267 Section 4. Section **38-1a-604** is amended to read:

268 **38-1a-604. Notice of final lien waiver.**

269 (1) [~~After a notice of intent to finance is filed under Section 38-1a-603 on a project~~  
 270 ~~property, each] A subcontractor that has filed a preliminary notice pertaining to [~~the~~] a project  
 271 property may file with the registry a final lien waiver[;]:~~

272 (a) within five days after the day on which the project property's owner or owner's  
 273 agent files:

274 (i) a notice of intent to finance under Section 38-1a-603; or

275 (ii) a notice of intent to finance construction or advance construction funds under

276 Section 38-1a-605; or

277 (b) at any time before the project property's owner or owner's agent files a notice  
278 described in Subsection (1)(a).

279 (2) The final lien waiver described in Subsection (1) may [be filed on the registry even  
280 if no notice of intent to finance was filed on the registry] state that no amount is owed.

281 Section 5. Section **38-1a-605** is enacted to read:

282 **38-1a-605. Notice of intent to finance construction or advance construction funds.**

283 (1) An owner or an owner's agent may file with the registry a notice of intent to finance  
284 construction or advance construction funds.

285 (2) A notice of intent to finance construction or advance construction funds under  
286 Subsection (1) shall state:

287 (a) the anticipated date on which construction financing or an advance under a  
288 construction loan will occur;

289 (b) the anticipated lender's name, address, and telephone number;

290 (c) the name of the trustor on the trust deed securing the construction financing;

291 (d) the tax parcel identification number of each parcel included in the project property;

292 and

293 (e) the name of the county in which the project property is located.

294 (3) If an owner or owner's agent files the notice described in Subsection (2) and  
295 financing or advancement of construction funds does not occur within 30 days after the date  
296 specified in the filed notice under Subsection (2)(a):

297 (a) the notice shall automatically have no effect and shall be removed from the registry;  
298 and

299 (b) a final lien waiver or progress waiver filed in connection with the notice shall  
300 automatically have no effect.

301 Section 6. Section **38-1a-606** is enacted to read:

302 **38-1a-606. Notice of progress waiver.**

303 A subcontractor that files a preliminary notice pertaining to a project property may file  
304 with the registry a progress waiver:

305 (1) within five days after the day on which the project property's owner or owner's  
306 agent files:

307 (a) a notice of intent to finance under Section 38-1a-603 on the project property; or

308 (b) a notice of intent to finance construction or advance construction funds under

309 Section 38-1a-605 on the project property; and

310 (2) if the subcontractor:

311 (a) is owed money under the original contract; or

312 (b) anticipates performing additional services under the original contract.

313 Section 7. Section 38-1a-802 is amended to read:

314 **38-1a-802. Waiver or limitation of a lien right -- Forms -- Scope.**

315 (1) As used in this section:

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

317 (i) a check;

318 (ii) a draft;

319 (iii) an order; or

320 (iv) other instrument.

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

322 (c) "Receives payment" means, in the case of a restrictive endorsement, a payee has  
323 endorsed a check and the check is presented to and paid by the depository institution on which  
324 [it] the check is drawn.

325 (2) Notwithstanding Section 38-1a-105, a claimant's written consent that waives or  
326 limits the claimant's lien rights is enforceable only if the claimant:

327 (a) (i) executes a waiver and release that is signed by the claimant or the claimant's  
328 authorized agent; or

329 (ii) for a restrictive endorsement on a check, includes a restrictive endorsement on a  
330 check that is:

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

332 (B) in substantially the same form set forth in Subsection (4)(d); and

333 (b) receives payment of the amount identified in the waiver and release or check that  
334 includes the restrictive endorsement:

335 (i) including payment by a joint payee check; and

336 (ii) for a progress payment, only to the extent of the payment.

337 (3) (a) Notwithstanding the language of a waiver and release described in Subsection

338 (2), Subsection (3)(b) applies if:

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

340 and

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

342 reason.

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

344 (i) the waiver and release described in Subsection (3)(a) is void; and

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

346 release:

347 (A) any lien;

348 (B) any lien right;

349 (C) any bond right;

350 (D) any contract right; or

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

352 (4) (a) A waiver and release given by a claimant meets the requirements of this section

353 if it is in substantially the form provided in this Subsection (4) for the circumstance provided in

354 this Subsection (4).

355 (b) A waiver and release may be in substantially the following form if the claimant is

356 required to execute a waiver and release in exchange for or to induce the payment of a progress

357 billing, and shall be in the following form if the waiver is a progress waiver filed under Section

358 [38-1a-606](#):

359 "UTAH CONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT

360 Property Name: \_\_\_\_\_

361 Property Location: \_\_\_\_\_

362 Undersigned's Customer: \_\_\_\_\_

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

364 Payment Amount: \_\_\_\_\_

365 Payment Period: \_\_\_\_\_

366 To the extent provided below, this document becomes effective to release and the

367 undersigned is considered to waive any notice of lien or right under Utah Code Ann., Title 38,

368 Chapter 1a, Preconstruction and Construction Liens, or any bond right under Utah Code Ann.,

369 Title 14, Contractors' Bonds, or Section [63G-6a-1103](#) related to payment rights the undersigned  
370 has on the above described Property once:

371 (1) the undersigned endorses a check in the above referenced Payment Amount payable  
372 to the undersigned; and

373 (2) the check is paid by the depository institution on which it is drawn.

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

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

385 Dated: \_\_\_\_\_

386 \_\_\_\_\_ (Company Name)

387 \_\_\_\_\_ By: \_\_\_\_\_

388 \_\_\_\_\_ Its: \_\_\_\_\_ "

389 (c) A waiver and release may be in substantially the following form if the lien claimant  
390 is required to execute a waiver and release in exchange for or to induce the payment of a final  
391 billing, and shall be in the following form if the waiver is a final lien waiver filed under  
392 Section [38-1a-604](#):

393 "UTAH WAIVER AND RELEASE UPON FINAL PAYMENT

394 Property Name: \_\_\_\_\_

395 Property Location: \_\_\_\_\_

396 Undersigned's Customer: \_\_\_\_\_

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

398 Payment Amount: \_\_\_\_\_

399 To the extent provided below, this document becomes effective to release and the

400 undersigned is considered to waive any notice of lien or right under Utah Code Ann., Title 38,  
401 Chapter 1a, Preconstruction and Construction Liens, or any bond right under Utah Code Ann.,  
402 Title 14, Contractors' Bonds, or Section 63G-6a-1103 related to payment rights the undersigned  
403 has on the above described Property once:

404 (1) the undersigned endorses a check in the above referenced Payment Amount payable  
405 to the undersigned; and

406 (2) the check is paid by the depository institution on which it is drawn.

407 This waiver and release applies to the final payment for the work, materials, equipment,  
408 or combination of work, materials, and equipment furnished by the undersigned to the Property  
409 or to the Undersigned's Customer.

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

415 Dated: \_\_\_\_\_

416 \_\_\_\_\_ (Company Name)

417 \_\_\_\_\_ By: \_\_\_\_\_

418 \_\_\_\_\_ Its: \_\_\_\_\_"

419 (d) A restrictive endorsement placed on a check to effectuate a waiver and release  
420 described in this Subsection (4) meets the requirements of this section if it is in substantially  
421 the following form:

422 "This check is a progress/ final payment for property described on this check sufficient  
423 for identification. Endorsement of this check is an acknowledgment by the endorser that the  
424 waiver and release to which the payment applies is effective to the extent provided in Utah  
425 Code Ann. Subsection 38-1a-802(4)(b) or (c) respectively."

426 (e) (i) If using a restrictive endorsement under Subsection (4)(d), the person preparing  
427 the check shall indicate whether the check is for a progress payment or a final payment by  
428 circling the word "progress" if the check is for a progress payment, or the word "final" if the  
429 check is for a final payment.

430 (ii) If a restrictive endorsement does not indicate whether the check is for a progress

431 payment or a final payment, it is considered to be for a progress payment.

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

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

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

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

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

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

441 Section 8. Section **38-1a-805** is amended to read:

442 **38-1a-805. Failure to file notice -- Petition to nullify preconstruction or**  
443 **construction lien -- Expedited proceeding.**

444 (1) An owner of an interest in a project property that is subject to a recorded  
445 preconstruction lien or a recorded construction lien may petition the district court in the county  
446 in which the project property is located for summary relief to nullify the preconstruction lien or  
447 the construction lien if:

448 (a) the owner claims that the preconstruction lien or the construction lien is invalid  
449 because:

450 (i) the lien claimant did not timely file a notice of preconstruction service under  
451 Section [38-1a-401](#); or

452 (ii) the lien claimant did not timely file a preliminary notice under Section [38-1a-501](#);

453 (b) the owner sent the lien claimant a written request to withdraw in accordance with  
454 Subsection (2); and

455 (c) the lien claimant did not withdraw the preconstruction lien or the construction lien  
456 within 10 business days after the day on which the owner sent the written request to withdraw.

457 (2) A written request to withdraw described in Subsection (1) shall:

458 (a) be delivered by certified mail to the lien claimant at the lien claimant's address  
459 provided in the recorded preconstruction lien or the recorded construction lien;

460 (b) state the owner's name, address, and telephone number;

461 (c) contain:

462 (i) (A) the name of the county in which the property that is subject to the  
463 preconstruction lien or the construction lien is located; and  
464 (B) the tax parcel identification number of each parcel that is subject to the  
465 preconstruction lien or the construction lien; or  
466 (ii) a legal description of the property that is subject to the preconstruction lien or the  
467 construction lien;  
468 (d) state that the lien claimant has failed to timely file:  
469 (i) a notice of preconstruction service under Section 38-1a-401; or  
470 (ii) a preliminary notice under Section 38-1a-501;  
471 (e) request that the lien claimant withdraw the lien claimant's preconstruction lien or  
472 construction lien within 10 business days after the day on which the written request to  
473 withdraw is sent; and  
474 (f) state that if the lien claimant does not withdraw the preconstruction lien or the  
475 construction lien within 10 business days after the day on which the written request to  
476 withdraw is sent, the owner may petition a court to nullify the lien in an expedited proceeding  
477 under this section.  
478 (3) A petition under Subsection (1) shall:  
479 (a) state with specificity that:  
480 (i) the lien claimant's preconstruction lien or the lien claimant's construction lien is  
481 invalid because the lien claimant did not file a notice of preconstruction service or a  
482 preliminary notice, as applicable;  
483 (ii) the petitioner sent the lien claimant a written request to withdraw in accordance  
484 with Subsection (2); and  
485 (iii) the lien claimant did not withdraw the preconstruction lien or the construction lien  
486 within 10 business days after the day on which the owner sent the written request to withdraw;  
487 (b) be supported by a sworn affidavit of the petitioner; and  
488 (c) be served on the lien claimant, in accordance with the Rules of Civil Procedure,  
489 within three business days after the day on which the petitioner files the petition in the district  
490 court.  
491 (4) (a) If the court finds that a petition does not meet the requirements described in  
492 Subsection (3), the court may dismiss the petition without a hearing.



493 (b) If the court finds that a petition meets the requirements described in Subsection (3),  
494 the court shall schedule an expedited hearing to determine whether the preconstruction lien or  
495 the construction lien is invalid because [~~the lien claimant failed to file a notice of~~  
496 ~~preconstruction service or a preliminary notice;~~ the notice of preconstruction service or  
497 preliminary notice is not filed within the time period described in Subsection [38-1a-401\(1\)](#) or  
498 [38-1a-501\(1\)](#), as applicable.

499 (5) (a) If the court grants a hearing, within three business days after the day on which  
500 the court schedules the hearing and at least seven business days before the day on which the  
501 hearing is scheduled, the petitioner shall serve on the lien claimant, in accordance with the  
502 Rules of Civil Procedure, a copy of the petition, notice of the hearing, and a copy of the court's  
503 order granting the expedited hearing.

504 (b) The lien claimant may attend the hearing and contest the petition.

505 (6) An expedited proceeding under this section may only determine:

506 (a) whether the lien claimant filed a notice of preconstruction service or a preliminary  
507 notice; and

508 (b) if the lien claimant failed to file a notice of preconstruction service or a preliminary  
509 notice, whether the lien claimant's preconstruction lien or construction lien is valid.

510 (7) (a) If, following a hearing, the court determines that the preconstruction lien or the  
511 construction lien is invalid, the court shall issue an order that:

512 (i) contains a legal description of the property;

513 (ii) declares the preconstruction lien or the construction lien void ab initio;

514 (iii) releases the property from the lien; and

515 (iv) awards costs and reasonable attorney fees to the petitioner.

516 (b) The petitioner may submit a copy of an order issued under Subsection (7)(a) to the  
517 county recorder for recording.

518 (8) (a) If, following a hearing, the court determines that the preconstruction lien or the  
519 construction lien is valid, the court shall:

520 (i) dismiss the petition; and

521 (ii) award costs and reasonable attorney fees to the lien claimant.

522 (b) The dismissal order shall contain a legal description of the property.

523 (c) The lien claimant may submit a copy of the dismissal order to the county recorder

524 for recording.

525 (9) If a petition under this section contains a claim for damages, the proceedings related  
526 to the claim for damages may not be expedited under this section.

527 Section 9. **Effective date.**

528 This bill takes effect on January 1, 2022.