

Brief Overview of Utah Mechanic's Lien Law

This document gives a brief description of the central aspects of Utah mechanic's lien law. It is not a comprehensive overview of the numerous statutory and common law intricacies surrounding lien law. Much of the information and format of this document comes from Michael D. Creer, *The Young Lawyer: A Brief Overview of Utah's Mechanic's Lien Law*, 12 UTAH BAR J. 32 (1999), as well as Dana Farmer, "Utah Lien and Bond Claims," http://www.liencounsel.com/general_liens.asp, 2005.

- What is a lien?** ▶ A lien is a legal right or interest that a creditor has in another's property, lasting usually until a debt or duty that it secures is satisfied.¹
- What is a mechanic's lien?** ▶ A statutory lien that secures payment for labor or materials supplied in improving, repairing, or maintaining real or personal property.²
- Who may file for a mechanic's lien?** ▶ Any person or entity who performs labor, furnishes materials, or renders services that improve real property including contractors, subcontractors, artisans, architects, engineers, laborers, *etc.*³
- What types of services or materials are covered by a mechanic's lien?** ▶ Any labor or materials that are incorporated into the real property as part of the "construction, alteration, or improvement of any building or structure or improvement to any premises in any manner."⁴ Only permanent, physical improvements to real property are lienable.⁵
- What is the amount of the mechanic's lien?** ▶ A mechanic's lien claim is for the "value of the service rendered, labor performed, or materials or equipment furnished or rented."⁶ In general, claims are limited to "reasonable value," and although a contract price may be persuasive to establish reasonable value, it is not necessarily determinative.⁷ In addition, successful lien claimants generally may collect attorney's fees and costs.⁸
- What is the State Construction Registry?** ▶ The State Construction Registry (SCR) is a standardized, statewide system for filing and managing the pre-lien process. The SCR is being implemented in two phases. The SCR begins operation for nonresidential construction projects on May 1, 2005, and will begin operations on November 1, 2005 for residential construction projects.⁹ All notices of commencement, preliminary notices, and notices of completion are to be filed and viewable from the SCR.¹⁰

What is a Notice of Commencement?

- ▶ A Notice of Commencement (NOC) signifies the beginning of the construction project and provides the date to which mechanic's liens relate back. Once a NOC is filed, only those contractors, subcontractors, and suppliers who file a preliminary notice may file a lien.¹¹ NOC is filed with the SCR within 15 days after the issuance of the building permit, if one is issued.¹² If no building permit is issued, the general contractor must file a NOC within 15 days after commencement of construction.¹³ The NOC can be filed by the local government entity, general contractor, lender, owner, or any other interested party within the allotted time frame.¹⁴

What is a Preliminary Notice?

- ▶ A Preliminary Notice (PN) must be filed by all subcontractors and suppliers who do not have a contract with the owner.¹⁵ The PN must be filed with the SCR within 20 days after the later of commencement of work¹⁶ or the filing of NOC.¹⁷ A PN must be filed before a lien is recorded.¹⁸ Moreover, if PN is not filed, the subcontractor or supplier loses their lien rights¹⁹ (unless the original contractor did not record a NOC).²⁰ The PN informs the general contractor and owner of subcontractors and suppliers on a particular construction project that may record a mechanic's lien.

What is a Notice of Completion?

- ▶ In general the Notice of Completion signifies that the project is substantially completed. It can be filed, depending on the situation, after the certificate of occupancy is issued, the local government inspection is passed, or there remains no substantial work to be completed to finish the work on the original contract.²¹ The Notice of Completion can be filed by the general contractor, lender, the surety, or the owner.²² Once the Notice of Completion is filed, the time period for subcontractors and suppliers to file a PN is shortened to 10 days.²³

How is a mechanic's lien perfected?

- ▶ All statutory requirements must be met for a lien to be perfected. The perfection of a mechanic's lien begins with the preliminary notice. As mentioned above, to protect their lien rights, a PN must be filed by all potential lien claimants not directly under contract with the owner.²⁴ After a PN is filed, a lien claimant has 90 days from the date of final completion of the original contract to file a written notice to hold and claim a lien with the county recorder of the county in which the property is situated.²⁵ Additionally, within 30 days after filing the notice of lien, the lien claimant must deliver or mail a copy of the notice of lien to the reported or recorded property owner.²⁶ If all requirements are met, the lien will "relate back to and take effect as of the time of the commencement of the work and shall have priority over any lien, mortgage, or other encumbrance which may have attached subsequently to the time when the project was commenced."²⁷

- How do you enforce a mechanic's lien?**
- ▶ Enforcement of a mechanic's lien is accomplished through the Utah court system and is generally referred to as a "foreclosure."²⁸ A lien claimant must file an action with a court of competent jurisdiction within 180 days from the day on which the notice of claim is filed.²⁹ Additionally, the lien claimant must file with the county recorder a notice of the pendency of the action within same the 180 days.³⁰
 - ▶ If the lien is on a residential project, when the lien claimant serves the owner with the complaint the claimant must include instructions relating to the to the owner's rights under the Residence Lien Restriction and Lien Recovery Fund Act (Act) as well as an affidavit specifying how the owner may exercise his or her rights under the Act.³¹ Failure to provide the owner with instructions and affidavit bar the lien claimant from enforcing the lien.³²

- What is the Residence Lien Restriction and Lien Recovery Fund Act (Act)?**
- ▶ The Act has two principle components. First it provides homeowners in Utah with limited protections from mechanic's liens arising as a result of construction of or on their residence. If the owner meets certain conditions, the lien claimant is barred from maintaining a lien upon that residence or recovering a judgment in any civil action against the owner.³³
 - ▶ The Act also creates the Residence Lien Recovery Fund against which a subcontractor, supplier, or laborer may recover payment for their qualified services as well as certain attorney's fees, interests, and costs (in residential projects attorney's fees are limited to 15% of qualified services).³⁴

END NOTES

1. Black's Law Dictionary 933 (7th ed. 1999).
2. *Id.* at 935
3. Utah Code Ann. § 38-1-3.
4. *Id.*
5. Michael D. Creer, *The Young Lawyer: A Brief Overview of Utah's Mechanic's Lien Law*, 12 UTAH BAR J. 32 (1999)(citing *King Brothers, Inc. v. Utah Dry Kiln Co., Inc.*, 374 P.2d 254 (Utah 1962)).
6. Utah Code Ann. § 38-1-3.
7. Creer, *supra* note 5, at 33.
8. Utah Code Ann. §§ 38-1-17 and 38-17-18(1).
9. Utah Code Ann. § 38-1-37.
10. Utah Code Ann. § 38-1-27(2).
11. Utah Code Ann. § 38-1-32(1)(c)
12. Utah Code Ann. § 38-1-31(1)(a).
13. Utah Code Ann. § 38-1-31(1)(b).
14. Utah Code Ann. § 38-1-31(1)(a)(i) and (c).
15. Utah Code Ann. § 38-1-32(1)(a)(i); see also § 38-1-2.
16. Utah Code Ann. § 38-1-32(1)(a)(i)(A).
17. Utah Code Ann. § 38-1-32(1)(a)(i)(B).
18. Utah Code Ann. § 38-1-32(1)(d)(i).
19. Utah Code Ann. § 38-1-32(1)(c).
20. Utah Code Ann. § 38-1-31(3).
21. Utah Code Ann. § 38-1-33(1)(a)(ii).
22. Utah Code Ann. § 38-1-33(1)(a)(i).
23. Utah Code Ann. § 38-1-33(1)(e)(iv).
24. Utah Code Ann. § 38-1-32(1)(a)(i)
25. Utah Code Ann. § 38-1-7(1)(a).
26. Utah Code Ann. § 38-1-7(3)(a).
27. Utah Code Ann. § 38-1-5.
28. Creer, *supra* note 5, at 34.
29. Utah Code Ann. § 38-1-11(1).
30. Utah Code Ann. § 38-1-11(2)(a).
31. Utah Code Ann. § 38-1-11(4)(a).
32. Utah Code Ann. § 38-1-11(4)(c).
33. Utah Code Ann. § 38-11-107(1).
34. Utah Code Ann. §§ 38-11-203 and 38-11-204.