

Part 1 General Provisions

38-11-101 Title.

This chapter is known as the "Residence Lien Restriction and Lien Recovery Fund Act."

Enacted by Chapter 308, 1994 General Session

38-11-102 Definitions.

- (1) "Certificate of compliance" means an order issued by the director to the owner finding that the owner is in compliance with the requirements of Subsections 38-11-204(4)(a) and (4)(b) and is entitled to protection under Section 38-11-107.
- (2) "Construction on an owner-occupied residence" means designing, engineering, constructing, altering, remodeling, improving, repairing, or maintaining a new or existing residence.
- (3) "Department" means the Department of Commerce.
- (4) "Director" means the director of the Division of Professional Licensing or the director's designee.
- (5) "Division" means the Division of Professional Licensing.
- (6) "Duplex" means a single building having two separate living units.
- (7) "Encumbered fund balance" means the aggregate amount of outstanding claims against the fund. The remainder of the money in the fund is unencumbered funds.
- (8) "Executive director" means the executive director of the Department of Commerce.
- (9) "Factory built housing" is as defined in Section 15A-1-302.
- (10) "Factory built housing retailer" means a person that sells factory built housing to consumers.
- (11) "Fund" means the Residence Lien Recovery Fund established under Section 38-11-201.
- (12) "Laborer" means a person who provides services at the site of the construction on an owner-occupied residence as an employee of an original contractor or other qualified beneficiary performing qualified services on the residence.
- (13) "Licensee" means any holder of a license issued under Title 58, Chapter 3a, Architects Licensing Act; Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act; Chapter 53, Landscape Architects Licensing Act; and Chapter 55, Utah Construction Trades Licensing Act.
- (14) "Nonpaying party" means the original contractor, subcontractor, or real estate developer who has failed to pay the qualified beneficiary making a claim against the fund.
- (15) "Original contractor" means a person who contracts with the owner of real property or the owner's agent to provide services, labor, or material for the construction of an owner-occupied residence.
- (16) "Owner" means a person who:
 - (a) contracts with a person who is licensed as a contractor or is exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, for the construction on an owner-occupied residence upon real property that the person:
 - (i) owns; or
 - (ii) purchases after the person enters into a contract described in this Subsection (16)(a) and before completion of the owner-occupied residence;
 - (b) contracts with a real estate developer to buy a residence upon completion of the construction on the owner-occupied residence; or

- (c) purchases a residence from a real estate developer after completion of the construction on the owner-occupied residence.
- (17) "Owner-occupied residence" means a residence that is, or after completion of the construction on the residence will be, occupied by the owner or the owner's tenant or lessee as a primary or secondary residence within 180 days after the day on which the construction on the residence is complete.
- (18) "Qualified beneficiary" means a person who:
 - (a) provides qualified services;
 - (b) pays necessary fees required under this chapter; and
 - (c) registers with the division:
 - (i) as a licensed contractor under Subsection 38-11-301(1) or (2), if that person seeks recovery from the fund as a licensed contractor; or
 - (ii) as a person providing qualified services other than as a licensed contractor under Subsection 38-11-301(3) if the person seeks recovery from the fund in a capacity other than as a licensed contractor.
- (19)
 - (a) "Qualified services" means the following performed in construction on an owner-occupied residence:
 - (i) contractor services provided by a contractor licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act;
 - (ii) architectural services provided by an architect licensed under Title 58, Chapter 3a, Architects Licensing Act;
 - (iii) engineering and land surveying services provided by a professional engineer or land surveyor licensed or exempt from licensure under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act;
 - (iv) landscape architectural services by a landscape architect licensed or exempt from licensure under Title 58, Chapter 53, Landscape Architects Licensing Act;
 - (v) design and specification services of mechanical or other systems;
 - (vi) other services related to the design, drawing, surveying, specification, cost estimation, or other like professional services;
 - (vii) providing materials, supplies, components, or similar products;
 - (viii) renting equipment or materials;
 - (ix) labor at the site of the construction on the owner-occupied residence; and
 - (x) site preparation, set up, and installation of factory built housing.
 - (b) "Qualified services" does not include the construction of factory built housing in the factory.
- (20) "Real estate developer" means a person having an ownership interest in real property who:
 - (a) contracts with a person who is licensed as a contractor or is exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, for the construction of a residence that is offered for sale to the public; or
 - (b) is a licensed contractor under Title 58, Chapter 55, Utah Construction Trades Licensing Act, who engages in the construction of a residence that is offered for sale to the public.
- (21)
 - (a) "Residence" means an improvement to real property used or occupied, to be used or occupied as, or in conjunction with:
 - (i) a primary or secondary detached single-family dwelling; or
 - (ii) a multifamily dwelling up to and including duplexes.
 - (b) "Residence" includes factory built housing.

(22) "Subsequent owner" means a person who purchases a residence from an owner within 180 days after the day on which the construction on the residence is completed.

Amended by Chapter 415, 2022 General Session

38-11-103 Administration.

This chapter shall be administered by the Division of Professional Licensing pursuant to the provisions of this chapter and consistent with Title 58, Chapter 1, Division of Professional Licensing Act.

Amended by Chapter 415, 2022 General Session

38-11-105 Procedures established by rule.

In compliance with Title 63G, Chapter 4, Administrative Procedures Act, the division shall establish procedures by rule by which claims for compensation from the fund and requests for certificates of compliance shall be adjudicated.

Amended by Chapter 229, 2018 General Session

38-11-106 State not liable.

The state and the state's agencies, instrumentalities, and political subdivisions are not liable for:

- (1) issuance or denial of any certificate of compliance;
- (2) any claims made against the fund; or
- (3) failure of the fund to pay any amounts ordered by the director to be paid from the fund, including failure of the fund to pay any amounts ordered by the director to be paid because there is insufficient money in the fund.

Amended by Chapter 229, 2018 General Session

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

- (1)
 - (a) A person qualified to file a lien upon an owner-occupied residence and the real property associated with that residence under Chapter 1a, Preconstruction and Construction Liens, who provides qualified services under an agreement, other than directly with the owner, is barred from maintaining a lien upon that residence and real property or recovering a judgment in any civil action against the owner or the owner-occupied residence to recover money owed for qualified services provided by that person if:
 - (i) an owner meets the conditions described in Subsections 38-11-204(4)(a) and (b); or
 - (ii)
 - (A) a subsequent owner purchases a residence from an owner;
 - (B) the subsequent owner who purchased the residence under Subsection (1)(a)(ii)(A) occupies the residence as a primary or secondary residence within 180 days from the date of transfer or the residence is occupied by the subsequent owner's tenant or lessee as a primary or secondary residence within 180 days from the date of transfer; and
 - (C) the owner from whom the subsequent owner purchased the residence met the conditions described in Subsections 38-11-204(4)(a) and (b).
- (b)

- (i) As used in this Subsection (1)(b):
 - (A) "Contract residence":
 - (I) means the owner-occupied residence for which a subcontractor provides service, labor, or materials; and
 - (II) includes the real property associated with that owner-occupied residence.
 - (B) "General contract" means an oral or written contract between an owner and an original contractor for providing service, labor, or materials for construction on an owner-occupied residence.
 - (C) "Subcontractor" means a person who provides service, labor, or materials for construction on an owner-occupied residence under an agreement other than directly with the owner.
- (ii) A subcontractor qualified to file a lien upon a contract residence under Chapter 1a, Preconstruction and Construction Liens, is barred from maintaining a lien upon that contract residence or from recovering a judgment in a civil action against the owner, the contract residence, or, as provided in Subsection (1)(b)(iii), a subsequent owner to recover for service, labor, or materials provided by the subcontractor:
 - (A) if the amount of the general contract under which the subcontractor provides service, labor, or materials totals no more than \$5,000; and
 - (B) whether or not the original contractor is licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act.
- (iii) A subsequent owner is protected under Subsection (1)(b)(ii) to the same extent as an owner if:
 - (A) the subsequent owner purchases the contract residence from the owner; and
 - (B)
 - (I) the subsequent owner occupies the residence as a primary or secondary residence within 180 days after the date of transfer; or
 - (II) the subsequent owner's tenant or lessee occupies the residence as a primary or secondary residence within 180 days after the date of the transfer.
- (2) If a residence is constructed under conditions that do not meet all of the provisions of Subsection (1)(a) or (b), that residence and the real property associated with that residence as provided in Section 38-1a-302 is subject to any lien as provided in Section 38-1a-301.
- (3) A lien claimant who files a preconstruction or construction lien under Chapter 1a, Preconstruction and Construction Liens, or a foreclosure action upon an owner-occupied residence is not liable for costs and attorney fees under Sections 38-1a-706 and 38-1a-707 or for any damages arising from a civil action related to the lien filing or foreclosure action if the lien claimant removes the lien within 15 days from the date the owner obtains a certificate of compliance and mails a copy of the certificate of compliance by certified mail to the lien claimant at the address provided for by Subsection 38-1a-502(2)(e). The 15-day period begins accruing from the date postmarked on the certificate of compliance sent to the lien claimant.

Amended by Chapter 278, 2012 General Session

38-11-108 Notification of rights under chapter.

- (1) Beginning July 1, 1995, the original contractor or real estate developer shall state in the written contract with the owner what actions are necessary for the owner to be protected under Section 38-11-107 from the maintaining of a mechanic's lien or other civil action against the owner or the owner-occupied residence to recover money owed for qualified services.
- (2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division may issue rules providing for the form and content of the information required by Subsection (1).

Amended by Chapter 382, 2008 General Session

38-11-109 Severability clause.

If any provision of this chapter is held invalid or unconstitutional by a court of competent jurisdiction, the invalidity shall not affect the other provisions of this chapter which can be given effect without the invalid or unconstitutional provision.

Enacted by Chapter 193, 1999 General Session

Effective until 7/1/2024

38-11-110 Issuance of certificates of compliance.

- (1)
- (a) The director may issue a certificate of compliance only after determining through an informal proceeding, as set forth in Title 63G, Chapter 4, Administrative Procedures Act:
 - (i) that the owner is in compliance with Subsections 38-11-204(4)(a) and (b); or
 - (ii) subject to Subsection (2), that the owner is entitled to protection under Subsection 38-11-107(1)(b).
 - (b) If the director determines through an informal proceeding under Subsection (1)(a) that an owner seeking the issuance of a certificate of compliance under Subsection (1)(a)(i) is not in compliance as provided in Subsection (1)(a)(i), the director may not issue a certificate of compliance.
- (2)
- (a) An owner seeking the issuance of a certificate of compliance under Subsection (1)(a)(ii) shall submit an affidavit, as defined by the division by rule, affirming that the owner is entitled to protection under Subsection 38-11-107(1)(b).
 - (b) If an owner's affidavit under Subsection (2)(a) is disputed, the owner may file a complaint in small claims court or district court to resolve the dispute.
 - (c) The director may issue a certificate of compliance to an owner seeking issuance of a certificate under Subsection (1)(a)(ii) if:
 - (i) the owner's affidavit under Subsection (2)(a) is undisputed; or
 - (ii) a small claims court or district court resolves any dispute over the owner's affidavit in favor of the owner.

Amended by Chapter 31, 2010 General Session

Effective 7/1/2024

38-11-110 Issuance of certificates of compliance.

- (1)
- (a) The director may issue a certificate of compliance only after determining through an informal proceeding, as set forth in Title 63G, Chapter 4, Administrative Procedures Act:
 - (i) that the owner is in compliance with Subsections 38-11-204(4)(a) and (b); or
 - (ii) subject to Subsection (2), that the owner is entitled to protection under Subsection 38-11-107(1)(b).
 - (b) If the director determines through an informal proceeding under Subsection (1)(a) that an owner seeking the issuance of a certificate of compliance under Subsection (1)(a)(i) is not in compliance as provided in Subsection (1)(a)(i), the director may not issue a certificate of compliance.

- (2)
- (a) An owner seeking the issuance of a certificate of compliance under Subsection (1)(a)(ii) shall submit an affidavit, as defined by the division by rule, affirming that the owner is entitled to protection under Subsection 38-11-107(1)(b).
 - (b) If an owner's affidavit under Subsection (2)(a) is disputed, the owner may file a complaint in a court with jurisdiction under Title 78A, Judiciary and Judicial Administration, to resolve the dispute.
 - (c) The director may issue a certificate of compliance to an owner seeking issuance of a certificate under Subsection (1)(a)(ii) if:
 - (i) the owner's affidavit under Subsection (2)(a) is undisputed; or
 - (ii) a court resolves any dispute over the owner's affidavit in favor of the owner.

Amended by Chapter 158, 2024 General Session