

Part 2 Residence Lien Recovery Fund

38-11-201 Residence Lien Recovery Fund.

- (1) There is created an expendable special revenue fund called the "Residence Lien Recovery Fund."
- (2)
 - (a) The fund consists of all amounts collected by the division in accordance with Section 38-11-202.
 - (b)
 - (i) The division shall deposit the funds in an account with the state treasurer.
 - (ii) The division shall record the funds in the Residence Lien Recovery Fund.
 - (c) The fund shall earn interest.
- (3) The division shall employ personnel and resources necessary to administer the fund and shall use fund money in accordance with Sections 38-11-203 and 38-11-204 and to pay the costs charged to the fund by the attorney general.
- (4) Costs incurred by the division for administering the fund shall be paid out of fund money.
- (5) The Division of Finance shall report annually to the Legislature, the division, and the board. The report shall state:
 - (a) amounts received by the fund;
 - (b) disbursements from the fund;
 - (c) interest earned and credited to the fund; and
 - (d) the fund balance.
- (6)
 - (a) For purposes of establishing and assessing fees under Section 63J-1-504, the provisions of this chapter are considered a new program for fiscal year 1995-96.
 - (b) The department shall submit its fee schedule to the Legislature for its approval at the 1996 Annual General Session.

Amended by Chapter 400, 2013 General Session

38-11-202 Payments to the fund.

The Residence Lien Recovery Fund shall be supported solely from:

- (1) initial and special assessments collected by the division from licensed contractors registered as qualified beneficiaries in accordance with Subsections 38-11-301(1) and (2) and Section 38-11-206;
- (2) initial and special assessments collected by the division from other qualified beneficiaries registering with the division in accordance with Subsection 38-11-301(3) and Section 38-11-206;
- (3) fees determined by the division under Section 63J-1-504 collected from laborers under Subsection 38-11-204(7) when the laborers obtain a recovery from the fund;
- (4) amounts collected by subrogation under Section 38-11-205 on behalf of the fund following a payment from the fund;
- (5) application fees determined by the division under Section 63J-1-504 collected from:
 - (a) qualified beneficiaries or laborers under Subsection 38-11-204(1)(b) when qualified beneficiaries or laborers make a claim against the fund; or
 - (b) owners or agents of the owners seeking to obtain a certificate of compliance for the owner;

- (6) registration fees determined by the division under Section 63J-1-504 collected from other qualified beneficiaries registering with the department in accordance with Subsection 38-11-301(3)(a)(iii);
- (7) reinstatement fees determined by the division under Section 63J-1-504 collected from registrants in accordance with Subsection 38-11-302(5)(b);
- (8) civil fines authorized under Subsection 38-11-205(2) collected by the attorney general for failure to reimburse the fund; and
- (9) any interest earned by the fund.

Amended by Chapter 183, 2009 General Session

38-11-203 Disbursements from the fund -- Limitations.

- (1) A payment of any claim upon the fund by a qualified beneficiary shall be made only upon an order issued by the director finding that:
 - (a) the claimant was a qualified beneficiary during the construction on a residence;
 - (b) the claimant complied with the requirements of Section 38-11-204;
 - (c) there is adequate money in the fund to pay the amount ordered; and
 - (d) the claimant provided the qualified services that are the basis of the claim.
- (2) A payment of a claim upon the fund by a laborer shall be made only upon an order issued by the director finding that:
 - (a) the laborer complied with the requirements of Subsection 38-11-204(7); and
 - (b) there is adequate money in the fund to pay the amount ordered.
- (3)
 - (a) An order under this section may be issued only after the division has complied with the procedures established by rule under Section 38-11-105.
 - (b) The director shall order payment of the qualified services as established by evidence, or if the claimant has obtained a judgment, then in the amount awarded for qualified services in the judgment to the extent the qualified services are attributable to the owner-occupied residence at issue in the claim.
 - (c) The director shall order payment of interest on amounts claimed for qualified services based on the current prime interest rate at the time payment was due to the date the claim is approved for payment except for delays attributable to the claimant but not more than 10% per annum.
 - (d) The rate shall be the prime lending rate as published in the Wall Street Journal on the first business day of each calendar year adjusted annually.
 - (e) The director shall order payment of costs in the amount stated in the judgment. If the judgment does not state a sum certain for costs, or if no judgment has been obtained, the director shall order payment of reasonable costs as supported by evidence. The claim application fee as established by the division pursuant to Subsection 38-11-204(1)(b) is not a reimbursable cost.
 - (f) If a judgment has been obtained with attorneys' fees, notwithstanding the amount stated in a judgment, or if no judgment has been obtained but the contract provides for attorneys' fees, the director shall order payment of attorneys' fees not to exceed 15% of qualified services. If the judgment does not state a sum for attorneys' fees, no attorneys' fees will be paid by the director.
- (4)
 - (a) Payments made from the fund may not exceed \$75,000 per construction project to qualified beneficiaries and laborers who have claim against the fund for that construction project.

- (b) If claims against the fund for a construction project exceed \$75,000, the \$75,000 shall be awarded proportionately so that each qualified beneficiary and laborer awarded compensation from the fund for qualified services shall receive an identical percentage of the qualified beneficiary's or laborer's award.
- (5) Subject to the limitations of Subsection (4), if on the day the order is issued there are inadequate funds to pay the entire claim and the director determines that the claimant has otherwise met the requirements of Subsection (1) or (2), the director shall order additional payments once the fund meets the balance limitations of Section 38-11-206.
- (6)
 - (a) A payment of any claim upon the fund may not be made to an assignee or transferee unless an order issued by the director finds that:
 - (i) the claim is assigned or transferred to a person who is a qualified beneficiary; and
 - (ii) the person assigning or transferring the claim:
 - (A) was a qualified beneficiary during the construction on a residence; and
 - (B) provided the qualified services that are the basis of the claim.
 - (b) A claimant who is an assignee or transferee of a claim upon the fund under this Subsection (6) does not have to meet the requirements of Subsections 38-11-203(1)(a) and (d).

Amended by Chapter 238, 2016 General Session

38-11-204 Claims against the fund -- Requirements to make a claim -- Qualifications to receive compensation -- Qualifications to receive a certificate of compliance.

- (1) To claim recovery from the fund a person shall:
 - (a) meet the requirements of Subsection (4) or (6);
 - (b) pay an application fee determined by the division under Section 63J-1-504; and
 - (c) file with the division a completed application on a form provided by the division accompanied by supporting documents establishing:
 - (i) that the person meets the requirements of Subsection (4) or (6);
 - (ii) that the person was a qualified beneficiary or laborer during the construction on the owner-occupied residence; and
 - (iii) the basis for the claim.
- (2) To recover from the fund, the application required by Subsection (1) shall be filed no later than one year:
 - (a) from the date the judgment required by Subsection (4)(d) is entered;
 - (b) from the date the nonpaying party filed bankruptcy, if the claimant is precluded from obtaining a judgment or from satisfying the requirements of Subsection (4)(d) because the nonpaying party filed bankruptcy within one year after the entry of judgment; or
 - (c) from the date the laborer, trying to recover from the fund, completed the laborer's qualified services.
- (3) The issuance of a certificate of compliance is governed by Section 38-11-110.
- (4) To recover from the fund, regardless of whether the residence is occupied by the owner, a subsequent owner, or the owner or subsequent owner's tenant or lessee, a qualified beneficiary shall establish that:
 - (a)
 - (i) the owner of the owner-occupied residence or the owner's agent entered into a written contract with an original contractor licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act:
 - (A) for the performance of qualified services;

- (B) to obtain the performance of qualified services by others; or
- (C) for the supervision of the performance by others of qualified services in construction on that residence;
- (ii) the owner of the owner-occupied residence or the owner's agent entered into a written contract with a real estate developer for the purchase of an owner-occupied residence; or
- (iii) the owner of the owner-occupied residence or the owner's agent entered into a written contract with a factory built housing retailer for the purchase of an owner-occupied residence;
- (b) the owner has paid in full the original contractor, licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, real estate developer, or factory built housing retailer under Subsection (4)(a) with whom the owner has a written contract in accordance with the written contract and any amendments to the contract;
- (c)
 - (i) the original contractor, licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, the real estate developer, or the factory built housing retailer subsequently failed to pay a qualified beneficiary who is entitled to payment under an agreement with that original contractor or real estate developer licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, for services performed or materials supplied by the qualified beneficiary;
 - (ii) a subcontractor who contracts with the original contractor, licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, the real estate developer, or the factory built housing retailer failed to pay a qualified beneficiary who is entitled to payment under an agreement with that subcontractor or supplier; or
 - (iii) a subcontractor who contracts with a subcontractor or supplier failed to pay a qualified beneficiary who is entitled to payment under an agreement with that subcontractor or supplier;
- (d)
 - (i) unless precluded from doing so by the nonpaying party's bankruptcy filing within the applicable time, the qualified beneficiary filed an action against the nonpaying party to recover money owed to the qualified beneficiary within the earlier of:
 - (A) 180 days from the date the qualified beneficiary filed a notice of claim under Section 38-1a-502; or
 - (B) 270 days from the completion of the original contract pursuant to Subsection 38-1a-502(1);
 - (ii) the qualified beneficiary has obtained a judgment against the nonpaying party who failed to pay the qualified beneficiary under an agreement to provide qualified services for construction of that owner-occupied residence;
 - (iii) the qualified beneficiary has:
 - (A) obtained from a court of competent jurisdiction the issuance of an order requiring the judgment debtor, or if a corporation any officer of the corporation, to appear before the court at a specified time and place to answer concerning the debtor's or corporation's property;
 - (B) received return of service of the order from a person qualified to serve documents under the Utah Rules of Civil Procedure, Rule 4(b);
 - (C) made reasonable efforts to obtain asset information from the supplemental proceedings;

- (D) if assets subject to execution are discovered as a result of the order required under this Subsection (4)(d)(iii) or for any other reason, obtained the issuance of a writ of execution from a court of competent jurisdiction; and
 - (iv) if the nonpaying party has filed bankruptcy, the qualified beneficiary timely filed a proof of claim where permitted in the bankruptcy action;
 - (e) the qualified beneficiary is not entitled to reimbursement from any other person; and
 - (f) the qualified beneficiary provided qualified services to a contractor, licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act.
- (5) The requirements of Subsections (4)(d)(ii) and (iii) need not be met if the qualified beneficiary is prevented from compliance because the nonpaying party files bankruptcy.
- (6) To recover from the fund a laborer shall:
- (a) establish that the laborer has not been paid wages due for the work performed at the site of a construction on an owner-occupied residence; and
 - (b) provide any supporting documents or information required by rule by the division.
- (7) A fee determined by the division under Section 63J-1-504 shall be deducted from any recovery from the fund received by a laborer.
- (8) The requirements of Subsections (4)(a) and (b) may be satisfied if an owner or agent of the owner establishes to the satisfaction of the director that the owner of the owner-occupied residence or the owner's agent entered into a written contract with an original contractor who:
- (a) was a business entity that was not licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, but was solely or partly owned by an individual who was licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act; or
 - (b) was a natural person who was not licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, but who was the sole or partial owner and qualifier of a business entity that was licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act.
- (9) The director shall have equitable power to determine if the requirements of Subsections (4)(a) and (b) have been met, but any decision by the director under this chapter shall not alter or have any effect on any other decision by the division under Title 58, Occupations and Professions.

Amended by Chapter 238, 2016 General Session

38-11-205 Subrogation.

- (1)
 - (a)
 - (i) The state, on behalf of the fund, has the right of subrogation only to the extent of payments made from the fund.
 - (ii) Upon payment from the fund to a claimant, any payment to the claimant that was the basis of the claimant's claim against the fund shall be assigned to the fund for the enforcement of subrogation rights by the attorney general.
 - (iii) A claimant's judgment or bankruptcy claim against the nonpaying party shall be automatically assigned to the state, to the extent paid by the fund on a particular residence, upon the state's filing of the director's order of payment of claim with the appropriate court.
 - (b) The state's right of subrogation under Subsection (1)(a) has priority over any rights of the qualified beneficiary under the judgment or any civil penalties imposed.
 - (c) The state shall be awarded attorney's fees and court costs incurred in recovering claims paid from the fund.
- (2)

- (a) The attorney general shall enforce all subrogation claims and may contract with private attorneys as necessary to adequately enforce subrogation claims.
- (b)
 - (i) In addition to the subrogation claims the attorney general may seek a civil fine of \$5,000 per residence for failure to reimburse the Residence Lien Recovery Fund within 90 days after any disbursement from the fund resulting from the registrant's failure to pay qualified beneficiaries under this chapter.
 - (ii) All claims under the judgment have priority over the civil penalty.
- (3) The attorney general may charge the fund for costs incurred by the attorney general under this chapter.

Amended by Chapter 193, 1999 General Session

38-11-206 Limitations on fund balance -- Payment of special assessments.

- (1)
 - (a) If on June 30 of any year the balance in the fund is less than \$1,500,000, the division shall make a special assessment against all qualified beneficiaries in an amount that will restore the unencumbered fund balance to not less than \$2,000,000 or more than \$2,500,000.
 - (b) The amount of the special assessment shall be determined by the division under Section 63J-1-504 after consultation with the board.
- (2) Special assessments made under this section shall be due and payable on December 1 following assessment.
- (3) The fund balance limitations set forth in Subsection (1)(a) shall be used by the division only for the purpose of determining the amount of any special assessment and do not prohibit the fund balance from exceeding \$2,500,000 or falling below \$2,000,000.

Amended by Chapter 367, 2011 General Session

38-11-207 Reimbursement to the fund.

- (1) If the director disburses money from the fund as a result of a person licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, or a qualified beneficiary failing to pay qualified beneficiaries:
 - (a) the division shall issue a notice of the disbursement from the fund and the obligation to reimburse the fund to the licensee or qualified beneficiary; and
 - (b) the licensee or qualified beneficiary shall reimburse the fund within 20 days from the issuance of the notice required by Subsection (1)(a).
- (2) The notice required by Subsection (1)(a) shall meet the requirements established by rule by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (3)
 - (a) A finding of fact in an administrative action that a payment of any amount has been made from the fund in settlement of a claim arising from the act, representation, transaction, or conduct of a person licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act, in violation of Section 58-55-603 shall result in the immediate suspension of that person's license without further compliance with Title 63G, Chapter 4, Administrative Procedures Act.
 - (b) The finding of fact for Subsection (3)(a) may be made in the same administrative action as the related claim and may be included in the findings required by Section 38-11-203.

- (c) The suspension required by Subsection (3)(a) shall remain in effect until the person applies for reinstatement and is issued a license in accordance with Sections 58-1-308 and 58-55-303.

Amended by Chapter 382, 2008 General Session