

Effective 5/12/2020

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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 Occupational and Professional Licensing or the director's designee.
- (5) "Division" means the Division of Occupational and 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.