

Effective 5/4/2022

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