

Part 4 Preconstruction Lien Provisions

38-1a-401 Notice of preconstruction service.

- (1)
- (a) A person that desires to claim a preconstruction lien on real property shall file a notice of preconstruction service with the registry no later than 20 days after the person commences providing preconstruction service for the anticipated improvement on the real property.
 - (b) A person that fails to file a timely notice of preconstruction service as required in this section may not claim a valid preconstruction lien.
 - (c) A timely filed notice of preconstruction service is effective as to each preconstruction service that the person filing the notice provides for the anticipated improvement under a single original contract, including preconstruction service that the person provides to more than one supervising subcontractor under that original contract.
 - (d) A notice of preconstruction service filed for preconstruction service provided or to be provided under an original contract for an anticipated improvement on real property is not valid for preconstruction service provided or to be provided under a separate original contract for an anticipated improvement on the same real property.
 - (e) A notice of preconstruction service that is timely filed with the database with respect to an anticipated improvement is considered to have been filed at the same time as the earliest timely filed notice of preconstruction service for that anticipated improvement.
 - (f) A notice of preconstruction service shall include:
 - (i) the name, address, telephone number, and email address of the person providing the preconstruction service;
 - (ii) the name, address, telephone number, and email address of the person that employed the person providing the preconstruction service;
 - (iii) a general description of the preconstruction service the person provided or will provide;
 - (iv) the name of the record or reputed owner;
 - (v) the name of the county in which the property on which the anticipated improvement will occur is located;
 - (vi)
 - (A) the tax parcel identification number of each parcel included in that property; or
 - (B) the entry number of a previously filed notice of preconstruction service that includes the tax parcel identification number of each parcel included in that property; and
 - (vii) a statement that the person filing the notice intends to claim a preconstruction lien if the person is not paid for the preconstruction service the person provides.
 - (g)
 - (i) A claimant who is an original contractor or a supervisory subcontractor may include in a notice of preconstruction service the name, address, and telephone number of each subcontractor who is under contract with the claimant to provide preconstruction service that the claimant is under contract to provide.
 - (ii) The inclusion of a subcontractor in a notice of preconstruction service filed by another claimant is not a substitute for the subcontractor's own submission of a notice of preconstruction service.
- (2) The burden is on the person filing the notice of preconstruction service to prove that the person has substantially complied with the requirements of this section.
- (3)

- (a) Subject to Subsection (3)(b), a person required by this section to file a notice of preconstruction service is required to give only one notice for each anticipated improvement.
- (b) A person that provides preconstruction service under more than one original contract for the same anticipated improvement and desires to claim a preconstruction lien for preconstruction service provided under each original contract shall file a separate notice of preconstruction service for preconstruction service provided under each original contract.
- (4) A person filing a notice of preconstruction service by alternate means is responsible for verifying and changing any incorrect information in the notice of preconstruction service before the expiration of the period during which the notice is required to be filed.

Amended by Chapter 464, 2013 General Session

38-1a-402 Notice of preconstruction lien -- Requirements.

- (1) Within 90 days after completing a preconstruction service for which a claimant is not paid in full, a claimant who desires to claim a preconstruction lien shall submit for recording with each applicable county recorder a notice of preconstruction lien.
- (2) A claimant who fails to submit a notice of preconstruction lien as provided in Subsection (1) may not claim a preconstruction lien.
- (3)
 - (a) A notice of preconstruction service lien shall include:
 - (i) the claimant's name, mailing address, and telephone number;
 - (ii) a statement that the claimant claims a preconstruction lien;
 - (iii) the date the claimant's notice of preconstruction service was filed;
 - (iv) the name of the person that employed the claimant;
 - (v) a general description of the preconstruction service provided by the claimant;
 - (vi) the date that the claimant last provided preconstruction service;
 - (vii) the name, if known, of the reputed owner or, if not known, the name of the record owner;
 - (viii) a description of the project property sufficient for identification;
 - (ix) the principal amount, excluding interest, costs, and attorney fees, claimed by the claimant;
 - (x) the claimant's signature or the signature of the claimant's authorized agent;
 - (xi) an acknowledgment or certificate as required under Title 57, Chapter 3, Recording of Documents; and
 - (xii) if the lien is against an owner-occupied residence, as defined in Section 38-11-102, a statement meeting the requirements that the division has established by rule, describing the steps the owner of the owner-occupied residence may take to require a claimant to remove the lien as provided in Section 38-11-107.
 - (b)
 - (i) A claimant who is an original contractor or a supervising subcontractor may include in a notice of preconstruction lien the name, address, and telephone number of each subcontractor who is under contract with the claimant to provide preconstruction service that the claimant is under contract to provide.
 - (ii) The inclusion of a subcontractor in a notice of preconstruction lien filed by another claimant is not a substitute for the subcontractor's own submission of a notice of preconstruction lien.
- (4)
 - (a) A county recorder:
 - (i) shall record each notice of preconstruction lien in an index maintained for that purpose; and
 - (ii) need not verify that a valid notice of preconstruction service is filed with respect to the claimed preconstruction lien.

- (b) All persons are considered to have notice of a notice of preconstruction lien from the time it is recorded.
- (5)
- (a) Within 30 days after a claimant's notice of preconstruction lien is recorded, the claimant shall send by certified mail a copy of the notice to the reputed or record owner.
 - (b) If the record owner's address is not readily available to the claimant, the claimant may mail a copy of the notice to the owner's last-known address as it appears on the last completed assessment roll of the county in which the property is located.
 - (c) A claimant's failure to mail a copy of the notice as required in this Subsection (5) precludes the claimant from being awarded costs and attorney fees against the reputed or record owner in an action to enforce the lien.
- (6) Nothing in this section may be construed to prohibit a claimant from recording a notice of preconstruction lien before completing the preconstruction service the claimant contracted to provide.

Amended by Chapter 464, 2013 General Session

38-1a-403 Effective time and priority of preconstruction lien -- Subordination to bona fide loan.

- (1) Except as otherwise provided in this chapter, a preconstruction lien:
- (a) relates back to and takes effect as of the time of filing of the earliest timely filed notice of preconstruction service under Section 38-1a-401 for the anticipated improvement for which the preconstruction lien is claimed; and
 - (b) has priority over:
 - (i) any lien, mortgage, or other encumbrance that attaches after the earliest timely filed notice of preconstruction service is filed; and
 - (ii) any lien, mortgage, or other encumbrance of which the claimant had no notice and that was unrecorded at the time the earliest timely filed notice of preconstruction service is filed.
- (2) A preconstruction lien is subordinate to an interest securing a bona fide loan if and to the extent that the lien covers preconstruction service provided after the interest securing a bona fide loan is recorded.

Amended by Chapter 464, 2013 General Session

38-1a-404 When preconstruction service considered complete.

Preconstruction service is considered complete for any project, project phase, or bid package as of the date that construction work for that project, project phase, or bid package, respectively, commences.

Enacted by Chapter 278, 2012 General Session

38-1a-405 Preconstruction liens on equal footing.

- (1) Each preconstruction lien on a project property is on equal footing with every other preconstruction lien on the project property, regardless of:
- (a) when the claimant submitted the claimant's notice of preconstruction service for recording;
 - (b) when the claimant submitted the claimant's notice of preconstruction lien for recording; or
 - (c) when the preconstruction service related to the lien occurs.

(2) Subsection (1) does not affect the priority of a construction lender's mortgage or trust deed, as established under this chapter.

Enacted by Chapter 464, 2013 General Session