

Part 7

Enforcement of Preconstruction and Construction Liens

38-1a-701 Action to enforce lien -- Time for filing action -- Notice of pendency of action -- Action involving a residence.

- (1) As used in this section:
 - (a) "Owner" has the same meaning as defined in Section 38-11-102.
 - (b) "Residence" has the same meaning as defined in Section 38-11-102.
- (2) In order to enforce a preconstruction lien or construction lien, a claimant shall file an action to enforce the lien:
 - (a) except as provided in Subsection (2)(b), within 180 days after the day on which the claimant files:
 - (i) a notice of preconstruction lien under Section 38-1a-402, for a preconstruction lien; or
 - (ii) a notice of construction lien under Section 38-1a-502, for a construction lien; or
 - (b) if an owner files for protection under the bankruptcy laws of the United States before the expiration of the 180-day period under Subsection (2)(a), within 90 days after the automatic stay under the bankruptcy proceeding is lifted or expires.
- (3)
 - (a)
 - (i) Within the time period provided in Subsection (2) for filing an action, a claimant shall file for record with each applicable county recorder a notice of the pendency of the action, in the manner provided for actions affecting the title or right to possession of real property.
 - (ii) If a claimant fails to file for record a notice of the pendency of the action, as required in Subsection (3)(a)(i), the preconstruction lien or construction lien, as applicable, is void, except as to persons who have been made parties to the action and persons having actual knowledge of the commencement of the action.
 - (b) The burden of proof is upon the claimant and those claiming under the claimant to show actual knowledge under Subsection (3)(a)(ii).
- (4)
 - (a) A preconstruction lien or construction lien is automatically and immediately void if an action to enforce the lien is not filed within the time required by this section.
 - (b) Notwithstanding Section 78B-2-111, a court has no subject matter jurisdiction to adjudicate a preconstruction or construction lien that becomes void under Subsection (4)(a).
- (5) This section may not be interpreted to impair or affect the right of any person to whom a debt may be due for any preconstruction service or construction work to maintain a personal action to recover the debt.
- (6)
 - (a) If a claimant files an action to enforce a preconstruction or construction lien involving a residence, the claimant shall include with the service of the complaint on the owner of the residence:
 - (i) instructions to the owner of the residence relating to the owner's rights under Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act; and
 - (ii) a form to enable the owner of the residence to specify the grounds upon which the owner may exercise available rights under Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act.
 - (b) The instructions and form required by Subsection (6)(a) shall meet the requirements established by the division by rule.

- (c) If a claimant fails to provide to the owner of the residence the instructions and form required by Subsection (6)(a), the claimant is barred from maintaining or enforcing the preconstruction or construction lien upon the residence.
- (d) A court shall stay an action to determine the rights and liabilities of an owner of a residence under this chapter, Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act, and Title 14, Chapter 2, Private Contracts, until after the owner is given a reasonable period of time to:
 - (i) establish compliance with Subsections 38-11-204(4)(a) and (4)(b) through an informal proceeding, as set forth in Title 63G, Chapter 4, Administrative Procedures Act, commenced at the division within 30 days after the owner is served with summons in the foreclosure action; and
 - (ii) obtain a certificate of compliance or denial of certificate of compliance, as defined in Section 38-11-102.
- (e) An owner applying for a certificate of compliance under Subsection (6)(d) shall send by certified mail to all claimants:
 - (i) a copy of the application for a certificate of compliance; and
 - (ii) all materials filed in connection with the application.
- (f) The division shall notify all claimants listed in an owner's application for a certificate of compliance under Subsection (6)(d) of the issuance or denial of a certificate of compliance.

Renumbered and Amended by Chapter 278, 2012 General Session

38-1a-702 Parties -- Consolidation of separate actions.

- (1) In an action under this part, subject to the time restrictions under Subsection 38-1a-701(2):
 - (a) a claimant who is not contesting the claim of another claimant may join as a plaintiff;
 - (b) a claimant who fails or refuses to become a plaintiff may be made a defendant; and
 - (c) a claimant who is not made a party may intervene at any time before the final hearing.
- (2) If separate actions are commenced under this part to enforce preconstruction or construction liens on the same property, the court may consolidate the actions and make all claimants parties to the consolidated action.

Enacted by Chapter 278, 2012 General Session

38-1a-703 Order of satisfaction if multiple liens on same property.

If liens are claimed against the same property the decree shall provide for their satisfaction in the following order:

- (1) subcontractors who are laborers or mechanics working by the day or piece, but who have not furnished materials;
- (2) all other subcontractors and all materialmen; and
- (3) original contractors.

Renumbered and Amended by Chapter 278, 2012 General Session

38-1a-704 Sale of property -- Redemption -- Disposition of proceeds.

- (1) The court shall cause the property to be sold in satisfaction of the liens and costs as in the case of a foreclosure of a mortgage, subject to the same right of redemption.
- (2) If the proceeds of sale after the payment of costs are not sufficient to satisfy the whole amount of liens included in the decree, then the proceeds shall be paid in the order designated in

Section 38-1a-703, and pro rata to the persons claiming in each class if the sum realized is insufficient to pay the persons of the class in full.

- (3) Any excess sale proceeds remaining after the payment of all liens and costs shall be paid to the owner.

Renumbered and Amended by Chapter 278, 2012 General Session

38-1a-705 Deficiency judgment.

A claimant whose preconstruction or construction lien is not paid in full through an enforcement action as provided in this part may:

- (1) have judgment for the unpaid balance entered against the person liable; and
- (2) execute on the judgment in the same manner as execution on judgments generally.

Enacted by Chapter 278, 2012 General Session

38-1a-706 Apportionment of costs -- Costs and attorney fees to subcontractor.

- (1) Except as provided in Section 38-11-107, the court shall apportion costs between the owner and original contractor according to the right of the case.
- (2) The court shall award a subcontractor with a valid preconstruction or construction lien:
 - (a) all of the subcontractor's costs, including the costs of preparing and recording the notice of preconstruction or construction lien; and
 - (b) the subcontractor's reasonable attorney fees incurred in preparing and recording the notice of preconstruction or construction lien.

Enacted by Chapter 278, 2012 General Session

38-1a-707 Attorney fees -- Offer of judgment.

- (1) Except as provided in Section 38-11-107 and in Subsection (2), in any action brought to enforce any lien under this chapter the successful party shall be entitled to recover reasonable attorney fees, to be fixed by the court, which shall be taxed as costs in the action.
- (2) A person who files a wrongful lien as provided in Section 38-1a-308 may not recover attorney fees under Subsection (1).
- (3)
 - (a) A person against whom an action is brought to enforce a preconstruction or construction lien may make an offer of judgment pursuant to Rule 68 of the Utah Rules of Civil Procedure.
 - (b) If the offer is not accepted and the judgment finally obtained by the offeree is not more favorable than the offer, the offeree shall pay the costs and attorney fees incurred by the offeror after the offer was made.

Renumbered and Amended by Chapter 278, 2012 General Session