

Effective 5/12/2015

38-1a-308 Intentional submission of excessive lien notice -- Criminal and civil liability.

- (1) As used in this section, "residential project" means a project on real property:
 - (a) for which a preconstruction service or construction work is provided; and
 - (b) that consists of:
 - (i) one single-family residence; or
 - (ii) one multi-family residence that contains no more than four units.
- (2) A person is guilty of a class B misdemeanor if:
 - (a) the person intentionally submits for recording a notice of preconstruction lien or notice of construction lien against any property containing a greater demand than the sum due; and
 - (b) by submitting the notice, the person intends:
 - (i) to cloud the title;
 - (ii) to exact from the owner or person liable by means of the excessive notice of preconstruction or construction lien more than is due; or
 - (iii) to procure any unjustified advantage or benefit.
- (3)
 - (a) As used in this Subsection (3), "third party" means an owner, original contractor, or subcontractor.
 - (b) In addition to any criminal penalty under Subsection (2), a person who submits a notice of preconstruction lien or notice of construction lien as described in Subsection (2) is liable to a third party who is affected by the notice of preconstruction lien or the notice of construction lien for twice the amount by which the lien notice exceeds the amount actually due or the actual damages incurred by the owner, original contractor, or subcontractor, whichever is greater.
- (4) The parties to a claim described in Subsection (3)(b) who agree to arbitrate the claim shall arbitrate in accordance with Subsections (5) through (15) if the notice of preconstruction lien, or the notice of construction lien, that is the subject of the claim is:
 - (a) for a residential project; and
 - (b) for \$50,000 or less.
- (5)
 - (a) Unless otherwise agreed to by the parties, a claim that is submitted to arbitration under this section shall be resolved by a single arbitrator.
 - (b) All parties shall agree on the single arbitrator described in Subsection (5)(a) within 60 days after the day on which an answer is filed.
 - (c) If the parties are unable to agree on a single arbitrator as required under Subsection (5)(b), the parties shall select a panel of three arbitrators.
 - (d) If the parties select a panel of three arbitrators under Subsection (5)(c):
 - (i) each side shall select one arbitrator; and
 - (ii) the arbitrators selected under Subsection (5)(d)(i) shall select one additional arbitrator to be included in the panel.
- (6) Unless otherwise agreed to in writing:
 - (a) each party shall pay an equal share of the fees and costs of the arbitrator selected under Subsection (5)(b); or
 - (b) if an arbitration panel is selected under Subsection (5)(d):
 - (i) each party shall pay the fees and costs of that party's selected arbitrator; and
 - (ii) each party shall pay an equal share of the fees and costs of the arbitrator selected under Subsection (5)(d)(ii).

- (7) Except as otherwise provided in this section or otherwise agreed to by the parties, an arbitration proceeding conducted under this section shall be governed by Title 78B, Chapter 11, Utah Uniform Arbitration Act.
- (8)
- (a) Subject to the provisions of this section, the Utah Rules of Civil Procedure and the Utah Rules of Evidence shall apply to an arbitration proceeding under this section.
 - (b) The Utah Rules of Civil Procedure and the Utah Rules of Evidence shall be applied liberally with the intent of resolving the claim in a timely and cost-efficient manner.
 - (c) Subject to the provisions of this section, discovery shall be conducted in accordance with Rules 26 through 37 of the Utah Rules of Civil Procedure and shall be subject to the jurisdiction of the district court in which the claim is filed.
 - (d) Unless otherwise agreed to by the parties or ordered by the court, discovery in an arbitration proceeding under this section shall be limited to the discovery available in a tier 1 case under Rule 26 of the Utah Rules of Civil Procedure.
- (9) A written decision by a single arbitrator or by a majority of the arbitration panel shall constitute a final decision.
- (10) An arbitration award issued under this section:
- (a) shall be the final resolution of all excessive notice claims described in Subsection (3)(b) that are:
 - (i) between the parties;
 - (ii) for a residential project; and
 - (iii) for \$50,000 or less; and
 - (b) may be reduced to judgment by the court upon motion and notice, unless:
 - (i) any party, within 20 days after the day on which the arbitration award is served, files a notice requesting a trial de novo in district court; or
 - (ii) the arbitration award has been satisfied.
- (11)
- (a) Upon filing a notice requesting a trial de novo under Subsection (10):
 - (i) unless otherwise stipulated to by the parties or ordered by the court, the parties are allowed an additional 60 days for discovery; and
 - (ii) the claim shall proceed through litigation pursuant to the Utah Rules of Civil Procedure and the Utah Rules of Evidence in the district court.
 - (b) The additional discovery time described in Subsection (11)(a)(i) shall run from the day on which the notice requesting a trial de novo is filed.
- (12) If the plaintiff, as the moving party in a trial de novo requested under Subsection (10), does not obtain a verdict that is at least 10% greater than the arbitration award, the plaintiff is responsible for all of the nonmoving party's costs, including expert witness fees.
- (13) If a defendant, as the moving party in a trial de novo requested under Subsection (10), does not obtain a verdict that is at least 10% less than the arbitration award, the defendant is responsible for all of the nonmoving party's costs, including expert witness fees.
- (14) If a district court determines, upon a motion of the nonmoving party, that the moving party's use of the trial de novo process was filed in bad faith, as defined in Section 78B-5-825, the district court may award reasonable attorney fees to the nonmoving party.
- (15) All arbitration awards issued under this section shall bear postjudgment interest pursuant to Section 15-1-4.

Amended by Chapter 303, 2015 General Session