

Superseded 5/13/2014

38-1a-501 Preliminary notice.

- (1)
 - (a)
 - (i) A person who desires to claim a construction lien on real property shall file a preliminary notice with the registry no later than 20 days after the person commences providing construction work on the real property.
 - (ii) A prelender claimant who provides construction work to a construction project after the recording of a construction lender's mortgage or trust deed on the project property and who desires to claim a construction lien for that construction work shall file a preliminary notice with the registry no later than 20 days after the recording of the mortgage or trust deed.
 - (b) Subject to Subsection (1)(c), a preliminary notice is effective as to all construction work that the person filing the notice provides to the construction project under a single original contract, including construction work that the person provides to more than one supervisory subcontractor under that original contract.
 - (c)
 - (i) A person who desires to claim a construction lien on real property but fails to file a timely preliminary notice within the period specified in Subsection (1)(a) may, subject to Subsection (1)(d), file a preliminary notice with the registry after the period specified in Subsection (1)(a).
 - (ii) A person who files a preliminary notice under Subsection (1)(c)(i) may not claim a construction lien for construction work the person provides to the construction project before the date that is five days after the preliminary notice is filed.
 - (d) Notwithstanding Subsections (1)(a) and (c), a preliminary notice has no effect if it is filed more than 10 days after the filing of a notice of completion under Section 38-1a-507 for the construction project for which the preliminary notice is filed.
 - (e) A person who fails to file a preliminary notice as required in this section may not claim a construction lien.
 - (f)
 - (i) Except as provided in Subsection (1)(f)(ii), a preliminary notice that is filed with the registry as provided in this section is considered to be filed at the time of the first preliminary notice filing.
 - (ii) A timely filed preliminary notice that is a refiled preliminary notice is considered to be filed immediately after the recording of a mortgage or trust deed of the construction lender that paid the pre-lender claimant in full for construction work the claimant provided before the recording of the mortgage or trust deed.
 - (g) If a preliminary notice filed with the registry includes the tax parcel identification number of a parcel not previously associated in the registry with a construction project, the designated agent shall promptly notify the person who filed the preliminary notice that:
 - (i) the preliminary notice includes a tax parcel identification number of a parcel not previously associated in the registry with a construction project; and
 - (ii) the likely explanation is that:
 - (A) the preliminary notice is the first filing for the project; or
 - (B) the tax parcel identification number is incorrectly stated in the preliminary notice.
 - (h) A preliminary notice shall include:
 - (i) the name, address, telephone number, and email address of the person providing the construction work for which the preliminary notice is filed;

- (ii) the name and address of the person who contracted with the claimant for the construction work;
 - (iii) the name of the record or reputed owner;
 - (iv) the name of the original contractor for construction work under which the claimant is providing or will provide construction work;
 - (v) the address of the project property or a description of the location of the project;
 - (vi) the name of the county in which the project property is located; and
 - (vii)
 - (A) the tax parcel identification number of each parcel included in the project property;
 - (B) the entry number of a previously filed notice of construction loan under Section 38-1a-601 on the same project;
 - (C) the entry number of a previously filed preliminary notice on the same project that includes the tax parcel identification number of each parcel included in the project property; or
 - (D) the entry number of the building permit issued for the project.
- (i) A preliminary notice may include:
- (i) the subdivision, development, or other project name applicable to the construction project for which the preliminary notice is filed; and
 - (ii) the lot or parcel number of each lot or parcel that is included in the project property.
- (2)
- (a) The burden is upon the person filing the preliminary notice to prove that the person has substantially complied with the requirements of this section.
 - (b) Substantial compliance with the requirements of Subsections (1)(h)(iii) through (vii) may be established by a person's reasonable reliance on information in the registry provided by a previously filed:
 - (i) notice of construction loan under Section 38-1a-601;
 - (ii) preliminary notice; or
 - (iii) building permit.
- (3)
- (a) Subject to Subsection (3)(b), a person required by this section to give preliminary notice is required to give only one notice for each construction project.
 - (b) If the construction work is provided pursuant to contracts under more than one original contract for construction work, the notice requirements shall be met with respect to the construction work provided under each original contract.
- (4) A person filing a preliminary notice by alternate means is responsible for verifying and changing any incorrect information in the preliminary notice before the expiration of the time period during which the notice is required to be filed.
- (5)
- (a) A person who files a preliminary notice before the recording of a construction lender's mortgage or trust deed may withdraw the preliminary notice by filing with the registry a notice of withdrawal as provided in Subsection (5)(b).
 - (b) A notice of withdrawal shall include:
 - (i) the information required for a preliminary notice under Subsection (1)(g); and
 - (ii) the entry number of the preliminary notice being withdrawn.
- (6) A person who files a preliminary notice that contains inaccurate or incomplete information may not be held liable for damages suffered by any other person who relies on the inaccurate or incomplete information in filing a preliminary notice.