

38-1a-506 Notice of intent to obtain final completion.

- (1) An owner, as defined in Section 14-2-1, of a nonresidential construction project that is registered with the registry, or an original contractor of a commercial nonresidential construction project that is registered with the registry under Section 38-1a-501, shall file with the registry a notice of intent to obtain final completion as provided in this section if:
 - (a) the completion of performance time under the original contract for construction work is greater than 120 days;
 - (b) the total original construction contract price exceeds \$500,000; and
 - (c) the original contractor or owner has not obtained a payment bond in accordance with Section 14-2-1.
- (2) The notice of intent described in Subsection (1) shall be filed at least 45 days before the day on which the owner or original contractor of a commercial nonresidential construction project files or could have filed a notice of completion under Section 38-1a-507.
- (3) A person who provides construction work to an owner or original contractor who files a notice of intent in accordance with Subsection (1) shall file an amendment to the person's preliminary notice previously filed by the person as required in Section 38-1a-501:
 - (a) that includes:
 - (i) a good faith estimate of the total amount remaining due to complete the contract, purchase order, or agreement relating to the person's approved construction work;
 - (ii) the identification of each original contractor or subcontractor with whom the person has a contract or contracts for providing construction work; and
 - (iii) a separate statement of all known amounts or categories of work in dispute; and
 - (b) no later than 20 days after the day on which the owner or contractor files a notice of intent.
- (4)
 - (a) A person described in Subsection (3) may demand a statement of adequate assurance from the owner, contractor, or subcontractor with whom the person has privity of contract no later than 10 days after the day on which the person files a balance statement in accordance with Subsection (3) from an owner, contractor, or subcontractor who is in privity of contract with the person.
 - (b) A demand for adequate assurance as described in Subsection (4)(a) may include a request for a statement from the owner, contractor, or subcontractor that the owner, contractor, or subcontractor has sufficient funds dedicated and available to pay for all sums due to the person filing for the adequate assurances or that will become due in order to complete a construction project.
 - (c) A person who demands adequate assurance under Subsection (4)(a) shall deliver copies of the demand to the owner and contractor:
 - (i) by hand delivery with a responsible party's acknowledgment of receipt;
 - (ii) by certified mail with a return receipt; or
 - (iii) as provided under Rule 4, Utah Rules of Civil Procedure.
- (5)
 - (a) A person described in Subsection (3) may bring a legal action against a party with whom the person is in privity of contract, including a request for injunctive or declaratory relief, to determine the adequacy of the funds of the owner, contractor, or subcontractor with whom the demanding person contracted if, after the person demands adequate assurance in accordance with the requirements of this section:
 - (i) the owner, contractor, or subcontractor fails to provide adequate assurance that the owner, contractor, or subcontractor has sufficient available funds, or access to financing or other

- sufficient available funds, to pay for the completion of the demanding person's approved work on the construction project; or
- (ii) the parties disagree, in good faith, as to whether there are adequate funds, or access to financing or other sufficient available funds, to pay for the completion of the demanding person's approved work on the construction project.
- (b) If a court finds that an owner, contractor, or subcontractor has failed to provide adequate assurance in accordance with Subsection (4)(a), the court may require the owner, contractor, or subcontractor to post adequate security with the court sufficient to assure timely payment of the remaining contract balance for the approved work of the person seeking adequate assurance, including:
- (i) cash;
 - (ii) a bond;
 - (iii) an irrevocable letter of credit;
 - (iv) property;
 - (v) financing; or
 - (vi) another form of security approved by the court.
- (6)
- (a) A person is subject to the civil penalty described in Subsection (6)(b), if the person files a balance statement described in Subsection (3) that misrepresents the amount due under the contract with the intent to:
 - (i) charge an owner, contractor, or subcontractor more than the actual amount due; or
 - (ii) procure any other unfair advantage or benefit on the person's behalf.
 - (b) The civil penalty described in Subsection (6)(a) is the greater of:
 - (i) twice the amount by which the balance statement filed under Subsection (3) exceeds the amount actually remaining due under the contract for completion of construction; and
 - (ii) the actual damages incurred by the owner, contractor, or subcontractor.
- (7) A court shall award reasonable attorney fees to a prevailing party for an action brought under this section.
- (8) Failure to comply with the requirements established in this section does not affect any other requirement or right under this chapter.
- (9) A person who has not filed a preliminary notice as required under Section 38-1a-501 is not entitled to a right or a remedy provided in this section.
- (10) This section does not create a cause of action against a person with whom the demanding party is not in privity of contract.

Renumbered and Amended by Chapter 278, 2012 General Session