

Superseded 5/12/2020

38-1a-804 Notice of release of lien and substitution of alternate security.

- (1) The owner of any interest in a project property that is subject to a recorded preconstruction or construction lien, or any original contractor or subcontractor affected by the lien, who disputes the correctness or validity of the lien may submit for recording a notice of release of lien and substitution of alternate security:
 - (a) that meets the requirements of Subsection (2);
 - (b) in the office of each applicable county recorder where the lien was recorded; and
 - (c) at any time before the date that is 90 days after the first summons is served in an action to foreclose the preconstruction or construction lien for which the notice under this section is submitted for recording.
- (2) A notice of release of lien and substitution of alternate security recorded under Subsection (1) shall:
 - (a) meet the requirements for the recording of documents in Title 57, Chapter 3, Recording of Documents;
 - (b) reference the preconstruction or construction lien sought to be released, including the applicable entry number, book number, and page number; and
 - (c) have as an attachment a surety bond or evidence of a cash deposit that:
 - (i)
 - (A) if a surety bond, is executed by a surety company that is treasury listed, A-rated by AM Best Company, and authorized to issue surety bonds in this state; or
 - (B) if evidence of a cash deposit, meets the requirements established by rule by the Department of Commerce in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
 - (ii) is in an amount equal to:
 - (A) 150% of the amount claimed by the claimant under the preconstruction or construction lien or as determined under Subsection (7), if the lien claim is for \$25,000 or more;
 - (B) 175% of the amount claimed by the claimant under the preconstruction or construction lien or as determined under Subsection (7), if the lien claim is for at least \$15,000 but less than \$25,000; or
 - (C) 200% of the amount claimed by the claimant under the preconstruction or construction lien or as determined under Subsection (7), if the lien claim is for less than \$15,000;
 - (iii) is made payable to the claimant;
 - (iv) is conditioned for the payment of:
 - (A) the judgment that would have been rendered, or has been rendered against the project property in the action to enforce the lien; and
 - (B) any costs and attorney fees awarded by the court; and
 - (v) has as principal:
 - (A) the owner of the interest in the project property; or
 - (B) the original contractor or subcontractor affected by the lien.
- (3)
 - (a) Upon the recording of the notice of release of lien and substitution of alternate security under Subsection (1), the real property described in the notice shall be released from the preconstruction lien or construction lien to which the notice applies.
 - (b) A recorded notice of release of lien and substitution of alternate security is effective as to any amendment to the preconstruction or construction lien being released if the bond amount remains enough to satisfy the requirements of Subsection (2)(c)(ii).
- (4)

- (a) Upon the recording of a notice of release of lien and substitution of alternate security under Subsection (1), the person recording the notice shall serve a copy of the notice, together with any attachments, within 30 days upon the claimant.
 - (b) If a suit is pending to foreclose the preconstruction or construction lien at the time the notice is served upon the claimant under Subsection (4)(a), the claimant shall, within 90 days after the receipt of the notice, institute proceedings to add the alternate security as a party to the lien foreclosure suit.
- (5) The alternate security attached to a notice of release of lien shall be discharged and released upon:
- (a) the failure of the claimant to commence a suit against the alternate security within the same time as an action to enforce the lien under Section 38-1a-701;
 - (b) the failure of the lien claimant to institute proceedings to add the alternate security as a party to a lien foreclosure suit within the time required by Subsection (4)(b);
 - (c) the dismissal with prejudice of the lien foreclosure suit or suit against the alternate security as to the claimant; or
 - (d) the entry of judgment against the claimant in:
 - (i) a lien foreclosure suit; or
 - (ii) suit against the alternate security.
- (6) If a copy of the notice of release of lien and substitution of alternate security is not served upon the claimant as provided in Subsection (4)(a), the claimant has six months after the discovery of the notice to commence an action against the alternate security, except that no action may be commenced against the alternate security after two years from the date the notice was recorded.
- (7)
- (a) The owner of any interest in a project property that is subject to a recorded preconstruction or construction lien, or an original contractor or subcontractor affected by the lien, who disputes the amount claimed under a preconstruction or construction lien may petition the district court in the county in which the notice of lien is recorded for a summary determination of the correct amount owing under the lien for the sole purpose of providing alternate security.
 - (b) A petition under this Subsection (7) shall:
 - (i) state with specificity the factual and legal bases for disputing the amount claimed under the preconstruction or construction lien; and
 - (ii) be supported by a sworn affidavit and any other evidence supporting the petition.
 - (c) A petitioner under Subsection (7)(a) shall, as provided in Utah Rules of Civil Procedure, Rule 4, serve on the claimant:
 - (i) a copy of the petition; and
 - (ii) a notice of hearing if a hearing is scheduled.
 - (d) If a court finds a petition under Subsection (7)(a) insufficient, the court may dismiss the petition without a hearing.
 - (e) If a court finds a petition under Subsection (7)(a) sufficient, the court shall schedule a hearing within 10 days to determine the correct amount claimed under the preconstruction or construction lien for the sole purpose of providing alternate security.
 - (f) A claimant may:
 - (i) attend a hearing held under this Subsection (7); and
 - (ii) contest the petition.
 - (g) A determination under this section is limited to a determination of the amount claimed under a preconstruction or construction lien for the sole purpose of providing alternate security and does not conclusively establish:

- (i) the amount to which the claimant is entitled;
 - (ii) the validity of the claim; or
 - (iii) any person's right to any other legal remedy.
- (h) If a court, in a proceeding under this Subsection (7), determines that the amount claimed under a preconstruction or construction lien is excessive, the court shall set the amount for the sole purpose of providing alternate security.
- (i) In an order under Subsection (7)(h), the court shall include a legal description of the project property.
- (j) A petitioner under this Subsection (7) may record a certified copy of any order issued under this Subsection (7) in the county in which the lien is recorded.
- (k) A court may not award attorney fees for a proceeding under this Subsection (7), but shall consider those attorney fees in any award of attorney fees under any other provision of this chapter.