

RESIDENCE LIEN RECOVERY FUND AMENDMENTS

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: Marda Dillree

AN ACT RELATING TO LIENS; AMENDING PROVISION REGARDING NOTICE OF CLAIM FOR MECHANICS LIENS; AMENDING REQUIREMENTS FOR RECOVERY FROM THE FUND; MAKING TECHNICAL CORRECTIONS; AND PROVIDING AN EFFECTIVE DATE.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

38-1-7, as last amended by Chapter 172, Laws of Utah 1995

38-11-107, as last amended by Chapter 146, Laws of Utah 1996

38-11-203, as last amended by Chapter 172, Laws of Utah 1995

38-11-204, as last amended by Chapters 28 and 172, Laws of Utah 1995

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **38-1-7** is amended to read:

38-1-7. Notice of claim -- Contents -- Recording -- Service on owner of property.

(1) A person claiming benefits under this chapter shall file for record with the county recorder of the county in which the property, or some part of the property, is situated, a written notice to hold and claim a lien within 90 days from the date:

(a) the person last performed labor or service or last furnished equipment or material on a project or improvement for a residence as defined in Section 38-11-102; or

(b) of final completion of an original contract not involving a residence as defined in Section 38-11-102.

(2) This notice shall contain a statement setting forth:

(a) the name of the reputed owner if known or, if not known, the name of the record owner;

(b) the name of the person by whom [he] the lien claimant was employed or to whom [he] the lien claimant furnished the equipment or material;

(c) the time when the first and last labor or service was performed or the first and last equipment or material was furnished;

(d) a description of the property, sufficient for identification; [and]

(e) the signature of the lien claimant or [his] the lien claimant's authorized agent [and];

(f) an acknowledgment or certificate as required under Title 57, Chapter 3, Recording of Documents[~~No~~]; and

(g) if the lien is on an owner-occupied residence, as defined in Section 38-11-102, a statement describing what steps an owner, as defined in Section 38-11-102, may take to require a lien claimant to remove the lien in accordance with Section 38-11-107.

(3) Notwithstanding Subsection (2), an acknowledgment or certificate is not required for any notice filed after April 29, 1985, and before April 24, 1989.

~~[(3)]~~ (4) (a) Within 30 days after filing the notice of lien, the lien claimant shall deliver or mail by certified mail a copy of the notice of lien to [either]:

(i) the reputed owner of the real property; or

(ii) the record owner of the real property [~~a copy of the notice of lien~~].

(b) If the record owner's current address is not readily available to the lien claimant, the copy of the claim may be mailed to the last-known address of the record owner, using the names and addresses appearing on the last completed real property assessment rolls of the county where the affected property is located.

(c) Failure to deliver or mail the notice of lien to the reputed owner or record owner precludes the lien claimant from an award of costs and attorneys' fees against the reputed owner or record owner in an action to enforce the lien.

(5) The Division of Occupational and Professional Licensing shall make rules governing the form of the statement required under Subsection (2)(g).

Section 2. Section **38-11-107** is amended to read:

38-11-107. Restrictions upon maintaining a lien against residence or owner's interest in the residence.

(1) A person qualified to file a lien upon an owner-occupied residence and the real property

associated with that residence under the provisions of Title 38, Chapter 1, Mechanics' Liens, who provides qualified services under an agreement effective on or after January 1, 1995, other than directly with the owner, shall be barred after January 1, 1995, from maintaining a lien upon that residence and real property or recovering a judgment in any civil action against the owner or the owner-occupied residence to recover monies owed for qualified services provided by that person if:

- (a) the conditions described in Subsections 38-11-204(3)(a) [~~through~~] and (3)(~~c~~) (b) are met; or
- (b) (i) a subsequent owner purchases a residence from an owner;
- (ii) the subsequent owner who purchased the residence under Subsection (1)(b)(i) occupies the residence as a primary or secondary residence within 180 days from the date of transfer or the residence is occupied by the subsequent owner's tenant or lessee as a primary or secondary residence within 180 days from the date of transfer; and
- (iii) the owner from whom the subsequent owner purchased the residence met the conditions described in Subsection 38-11-204(3)(a) [~~through~~] and (3)(~~c~~) (b).

(2) If a residence is constructed under conditions that do not meet all of the provisions of Subsection (1), that residence and the real property associated with that residence as defined in Section 38-1-4, shall be subject to any mechanics' lien as provided in Section 38-1-3.

(3) A lien claimant who files a mechanics' lien or foreclosure action upon an owner-occupied residence is not liable for costs and attorneys' fees under Sections 38-1-17 and 38-1-18 or for any damages arising from a civil action related to the lien filing or foreclosure action if the lien claimant removes the lien within ten days from the date the owner establishes compliance with the requirements of Subsections 38-11-204(3)(a) [~~through~~] and (3)(~~c~~) (b).

Section 3. Section **38-11-203** is amended to read:

38-11-203. Disbursements from the fund -- Limitations.

(1) A payment of any claim upon the fund by a qualified beneficiary shall be made only upon an order issued by the director finding that:

- (a) the claimant was a qualified beneficiary during the construction on a residence;
- (b) the claimant complied with the requirements of Section 38-11-204; and

(c) there is adequate money in the fund to pay the amount ordered.

(2) A payment of a claim upon the fund by a laborer shall be made only upon an order issued by the director finding that:

(a) the laborer complied with the requirements of Subsection 38-11-204(4); and

(b) there is adequate money in the fund to pay the amount ordered.

(3) (a) An order under this section may be issued only after the division has complied with the procedures established by rule under Section 38-11-105.

(b) If the claimant is a laborer or is precluded from obtaining a judgment because the person described in Subsection 38-11-204(3)[(c)] (b) has filed bankruptcy, the director shall determine the amount to be paid from the fund.

(c) If the qualified beneficiary obtains a judgment, subject to the limitation of this section, the director shall order payment of the amount of the judgment.

(4) (a) Payments made from the fund may not exceed:

(i) \$75,000 per residence to all qualified beneficiaries and laborers who have claim against the fund for that residence; and

(ii) \$500,000 per qualified beneficiary or laborer for payments to the qualified beneficiary over the qualified beneficiary's lifetime.

(b) If claims against the fund for a residence exceed \$75,000, the \$75,000 shall be awarded proportionately so that each qualified beneficiary and laborer awarded compensation from the fund for qualified services shall receive an identical percentage of the qualified beneficiary's or laborer's award.

(5) Subject to the limitations of Subsection (4), if on the day the order is issued there are inadequate funds to pay the entire claim and the director determines that the claimant has otherwise met the requirements of Subsection (1) or (2), the director shall order additional payments once the fund meets the balance limitations of Section 38-11-206.

Section 4. Section **38-11-204** is amended to read:

38-11-204. Claims against the fund -- Requirement to make a claim -- Qualifications to receive compensation.

(1) To claim recovery from the fund a person shall:

- (a) meet the requirements of either Subsection (3) or (4);
- (b) pay an application fee determined by the division under Section 63-38-3.2; and
- (c) file with the division a completed application on a form provided by the division

accompanied by supporting documents establishing:

- (i) that the person meets the requirements of either Subsection (3) or (4);
- (ii) that the person was a qualified beneficiary or laborer during the construction on the owner-occupied residence; and
- (iii) the basis for the claim.

(2) To recover from the fund, the application required by Subsection (1) shall be filed no later than 120 days:

- (a) from the date the judgment required by Subsection (3)[(d)] (c) is entered;
- (b) if the claimant is precluded from obtaining a judgment because the person described in Subsection (3)[(e)] (b) filed bankruptcy, from the date the person filed bankruptcy; or
- (c) if a laborer, the date the laborer completed [his] the laborer's qualified services.

(3) To recover from the fund, regardless of whether the residence is occupied by the owner, a subsequent owner, or the owner or subsequent owner's tenant or lessee, a qualified beneficiary shall establish that:

(a) (i) the owner of the owner-occupied residence or the owner's agent entered into a written contract with an original contractor licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, for the performance of qualified services, to obtain the performance of qualified services by others, or for the supervision of the performance by others of qualified services in construction on that residence; or

(ii) the owner of the owner-occupied residence or the owner's agent entered into a written contract with a real estate developer for the purchase of an owner-occupied residence;

~~[(b) construction on that owner-occupied residence is performed pursuant to a building permit issued by the local jurisdiction in which the residence is located if a building permit is required by that jurisdiction for the scope of the work performed;]~~

~~[(c)]~~ (b) the owner has paid in full the original contractor licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, real estate developer, or both, under Subsection (3)(a)(i) or (ii) with whom the owner has a written contract in accordance with the written contract and any amendments to the contract, and:

(i) the original contractor or real estate developer licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, subsequently failed to pay a qualified beneficiary who is entitled to payment under an agreement with that original contractor or real estate developer licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, for services performed or materials supplied by the qualified beneficiary;

(ii) a subcontractor who contracts with the original contractor or real estate developer licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, failed to pay a qualified beneficiary who is entitled to payment under an agreement with that subcontractor or supplier; or

(iii) a subcontractor who contracts with a subcontractor or supplier failed to pay a qualified beneficiary who is entitled to payment under an agreement with that subcontractor or supplier;

~~[(d)]~~ (c) (i) the qualified beneficiary filed:

(A) an action to recover monies owed him within 180 days from the date the qualified beneficiary last provided qualified services; and

(B) filed with the division a notice of commencement of action within 30 days from the date the qualified beneficiary filed an action to recover monies owed him;

(ii) the qualified beneficiary has obtained a judgment against the person described in Subsection (3)~~[(c)]~~ (b) who failed to pay the qualified beneficiary under an agreement to provide qualified services for construction of that owner-occupied residence;

(iii) (A) the qualified beneficiary has obtained from a court of competent jurisdiction the issuance of an order requiring the judgment debtor, or if a corporation any officer of the corporation, to appear before the court at a specified time and place to answer concerning the debtor's or corporation's property and has received return of service of the order from a person qualified to serve documents under the Utah Rules of Civil Procedure, Rule 4(b); and

(B) if assets subject to execution are discovered as a result of the order required under Subsection (3)[~~(d)~~] (c)(iii)(A) or for any other reason, to obtain the issuance of a writ of execution from a court of competent jurisdiction; or

(iv) has been precluded from obtaining a judgment against that person because that person filed bankruptcy; and

[~~(e)~~] (d) the qualified beneficiary is not entitled to reimbursement from any other person.

(e) If a qualified beneficiary fails to file the notice with the division required under Subsection (3)(c)(i)(B), the claim of the qualified beneficiary shall be paid:

(i) if otherwise qualified under this chapter;

(ii) to the extent that the limit of Subsection 38-11-203(4)(a)(i) has not been reached by payments from the fund to qualified beneficiaries who have complied with the notice requirements of Subsection (3)(c)(i)(B); and

(iii) in the order that the claims are filed by persons who fail to comply with Subsection (3)(c)(i)(B), not to exceed the limit of Subsection 38-11-203(4)(a)(i).

(4) To recover from the fund a laborer shall:

(a) establish that the laborer has not been paid wages due for the work performed at the site of a construction on an owner-occupied residence; and

(b) provide any supporting documents or information required by rule by the division.

(5) A fee determined by the division under Section 63-38-3.2 shall be deducted from any recovery from the fund received by a laborer.

Section 5. Effective date.

This act takes effect on July 1, 1998.