

28 (3) "Department" means the Department of Commerce.

29 (4) "Director" means the director of the Division of Occupational and Professional
30 Licensing.

31 (5) "Division" means the Division of Occupational and Professional Licensing.

32 (6) "Encumbered fund balance" means the aggregate amount of all outstanding claims
33 against the fund. The remainder of monies in the fund are unencumbered funds.

34 (7) "Executive director" means the executive director of the Department of Commerce.

35 (8) "Fund" means the Residence Lien Recovery Fund established under Section 38-11-201.

36 (9) "Laborer" means a person who provides services at the site of the construction on an
37 owner-occupied residence as an employee of an original contractor or other qualified beneficiary
38 performing qualified services on the residence.

39 (10) "Licensee" means any holder of a license issued under Title 58, Chapters 3a, 22, 53,
40 and 55.

41 (11) "Nonpaying party" means the original contractor, subcontractor, or real estate
42 developer who has failed to pay the qualified beneficiary making a claim against the fund.

43 [~~11~~] (12) "Original contractor" means a person who contracts with the owner of real
44 property or the owner's agent to provide services, labor, or material for the construction of an
45 owner-occupied residence.

46 [~~12~~] (13) "Owner" means a person who:

47 (a) contracts with a person who is licensed as a contractor or is exempt from licensure
48 under Title 58, Chapter 55, Utah Construction Trades Licensing Act, for the construction on an
49 owner-occupied residence upon real property owned by that person;

50 (b) contracts with a real estate developer to buy a residence upon completion of the
51 construction on the owner-occupied residence; or

52 (c) buys a residence from a real estate developer after completion of the construction on
53 the owner-occupied residence.

54 [~~13~~] (14) "Owner-occupied residence" means a residence that is, or after completion of
55 the construction on the residence will be, occupied by the owner or the owner's tenant or lessee as
56 a primary or secondary residence within 180 days from the date of the completion of the
57 construction on the residence.

58 [~~14~~] (15) "Qualified beneficiary" means a person who:

- 59 (a) provides qualified services;
- 60 (b) pays all necessary fees or assessment required under this chapter; and
- 61 (c) registers with the division:
- 62 (i) as a licensed contractor under Subsection 38-11-301(1) or (2) if that person seeks
- 63 recovery from the fund as a licensed contractor; or
- 64 (ii) as a person providing qualified services other than as a licensed contractor under
- 65 Subsection 38-11-301(3) if the person seeks recovery from the fund in a capacity other than as a
- 66 licensed contractor.

67 [(+15)] (16) "Qualified services" means the following performed in construction on an

68 owner-occupied residence:

- 69 (a) contractor services provided by a contractor licensed or exempt from licensure under
- 70 Title 58, Chapter 55, Utah Construction Trades Licensing Act;
- 71 (b) architectural services provided by an architect licensed under Title 58, Chapter 3a;
- 72 (c) engineering and land surveying services provided by a professional engineer or land
- 73 surveyor licensed or exempt from licensure under Title 58, Chapter 22;
- 74 (d) landscape architectural services by a landscape architect licensed or exempt from
- 75 licensure under Title 58, Chapter 53;
- 76 (e) design and specification services of mechanical or other systems;
- 77 (f) other services related to the design, drawing, surveying, specification, cost estimation,
- 78 or other like professional services;
- 79 (g) providing materials, supplies, components, or similar products;
- 80 (h) renting equipment or materials; and
- 81 (i) labor at the site of the construction on the owner-occupied residence.

82 [(+16)] (17) "Real estate developer" means a person having an ownership interest in real

83 property who contracts for the construction of a residence that is offered for sale to the public.

84 [(+17)] (18) "Residence" means an improvement to real property used or occupied, to be

85 used or occupied as, or in conjunction with, a primary or secondary detached single-family

86 [residence] dwelling or multifamily [residence] dwelling up to two units.

87 [(+18)] (19) "Subsequent owner" means a person who purchases a residence from an owner

88 within 180 days from the date of the completion of the construction on the residence.

89 Section 2. Section **38-11-109** is enacted to read:

90 **38-11-109. Severability clause.**

91 If any provision of this chapter is held invalid or unconstitutional by court of competent
92 jurisdiction, the invalidity shall not affect the other provisions of this chapter which can be given
93 effect without the invalid or unconstitutional provision.

94 Section 3. Section **38-11-202** is amended to read:

95 **38-11-202. Payments to the fund.**

96 The Residence Lien Recovery Fund shall be supported solely from:

97 (1) initial and special assessments collected by the division from licensed contractors
98 registered as qualified beneficiaries in accordance with Subsections 38-11-301(1) and (2) and
99 Section 38-11-206;

100 (2) initial and special assessments collected by the division from other qualified
101 beneficiaries registering with the division in accordance with Subsection 38-11-301(3) and Section
102 38-11-206;

103 (3) fees determined by the division under Section 63-38-3.2 collected from laborers under
104 Subsection 38-11-204[(5)](7) when the laborers obtain a recovery from the fund;

105 (4) amounts collected by subrogation under Section 38-11-205 on behalf of the fund
106 following a payment from the fund;

107 (5) application fees determined by the division under Section 63-38-3.2 collected from
108 qualified beneficiaries or laborers under Subsection 38-11-204(1)(b) when qualified beneficiaries
109 or laborers make a claim against the fund;

110 (6) registration fees determined by the division under Section 63-38-3.2 collected from
111 other qualified beneficiaries registering with the department in accordance with Subsection
112 38-11-301(3)(a)(iii);

113 (7) reinstatement fees determined by the division under Section 63-38-3.2 collected from
114 registrants in accordance with Subsection 38-11-302(5)(b);

115 (8) civil fines authorized under Subsection 38-11-205(2) collected by the attorney general
116 for failure to reimburse the fund; and

117 (9) any interest earned by the fund.

118 Section 4. Section **38-11-203** is amended to read:

119 **38-11-203. Disbursements from the fund -- Limitations.**

120 (1) A payment of any claim upon the fund by a qualified beneficiary shall be made only

121 upon an order issued by the director finding that:

122 (a) the claimant was a qualified beneficiary during the construction on a residence;

123 (b) the claimant complied with the requirements of Section 38-11-204; and

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

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

127 (a) the laborer complied with the requirements of Subsection 38-11-204~~[(4)]~~(6); and

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

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

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

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

136 (b) The director shall order payment of the qualified services as established by evidence,
137 or if the claimant has obtained a judgment, then in the amount awarded for qualified services in
138 the judgment to the extent the qualified services are attributable to the owner-occupied residence
139 at issue in the claim.

140 (c) The director shall order payment of interest on all claims at the rate of 12% from the
141 date payment was due to the date the claim is approved for payment except for delays attributable
142 to the claimant.

143 (d) The director shall order payment of costs in the amount stated in the judgment. If the
144 judgment does not state a sum certain for costs, or if no judgment has been obtained, the director
145 shall order payment of reasonable costs as supported by evidence. The claim application fee as
146 established by the division pursuant to Subsection 38-11-204(1)(b) is not a reimbursable cost.

147 (e) The director shall order payment of attorney's fees in the amount stated in a judgment.

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

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

151 (ii) \$500,000 per qualified beneficiary or laborer for payments to the qualified beneficiary

152 over the qualified beneficiary's lifetime.

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

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

161 Section 5. Section **38-11-204** is amended to read:

162 **38-11-204. Claims against the fund -- Requirement to make a claim -- Qualifications**
163 **to receive compensation.**

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

165 (a) meet the requirements of either Subsection (3) or ~~[(4)]~~ (6);

166 (b) pay an application fee determined by the division under Section 63-38-3.2; and

167 (c) file with the division a completed application on a form provided by the division
168 accompanied by supporting documents establishing:

169 (i) that the person meets the requirements of either Subsection (3) or ~~[(4)]~~ (6);

170 (ii) that the person was a qualified beneficiary or laborer during the construction on the
171 owner-occupied residence; and

172 (iii) the basis for the claim.

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

175 (a) from the date the judgment required by Subsection (3) (c) is entered;

176 (b) from the date the nonpaying party filed bankruptcy, if the claimant is precluded from
177 obtaining a judgment [~~because the person described in Subsection (3) (b) filed bankruptcy, from~~
178 ~~the date the person filed bankruptcy~~] or from satisfying the requirements of Subsection (3)(c)
179 because the nonpaying party filed bankruptcy; or

180 (c) if a laborer, the date the laborer completed the laborer's qualified services.

181 (3) To recover from the fund, regardless of whether the residence is occupied by the
182 owner, a subsequent owner, or the owner or subsequent owner's tenant or lessee, a qualified

183 beneficiary shall establish that:

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

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

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

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

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

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

207 (c) (i) the qualified beneficiary filed:

208 (A) an action against the nonpaying party to recover monies owed him within 180 days
209 from the date the qualified beneficiary last provided qualified services, unless precluded from
210 doing so by the nonpaying party's bankruptcy filing within the 180 days after completion of
211 services; and

212 (B) [~~filed with the division~~] a notice of commencement of action with the division within
213 30 days from the date the qualified beneficiary filed [an] the civil action [~~to recover monies owed~~

214 him] if a civil action was filed as required by Subsection (3)(c)(i)(A);

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

218 (iii) (A) the qualified beneficiary has obtained from a court of competent jurisdiction the
219 issuance of an order requiring the judgment debtor, or if a corporation any officer of the
220 corporation, to appear before the court at a specified time and place to answer concerning the
221 debtor's or corporation's property [and], has received return of service of the order from a person
222 qualified to serve documents under the Utah Rules of Civil Procedure, Rule 4(b), and has made
223 reasonable efforts to obtain asset information from the supplemental proceedings; and

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

227 (iv) [~~has been precluded from obtaining a judgment against that person because that person~~
228 ~~filed bankruptcy; and~~] the claimant timely filed a proof of claim where permitted in the bankruptcy
229 action, if the original contractor, subcontractor, or real estate developer has filed bankruptcy; and

230 (d) the qualified beneficiary is not entitled to reimbursement from any other person.

231 (4) The requirements of Subsection 38-11-204(3)(c) need not be met if the qualified
232 beneficiary has been precluded from obtaining a judgment against the nonpaying party or from
233 satisfying the requirements of Subsection 38-11-204(3)(c) because the nonpaying party filed
234 bankruptcy.

235 [~~(e)~~] (5) If a qualified beneficiary fails to file the notice with the division required under
236 Subsection (3)(c)(i)(B), the claim of the qualified beneficiary shall be paid:

237 (i) if otherwise qualified under this chapter;

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

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

243 [~~(4)~~] (6) To recover from the fund a laborer shall:

244 (a) establish that the laborer has not been paid wages due for the work performed at the

245 site of a construction on an owner-occupied residence; and

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

247 [~~5~~] (7) A fee determined by the division under Section 63-38-3.2 shall be deducted from
248 any recovery from the fund received by a laborer.

249 Section 6. Section **38-11-205** is amended to read:

250 **38-11-205. Subrogation.**

251 (1) (a) (i) The state, on behalf of the fund, has the right of subrogation only to the extent
252 of payments made from the fund.

253 (ii) Upon payment from the fund to a claimant, any payment to the claimant that was the
254 basis of the claimant's claim against the fund shall be assigned to the fund for the enforcement of
255 subrogation rights by the attorney general.

256 (iii) A claimant's judgment or bankruptcy claim against the nonpaying original contractor,
257 subcontractor, or real estate developer shall be automatically assigned to the state, to the extent
258 paid by the fund on a particular residence, upon the state's filing of the director's order of payment
259 of claim with the appropriate court.

260 (b) The state's right of subrogation under Subsection (1)(a) has priority over any rights of
261 the qualified beneficiary under the judgment or any civil penalties imposed.

262 (c) The state shall be awarded attorney's fees and court costs incurred in recovering claims
263 paid from the fund.

264 (2) (a) The attorney general shall enforce all subrogation claims and may contract with
265 private attorneys as necessary to adequately enforce subrogation claims.

266 (b) (i) In addition to the subrogation claims the attorney general may seek a civil fine of
267 \$5,000 per residence for failure to reimburse the Residence Lien Recovery Fund within 90 days
268 after any disbursement from the fund resulting from the registrant's failure to pay qualified
269 beneficiaries under this chapter.

270 (ii) All claims under the judgment have priority over the civil penalty.

271 (3) The attorney general may charge the fund for costs incurred by the attorney general
272 under this chapter.

Legislative Review Note

as of 2-9-99 6:24 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel