

1 **RESIDENTIAL LIEN RECOVERY FUND**

2 2000 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Scott N. Howell**

5 AN ACT RELATING TO THE RESIDENTIAL LIEN RECOVERY FUND; AMENDING THE
6 MEMBERSHIP OF THE ADVISORY BOARD; LIMITING THE AMOUNT OF ATTORNEYS'
7 FEES THAT MAY BE RECOVERED FROM THE FUND; AMENDING THE CAPS ON
8 RECOVERY FROM THE FUND; ELIMINATING THE NOTICE OF COMMENCEMENT
9 REQUIREMENT; PROVIDING FOR SUSPENSION OF A LICENSE; REQUIRING THE
10 INCLUSION OF INSTRUCTIONS AND A FORM AFFIDAVIT AND MOTION WHEN
11 SERVING A COMPLAINT ON A HOMEOWNER; ADDING FACTORY BUILT HOUSING
12 TO THE SCOPE OF THE FUND; ASSESSING A FEE ON RESIDENTIAL BUILDING
13 PERMITS; AND MAKING TECHNICAL CHANGES.

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

15 AMENDS:

16 **31A-23-216**, as last amended by Chapter 232, Laws of Utah 1997

17 **38-1-11**, as last amended by Chapter 172, Laws of Utah 1995

18 **38-11-102**, as last amended by Chapter 193, Laws of Utah 1999

19 **38-11-104**, as last amended by Chapter 172, Laws of Utah 1995

20 **38-11-107**, as last amended by Chapter 49, Laws of Utah 1998

21 **38-11-202**, as last amended by Chapter 193, Laws of Utah 1999

22 **38-11-203**, as last amended by Chapter 193, Laws of Utah 1999

23 **38-11-204**, as last amended by Chapter 193, Laws of Utah 1999

24 **38-11-207**, as enacted by Chapter 308, Laws of Utah 1994

25 **38-11-301**, as last amended by Chapter 146, Laws of Utah 1996

26 **58-55-302**, as last amended by Chapter 375, Laws of Utah 1997

27 **58-55-303**, as renumbered and amended by Chapter 181, Laws of Utah 1994

28 **58-55-501**, as enacted by Chapter 181, Laws of Utah 1994

29 **58-55-502**, as last amended by Chapter 172, Laws of Utah 1995

30 **58-55-503**, as last amended by Chapter 10, Laws of Utah 1997

31 ENACTS:

32 **58-56-19**, Utah Code Annotated 1953

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

34 Section 1. Section **31A-23-216** is amended to read:

35 **31A-23-216. Termination of license.**

36 (1) A license issued under this chapter remains in force until:

37 (a) revoked, suspended, or limited under Subsection (2);

38 (b) lapsed under Subsection (3);

39 (c) surrendered to and accepted by the commissioner; or

40 (d) the licensee dies or is adjudicated incompetent as defined under Title 75, Chapter 5,

41 Part 3, Guardians of Incapacitated Persons or Part 4, Protection of Property of Persons Under

42 Disability and Minors.

43 (2) (a) After an adjudicative proceeding under Title 63, Chapter 46b, Administrative
44 Procedures Act, the commissioner may revoke, suspend, or limit in whole or in part the license of
45 any agent, broker, surplus lines broker, or consultant who is found:

46 (i) to be unqualified;

47 (ii) to have violated an insurance statute, valid rule under Subsection 31A-2-201(3), or a
48 valid order under Subsection 31A-2-201(4); [or]

49 (iii) if the licensee's methods and practices in the conduct of business endanger the
50 legitimate interests of customers and the public[~~];~~ or

51 (iv) to have violated Section 38-11-208.

52 (b) Every order suspending a license issued under this chapter shall specify the period for
53 which the suspension is effective, but in no event may the period exceed 12 months.

54 (3) Any license issued under this chapter shall lapse if the licensee fails to pay when due
55 a fee under Section 31A-3-103. The commissioner shall by rule prescribe the license renewal and
56 reinstatement procedures, in accordance with Title 63, Chapter 46a, Utah Administrative
57 Rulemaking Act.

58 (4) A licensee under this chapter whose license is suspended, revoked, or lapsed, but who

59 continues to act as a licensee, is subject to the penalties for acting as a licensee without a license.

60 (5) Any person licensed in this state shall immediately report to the commissioner:

61 (a) a suspension or revocation of that person's license in any other state, District of
62 Columbia, or territory of the United States;

63 (b) the imposition of a disciplinary sanction imposed on that person by any other state,
64 District of Columbia, or territory of the United States; and

65 (c) a judgment or injunction entered against that person on the basis of conduct involving
66 fraud, deceit, misrepresentation, or violation of an insurance law or rule.

67 (6) An order revoking a license under Subsection (2) may specify a time, not to exceed five
68 years, within which the former licensee may not apply for a new license. If no time is specified,
69 the former licensee may not apply for a new license for five years without express approval by the
70 commissioner.

71 (7) Any person whose license is suspended or revoked under Subsection (2) shall, when
72 the suspension ends or a new license is issued, pay all fees that would have been payable if the
73 license had not been suspended or revoked, unless the commissioner by order waives the payment
74 of the interim fees. If a new license is issued more than three years after the revocation of a similar
75 license, this Subsection (7) applies only to the fees that would have accrued during the three years
76 immediately following the revocation.

77 (8) The division shall promptly withhold, suspend, restrict, or reinstate the use of a license
78 issued under this part if so ordered by a court.

79 Section 2. Section **38-1-11** is amended to read:

80 **38-1-11. Enforcement -- Time for -- Lis pendens -- Action for debt not affected --**
81 **Instructions and form affidavit and motion.**

82 (1) A lien claimant shall file an action to enforce the lien filed under this chapter within:

83 (a) [twelve] 12 months from the date of final completion of the original contract not
84 involving a residence as defined in Section 38-11-102; or

85 (b) 180 days from the date the lien claimant last performed labor and services or last
86 furnished equipment or material for a residence, as defined in Section 38-11-102.

87 (2) (a) Within the time period provided for filing in Subsection (1) the lien claimant shall
88 file for record with the county recorder of each county in which the lien is recorded a notice of the
89 pendency of the action, in the manner provided in actions affecting the title or right to possession

90 of real property, or the lien shall be void, except as to persons who have been made parties to the
91 action and persons having actual knowledge of the commencement of the action.

92 (b) The burden of proof shall be upon the lien claimant and those claiming under him to
93 show actual knowledge.

94 (3) This section may not be interpreted to impair or affect the right of any person to whom
95 a debt may be due for any work done or materials furnished to maintain a personal action to
96 recover the same.

97 (4) (a) If a lien claimant files an action to enforce a lien filed under this chapter involving
98 a residence, as defined in Section 38-11-102, the lien claimant shall include with the service of the
99 complaint on the owner of the residence:

100 (i) instructions to the owner of the residence relating to the owner's rights under Title 38,
101 Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act; and

102 (ii) a form affidavit and motion for summary judgment to enable the owner of the
103 residence to specify the grounds upon which the owner may exercise available rights under Title
104 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act.

105 (b) The lien claimant may file a notice to submit for decision on the motion for summary
106 judgment. The motion may be ruled upon after the service of the summons and complaint upon
107 the nonpaying party, as defined in Section 38-11-102, and the time for the nonpaying party to
108 respond, as provided in the Utah Rules of Civil Procedure, has elapsed.

109 (c) The instructions and form affidavit and motion required by Subsection (4)(a) shall meet
110 the requirements established by rule by the Division of Occupational and Professional Licensing
111 in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

112 (d) If the nonpaying party, as defined by Section 38-11-102, files for bankruptcy protection
113 and there is a bankruptcy stay in effect, the motion for summary judgment and the action to enforce
114 the lien shall be stayed until resolution of the related claim under Title 38, Chapter 11, Residence
115 Lien Restriction and Lien Recovery Fund Act.

116 Section 3. Section **38-11-102** is amended to read:

117 **38-11-102. Definitions.**

118 (1) "Board" means the Residence Lien Recovery Fund Advisory Board established under
119 Section 38-11-104.

120 (2) "Construction on an owner-occupied residence" means designing, engineering,

121 constructing, altering, remodeling, improving, repairing, or maintaining a new or existing
122 residence.

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

124 (4) "Director" means the director of the Division of Occupational and Professional
125 Licensing.

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

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

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

130 (8) "Factory built housing" is as defined in Section 58-56-3.

131 (9) "Factory built housing retailer" means a person that sells factory built housing to
132 consumers.

133 [~~8~~] (10) "Fund" means the Residence Lien Recovery Fund established under Section
134 38-11-201.

135 [~~9~~] (11) "Laborer" means a person who provides services at the site of the construction
136 on an owner-occupied residence as an employee of an original contractor or other qualified
137 beneficiary performing qualified services on the residence.

138 [~~10~~] (12) "Licensee" means any holder of a license issued under Title 58, Chapters 3a,
139 22, 53, and 55.

140 [~~11~~] (13) "Nonpaying party" means the original contractor, subcontractor, or real estate
141 developer who has failed to pay the qualified beneficiary making a claim against the fund.

142 [~~12~~] (14) "Original contractor" means a person who contracts with the owner of real
143 property or the owner's agent to provide services, labor, or material for the construction of an
144 owner-occupied residence.

145 [~~13~~] (15) "Owner" means a person who:

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

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

151 (c) buys a residence from a real estate developer after completion of the construction on

152 the owner-occupied residence.

153 ~~[(14)]~~ (16) "Owner-occupied residence" means a residence that is, or after completion of
154 the construction on the residence will be, occupied by the owner or the owner's tenant or lessee as
155 a primary or secondary residence within 180 days from the date of the completion of the
156 construction on the residence.

157 ~~[(15)]~~ (17) "Qualified beneficiary" means a person who:

158 (a) provides qualified services;

159 (b) pays all necessary fees or assessment required under this chapter; and

160 (c) registers with the division:

161 (i) as a licensed contractor under Subsection 38-11-301(1) or (2) if that person seeks
162 recovery from the fund as a licensed contractor; or

163 (ii) as a person providing qualified services other than as a licensed contractor under
164 Subsection 38-11-301(3) if the person seeks recovery from the fund in a capacity other than as a
165 licensed contractor.

166 ~~[(16)]~~ (18) (a) "Qualified services" means the following performed in construction on an
167 owner-occupied residence:

168 ~~[(a)]~~ (i) contractor services provided by a contractor licensed or exempt from licensure
169 under Title 58, Chapter 55, Utah Construction Trades Licensing Act;

170 ~~[(b)]~~ (ii) architectural services provided by an architect licensed under Title 58, Chapter
171 3a;

172 ~~[(c)]~~ (iii) engineering and land surveying services provided by a professional engineer or
173 land surveyor licensed or exempt from licensure under Title 58, Chapter 22;

174 ~~[(d)]~~ (iv) landscape architectural services by a landscape architect licensed or exempt from
175 licensure under Title 58, Chapter 53;

176 ~~[(e)]~~ (v) design and specification services of mechanical or other systems;

177 ~~[(f)]~~ (vi) other services related to the design, drawing, surveying, specification, cost
178 estimation, or other like professional services;

179 ~~[(g)]~~ (vii) providing materials, supplies, components, or similar products;

180 ~~[(h)]~~ (viii) renting equipment or materials; ~~[and]~~

181 ~~[(i)]~~ (ix) labor at the site of the construction on the owner-occupied residence~~[-]; and~~

182 ~~[(j)]~~ (x) site preparation, set up, and installation of factory built housing.

183 (b) "Qualified services" does not include the construction of factory built housing in the
184 factory.

185 [(17)] (19) "Real estate developer" means a person having an ownership interest in real
186 property who contracts for the construction of a residence that is offered for sale to the public.

187 [(18)] (20) "Residence" means an improvement to real property used or occupied, to be
188 used or occupied as, or in conjunction with, a primary or secondary detached single-family
189 dwelling or multifamily dwelling up to two units, including factory built housing.

190 [(19)] (21) "Subsequent owner" means a person who purchases a residence from an owner
191 within 180 days from the date of the completion of the construction on the residence.

192 Section 4. Section **38-11-104** is amended to read:

193 **38-11-104. Board.**

194 (1) There is created the Residence Lien Recovery Fund Advisory Board consisting of:

195 (a) [~~three~~] two individuals licensed as a contractor who are actively engaged in
196 construction on owner-occupied residences;

197 (b) [~~three~~] two individuals who are employed in responsible management positions with
198 major suppliers of materials or equipment used in the construction on owner-occupied residences;
199 and

200 (c) [~~one member~~] three members from the general public who [~~has~~] have no interest in the
201 construction on owner-occupied residences, or supply of materials used in the construction on
202 owner-occupied residences.

203 (2) The board shall be appointed and members shall serve their respective terms in
204 accordance with Section 58-1-201.

205 (3) The duties and responsibilities of the board shall be to:

206 (a) advise the division with respect to informal adjudication of claims for payment from
207 the fund by the division;

208 (b) act as the presiding officer, as defined by rule, in formal adjudicative proceedings held
209 before the division with respect to claims made for payment from the fund;

210 (c) advise the division with respect to:

211 (i) the general operation of the fund;

212 (ii) the amount and frequency of any assessment under this chapter;

213 (iii) the amount of any fees required under this chapter;

214 (iv) the availability and advisability of using funds for purchase of surety bonds to
215 guarantee payment to qualified beneficiaries; and
216 (v) the limitation on the fund balance under Section 38-11-206; and
217 (d) review the administrative expenditures made by the division pursuant to Subsection
218 38-11-201(4) and report its findings regarding those expenditures to the executive director on or
219 before the first Monday of December of each year.

220 (4) The attorney general shall render legal assistance as requested by the board.
221 Section 5. Section **38-11-107** is amended to read:

222 **38-11-107. Restrictions upon maintaining a lien against residence or owner's interest**
223 **in the residence.**

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

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

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

242 (3) A lien claimant who files a mechanics' lien or foreclosure action upon an
243 owner-occupied residence is not liable for costs and attorneys' fees under Sections 38-1-17 and
244 38-1-18 or for any damages arising from a civil action related to the lien filing or foreclosure

245 action if the lien claimant removes the lien within ten days from the date the owner establishes
246 compliance, through written findings of fact from a court of competent jurisdiction or, in cases
247 where a bankruptcy has been filed, from the director, with the requirements of Subsections
248 38-11-204(3)(a) and (3)(b).

249 Section 6. Section **38-11-202** is amended to read:

250 **38-11-202. Payments to the fund.**

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

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

255 (2) initial and special assessments collected by the division from other qualified
256 beneficiaries registering with the division in accordance with Subsection 38-11-301(3) and Section
257 38-11-206;

258 (3) fees determined by the division under Section 63-38-3.2 collected from laborers under
259 Subsection 38-11-204[~~(7)~~](6) when the laborers obtain a recovery from the fund;

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

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

265 (6) registration fees determined by the division under Section 63-38-3.2 collected from
266 other qualified beneficiaries registering with the department in accordance with Subsection
267 38-11-301(3)(a)(iii);

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

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

272 (9) any interest earned by the fund[-]; and

273 (10) residential building permit fees determined by the division under Section 63-38-3.2,
274 collected pursuant to Section 58-56-19.

275 Section 7. Section **38-11-203** is amended to read:

276 **38-11-203. Disbursements from the fund -- Limitations.**

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

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

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

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

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

284 (a) the laborer complied with the requirements of Subsection 38-11-204~~[(6)]~~(5); and

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

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

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

292 (c) The director shall order payment of interest on all amounts claimed for qualified
293 services at the rate of 12%, annual percentage rate, from the date payment was due to the date the
294 claim is approved for payment except for delays attributable to the claimant.

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

299 (e) The director shall order payment of ~~[attorney's fees in the amount stated in a judgment.]~~
300 reasonable attorney fees attributable to the owner-occupied residence at issue in the claim, to the
301 extent documented according to the provisions of Rule 4-505, Utah Code of Judicial
302 Administration, and subject to the following limitations:

303 (i) if the payable amount of qualified services is \$3,000 or less, not more than 33% of the
304 value of the qualified services;

305 (ii) if the payable amount of qualified services is greater than \$3,000 and \$10,000 or less,
306 not more than 25% of the value of the qualified services; or

307 (iii) if the payable amount of qualified services is greater than \$10,000, not more than 20%
 308 of the value of the qualified services.

309 (f) (i) The limits on attorney fees set forth in Subsection (3)(e) may be waived by the
 310 director if the director determines that manifest injustice would result from the application of the
 311 limits.

312 (ii) The burden of establishing manifest injustice for purposes of Subsection (3)(f)(i) is on
 313 the claimant.

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

315 (i) [~~\$75,000~~] \$125,000 per [~~residence~~] construction project to all qualified beneficiaries
 316 and laborers who have claim against the fund for that [~~residence~~] construction project; and

317 (ii) [~~\$500,000~~] \$100,000 per qualified beneficiary or laborer for payments to the qualified
 318 beneficiary [~~over the qualified beneficiary's lifetime~~] during each calendar year.

319 (b) If claims against the fund for a [~~residence~~] construction project exceed [~~\$75,000, the~~
 320 ~~\$75,000 shall be awarded proportionately so that each qualified beneficiary and laborer awarded~~
 321 ~~compensation from the fund for qualified services shall receive an identical percentage~~] \$125,000,
 322 the claims of the qualified [beneficiary's or laborer's award] beneficiaries shall be paid in the order
 323 that the claims are filed with the division until the limit of \$125,000 is reached.

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

328 Section 8. Section **38-11-204** is amended to read:

329 **38-11-204. Claims against the fund -- Requirement to make a claim -- Qualifications**
 330 **to receive compensation.**

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

332 (a) meet the requirements of either Subsection (3) or [~~(6)~~] (5);

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

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

336 (i) that the person meets the requirements of either Subsection (3) or [~~(6)~~] (5);

337 (ii) that the person was a qualified beneficiary or laborer during the construction on the

338 owner-occupied residence; and

339 (iii) the basis for the claim.

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

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

343 (b) from the date the nonpaying party filed bankruptcy, if the claimant is precluded from
344 obtaining a judgment or from satisfying the requirements of Subsection (3)(c) because the
345 nonpaying party filed bankruptcy within 120 days after the entry of judgment; or

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

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

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

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

357 (iii) the owner of the owner-occupied residence or the owner's agent entered into a written
358 contract with a factory built housing retailer for the purchase of an owner-occupied residence;

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

363 (i) the original contractor [~~or real estate developer~~], licensed or exempt from licensure
364 under Title 58, Chapter 55, Utah Construction Trades Licensing Act, the real estate developer, or
365 the factory built housing retailer subsequently failed to pay a qualified beneficiary who is entitled
366 to payment under an agreement with that original contractor or real estate developer licensed or
367 exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, for
368 services performed or materials supplied by the qualified beneficiary;

369 (ii) a subcontractor who contracts with the original contractor [~~or real estate developer~~],
370 licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing
371 Act, the real estate developer, or the factory built housing retailer failed to pay a qualified
372 beneficiary who is entitled to payment under an agreement with that subcontractor or supplier; or

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

375 (c) (i) the qualified beneficiary filed~~[(A)]~~ an action against the nonpaying party to
376 recover monies owed him within 180 days from the date the qualified beneficiary last provided
377 qualified services, unless precluded from doing so by the nonpaying party's bankruptcy filing
378 within the 180 days after completion of services; [~~and~~]

379 [~~(B) a notice of commencement of action with the division within 30 days from the date~~
380 ~~the qualified beneficiary filed the civil action if a civil action was filed as required by Subsection~~
381 ~~(3)(c)(i)(A);]~~

382 (ii) the qualified beneficiary has obtained a judgment against the nonpaying party who
383 failed to pay the qualified beneficiary under an agreement to provide qualified services for
384 construction of that owner-occupied residence;

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

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

394 (iv) the claimant timely filed a proof of claim where permitted in the bankruptcy action,
395 if the nonpaying party has filed bankruptcy; and

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

397 (4) The requirements of Subsection ~~[38-11-204]~~(3)(c) need not be met if the qualified
398 beneficiary has been precluded from obtaining a judgment against the nonpaying party or from
399 satisfying the requirements of Subsection ~~[38-11-204]~~(3)(c) because the nonpaying party filed

400 bankruptcy.

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

403 ~~[(a) if otherwise qualified under this chapter;]~~

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

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

409 ~~[(6)]~~ (5) To recover from the fund a laborer shall:

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

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

413 ~~[(7)]~~ (6) A fee determined by the division under Section 63-38-3.2 shall be deducted from
414 any recovery from the fund received by a laborer.

415 Section 9. Section **38-11-207** is amended to read:

416 **38-11-207. Reimbursement to the fund.**

417 (1) If the director disburses monies from the fund as a result of a person licensed under
418 Title 58, Chapter 55, Utah Construction Trades Licensing Act, or a qualified beneficiary failing
419 to pay qualified beneficiaries~~[-, the licensee or qualified beneficiary shall reimburse the fund within~~
420 ~~90 days from]~~:

421 (a) the division shall issue a notice of the disbursement from the fund[-] and the obligation
422 to reimburse the fund to the licensee or qualified beneficiary; and

423 (b) the licensee or qualified beneficiary shall reimburse the fund within 20 days from the
424 issuance of the notice required by Subsection (1)(a).

425 (2) The notice required by Subsection (1)(a) shall meet the requirements established by
426 rule by the division in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking
427 Act.

428 (3) (a) A finding of fact in an administrative action that a payment of any amount has been
429 made from the fund in settlement of a claim arising from the act, representation, transaction, or
430 conduct of a person licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act.

431 in violation of Section 58-55-603 shall result in the immediate suspension of that person's license
432 without further compliance with Title 63, Chapter 46b, Administrative Procedures Act.

433 (b) The finding of fact for Subsection (3)(a) may be made in the same administrative
434 action as the related claim and may be included in the findings required by Section 38-11-203.

435 (c) The suspension required by Subsection (3)(a) shall remain in effect until the person
436 applies for reinstatement of the license in accordance with Sections 58-1-308 and 58-55-303.

437 Section 10. Section **38-11-301** is amended to read:

438 **38-11-301. Registration as a qualified beneficiary -- Initial regular assessment --**
439 **Affidavit.**

440 (1) A person licensed as of July 1, 1995, as a contractor under the provisions of Title 58,
441 Chapter 55, Utah Construction Trades Licensing Act, in license classifications that regularly
442 engage in providing qualified services shall be automatically registered as a qualified beneficiary
443 upon payment of the initial assessment.

444 (2) A person applying for licensure as a contractor after July 1, 1995, in license
445 classifications that regularly engage in providing qualified services shall be automatically
446 registered as a qualified beneficiary upon issuance of a license and payment of the initial
447 assessment.

448 (3) (a) After July 1, 1995, any person providing qualified services as other than a
449 contractor as provided in Subsection (1) or any person exempt from licensure under the provisions
450 of Title 58, Chapter 55, Utah Construction Trades Licensing Act, may register as a qualified
451 beneficiary by:

452 (i) submitting an application in a form prescribed by the division;

453 (ii) demonstrating registration with the Division of Corporations and Commercial Code
454 as required by state law;

455 (iii) paying a registration fee determined by the division under Section 63-38-3.2; and

456 (iv) paying the initial assessment established under Subsection (4), and any special
457 assessment determined by the division under Subsection 38-11-206(1).

458 (b) A person [~~other than a contractor~~] who does not register under Subsection (3)(a) shall
459 be prohibited from recovering under the fund as a qualified beneficiary for work performed as
460 qualified services while not registered with the fund.

461 (4) (a) An applicant shall pay an initial assessment determined by the division under

462 Section 63-38-3.2.

463 (b) The initial assessment to qualified registrants under Subsection (1) shall be made not
464 later than July 15, 1995, and shall be paid no later than November 1, 1995.

465 (c) The initial assessment to qualified registrants under Subsections (2) and (3) shall be
466 paid at the time of application for license or registration, however, beginning on May 1, 1996, only
467 one initial assessment or special assessments thereafter shall be required for persons having
468 multiple licenses under this section.

469 (5) A person shall be considered to have been registered as a qualified beneficiary on
470 January 1, 1995, for purposes of meeting the requirements of Subsection 38-11-204(1)(c)(ii) if the
471 person:

472 (a) (i) is licensed on or before July 1, 1995, as a contractor under the provisions of Title
473 58, Chapter 55, Utah Construction Trades Licensing Act, in license classifications that regularly
474 engage in providing qualified services; or

475 (ii) provides qualified services after July 1, 1995, as other than a contractor as provided
476 in Subsection (5)(a)(i) or is exempt from licensure under the provisions of Title 58, Chapter 55,
477 Utah Construction Trades Licensing Act; and

478 (b) registers as a qualified beneficiary under Subsection (1) or (3) on or before November
479 1, 1995.

480 Section 11. Section **58-55-302** is amended to read:

481 **58-55-302. Qualifications for licensure.**

482 (1) Each applicant for a license under this chapter shall:

483 (a) submit an application prescribed by the division;

484 (b) pay a fee as determined by the department under Section 63-38-3.2;

485 (c) (i) pass an examination approved by the division in collaboration with the board, except
486 for the classifications of apprentice plumber, residential apprentice plumber, and apprentice
487 electrician for whom no examination is required; or

488 (ii) the individual qualifier must pass the required examination if the applicant is a
489 business entity;

490 (d) if an apprentice, identify the proposed supervisor of the apprenticeship;

491 (e) if an applicant for a contractor's license:

492 (i) produce satisfactory evidence of financial responsibility, except for construction trades

493 instructor for whom evidence of financial responsibility is not required;

494 (ii) produce satisfactory evidence of knowledge and experience in the construction industry
495 and knowledge of the principles of the conduct of business as a contractor, reasonably necessary
496 for the protection of the public health, safety, and welfare; and

497 (iii) be a licensed master electrician if an applicant for an electrical contractor's license or
498 a licensed master residential electrician if an applicant for a residential electrical contractor's
499 license; or

500 (iv) be a journeyman plumber or residential journeyman plumber if an applicant for a
501 plumbing contractor's license; and

502 (f) if an applicant for a construction trades instructor license, satisfy any additional
503 requirements established by rule.

504 (2) After approval of an applicant for a contractor's license by the board and the division,
505 the applicant shall file the following with the division before the division issues the license:

506 (a) proof of workers' compensation insurance which covers employees of the applicant in
507 accordance with applicable Utah law;

508 (b) proof of public liability insurance in coverage amounts and form established by rule
509 except for a construction trades instructor for whom public liability insurance is not required; and

510 (c) proof of registration as required by applicable law with the:

511 (i) Utah Department of Commerce;

512 (ii) Division of Corporations and Commercial Code;

513 (iii) Division of Workforce Information and Payment Services in the Department of
514 Workforce Services, for purposes of Title 35A, Chapter 4, Employment Security Act;

515 (iv) State Tax Commission; and

516 (v) Internal Revenue Service.

517 (3) In addition to the general requirements for each applicant in Subsection (1), applicants
518 shall comply with the following requirements to be licensed in the following classifications:

519 (a) A journeyman plumber applicant shall produce:

520 (i) satisfactory evidence of successful completion of the equivalent of at least four years
521 of full-time training and instruction as a licensed apprentice plumber under supervision of a
522 licensed journeyman plumber and in accordance with a planned program of training approved by
523 the division;

524 (ii) satisfactory evidence of at least eight years of full-time experience approved by the
525 division in collaboration with the Plumbers Licensing Board; or

526 (iii) satisfactory evidence of meeting the qualifications determined by the division and
527 board to be equivalent to Subsection (3)(a)(i) or (a)(ii).

528 (b) A residential journeyman plumber shall produce satisfactory evidence of completion
529 of:

530 (i) the equivalent of at least three years of full-time training and instruction as a licensed
531 apprentice plumber under the supervision of a licensed residential journeyman plumber or licensed
532 journeyman plumber in accordance with a planned program of training approved by the division;

533 (ii) at least six years of full-time experience in a maintenance or repair trade involving
534 substantial plumbing work; or

535 (iii) satisfactory evidence of meeting the qualifications determined by the division and
536 board to be equivalent to Subsection (3)(b)(i) or (b)(ii).

537 (c) A master electrician applicant shall produce satisfactory evidence that he either:

538 (i) is a graduate electrical engineer of an accredited college or university approved by the
539 division and has one year of practical electrical experience as a licensed apprentice electrician;

540 (ii) is a graduate of an electrical trade school, having received an associate of applied
541 sciences degree following successful completion of a course of study approved by the division, and
542 has two years of practical experience as a licensed journeyman electrician;

543 (iii) is a graduate of an electrical trade school, having received a certificate of completion
544 following successful completion of a course of study approved by the division, and has four years
545 of practical experience as a journeyman electrician;

546 (iv) has at least eight years of practical experience under the supervision of a licensed
547 journeyman or master electrician; or

548 (v) meets the qualifications determined by the division and board to be equivalent to these
549 qualifications.

550 (d) A master residential electrician applicant shall produce satisfactory evidence that he:

551 (i) has at least two years of practical experience as a residential journeyman electrician;

552 or

553 (ii) meets the qualifications determined by the division and board to be equivalent to this
554 practical experience.

555 (e) A journeyman electrician applicant shall produce satisfactory evidence that he either:

556 (i) has successfully completed at least four years of full-time training and instruction as
557 a licensed apprentice electrician under the supervision of a master electrician or journeyman
558 electrician and in accordance with a planned training program approved by the division;

559 (ii) has six years of practical experience in wiring, installing, and repairing electrical
560 apparatus and equipment for light, heat, and power under the supervision of a licensed master or
561 journeyman electrician; or

562 (iii) meets the qualifications determined by the division and board to be equivalent to these
563 qualifications.

564 (f) A residential journeyman electrician applicant shall produce satisfactory evidence that
565 he:

566 (i) has successfully completed two years of training in an electrical training program
567 approved by the division;

568 (ii) has four years of practical experience in wiring, installing, and repairing electrical
569 apparatus and equipment for light, heat, and power under the supervision of a licensed master,
570 journeyman, residential master, or residential journeyman electrician; or

571 (iii) meets the qualifications determined by the division and board to be equivalent to
572 Subsection (3)(f)(i) or (f)(ii).

573 (g) The conduct of licensed apprentice electricians and their licensed supervisors shall be
574 in accordance with the following:

575 (i) A licensed apprentice electrician shall be under the immediate supervision of a licensed
576 master, journeyman, residential master, or residential journeyman electrician. An apprentice in
577 the fourth year of training may work without supervision for a period not to exceed eight hours in
578 any 24-hour period.

579 (ii) A licensed master, journeyman, residential master, or residential journeyman
580 electrician may have under his immediate supervision on a residential project up to three licensed
581 apprentice electricians.

582 (iii) A licensed master or journeyman electrician may have under his immediate
583 supervision on nonresidential projects only one licensed apprentice electrician.

584 (4) (a) An application for licensure under this chapter shall be denied if:

585 (i) the applicant has had a previous license, which was issued under this chapter,

586 suspended or revoked within one year prior to the date of the applicant's application;

587 (ii) (A) the applicant is a partnership, corporation, or limited liability company; and

588 (B) any corporate officer, director, shareholder holding 25% or more of the stock in the

589 applicant, partner, member, agent acting as a qualifier, or any person occupying a similar status,

590 performing similar functions, or directly or indirectly controlling the applicant has served in any

591 similar capacity with any person or entity which has had a previous license, which was issued

592 under this chapter, suspended or revoked within one year prior to the date of the applicant's

593 application; or

594 (iii) (A) the applicant is an individual or sole proprietorship; and

595 (B) any owner or agent acting as a qualifier has served in any capacity listed in Subsection

596 (4)(a)(ii)(B) in any entity which has had a previous license, which was issued under this chapter,

597 suspended or revoked within one year prior to the date of the applicant's application.

598 (b) An application for licensure under this chapter shall be reviewed by the appropriate

599 licensing board prior to approval if:

600 (i) the applicant has had a previous license, which was issued under this chapter,

601 suspended or revoked more than one year prior to the date of the applicant's application;

602 (ii) (A) the applicant is a partnership, corporation, or limited liability company; and

603 (B) any corporate officer, director, shareholder holding 25% or more of the stock in the

604 applicant, partner, member, agent acting as a qualifier, or any person occupying a similar status,

605 performing similar functions, or directly or indirectly controlling the applicant has served in any

606 similar capacity with any person or entity which has had a previous license, which was issued

607 under this chapter, suspended or revoked more than one year prior to the date of the applicant's

608 application; or

609 (iii) (A) the applicant is an individual or sole proprietorship; and

610 (B) any owner or agent acting as a qualifier has served in any capacity listed in Subsection

611 (4)(b)(ii)(B) in any entity which has had a previous license, which was issued under this chapter,

612 suspended or revoked more than one year prior to the date of the applicant's application.

613 Section 12. Section **58-55-303** is amended to read:

614 **58-55-303. Term of license -- Expiration -- Renewal.**

615 (1) Each license issued under this chapter shall be issued in accordance with a two-year

616 renewal cycle established by rule. The division may by rule extend or shorten a renewal period

617 by as much as one year to stagger the renewal cycle it administers.

618 (2) At the time of renewal, the licensee shall show satisfactory evidence of continuing
619 financial responsibility as required under Section 58-55-306.

620 (3) Each license automatically expires on the expiration date shown on the license unless
621 the licensee renews the license in accordance with Section 58-1-308.

622 (4) The requirements of Section 58-55-302(4) shall also apply to applicants seeking to
623 renew or reinstate a license.

624 (5) In addition to any other requirements imposed by law, if a license has been suspended
625 or revoked for any reason, the applicant must pay in full all fines imposed by the division,
626 completely resolve any outstanding citations or disciplinary actions, complete a new financial
627 responsibility review as required under Section 58-55-306, using only titled assets, and pay in full
628 any reimbursement amount as provided in Title 38, Chapter 11, Residence Lien Restriction and
629 Lien Recovery Fund Act.

630 Section 13. Section **58-55-501** is amended to read:

631 **58-55-501. Unlawful conduct.**

632 Unlawful conduct includes:

633 (1) engaging in a construction trade, acting as a contractor, or representing oneself to be
634 engaged in a construction trade or to be acting as a contractor in a construction trade requiring
635 licensure, unless the person doing any of these is appropriately licensed or exempted from
636 licensure under this chapter;

637 (2) acting in a construction trade beyond the scope of the license held;

638 (3) hiring or employing in any manner an unlicensed person, other than an employee for
639 wages who is not required to be licensed under this chapter, to engage in a construction trade for
640 which licensure is required or to act as a contractor or subcontractor in a construction trade
641 requiring licensure;

642 (4) applying for or obtaining a building permit either for oneself or another when not
643 licensed or exempted from licensure as a contractor under this chapter;

644 (5) issuing a building permit to any person for whom there is no evidence of a current
645 license or exemption from licensure as a contractor under this chapter;

646 (6) applying for or obtaining a building permit for the benefit of or on behalf of any other
647 person who is required to be licensed under this chapter but who is not licensed or is otherwise not

- 648 entitled to obtain or receive the benefit of the building permit;
- 649 (7) failing to obtain a building permit when required by law or rule;
- 650 (8) submitting a bid for any work for which a license is required under this chapter by a
651 person not licensed or exempted from licensure as a contractor under this chapter;
- 652 (9) willfully or deliberately misrepresenting or omitting a material fact in connection with
653 an application to obtain or renew a license under this chapter;
- 654 (10) allowing one's license to be used by another except as provided by statute or rule;
- 655 (11) doing business under a name other than the name appearing on the license, except as
656 permitted by statute or rule;
- 657 (12) exceeding one's monetary limit as a licensed contractor, as the limit is defined by
658 statute or rule;
- 659 (13) if licensed as a contractor, submitting a bid on a single project in an amount exceeding
660 his monetary limit, unless he first files with the division a notice of intent to request an increase
661 of the monetary limit in compliance with Subsection 58-55-309(5);
- 662 (14) if licensed as a journeyman plumber, residential journeyman plumber, journeyman
663 electrician, master electrician, or residential electrician, failing to directly supervise an apprentice
664 under one's supervision or exceeding the number of apprentices one is allowed to have under his
665 supervision;
- 666 (15) if licensed as a contractor or representing oneself to be a contractor, receiving any
667 funds in payment for a specific project from an owner or any other person, which funds are to pay
668 for work performed or materials and services furnished for that specific project, and after receiving
669 the funds to exercise unauthorized control over the funds by failing to pay the full amounts due and
670 payable to persons who performed work or furnished materials or services within a reasonable
671 period of time;
- 672 (16) if licensed under this chapter, willfully or deliberately disregarding or violating:
- 673 (a) the building or construction laws of this state or any political subdivision;
- 674 (b) the safety and labor laws applicable to a project;
- 675 (c) any provision of the health laws applicable to a project;
- 676 (d) the workers' compensation insurance laws of the state applicable to a project;
- 677 (e) the laws governing withholdings for employee state and federal income taxes,
678 unemployment taxes, FICA, or other required withholdings; or

- 679 (f) reporting, notification, and filing laws of this state or the federal government;
- 680 (17) aiding or abetting any person in evading the provisions of this chapter or rules
- 681 established under the authority of the division to govern this chapter; [or]
- 682 (18) engaging in the construction trade or as a contractor for the construction of residences
- 683 of up to two units when not currently registered or exempt from registration as a qualified
- 684 beneficiary under Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act[-];
- 685 or
- 686 (19) failing to pay subcontractors and suppliers in proportion to the percentage of work
- 687 they performed under a billing after a contractor receives any construction funds from an owner
- 688 or another contractor for work performed and billed, unless otherwise agreed by contract.

689 Section 14. Section **58-55-502** is amended to read:

690 **58-55-502. Unprofessional conduct.**

691 Unprofessional conduct includes:

- 692 (1) failing to establish, maintain, or demonstrate financial responsibility while licensed as
- 693 a contractor under this chapter;
- 694 (2) disregarding or violating through gross negligence or a pattern of negligence:
- 695 (a) the building or construction laws of this state or any political subdivision;
- 696 (b) the safety and labor laws applicable to a project;
- 697 (c) any provision of the health laws applicable to a project;
- 698 (d) the workers' compensation insurance laws of this state applicable to a project;
- 699 (e) the laws governing withholdings for employee state and federal income taxes,
- 700 unemployment taxes, FICA, or other required withholdings; or
- 701 (f) any reporting, notification, and filing laws of this state or the federal government;
- 702 (3) any willful, fraudulent, or deceitful act by a licensee, caused by a licensee, or at a
- 703 licensee's direction which causes material injury to another;
- 704 (4) contract violations that pose a threat or potential threat to the public health, safety, and
- 705 welfare including:
- 706 (a) willful, deliberate, or grossly negligent departure from or disregard for plans or
- 707 specifications, or abandonment or failure to complete a project without the consent of the owner
- 708 or his duly authorized representative or the consent of any other person entitled to have the
- 709 particular project completed in accordance with the plans, specifications, and contract terms;

710 (b) failure to deposit funds to the benefit of an employee as required under any written
711 contractual obligation the licensee has to the employee;

712 (c) failure to maintain in full force and effect any health insurance benefit to an employee
713 that was extended as a part of any written contractual obligation or representation by the licensee,
714 unless the employee is given written notice of the licensee's intent to cancel or reduce the insurance
715 benefit at least 45 days before the effective date of the cancellation or reduction;

716 (d) failure to reimburse the Residence Lien Recovery Fund [~~within 90 days after any~~
717 ~~disbursement from the fund resulting from the licensee's failure to pay qualified beneficiaries as~~
718 ~~provided in Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act] as
719 required by Section 38-11-207;~~

720 (e) failure to provide, when applicable, the information required by Section 38-11-108; or

721 (f) willfully or deliberately misrepresenting or omitting a material fact in connection with
722 an application to claim recovery from the Residence Lien Recovery Fund under Section 38-11-204.

723 Section 15. Section **58-55-503** is amended to read:

724 **58-55-503. Penalty for unlawful conduct -- Citations.**

725 (1) Any person who violates Subsections 58-55-501(1) through (14), (16), (17) or (18),
726 or who fails to comply with a citation issued under this section after it is final, is guilty of a class
727 A misdemeanor. Any person who violates the provisions of Subsection 58-55-501(8) or (13) may
728 not be awarded and may not accept a contract for the performance of the work. Any licensee who
729 submits a notice of intent to request an increase in the monetary limit under Subsection
730 58-55-309(5), but who is not granted an increase sufficient to cover the award of a contract upon
731 which he has bid, may not be awarded and may not accept the contract.

732 (2) Any person who violates the provisions of Subsection 58-55-501(15) is guilty of an
733 infraction unless the violator did so with the intent to deprive the person to whom money is to be
734 paid of the money received, in which case the violator is guilty of theft, as classified in Section
735 76-6-412.

736 (3) Grounds for immediate suspension of the licensee's license by the division and the
737 board include the failure by a licensee to make application to, report to, or notify the division with
738 respect to any matter for which application, notification, or reporting is required under this chapter
739 or rules adopted under this chapter, including applying to the division for a new license to engage
740 in a new specialty classification or to do business under a new form of organization or business

741 structure, filing with the division current financial statements, notifying the division concerning
742 loss of insurance coverage, or change in qualifier.

743 (4) (a) If upon inspection or investigation, the division concludes that a contractor has
744 violated the provisions of Subsections 58-55-501(1), (2), (3), (19), or any rule or order issued with
745 respect to these subsections, and that disciplinary action is appropriate, the director or his designee
746 from within the division for each alternative respectively, shall, promptly issue a citation to the
747 contractor according to this chapter and any pertinent rules, attempt to negotiate a stipulated
748 settlement, or notify the contractor to appear before an adjudicative proceeding conducted under
749 Title 63, Chapter 46b, Administrative Procedures Act.

750 (i) Any person who is in violation of the provisions of Subsection 58-55-501(1), (2), [or]
751 (3), or (19) as evidenced by an uncontested citation, a stipulated settlement, or by a finding of
752 violation in an adjudicative proceeding, may be assessed a fine pursuant to this Subsection (4) and
753 may, in addition to or in lieu of, be ordered to cease and desist from violating Subsection
754 58-55-501(1), (2), [or] (3), or (19).

755 (ii) Except for a cease and desist order, the licensure sanctions cited in Section 58-55-401
756 may not be assessed through a citation.

757 (b) Each citation shall be in writing and describe with particularity the nature of the
758 violation, including a reference to the provision of the chapter, rule, or order alleged to have been
759 violated. The citation shall clearly state that the recipient must notify the division in writing within
760 20 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing
761 conducted under Title 63, Chapter 46b, Administrative Procedures Act. The citation shall clearly
762 explain the consequences of failure to timely contest the citation or to make payment of any fines
763 assessed by the citation within the time specified in the citation.

764 (c) The division may issue a notice in lieu of a citation.

765 (d) Each citation issued under this section, or a copy of each citation, may be served upon
766 any person upon whom a summons may be served in accordance with the Utah Rules of Civil
767 Procedure and may be made personally or upon his agent by a division investigator or by any
768 person specially designated by the director or by mail.

769 (e) If within 20 calendar days from the service of a citation, the person to whom the
770 citation was issued fails to request a hearing to contest the citation, the citation becomes the final
771 order of the division and is not subject to further agency review. The period to contest a citation

772 may be extended by the division for cause.

773 (f) The division may refuse to issue or renew, suspend, revoke, or place on probation the
774 license of a licensee who fails to comply with a citation after it becomes final.

775 (g) The failure of an applicant for licensure to comply with a citation after it becomes final
776 is a ground for denial of license.

777 (h) No citation may be issued under this section after the expiration of six months
778 following the occurrence of any violation.

779 (i) Fines shall be assessed by the director or his designee according to the following:

780 (i) for a first offense handled pursuant to Subsection (4) (a), a fine of up to \$1,000;

781 (ii) for a second offense handled pursuant to Subsection (4) (a), a fine of up to \$2,000; and

782 (iii) for any subsequent offense handled pursuant to Subsection (4) (a), a fine of up to
783 \$2,000 for each day of continued offense.

784 (j) (i) For purposes of issuing a final order under this section and assessing a fine under
785 Subsection (4)(i), an offense constitutes a second or subsequent offense if:

786 (A) the division previously issued a final order determining that a person committed a first
787 or second offense in violation of Subsection 58-55-501(1), (2), or (3); or

788 (B) (I) the division initiated an action for a first or second offense;

789 (II) no final order has been issued by the division in the action initiated under Subsection
790 (4)(j)(i)(B)(I);

791 (III) the division determines during an investigation that occurred after the initiation of the
792 action under Subsection (4)(j)(i)(B)(I) that the person committed a second or subsequent violation
793 of the provisions of Subsection 58-55-501(1), (2), or (3); and

794 (IV) after determining that the person committed a second or subsequent offense under
795 Subsection (4)(j)(i)(B)(III), the division issues a final order on the action initiated under Subsection
796 (4)(j)(i)(B)(I).

797 (ii) In issuing a final order for a second or subsequent offense under Subsection (4)(j)(i),
798 the division shall comply with the requirements of this section.

799 (5) Any penalty imposed by the director under Subsection (4) (i) shall be deposited into
800 the Commerce Service Fund. Any penalty which is not paid may be collected by the director by
801 either referring the matter to a collection agency or bringing an action in the district court of the
802 county in which the person against whom the penalty is imposed resides or in the county where

803 the office of the director is located. Any county attorney or the attorney general of the state is to
804 provide legal assistance and advice to the director in any action to collect the penalty. In any
805 action brought to enforce the provisions of this section, reasonable attorney's fees and costs shall
806 be awarded.

807 Section 16. Section **58-56-19** is enacted to read:

808 **58-56-19. Residential building permit fees.**

809 (1) Each compliance agency shall assess a residential building permit fee, determined by
810 the division under Section 63-38-3.2, on each building permit issued by that compliance agency
811 for work to be performed on a residence, as defined in Section 38-11-102.

812 (2) Each compliance agency shall collect the fee assessed in Subsection (1) and transmit
813 the amount collected to the division to be deposited in the Residential Lien Recovery Fund created
814 in Section 38-11-201.

Legislative Review Note

as of 1-13-00 2:31 PM

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

Office of Legislative Research and General Counsel