

**MECHANICS' LIENS AMENDMENTS**

2001 GENERAL SESSION

STATE OF UTAH

**Sponsor: Kevin S. Garn**

**This act modifies the Mechanics' Lien Act. The act provides for the recording of a notice of release of lien and substitution of alternate security in order to release property encumbered by a mechanics' lien. The act prohibits the variance by agreement of the provisions of the Mechanics' Lien Act.**

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

AMENDS:

**38-1-27**, as last amended by Chapter 110, Laws of Utah 1991

ENACTS:

**38-1-28**, Utah Code Annotated 1953

**38-1-29**, Utah Code Annotated 1953

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

Section 1. Section **38-1-27** is amended to read:

**38-1-27. Preliminary notice to original contractor -- Form and contents -- Service -- Notice of commencement of project or improvement.**

(1) This section relating to preliminary notices does not apply to residential construction or to work performed in the development of subdivisions whose end use is for residential construction. For the purposes of this section, residential construction means single family detached housing and multifamily attached housing up to and including fourplexes, and includes rental housing.

(2) Except subcontractors who are in privity of contract with an original contractor or except for persons performing labor for wages, any person claiming, reserving the right to claim, or intending to claim a mechanic's lien under this chapter for labor, service, equipment, or material shall provide preliminary notice to the original contractor as prescribed by this section. Any person who fails to provide this preliminary notice has no right to claim a mechanic's lien under this chapter.

(3) The preliminary notice required by this section shall be in writing and may be given at any time during the course of the project or improvement.

(4) A person required by this section to give preliminary notice is only required to give one notice for each project or improvement, which may include an entire structure or a scheme of improvements.

(5) If the labor, service, equipment, or material is furnished pursuant to contracts with more than one subcontractor or with more than one original contractor, the notice requirements must be met with respect to the labor, service, equipment, or materials furnished to each such subcontractor or original contractor.

(6) The person required by this section to give preliminary notice is precluded from making a claim for any labor, service, equipment, or material which was provided more than 45 days prior to the date the preliminary notice is given. The preliminary notice must be given before a notice of lien is filed with the county recorder pursuant to Section 38-1-7.

(7) The preliminary notice under this section shall include:

(a) the name, address, and telephone number of the person furnishing the labor, service, equipment, or material;

(b) the name and address of the person who contracted for the furnishing of the labor, service, equipment, or material; and

(c) the address of the project or improvement or a drawing sufficient to describe the location of the project or improvement.

(8) (a) Service of a preliminary notice is sufficient if the notice is deposited in the United States mail, certified or registered, return receipt requested, postage prepaid. Service of the preliminary notice by mail is complete upon deposit of the certified or registered mail.

(b) A preliminary notice served by mail may be addressed to the original contractor at his place of business, or his address as shown on the notice of commencement on record with the county recorder as required by Subsection (10).

~~[(9) The applicability of this section, including the waiver of rights or privileges granted or protected by this section, may not be varied by agreement.]~~

~~[(10)]~~ (9) Any right to assert a defense of failure to comply with the preliminary notice requirements of this section is void unless the original contractor records a notice of commencement of the project or improvement with the county recorder for the county or counties where the project is located within 30 days after commencement of the project. The notice of commencement shall include the following:

- (a) the name and address of the owner of the project or improvement;
- (b) the name and address of the original contractor;
- (c) the name and address of the surety providing any payment bond for the project or improvement, or if none exists, a statement that a payment bond was not required for the work being performed;
- (d) the name and address of the project; and
- (e) a legal description of the property on which the project is located.

Section 2. Section **38-1-28** is enacted to read:

**38-1-28. Notice of release of lien and substitution of alternate security.**

(1) The owner of any interest in real property which is subject to a mechanics' lien recorded under this chapter, or any original contractor or subcontractor affected by the lien, who disputes the correctness or validity of the lien may, either before or after the commencement of an action to enforce the lien, record a notice of release of lien and substitution of alternate security, which meets the requirements of Subsection (2), in the office of the county recorder where the lien was recorded.

(2) A notice of release of lien and substitution of alternate security recorded under Subsection (1) shall meet the requirements for the recording of documents in Title 57, Chapter 3, Recording of Documents, shall reference the lien sought to be released, and shall have as an attachment a surety bond or evidence of a cash deposit which:

(a) (i) if a surety bond, is executed by a surety company which is treasury listed, A-rated by AM Best Company, and authorized to issue surety bonds in this state; or

(ii) if a letter of credit or evidence of a cash deposit, meets the requirements established by rule by the Department of Commerce in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act;

(b) is in an amount equal to 150% of the amount claimed by the lien claimant in connection with the parcel of real property sought to be released;

(c) is made payable to the lien claimant;

(d) is conditioned for the payment of the judgment which would have been rendered against the property in the action to enforce the lien together with any costs and attorneys' fees awarded by the court; and

(e) has as principal the owner of the interest in the real property, or the original contractor or subcontractor affected by the lien.

(3) Upon the recording of the notice of release of lien and substitution of alternate security under Subsection (1), the real property described in the notice shall be released from the mechanics' lien to which the notice applies.

(4) (a) Upon the recording of a notice of release of lien and substitution of alternate security under Subsection (1), the person recording the notice shall cause a copy of the notice, together with any attachments, to be served within 30 days upon the lien claimant.

(b) If a suit is pending to foreclose the lien at the time the notice is served upon the lien claimant under Subsection (4)(a), the lien claimant shall, within 90 days from the receipt of the notice, institute proceedings to add the alternate security as a party to the lien foreclosure suit.

(5) The alternate security attached to a notice of release of lien shall be discharged and released upon:

(a) the failure of the lien claimant to commence a suit against the alternate security within the same time as an action to enforce the lien under Section 38-1-11;

(b) the failure of the lien claimant to institute proceedings to add the alternate security as a party to a lien foreclosure suit within the time required by Subsection (4)(b); or

(c) the dismissal with prejudice of the foreclosure suit or suit against the alternate security as to the lien claimant or the entry of judgment against the lien claimant in such a suit.

(6) If a copy of the notice of release of lien and substitution of alternate security is not served upon the lien claimant as provided in Subsection (4)(a), the lien claimant shall have six months after the discovery of the notice to commence an action against the alternate security, except that no action

may be commenced against the alternate security after two years from the date the notice was recorded.

Section 3. Section **38-1-29** is enacted to read:

**38-1-29. No waiver of rights.**

The applicability of the provisions of this chapter, including the waiver of rights or privileges granted under this chapter, may not be varied by agreement.