

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 a surety bond 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



28 person who fails to provide this preliminary notice has no right to claim a mechanic's lien under
29 this chapter.

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

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

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

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

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

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

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

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

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

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

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

58 ~~[(10)]~~ (9) Any right to assert a defense of failure to comply with the preliminary notice

59 requirements of this section is void unless the original contractor records a notice of
60 commencement of the project or improvement with the county recorder for the county or counties
61 where the project is located within 30 days after commencement of the project. The notice of
62 commencement shall include the following:

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

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

71 **38-1-28. Recording of surety bond in order to release lien.**

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

78 (2) A notice of release of lien and substitution of a surety bond recorded under Subsection
79 (1) shall meet the requirements for the recording of documents in Title 57, Chapter 3, Recording
80 of Documents, and shall have as an attachment a surety bond which:

- 81 (a) is executed by a surety company authorized to issue surety bonds in this state;
- 82 (b) is in an amount equal to 150% of the amount claimed in the lien in connection with the
83 parcel of real property sought to be released;
- 84 (c) is made payable to the lien claimant;
- 85 (d) is conditioned for the payment of any sum which the lien claimant may recover in the
86 action to enforce the lien together with any costs and attorneys' fees awarded by the court; and
- 87 (e) has as principal the owner of the interest in the real property, or the original contractor
88 or subcontractor affected by the lien.

89 (3) Upon the recording of the notice of release of lien and substitution of a surety bond

90 under Subsection (1), the real property described in the notice shall be released from the
91 mechanics' lien to which the bond applies.

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

93 **38-1-29. No waiver of rights.**

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

Legislative Review Note
as of 2-2-01 10:44 AM

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

Office of Legislative Research and General Counsel