

Representative Stephen D. Clark proposes the following substitute bill:

CONSTRUCTION LIEN AMENDMENTS

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Stephen D. Clark

This act modifies the Liens Code by requiring a ten-day advance written notice to the person or entity the lien claimant supplied labor, materials, equipment, or services stating the amount of any claim and from whom it is due.

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

AMENDS:

38-1-11, as last amended by Chapter 198, Laws of Utah 2001

ENACTS:

38-1-30, Utah Code Annotated 1953

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

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

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

(1) [A] When a lien claimant provides a written notice pursuant to Section 38-1-30 a lien claimant shall file an action to enforce the lien filed under this chapter within:

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

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

(2) If a lien claimant fails to provide written notice pursuant to Section 38-1-30 a lien claimant shall file an action to enforce the lien filed under this chapter within:

(a) six months from the date of final completion of the original contract not involving a



26 residence as defined in Section 38-11-102; or

27 (b) 90 days from the date the lien claimant last performed labor and services or last
28 furnished equipment or material for a residence, as defined in Section 38-11-102.

29 [~~2~~] (3) (a) Within the time period provided for filing in [~~Subsection~~] Subsections (1)
30 and (2) the lien claimant shall file for record with the county recorder of each county in which
31 the lien is recorded a notice of the pendency of the action, in the manner provided in actions
32 affecting the title or right to possession of real property, or the lien shall be void, except as to
33 persons who have been made parties to the action and persons having actual knowledge of the
34 commencement of the action.

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

37 [~~3~~] (4) This section may not be interpreted to impair or affect the right of any person
38 to whom a debt may be due for any work done or materials furnished to maintain a personal
39 action to recover the same.

40 [~~4~~] (5) (a) If a lien claimant files an action to enforce a lien filed under this chapter
41 involving a residence, as defined in Section 38-11-102, the lien claimant shall include with the
42 service of the complaint on the owner of the residence:

43 (i) instructions to the owner of the residence relating to the owner's rights under Title
44 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act; and

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

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

52 (c) The instructions and form affidavit and motion required by Subsection [~~4~~] (5)(a)
53 shall meet the requirements established by rule by the Division of Occupational and
54 Professional Licensing in accordance with Title 63, Chapter 46a, Utah Administrative
55 Rulemaking Act.

56 (d) If the nonpaying party, as defined by Section 38-11-102, files for bankruptcy

57 protection and there is a bankruptcy stay in effect, the motion for summary judgment and the
58 action to enforce the lien shall be stayed until resolution of the related claim under Title 38,
59 Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act.

60 (e) If a lien claimant fails to provide to the owner of the residence the instructions and
61 form affidavit required by Subsection [~~(4)~~] (5)(a), the lien claimant shall be barred from
62 maintaining or enforcing the lien upon the residence.

63 (6) This section applies to liens filed on or after July 1, 2003.

64 Section 2. Section **38-1-30** is enacted to read:

65 **38-1-30. Lien notification.**

66 (1) Before filing a mechanics lien for any amount exceeding \$2,500 pursuant to
67 Section 38-1-11, the person or entity claiming a lien shall give ten days written notice by
68 certified mail to the person or entity to whom the lien claimant supplied labor, materials,
69 equipment, or services for the improvement of real property, stating the amount of any claim
70 and from whom it is due.

71 (2) This requirement does not apply to a lien for less than \$2,500.

72 (3) This section applies to liens filed on or after July 1, 2003.