

1 **LIEN RECOVERY FUND AMENDMENTS**

2 2004 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: R. Curt Webb**

5

LONG TITLE

6 **General Description:**

7 This bill modifies the Residence Lien Restriction and Lien Recovery Fund Act.

8 **Highlighted Provisions:**

9 This bill:

10 ▶ creates a "certificate of compliance" to be obtained by the owner of a residence
11 when the owner has complied with provisions of the Residence Lien Restriction and
12 Lien Recovery Fund Act and is seeking protection under the Act;

13 ▶ establishes the Division of Occupational and Professional Licensing as the
14 administrator of the "certificate of compliance";

15 ▶ broadens the definition of a contractor used in establishing that an owner has
16 complied with provisions of the Residence Lien Restriction and Lien Recovery
17 Fund Act and is seeking protection under the Act;

18 ▶ delays judicial determination of the rights and responsibilities of an owner of a
19 residence in a lien proceeding until the owner has time to establish compliance with
20 the Residence Lien Restriction and Lien Recovery Fund Act;

21 ▶ eliminates an outdated provision of the Residence Lien Restriction and Lien
22 Recovery Fund Act requiring a study of the Lien Recovery Fund; and

23 ▶ makes technical changes.

24 **Monies Appropriated in this Bill:**

25 None

26 **Other Special Clauses:**



28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

- 31 **38-1-11**, as last amended by Chapter 198, Laws of Utah 2001
- 32 **38-11-102**, as last amended by Chapter 198, Laws of Utah 2001
- 33 **38-11-104**, as last amended by Chapter 172, Laws of Utah 1995
- 34 **38-11-105**, as enacted by Chapter 308, Laws of Utah 1994
- 35 **38-11-106**, as enacted by Chapter 308, Laws of Utah 1994
- 36 **38-11-107**, as last amended by Chapter 198, Laws of Utah 2001
- 37 **38-11-202**, as last amended by Chapter 193, Laws of Utah 1999
- 38 **38-11-203**, as last amended by Chapter 276, Laws of Utah 2003
- 39 **38-11-204**, as last amended by Chapter 198, Laws of Utah 2001

40 ENACTS:

41 **38-11-110**, Utah Code Annotated 1953



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

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

45 **38-1-11. Enforcement -- Time for -- Lis pendens -- Action for debt not affected --**

46 **Instructions and form affidavit ~~h~~ [and motion] ~~h~~ .**

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

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

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

53 (2) (a) Within the time period provided for filing in Subsection (1) the lien claimant
54 shall file for record with the county recorder of each county in which the lien is recorded a
55 notice of the pendency of the action, in the manner provided in actions affecting the title or
56 right to possession of real property, or the lien shall be void, except as to persons who have
57 been made parties to the action and persons having actual knowledge of the commencement of
58 the action.

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

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

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

67 (i) instructions to the owner of the residence relating to the owner's rights under Title
68 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act; and

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

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

76 [(~~e~~)] (b) The instructions and form affidavit [~~and motion~~] required by Subsection (4)(a)
77 shall meet the requirements established by rule by the Division of Occupational and
78 Professional Licensing in accordance with Title 63, Chapter 46a, Utah Administrative
79 Rulemaking Act.

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

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

87 (d) Judicial determination of the rights and liabilities of the owner of the residence
88 under Title 38, Chapters 1 and 11, and Title 14, Chapter 2, shall be stayed until after the owner
89 has been given a reasonable period of time to establish compliance with Subsections

90 38-11-204(4)(a) and (4)(b) ~~h~~ THROUGH AN INFORMAL PROCEEDING, AS SET FORTH IN TITLE 63,
 90a CHAPTER 46b, ADMINISTRATIVE PROCEDURES ACT, COMMENCED WITHIN 30 DAYS OF THE
 90b OWNER BEING SERVED SUMMONS IN THE FORECLOSURE ACTION, ~~h~~ at the Division of
 90c Occupational and Professional Licensing and
 91 obtain a certificate of compliance ~~h~~ OR DENIAL OF CERTIFICATE OF COMPLIANCE ~~h~~ , as defined in
 91a Section 38-11-102.

92 Section 2. Section **38-11-102** is amended to read:

93 **38-11-102. Definitions.**

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

96 (2) "Certificate of compliance" means an order issued by the director to the owner
 97 finding that the owner is in compliance with the requirements of Subsections 38-11-204(4)(a)
 98 and (4)(b) and is entitled to protection under Section 38-11-107.

99 [~~(2)~~] (3) "Construction on an owner-occupied residence" means designing, engineering,
 100 constructing, altering, remodeling, improving, repairing, or maintaining a new or existing
 101 residence.

102 [~~(3)~~] (4) "Department" means the Department of Commerce.

103 [~~(4)~~] (5) "Director" means the director of the Division of Occupational and
 104 Professional Licensing.

105 [~~(5)~~] (6) "Division" means the Division of Occupational and Professional Licensing.

106 [~~(6)~~] (7) "Encumbered fund balance" means the aggregate amount of [~~all~~] outstanding
 107 claims against the fund. The remainder of monies in the fund are unencumbered funds.

108 [~~(7)~~] (8) "Executive director" means the executive director of the Department of
 109 Commerce.

110 [~~(8)~~] (9) "Factory built housing" is as defined in Section 58-56-3.

111 [~~(9)~~] (10) "Factory built housing retailer" means a person that sells factory built
 112 housing to consumers.

113 [~~(10)~~] (11) "Fund" means the Residence Lien Recovery Fund established under Section
 114 38-11-201.

115 [~~(11)~~] (12) "Laborer" means a person who provides services at the site of the
 116 construction on an owner-occupied residence as an employee of an original contractor or other
 117 qualified beneficiary performing qualified services on the residence.

118 [~~(12)~~] (13) "Licensee" means any holder of a license issued under Title 58, Chapters
 119 3a, 22, 53, and 55.

120 [~~(13)~~] (14) "Nonpaying party" means the original contractor, subcontractor, or real

121 estate developer who has failed to pay the qualified beneficiary making a claim against the
122 fund.

123 ~~[(14)]~~ (15) "Original contractor" means a person who contracts with the owner of real
124 property or the owner's agent to provide services, labor, or material for the construction of an
125 owner-occupied residence.

126 ~~[(15)]~~ (16) "Owner" means a person who:

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

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

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

134 ~~[(16)]~~ (17) "Owner-occupied residence" means a residence that is, or after completion
135 of the construction on the residence will be, occupied by the owner or the owner's tenant or
136 lessee as a primary or secondary residence within 180 days from the date of the completion of
137 the construction on the residence.

138 ~~[(17)]~~ (18) "Qualified beneficiary" means a person who:

139 (a) provides qualified services;

140 (b) pays ~~[all]~~ necessary fees or ~~[assessment]~~ assessments required under this chapter;

141 and

142 (c) registers with the division:

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

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

148 ~~[(18)]~~ (19) (a) "Qualified services" means the following performed in construction on
149 an owner-occupied residence:

150 (i) contractor services provided by a contractor licensed or exempt from licensure
151 under Title 58, Chapter 55, Utah Construction Trades Licensing Act;

- 152 (ii) architectural services provided by an architect licensed under Title 58, Chapter 3a;
- 153 (iii) engineering and land surveying services provided by a professional engineer or
- 154 land surveyor licensed or exempt from licensure under Title 58, Chapter 22;
- 155 (iv) landscape architectural services by a landscape architect licensed or exempt from
- 156 licensure under Title 58, Chapter 53;
- 157 (v) design and specification services of mechanical or other systems;
- 158 (vi) other services related to the design, drawing, surveying, specification, cost
- 159 estimation, or other like professional services;
- 160 (vii) providing materials, supplies, components, or similar products;
- 161 (viii) renting equipment or materials;
- 162 (ix) labor at the site of the construction on the owner-occupied residence; and
- 163 (x) site preparation, set up, and installation of factory built housing.

164 (b) "Qualified services" do not include the construction of factory built housing in the
 165 factory.

166 [~~(19)~~] (20) "Real estate developer" means a person having an ownership interest in real
 167 property who contracts with a person who is licensed as a contractor or is exempt from
 168 licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, for the
 169 construction of a residence that is offered for sale to the public.

170 [~~(20)~~] (21) "Residence" means an improvement to real property used or occupied, to be
 171 used or occupied as, or in conjunction with, a primary or secondary detached single-family
 172 dwelling or multifamily dwelling up to two units, including factory built housing.

173 [~~(21)~~] (22) "Subsequent owner" means a person who purchases a residence from an
 174 owner within 180 days from the date [~~of the completion of~~] the construction on the residence is
 175 completed.

176 Section 3. Section **38-11-104** is amended to read:

177 **38-11-104. Board.**

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

179 (a) three individuals licensed as a contractor who are actively engaged in construction
 180 on owner-occupied residences;

181 (b) three individuals who are employed in responsible management positions with
 182 major suppliers of materials or equipment used in the construction on owner-occupied

183 residences; and

184 (c) one member from the general public who has no interest in the construction on
185 owner-occupied residences, or supply of materials used in the construction on owner-occupied
186 residences.

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

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

190 (a) advise the division with respect to informal adjudication of [~~claims~~] any claim for
191 payment from the fund [by] and any request for a certificate of compliance received by the
192 division;

193 (b) act as the presiding officer, as defined by rule, in formal adjudicative proceedings
194 held before the division with respect to [~~claims~~] any claim made for payment from the fund ~~h~~ [and
195 any request for a certificate of compliance received by the division] h ;

196 (c) advise the division with respect to:

197 (i) the general operation of the fund;

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

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

200 (iv) the availability and advisability of using funds for purchase of surety bonds to
201 guarantee payment to qualified beneficiaries; and

202 (v) the limitation on the fund balance under Section 38-11-206; and

203 (d) review the administrative expenditures made by the division pursuant to Subsection
204 38-11-201(4) and report its findings regarding those expenditures to the executive director on
205 or before the first Monday of December of each year.

206 (4) The attorney general shall render legal assistance as requested by the board.

207 Section 4. Section **38-11-105** is amended to read:

208 **38-11-105. Procedures established by rule.**

209 In compliance with Title 63, Chapter 46b, Administrative Procedures Act, the division
210 shall establish procedures by rule by which claims for compensation from the fund and requests
211 for certificates of compliance shall be adjudicated and by which assessments shall be collected.

212 Section 5. Section **38-11-106** is amended to read:

213 **38-11-106. State not liable.**

214 The state and the state's agencies, instrumentalities, and political subdivisions are not
215 liable for:

- 216 (1) issuance or ~~h~~ [failure to issue] DENIAL OF ~~h~~ any certificate of compliance;
217 (2) any claims made against the fund; or [for the]
218 (3) failure of the fund to pay any amounts ordered by the director to be paid from the
219 fund.

220 Section 6. Section **38-11-107** is amended to read:

221 **38-11-107. Restrictions upon maintaining a lien against residence or owner's**
222 **interest in the residence.**

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

230 (a) an owner meets the conditions described in Subsections 38-11-204~~(3)~~(4)(a) and
231 ~~(3)~~ (4)(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)
234 occupies the residence as a primary or secondary residence within 180 days from the date of
235 transfer or the residence is occupied by the subsequent owner's tenant or lessee as a primary or
236 secondary 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)~~(4)(a) and ~~(3)~~ (4)(b).

239 (2) If a residence is constructed under conditions that do not meet all of the provisions
240 of Subsection (1), that residence and the real property associated with that residence as defined
241 in 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]~~ 15 days from the date the owner
 246 ~~[establishes compliance, through written findings of fact from a court of competent jurisdiction~~
 247 ~~or, in cases where a bankruptcy has been filed, from the director, with the requirements of~~
 248 Subsections 38-11-204(3)(a) and (3)(b)] obtains a certificate of compliance and mails a copy of
 249 the certificate of compliance by certified mail to the lien claimant at the address provided for
 250 by Subsection 38-1-7(2)(e). The 15-day period begins accruing from the date postmarked on
 251 the certificate of compliance sent to the lien claimant.

252 Section 7. Section **38-11-110** is enacted to read:

253 **38-11-110. Issuance of certificates of compliance.**

254 The director shall have authority to issue **h** OR DENY **h** a certificate of compliance only after
 255 determining **h** THROUGH AN INFORMAL PROCEEDING , AS SET FORTH IN TITLE 63, CHAPTER 46b,
 256a ADMINISTRATIVE PROCEDURES ACT, **h** that the owner is in compliance with Subsections
 256b 38-11-204(4)(a) and (4)(b).

256 Section 8. Section **38-11-202** is amended to read:

257 **38-11-202. Payments to the fund.**

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

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

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

265 (3) fees determined by the division under Section 63-38-3.2 collected from laborers
 266 under Subsection 38-11-204~~(7)~~(8) when the laborers obtain a recovery from the fund;

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

269 (5) application fees determined by the division under Section 63-38-3.2 collected from:

270 (a) qualified beneficiaries or laborers under Subsection 38-11-204(1)(b) when
 271 qualified beneficiaries or laborers make a claim against the fund; or

272 (b) owners or agents of the owners seeking to obtain a certificate of compliance for the
 273 owner;

274 (6) registration fees determined by the division under Section 63-38-3.2 collected from
 275 other qualified beneficiaries registering with the department in accordance with Subsection

276 38-11-301(3)(a)(iii);

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

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

281 (9) any interest earned by the fund.

282 Section 9. Section **38-11-203** is amended to read:

283 **38-11-203. Disbursements from the fund -- Limitations.**

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

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

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

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

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

291 (a) the laborer complied with the requirements of Subsection 38-11-204[~~(6)~~](7); and

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

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

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

299 (c) The director shall order payment of interest on [aH] amounts claimed for qualified
300 services based on the current prime interest rate at the time payment was due to the date the
301 claim is approved for payment except for delays attributable to the claimant but not more than
302 10% per annum.

303 (d) The rate shall be the Prime Lending Rate as published in the Wall Street Journal on
304 the first business day of each calendar year adjusted annually.

305 (e) The director shall order payment of costs in the amount stated in the judgment. If
306 the judgment does not state a sum certain for costs, or if no judgment has been obtained, the

307 director shall order payment of reasonable costs as supported by evidence. The claim
 308 application fee as established by the division pursuant to Subsection 38-11-204(1)(b) is not a
 309 reimbursable cost.

310 (f) If a judgment has been obtained with attorneys' fees, notwithstanding the amount
 311 stated in a judgment, or if no judgment has been obtained but the contract provides for
 312 attorneys' fees, the director shall order payment of attorneys' fees not to exceed 15% of
 313 qualified services. If the judgment does not state a sum for attorneys' fees, no attorneys' fees
 314 will be paid by the director.

315 (4) (a) Payments made from the fund may not exceed \$75,000 per construction project
 316 to ~~aff~~ qualified beneficiaries and laborers who have claim against the fund for that
 317 construction project.

318 (b) If claims against the fund for a construction project exceed \$75,000, the \$75,000
 319 shall be awarded proportionately so that each qualified beneficiary and laborer awarded
 320 compensation from the fund for qualified services shall receive an identical percentage of the
 321 qualified beneficiary's or laborer's award.

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

326 ~~[(6) The Executive Director of the Department of Commerce shall initiate a study to~~
 327 ~~determine the viability of the Lien Recovery Fund.]~~

328 Section 10. Section **38-11-204** is amended to read:

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

330 **Qualifications to receive compensation -- Qualifications to receive a certificate of**
 331 **compliance.**

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

333 (a) meet the requirements of either Subsection ~~[(3)]~~ (4) or ~~[(6)]~~ (7);

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

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

337 (i) that the person meets the requirements of either Subsection ~~[(3)]~~ (4) or ~~[(6)]~~ (7);

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

340 (iii) the basis for the claim.

341 (2) To recover from the fund, the application required by Subsection (1) shall be filed
342 no later than one year:

343 (a) from the date the judgment required by Subsection [~~(3)(c)~~] (4)(d) is entered;

344 (b) from the date the nonpaying party filed bankruptcy, if the claimant is precluded
345 from obtaining a judgment or from satisfying the requirements of Subsection [~~(3)(c)~~] (4)(d)

346 because the nonpaying party filed bankruptcy within one year after the entry of judgment; or

347 (c) [~~if a laborer,~~] from the date the laborer, trying to recover from the fund, completed
348 the laborer's qualified services.

349 (3) To obtain a certificate of compliance an owner or agent of the owner shall establish
350 with the division that the owner meets the requirements of Subsections (4)(a) and (4)(b).

351 [~~(3)~~] (4) To recover from the fund, regardless of whether the residence is occupied by
352 the owner, a subsequent owner, or the owner or subsequent owner's tenant or lessee, a qualified
353 beneficiary shall establish that:

354 (a) (i) the owner of the owner-occupied residence or the owner's agent entered into a
355 written contract with an original contractor licensed or exempt from licensure under Title 58,
356 Chapter 55, Utah Construction Trades Licensing Act[;];

357 (A) for the performance of qualified services[;];

358 (B) to obtain the performance of qualified services by others[;]; or

359 (C) for the supervision of the performance by others of qualified services in
360 construction on that residence;

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

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

367 (b) the owner has paid in full the original contractor, licensed or exempt from licensure
368 under Title 58, Chapter 55, Utah Construction Trades Licensing Act, real estate developer, or

369 factory built housing retailer under Subsection [~~(3)~~] (4)(a) with whom the owner has a written
370 contract in accordance with the written contract and any amendments to the contract[~~, and~~];

371 (c) (i) the original contractor, licensed or exempt from licensure under Title 58,
372 Chapter 55, Utah Construction Trades Licensing Act, the real estate developer, or the factory
373 built housing retailer subsequently failed to pay a qualified beneficiary who is entitled to
374 payment under an agreement with that original contractor or real estate developer licensed or
375 exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, for
376 services performed or materials supplied by the qualified beneficiary;

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

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

384 [~~(c)~~] (d) (i) the qualified beneficiary filed:

385 (A) an action against the nonpaying party to recover monies owed [~~him~~] to the
386 qualified beneficiary within 180 days from the date the qualified beneficiary last provided
387 qualified services, unless precluded from doing so by the nonpaying party's bankruptcy filing
388 within the 180 days after completion of services; and

389 (B) a notice of commencement of action with the division within 30 days from the date
390 the qualified beneficiary filed the civil action if a civil action was filed as required by
391 Subsection [~~(3)~~]~~(c)~~] (4)(d)(i)(A);

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

395 (iii) (A) the qualified beneficiary has:

396 (I) obtained from a court of competent jurisdiction the issuance of an order requiring
397 the judgment debtor, or if a corporation any officer of the corporation, to appear before the
398 court at a specified time and place to answer concerning the debtor's or corporation's property[
399 ~~has~~];

400 (II) received return of service of the order from a person qualified to serve documents
401 under the Utah Rules of Civil Procedure, Rule 4(b)[;]; and [has]

402 (III) made reasonable efforts to obtain asset information from the supplemental
403 proceedings; and

404 (B) if assets subject to execution are discovered as a result of the order required under
405 Subsection [~~(3)(c)~~] (4)(d)(iii)(A) or for any other reason, to obtain the issuance of a writ of
406 execution from a court of competent jurisdiction; or

407 (iv) the [claimant] qualified beneficiary timely filed a proof of claim where permitted
408 in the bankruptcy action, if the nonpaying party has filed bankruptcy; [and]

409 [~~(d)~~] (e) the qualified beneficiary is not entitled to reimbursement from any other
410 person[;]; and

411 (f) the qualified beneficiary provided qualified services to a contractor, licensed or
412 exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act.

413 [~~(4)~~] (5) The requirements of [~~Subsection (3)(c)~~] Subsections (4)(d)(i), (ii), and (iii)
414 need not be met if the qualified beneficiary has been precluded from obtaining a judgment
415 against the nonpaying party or from satisfying the requirements of [~~Subsection (3)(c)~~]
416 Subsections (4)(d)(i), (ii), and (iii) because the nonpaying party filed bankruptcy.

417 [~~(5)~~] (6) If a qualified beneficiary fails to file the notice with the division required
418 under Subsection [~~(3)(c)~~] (4)(d)(i)(B), the claim of the qualified beneficiary shall be paid:

419 (a) if otherwise qualified under this chapter;

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

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

425 [~~(6)~~] (7) To recover from the fund a laborer shall:

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

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

429 [~~(7)~~] (8) A fee determined by the division under Section 63-38-3.2 shall be deducted
430 from any recovery from the fund received by a laborer.

431 [(8)] (9) The requirements of [~~Subsection (3)(a)(i)] Subsections (4)(a) and (4)(b) may
 432 be satisfied if [~~a claimant]~~ an owner or agent of the owner establishes to the satisfaction of the
 433 director that the owner of the owner-occupied residence or the owner's agent entered into a
 434 written contract with an original contractor who:~~

435 (a) was a business entity that was not licensed under Title 58, Chapter 55, Utah
 436 Construction Trades Licensing Act, but was solely or partly owned by an individual [~~that]~~ who
 437 was licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act ~~h~~ [, or was the
 438 alter ego of the individual that was licensed under Title 58, Chapter 55, Utah Construction
 439 Trades Licensing Act] ~~h~~ ; or

440 (b) was a natural person who was not licensed under Title 58, Chapter 55, Utah
 441 Construction Trades Licensing Act, but who was the sole or partial owner and qualifier of a
 442 business entity that was licensed under Title 58, Chapter 55, Utah Construction Trades
 443 Licensing Act[;] ~~h~~ [, or was the alter ego of the business entity that was licensed under Title 58,
 444 Chapter 55, Utah Construction Trades Licensing Act] ~~h~~ .

445 (c) The director shall have equitable power to determine if the requirements of
 446 Subsections (4)(a) and (4)(b) have been met, but any decision by the director under Title 38,
 447 Chapter 11, shall not alter or have any effect on any other decision by the division under Title
 448 58.

Legislative Review Note
 as of 12-19-03 1:51 PM

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

Office of Legislative Research and General Counsel