

LIEN AMENDMENTS
2004 GENERAL SESSION
STATE OF UTAH
Sponsor: Michael T. Morley

LONG TITLE

General Description:

This bill modifies the title on liens to modify filing requirements and definitions.

Highlighted Provisions:

This bill:

- ▶ amends the timing requirement for filing a notice of a claim for a lien;
- ▶ provides that the lien amount be included in a notice of claim;
- ▶ provides that substantial compliance with content requirements for a notice of claim

is sufficient to hold and claim a lien;

- ▶ amends the timing requirements to file an action to enforce a lien;
- ▶ clarifies provisions related to preliminary notice and notice of commencement;
- ▶ amends the definition provisions of the Residence Lien Restriction and Lien

Recovery Fund Act; and

- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

38-1-7, as last amended by Chapter 223, Laws of Utah 1999

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

38-1-27, as last amended by Chapter 229, Laws of Utah 2001

38-11-102, as last amended by Chapter 198, Laws of Utah 2001

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

Section 1. Section **38-1-7** is amended to read:

38-1-7. Notice of claim -- Contents -- Recording -- Service on owner of property.

(1) (a) A person claiming benefits under this chapter shall file for record with the county recorder of the county in which the property, or some part of the property, is situated, a written notice to hold and claim a lien within 90 days from the date ~~[: (a) the person last performed labor or service or last furnished equipment or material on a project or improvement for a residence as defined in Section 38-11-102; or (b)]~~ of final completion of ~~[an]~~ the original contract [not involving a residence as defined in Section 38-11-102.] under which the claimant claims a lien under this chapter. For purposes of this Subsection (1), final completion of the original contract means:

(i) if as a result of work performed under the original contract a permanent certificate of occupancy is required for such work, the date of issuance of a permanent certificate of occupancy by the local government entity having jurisdiction over the construction project;

(ii) if no certificate of occupancy is required by the local government entity having jurisdiction over the construction project, but as a result of the work performed under the original contract an inspection is required for such work, the date of the final inspection for such work by the local government entity having jurisdiction over the construction project; or

(iii) if with regard to work performed under the original contract no certificate of occupancy and no final inspection are required by the local government entity having jurisdiction over the construction project, the date on which there remains no substantial work to be completed to finish such work on the original contract.

(b) Notwithstanding Section 38-1-2, where a subcontractor performs substantial work after the applicable dates established by Subsections (1)(a)(i) and (ii), that subcontractor's subcontract shall be considered an original contract for the sole purpose of determining:

(i) the subcontractor's time frame to file a notice of intent to hold and claim a lien under Subsection (1); and

(ii) the original contractor's time frame to file a notice of intent to hold and claim a lien under Subsection (1) for that subcontractor's work.

(c) For purposes of this section, the term "substantial work" does not include:

(i) repair work;

(ii) warranty work; or

(iii) work for which the project owner is not holding payment to ensure completion of that work.

(2) (a) The notice required by Subsection (1) shall contain a statement setting forth:

~~[(a)]~~ (i) the name of the reputed owner if known or, if not known, the name of the record owner;

~~[(b)]~~ (ii) the name of the person;

(A) by whom the lien claimant was employed; or

(B) to whom the lien claimant furnished the equipment or material;

~~[(c)]~~ (iii) the time when;

(A) the first and last labor or service was performed; or

(B) the first and last equipment or material was furnished;

~~[(d)]~~ (iv) a description of the property, sufficient for identification;

~~[(e)]~~ (v) the name, current address, and current phone number of the lien claimant;

(vi) the amount of the lien claim;

~~[(f)]~~ (vii) the signature of the lien claimant or the lien claimant's authorized agent;

~~[(g)]~~ (viii) an acknowledgment or certificate as required under Title 57, Chapter 3, Recording of Documents; and

~~[(h)]~~ (ix) if the lien is on an owner-occupied residence, as defined in Section 38-11-102, a statement describing what steps an owner, as defined in Section 38-11-102, may take to require a lien claimant to remove the lien in accordance with Section 38-11-107.

~~[(3) Notwithstanding Subsection (2), an acknowledgment or certificate is not required for any notice filed after April 29, 1985, and before April 24, 1989.]~~

(b) Substantial compliance with the requirements of this Subsection (2) is sufficient to

hold and claim a lien.

~~[(4)]~~ (3) (a) Within 30 days after filing the notice of lien, the lien claimant shall deliver or mail by certified mail a copy of the notice of lien to:

- (i) the reputed owner of the real property; or
- (ii) the record owner of the real property.

(b) If the record owner's current address is not readily available to the lien claimant, the copy of the claim may be mailed to the last-known address of the record owner, using the names and addresses appearing on the last completed real property assessment rolls of the county where the affected property is located.

(c) Failure to deliver or mail the notice of lien to the reputed owner or record owner precludes the lien claimant from an award of costs and attorneys' fees against the reputed owner or record owner in an action to enforce the lien.

~~[(5)]~~ (4) The Division of Occupational and Professional Licensing shall make rules governing the form of the statement required under Subsection (2)~~[(4)]~~(a)(ix).

Section 2. 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 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.]~~ 180 days from the day on which the lien claimant filed a notice of claim under Section 38-1-7.

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

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

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

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

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

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

(b) (i) The lien claimant may file a notice to submit for decision on the motion for summary judgment.

(ii) The motion for summary judgment may be ruled upon after:

(A) the service of the summons and complaint upon the nonpaying party, as defined in Section 38-11-102[7]; and

(B) the time for the nonpaying party to respond, as provided in the Utah Rules of Civil Procedure, has elapsed.

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

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

(e) If a lien claimant fails to provide to the owner of the residence the instructions and

form affidavit required by Subsection (4)(a), the lien claimant shall be barred from maintaining or enforcing the lien upon the residence.

Section 3. 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) (a) 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.

(b) (i) For the purposes of this section, residential construction means:

(A) single family detached housing; and

(B) multifamily attached housing up to and including fourplexes~~[-and]~~.

(ii) Residential construction includes rental housing.

(2) (a) ~~[Except subcontractors who are in privity of contract with an original contractor or except for persons performing labor for wages, any]~~ 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~~[-]~~ except this Subsection (2) does not apply to:

(i) a person who is in privity of contract with an original contractor; or

(ii) a person performing labor for wages.

(b) Any person who fails to provide ~~[this]~~ the preliminary notice required by this Subsection (2) has no right to claim a mechanic's lien under this chapter.

(3) The preliminary notice required by this section:

(a) shall be in writing; and

(b) 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) (a) 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.

(b) 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~~] the original contractor's place of business, or [~~his~~] the original contractor's address as shown on the notice of commencement on record with the county recorder as required by Subsection (9).

(9) (a) 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.

(b) The notice of commencement described in Subsection (9)(a) shall include the following:

~~[(a)]~~ (i) the name and address of the owner of the project or improvement;
~~[(b)]~~ (ii) the name and address of the original contractor;
~~[(c)]~~ (iii) (A) the name and address of the surety providing any payment bond for the project or improvement~~[-];~~ or

(B) if ~~[none exists]~~ a surety does not exist, a statement that a payment bond was not required for the work being performed;

~~[(d)]~~ (iv) the name and address of the project; and

~~[(e)]~~ (v) a legal description of the property on which the project is located.

Section 4. Section **38-11-102** is amended to read:

38-11-102. Definitions.

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

(2) "Construction on an owner-occupied residence" means designing, engineering, constructing, altering, remodeling, improving, repairing, or maintaining a new or existing residence.

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

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

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

(6) "Duplex" means a single building having two separate living units.

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

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

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

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

~~[(10)]~~ (11) "Fund" means the Residence Lien Recovery Fund established under Section

38-11-201.

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

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

~~[(13)]~~ (14) "Nonpaying party" means the original contractor, subcontractor, or real estate developer who has failed to pay the qualified beneficiary making a claim against the fund.

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

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

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

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

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

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

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

(a) provides qualified services;

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

(c) registers with the division:

(i) as a licensed contractor under Subsection 38-11-301(1) or (2) if that person seeks

recovery from the fund as a licensed contractor; or

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

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

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

(ii) architectural services provided by an architect licensed under Title 58, Chapter 3a, Architects Licensing Act;

(iii) engineering and land surveying services provided by a professional engineer or land surveyor licensed or exempt from licensure under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act;

(iv) landscape architectural services by a landscape architect licensed or exempt from licensure under Title 58, Chapter 53, Landscape Architects Licensing Act;

(v) design and specification services of mechanical or other systems;

(vi) other services related to the design, drawing, surveying, specification, cost estimation, or other like professional services;

(vii) providing materials, supplies, components, or similar products;

(viii) renting equipment or materials;

(ix) labor at the site of the construction on the owner-occupied residence; and

(x) site preparation, set up, and installation of factory built housing.

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

~~[(19)]~~ (20) "Real estate developer" means a person having an ownership interest in real property who contracts for the construction of a residence that is offered for sale to the public.

~~[(20)]~~ (21) (a) "Residence" means an improvement to real property used or occupied, to be used or occupied as, or in conjunction with[;]:

(i) a primary or secondary detached single-family dwelling; or

(ii) a multifamily dwelling up to [~~two units, including~~] and including duplexes.

(b) "Residence" includes factory built housing.

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