

1 **LIEN AMENDMENTS**

2 2004 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Michael T. Morley**

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**LONG TITLE**

6 **General Description:**

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

8 **Highlighted Provisions:**

9 This bill:

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

14 is sufficient to hold and claim a lien;

- 15 ▶ amends the timing requirements to file an action to enforce a lien;
- 16 ▶ amends the definition of resident construction for purposes of the preliminary
- 17 notices;
- 18 ▶ amends the definition provisions of the Residence Lien Restriction and Lien
- 19 Recovery Fund Act; and
- 20 ▶ makes technical changes.

21 **Monies Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 None

25 **Utah Code Sections Affected:**

26 AMENDS:

27 **38-1-7**, as last amended by Chapter 223, Laws of Utah 1999



28           **38-1-11**, as last amended by Chapter 198, Laws of Utah 2001  
 29           **38-1-27**, as last amended by Chapter 229, Laws of Utah 2001  
 30           **38-11-102**, as last amended by Chapter 198, Laws of Utah 2001



31  
32 *Be it enacted by the Legislature of the state of Utah:*

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

34           **38-1-7. Notice of claim -- Contents -- Recording -- Service on owner of property.**

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

42           (a) the date of issuance of a permanent certificate of occupancy by the local  
 43 government entity having jurisdiction over the construction project;

44           (b) if no certificate of occupancy is required for the construction project by the local  
 45 government entity having jurisdiction over the construction project, the date of the final  
 46 inspection by the local government entity having jurisdiction over the construction project; or

47           (c) if no certificate of occupancy is required and no final inspection is conducted by the  
 48 local government entity having jurisdiction over the construction project, the date on which  
 49 there remains no substantial work to be completed to finish the work on the construction  
 50 project.

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

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

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

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

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

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

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

59            (B) the first and last equipment or material was furnished;  
 60            ~~[(4)]~~ (iv) a description of the property, sufficient for identification;  
 61            ~~[(e)]~~ (v) the name, current address, and current phone number of the lien claimant;  
 62            (vi) the amount of the lien claim;  
 63            ~~[(f)]~~ (vii) the signature of the lien claimant or the lien claimant's authorized agent;  
 64            ~~[(g)]~~ (viii) an acknowledgment or certificate as required under Title 57, Chapter 3,

65 Recording of Documents; and

66            ~~[(h)]~~ (ix) if the lien is on an owner-occupied residence, as defined in Section  
 67 38-11-102, a statement describing what steps an owner, as defined in Section 38-11-102, may  
 68 take to require a lien claimant to remove the lien in accordance with Section 38-11-107.

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

71            (b) Substantial compliance with the requirements of this Subsection (2) is sufficient to  
 72 hold and claim a lien.

73            ~~[(4)]~~ (3) (a) Within 30 days after filing the notice of lien, the lien claimant shall deliver  
 74 or mail by certified mail a copy of the notice of lien to:

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

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

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

84            ~~[(5)]~~ (4) The Division of Occupational and Professional Licensing shall make rules  
 85 governing the form of the statement required under Subsection (2)~~[(h)]~~(a)(ix).

86            Section 2. Section **38-1-11** is amended to read:

87            **38-1-11. Enforcement -- Time for -- Lis pendens -- Action for debt not affected --**  
 88 **Instructions and form affidavit and motion.**

89            (1) A lien claimant shall file an action to enforce the lien filed under this chapter

90 within[ ~~(a) 12 months~~] 180 days from the date of final completion of the original contract [~~not~~  
91 ~~involving a residence as defined in Section 38-11-102; or (b) 180 days from the date the lien~~  
92 ~~claimant last performed labor and services or last furnished equipment or material for a~~  
93 ~~residence, as defined in Section 38-11-102]. For purposes of this Subsection (1), final  
94 completion of the original contract is as defined in Subsection 38-1-7(1).~~

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

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

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

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

109 (i) instructions to the owner of the residence relating to the owner's rights under Title  
110 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act; and

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

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

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

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

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

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

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

128 (e) If a lien claimant fails to provide to the owner of the residence the instructions and  
 129 form affidavit required by Subsection (4)(a), the lien claimant shall be barred from maintaining  
 130 or enforcing the lien upon the residence.

131 Section 3. Section **38-1-27** is amended to read:

132 **38-1-27. Preliminary notice to original contractor -- Form and contents -- Service**  
 133 **-- Notice of commencement of project or improvement.**

134 (1) (a) This section relating to preliminary notices does not apply to residential  
 135 construction or to work performed in the development of subdivisions whose end use is for  
 136 residential construction.

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

138 (A) single family detached housing; and

139 (B) multifamily attached housing up to and including [~~fourplexes, and~~] duplexes, as  
 140 defined in Section 38-11-102.

141 (ii) Residential construction includes rental housing.

142 (2) (a) [~~Except subcontractors who are in privity of contract with an original contractor~~  
 143 ~~or except for persons performing labor for wages, any~~] Any person claiming, reserving the right  
 144 to claim, or intending to claim a mechanic's lien under this chapter for labor, service,  
 145 equipment, or material shall provide preliminary notice to the original contractor as prescribed  
 146 by this section[.] except this Subsection (2) does not apply to:

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

148 (ii) a person performing labor for wages.

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

151 (3) The preliminary notice required by this section;

152 (a) shall be in writing; and

153 (b) may be given at any time during the course of the project or improvement.

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

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

161 (6) (a) The person required by this section to give preliminary notice is precluded from  
162 making a claim for any labor, service, equipment, or material which was provided more than 45  
163 days prior to the date the preliminary notice is given.

164 (b) The preliminary notice must be given before a notice of lien is filed with the county  
165 recorder pursuant to Section 38-1-7.

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

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

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

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

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

176 (b) A preliminary notice served by mail may be addressed to the original contractor at  
177 his the original contractor's place of business, or his the original contractor's address as  
178 shown on the notice of commencement on record with the county recorder as required by  
179 Subsection (9).

180 (9) (a) Any right to assert a defense of failure to comply with the preliminary notice  
181 requirements of this section is void unless the original contractor records a notice of  
182 commencement of the project or improvement with the county recorder for the county or

183 counties where the project is located within 30 days after commencement of the project.

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

186 [~~(a)~~] (i) the name and address of the owner of the project or improvement;

187 [~~(b)~~] (ii) the name and address of the original contractor;

188 [~~(c)~~] (iii) (A) the name and address of the surety providing any payment bond for the  
189 project or improvement[;]; or

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

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

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

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

195 **38-11-102. Definitions.**

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

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

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

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

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

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

206 [~~(6)~~] (7) "Encumbered fund balance" means the aggregate amount of all outstanding  
207 claims against the fund. The remainder of monies in the fund are unencumbered funds.

208 [~~(7)~~] (8) "Executive director" means the executive director of the Department of  
209 Commerce.

210 [~~(8)~~] (9) "Factory built housing" is as defined in Section 58-56-3.

211 [~~(9)~~] (10) "Factory built housing retailer" means a person that sells factory built  
212 housing to consumers.

213 [~~(10)~~] (11) "Fund" means the Residence Lien Recovery Fund established under Section

214 38-11-201.

215 ~~[(11)]~~ (12) "Laborer" means a person who provides services at the site of the  
216 construction on an owner-occupied residence as an employee of an original contractor or other  
217 qualified beneficiary performing qualified services on the residence.

218 ~~[(12)]~~ (13) "Licensee" means any holder of a license issued under Title 58, Chapters  
219 3a, 22, 53, and 55.

220 ~~[(13)]~~ (14) "Nonpaying party" means the original contractor, subcontractor, or real  
221 estate developer who has failed to pay the qualified beneficiary making a claim against the  
222 fund.

223 ~~[(14)]~~ (15) "Original contractor" means a person who contracts with the owner of real  
224 property or the owner's agent to provide services, labor, or material for the construction of an  
225 owner-occupied residence.

226 ~~[(15)]~~ (16) "Owner" means a person who:

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

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

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

234 ~~[(16)]~~ (17) "Owner-occupied residence" means a residence that is, or after completion  
235 of the construction on the residence will be, occupied by the owner or the owner's tenant or  
236 lessee as a primary or secondary residence within 180 days from the date of the completion of  
237 the construction on the residence.

238 ~~[(17)]~~ (18) "Qualified beneficiary" means a person who:

239 (a) provides qualified services;

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

241 (c) registers with the division:

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

244 (ii) as a person providing qualified services other than as a licensed contractor under



245 Subsection 38-11-301(3) if the person seeks recovery from the fund in a capacity other than as  
246 a licensed contractor.

247 ~~[(18)]~~ (19) (a) "Qualified services" means the following performed in construction on  
248 an owner-occupied residence:

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

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

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

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

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

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

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

262 (viii) renting equipment or materials;

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

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

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

267 ~~[(19)]~~ (20) "Real estate developer" means a person having an ownership interest in real  
268 property who contracts for the construction of a residence that is offered for sale to the public.

269 ~~[(20)]~~ (21) (a) "Residence" means an improvement to real property used or occupied,  
270 to be used or occupied as, or in conjunction with[;]:

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

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

273 (b) "Residence" includes factory built housing.

274 ~~[(21)]~~ (22) "Subsequent owner" means a person who purchases a residence from an  
275 owner within 180 days from the date of the completion of the construction on the residence.

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**Legislative Review Note**  
**as of 11-25-03 6:48 AM**

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

**Office of Legislative Research and General Counsel**

**Interim Committee Note**  
**as of 12-10-03 12:05 PM**

The Business and Labor Interim Committee recommended this bill.