

**ELECTRONIC FILING OF PRELIMINARY
LIEN DOCUMENTS**

2004 GENERAL SESSION
STATE OF UTAH

Sponsor: Michael T. Morley

LONG TITLE

General Description:

This bill modifies the Mechanics' Lien statute and enacts provisions for on-line filing of notices of commencement, preliminary notices, and notices of completion.

Highlighted Provisions:

This bill:

- ▶ requires the Division of Occupational and Professional Licensing to contract for the creation and maintenance of a construction notice registry;
- ▶ requires the notice registry to be accessible for filing and reviewing notices of commencement, preliminary notices, and notices of completion;
- ▶ provides for alternative filing;
- ▶ requires that electronic notification and hard-copy printing of electronic receipts be provided;
- ▶ requires the division to establish by rule the fees for filing;
- ▶ creates time requirements for filing notices;
- ▶ requires the assignment to each construction project a unique project number which identifies each construction project;
- ▶ provides requirements for the content of a notice of commencement;
- ▶ provides penalties for failure to file in a timely manner; and
- ▶ creates requirements for filing a notice of completion.

Monies Appropriated in this Bill:



28 None

29 **Other Special Clauses:**

30 This bill takes effect on May 1, 2005.

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **14-1-20**, as enacted by Chapter 271, Laws of Utah 1989

34 **14-2-5**, as enacted by Chapter 271, Laws of Utah 1989

35 **38-1-7**, as last amended by Chapter 223, Laws of Utah 1999

36 **38-11-204**, as last amended by Chapter 198, Laws of Utah 2001

37 **63-56-38.1**, as enacted by Chapter 271, Laws of Utah 1989

38 ENACTS:

39 **38-1-30**, Utah Code Annotated 1953

40 **38-1-31**, Utah Code Annotated 1953

41 **38-1-32**, Utah Code Annotated 1953

42 **38-1-33**, Utah Code Annotated 1953

43 REPEALS AND REENACTS:

44 **38-1-27**, as last amended by Chapter 229, Laws of Utah 2001



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

47 Section 1. Section **14-1-20** is amended to read:

48 **14-1-20. Preliminary notice requirement.**

49 Except persons who are in privity of contract with a payment bond principal or except
50 for persons performing labor for wages, any person furnishing labor, service, equipment, or
51 material for which a payment bond claim may be made under this chapter shall provide
52 preliminary notice to the ~~[payment bond principal]~~ designated agent as prescribed by Section
53 38-1-27. Any person who fails to provide this preliminary notice may not make a payment
54 bond claim under this chapter. The preliminary notice must be provided prior to
55 commencement of any action on the payment bond.

56 Section 2. Section **14-2-5** is amended to read:

57 **14-2-5. Preliminary notice requirement.**

58 Except subcontractors who are in privity of contract with a payment bond principal or

59 except for persons performing labor for wages, any person furnishing labor, service,
60 equipment, or material for which a payment bond claim may be made under this chapter shall
61 provide preliminary notice to the [~~payment bond principal~~] designated agent as prescribed by
62 Section 38-1-27. Any person who fails to provide this preliminary notice may not make a
63 payment bond claim under this chapter. The preliminary notice must be provided prior to
64 commencement of any action on the payment bond.

65 Section 3. Section **38-1-7** is amended to read:

66 **38-1-7. Notice of claim -- Contents -- Recording -- Service on owner of property.**

67 (1) [A] Except as modified in Section 38-1-27, a person claiming benefits under this
68 chapter shall file for record with the county recorder of the county in which the property, or
69 some part of the property, is situated, a written notice to hold and claim a lien within 90 days
70 from the date:

71 (a) the person last performed labor or service or last furnished equipment or material
72 on a project or improvement for a residence as defined in Section 38-11-102; or

73 (b) of final completion of an original contract not involving a residence as defined in
74 Section 38-11-102.

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

76 (a) the name of the reputed owner if known or, if not known, the name of the record
77 owner;

78 (b) the name of the person by whom the lien claimant was employed or to whom the
79 lien claimant furnished the equipment or material;

80 (c) the time when the first and last labor or service was performed or the first and last
81 equipment or material was furnished;

82 (d) a description of the property, sufficient for identification;

83 (e) the name, current address, and current phone number of the lien claimant;

84 (f) the signature of the lien claimant or the lien claimant's authorized agent;

85 (g) an acknowledgment or certificate as required under Title 57, Chapter 3, Recording
86 of Documents; and

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

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

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

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

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

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

103 (5) The Division of Occupational and Professional Licensing shall make rules
104 governing the form of the statement required under Subsection (2)(h).

105 Section 4. Section **38-1-27** is repealed and reenacted to read:

106 **38-1-27. Construction notice registry -- Form and contents of notice of**
107 **commencement, preliminary notice and notice of completion.**

108 (1) As used in this section and Sections 38-1-30 through 38-1-32:

109 (a) "Database" means the Construction Notice Registry Database created in this
110 section.

111 (b) "Designated agent" means the third party the Division of Occupational and
112 Professional Licensing contracts with to create and maintain the Construction Notice Registry
113 Database.

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

115 (d) "Program" means the Construction Notice Registry Database Program created in
116 this section.

117 (2) There is created the Construction Notice Registry Database Program which shall:

118 (a) assist in protecting public health, safety, and welfare and promote a fair working
119 environment;

120 (b) be administered by the Division of Occupational and Professional Licensing with

121 the assistance of the designated agent;

122 (c) provide a central repository for notices of commencement, preliminary notices, and
123 notices of completion filed in connection with all privately owned construction projects as well
124 as all state and local government owned construction projects throughout Utah;

125 (d) be accessible for filing and review of notices of commencement, preliminary
126 notices, and notices of completion via the program Internet web site;

127 (e) accommodate electronic filing of such notices as well as provide for alternate filing
128 by U.S. mail, telefax, telephone, or any other alternate method as provided by rule
129 promulgated by the division;

130 (f) provide electronic notification for up to three e-mail addresses for each interested
131 person or company who requests notice from the construction notice registry as well as provide
132 alternate means of notification for those persons who make alternate filings, including U.S.
133 mail, telefax, or any other method as prescribed by rule promulgated by the division; and

134 (g) provide hard-copy printing of electronic receipts for individual filings evidencing
135 the date and time of individual filings as well as the content of individual filings.

136 (3) Persons interested in a construction project may request notice of filings related to
137 the project. The registry shall be indexed by owner name, original contractor name, project
138 name, project address, parcel number, project number, and any other identifier that the division
139 considers reasonably appropriate and established by rule.

140 (4) The division shall establish by rule the filing fees for notices of commencement,
141 preliminary notices, notices of completion, and requests for notice, which fees shall not exceed
142 the amount reasonably necessary to create and maintain the construction notice registry. The
143 fees established by the division may vary by method of filing if one form of filing is more
144 costly than other forms of filing.

145 Section 5. Section **38-1-30** is enacted to read:

146 **38-1-30. Third party contract -- Designated agent.**

147 (1) The division shall contract in accordance with Title 63, Chapter 56, Utah
148 Procurement Code, with a third party to establish and maintain the database for the purposes
149 established under this part.

150 (2) The third party under contract under this section is the division's designated agent,
151 and shall develop and maintain a database from the information provided by local government

152 entities issuing building permits, original contractors, subcontractors, and other interested
153 persons. The division and the designated agent shall design, develop, and test the database for
154 full implementation on May 1, 2005.

155 (3) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
156 division shall make rules and develop procedures for the purpose of administering and
157 enforcing this part.

158 (4) (a) The designated agent shall archive computer data files at least semiannually for
159 auditing purposes.

160 (b) The division may audit the designated agent's administration of the database as
161 often as it considers necessary.

162 Section 6. Section **38-1-31** is enacted to read:

163 **38-1-31. Building permit -- Construction -- Notice registry -- Notice of**
164 **Commencement of Work.**

165 (1) (a) For construction projects where a building permit is issued, within ten days after
166 the issuance of such permit, the local government entity issuing that permit shall transmit the
167 permit information to the construction notice registry and such information shall form the basis
168 of a notice of commencement.

169 (b) For construction projects where a building permit is not issued, within ten days
170 after commencement of physical construction work at the project site, the original contractor
171 shall file a notice of commencement with the construction notice registry.

172 (c) An owner of construction, a lender, surety, or other interested party may file a
173 notice of commencement with the designated agent within the prescribed time set forth in
174 Subsection (1)(a).

175 (d) If duplicate notices of commencement are filed, they shall be combined into one
176 notice for each project. The designated agent shall assign each construction project a unique
177 project number which identifies each construction project and can be associated with all
178 notices of commencement, preliminary notices, and notices of completion.

179 (e) A notice of commencement filed within the ten-day period is effective as to all
180 work, materials, and equipment furnished to the construction project. If a notice of
181 commencement is filed after the ten-day period, the notice shall be effective only as to
182 subcontractors or suppliers whose work, materials, or equipment furnished to the construction

183 project is commenced subsequent to the filing of the notice of commencement.

184 (2) The content of a notice of commencement shall include the following:

185 (a) the name and address of the owner of the project or improvement;

186 (b) the name and address of the:

187 (i) original contractor;

188 (ii) surety providing any payment bond for the project or improvement, or if none

189 exists, a statement that a payment bond was not required for the work being performed; and

190 (iii) project address if the project can be reasonably identified by an address or the

191 name and general description of the location of the project if the project cannot be reasonably

192 identified by an address;

193 (c) a general description of the project;

194 (d) the parcel number of the real property upon which the project is to be constructed if

195 the project is subject to mechanics' liens; and

196 (e) a legal description of the property on which the project is located if the project is

197 subject to mechanics' liens.

198 (3) Failure to file any notice of commencement for a construction project suspends the

199 operation of the preliminary notice provisions and notice of completion provisions set forth

200 below.

201 (4) Electronic notice of the filing of a notice of commencement or alternate notice as

202 prescribed in Subsection (1), shall be provided to all persons who have filed notices of

203 commencement for the project and to all interested parties who have requested such notice for

204 the project.

205 (5) The burden is upon the person filing the notice of commencement to prove that the

206 notice of commencement is filed timely and meets all of the requirements herein.

207 Section 7. Section **38-1-32** is enacted to read:

208 **38-1-32. Preliminary notice -- Subcontractor or supplier.**

209 (1) (a) Within 20 days after commencement of its own work or the commencement of

210 furnishing materials or equipment to a construction project, a subcontractor or supplier shall

211 file a preliminary notice with the construction notice registry. A preliminary notice filed within

212 the 20-day period is effective as to all work, materials, and equipment furnished to the

213 construction project.

214 (b) If a subcontractor or supplier files a preliminary notice after the 20-day period
215 prescribed above, the preliminary notice becomes effective as of five days after the filing of the
216 preliminary notice.

217 (c) Failure to file a preliminary notice within the 20-day period as prescribed above
218 precludes a subcontractor or supplier from filing any claim for compensation earned for
219 performance of work or supply of materials or equipment furnished to the construction project
220 before the expiration of five days after the filing of a preliminary notice, except as against the
221 person with whom the subcontractor or supplier contracted.

222 (d) The preliminary notice must be filed before a notice of lien is filed with the county
223 recorder pursuant to Section 38-1-7. The content of a preliminary notice shall include the
224 following:

225 (i) the name, address, and telephone number of the person furnishing the labor, service,
226 equipment, or material;

227 (ii) the name and address of the person who contracted with the claimant for the
228 furnishing of the labor, service, equipment, or material;

229 (iii) the name of the record or reputed owner of the project or improvement;

230 (iv) the name of the original contractor under which the claimant is performing or will
231 perform its work;

232 (v) the address of the project or improvement or a description of the location of the
233 project or improvement; and

234 (vi) the parcel number of the real property upon which the project or improvement is
235 being constructed.

236 (2) (a) Electronic notification of the filing of a preliminary notice or alternate notice as
237 prescribed in Subsection (1), shall be provided to the person filing the preliminary notice, to
238 each person that filed a notice of commencement for the project, and to all interested parties
239 who have requested such notice for the project.

240 (b) The burden is upon the person filing the preliminary notice to prove that the
241 preliminary notice is filed timely and meets all of the requirements herein.

242 (c) Subject to Subsection (1)(d), a person required by this section to give preliminary
243 notice is only required to give one notice for each project or improvement, which may include
244 an entire structure of a scheme of improvements.

245 (d) If the labor, service, equipment, or material is furnished pursuant to contracts with
246 more than one subcontractor or with more than one original contractor, the notice requirements
247 must be met with respect to the labor, service, equipment, or materials furnished to each
248 subcontractor or original contractor.

249 Section 8. Section **38-1-33** is enacted to read:

250 **38-1-33. Notice of completion.**

251 (1) (a) Upon final completion of a construction project, an owner of a construction
252 project, an original contractor, a lender that has provided financing for the construction project,
253 or surety that has provided bonding for the construction project, may file a notice of completion
254 with the construction notice registry. Final completion, for purposes of this Subsection (1),
255 shall mean:

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

258 (ii) if no certificate of occupancy is required for the construction project by the local
259 government entity having jurisdiction over the construction project, the date of the final
260 inspection by the local government entity having jurisdiction over the construction project; or

261 (iii) if no certificate of occupancy is required and no final inspection is conducted by
262 the local government entity having jurisdiction over the construction project, the date on which
263 there remains no substantial work to be completed to finish the work on the construction
264 project.

265 (b) Electronic notification of the filing of a notice of completion or alternate notice as
266 prescribed in Subsection (17)(a), shall be provided to each person that filed a notice of
267 commencement for the project, to each person that filed preliminary notice for the project, and
268 to all interested parties who have requested notice for the project. Upon the filing of a notice of
269 completion, the time periods for filing preliminary notices stated in Section 38-1-27 are
270 modified such that all notices of lien shall be filed subsequent to the notice of completion and
271 shall be filed within ten days from the date the notice of completion is filed.

272 (2) The provisions of this section which amend the dates in Section 38-1-27 shall
273 become effective for construction projects commenced on or after May 1, 2005. The previous
274 Section 38-1-27 shall apply to all construction projects commenced prior to May 1, 2005,
275 according to its terms.

276 (3) The provisions of this section requiring the division to contract with the designated
277 agent and those which relate to the design, development, and testing of the database shall be
278 effective as of the date signed by the governor. The remaining provisions of this section shall
279 become effective on May 1, 2005.

280 Section 9. Section **38-11-204** is amended to read:

281 **38-11-204. Claims against the fund -- Requirement to make a claim --**
282 **Qualifications to receive compensation.**

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

284 (a) meet the requirements of either Subsection (3) or (6);

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

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

288 (i) that the person meets the requirements of either Subsection (3) or (6);

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

291 (iii) the basis for the claim.

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

294 (a) from the date the judgment required by Subsection (3)~~(c)~~ (d) is entered;

295 (b) from the date the nonpaying party filed bankruptcy, if the claimant is precluded
296 from obtaining a judgment or from satisfying the requirements of Subsection (3)~~(c)~~ (d)
297 because the nonpaying party filed bankruptcy within one year after the entry of judgment; or

298 (c) if a laborer, from the date the laborer completed the laborer's qualified services.

299 (3) To recover from the fund, regardless of whether the residence is occupied by the
300 owner, a subsequent owner, or the owner or subsequent owner's tenant or lessee, a qualified
301 beneficiary shall establish that:

302 (a) (i) the owner of the owner-occupied residence or the owner's agent entered into a
303 written contract with an original contractor licensed or exempt from licensure under Title 58,
304 Chapter 55, Utah Construction Trades Licensing Act, for the performance of qualified services,
305 to obtain the performance of qualified services by others, or for the supervision of the
306 performance by others of qualified services in construction on that residence;

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

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

313 (b) the owner has paid in full the original contractor, licensed or exempt from licensure
314 under Title 58, Chapter 55, Utah Construction Trades Licensing Act, real estate developer, or
315 factory built housing retailer under Subsection (3)(a) with whom the owner has a written
316 contract in accordance with the written contract and any amendments to the contract, and:

317 (i) the original contractor, licensed or exempt from licensure under Title 58, Chapter
318 55, Utah Construction Trades Licensing Act, the real estate developer, or the factory built
319 housing retailer subsequently failed to pay a qualified beneficiary who is entitled to payment
320 under an agreement with that original contractor or real estate developer licensed or exempt
321 from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, for
322 services performed or materials supplied by the qualified beneficiary;

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

327 (iii) a subcontractor who contracts with a subcontractor or supplier failed to pay a
328 qualified beneficiary who is entitled to payment under an agreement with that subcontractor or
329 supplier;

330 (c) for residential construction projects commenced on or after May 1, 2005, the owner
331 has paid in full each person that filed a preliminary notice with the database for the owner's
332 construction project as provided in Section 38-1-27;

333 [~~e~~] (d) (i) the qualified beneficiary filed:

334 (A) an action against the nonpaying party to recover monies owed him within 180 days
335 from the date the qualified beneficiary last provided qualified services, unless precluded from
336 doing so by the nonpaying party's bankruptcy filing within the 180 days after completion of
337 services; and

338 (B) a notice of commencement of action with the division within 30 days from the date
339 the qualified beneficiary filed the civil action if a civil action was filed as required by

340 Subsection (3)~~(c)~~(d)(i)(A);

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

344 (iii) (A) the qualified beneficiary has obtained from a court of competent jurisdiction
345 the issuance of an order requiring the judgment debtor, or if a corporation any officer of the
346 corporation, to appear before the court at a specified time and place to answer concerning the
347 debtor's or corporation's property, has received return of service of the order from a person
348 qualified to serve documents under the Utah Rules of Civil Procedure, Rule 4(b), and has made
349 reasonable efforts to obtain asset information from the supplemental proceedings; and

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

353 (iv) the claimant timely filed a proof of claim where permitted in the bankruptcy action,
354 if the nonpaying party has filed bankruptcy; and

355 ~~(d)~~ (e) the qualified beneficiary is not entitled to reimbursement from any other
356 person.

357 (4) The requirements of Subsection (3)~~(c)~~(d) need not be met if the qualified
358 beneficiary has been precluded from obtaining a judgment against the nonpaying party or from
359 satisfying the requirements of Subsection (3)~~(c)~~(d) because the nonpaying party filed
360 bankruptcy.

361 (5) If a qualified beneficiary fails to file the notice with the division required under
362 Subsection (3)~~(c)~~(d)(i)(B), the claim of the qualified beneficiary shall be paid:

363 (a) if otherwise qualified under this chapter;

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

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

369 (6) To recover from the fund a laborer shall:

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

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

373 (7) A fee determined by the division under Section 63-38-3.2 shall be deducted from
374 any recovery from the fund received by a laborer.

375 (8) The requirements of Subsection (3)(a)(i) may be satisfied if a claimant establishes
376 to the satisfaction of the director that the owner of the owner-occupied residence or the owner's
377 agent entered into a written contract with an original contractor who:

378 (a) was a business entity that was not licensed under Title 58, Chapter 55, Utah
379 Construction Trades Licensing Act, but was solely owned by an individual that was licensed
380 under Title 58, Chapter 55, Utah Construction Trades Licensing Act; or

381 (b) was a natural person who was not licensed under Title 58, Chapter 55, Utah
382 Construction Trades Licensing Act, but who was the sole owner and qualifier of a business
383 entity that was licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act.

384 Section 10. Section ~~63-56-38.1~~ is amended to read:

385 **63-56-38.1. Preliminary notice requirement.**

386 Except subcontractors who are in privity of contract with a payment bond principal or
387 except for persons performing labor for wages, any person furnishing labor, service,
388 equipment, or material for which a payment bond claim may be made under this chapter shall
389 provide preliminary notice to the [~~payment bond principal~~] designated agent as prescribed by
390 Section 38-1-27. Any person who fails to provide this preliminary notice may not make a
391 payment bond claim under this chapter. The preliminary notice must be provided prior to
392 commencement of any action on the payment bond.

393 Section 11. **Effective date.**

394 This bill takes effect on May 1, 2005

Legislative Review Note

as of 2-3-04 9:47 AM

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

Office of Legislative Research and General Counsel

State Impact

Implementation of this bill will require \$896,100 from the Residence Lien Recovery Fund. Part of first year costs is an additional FTE at a cost of \$63,100 and the Attorney General will need \$25,000 in the first year to help with rulemaking. While first year costs come from the Residence Lien Recovery Fund, fees would be set at a level so that the fund is repaid and continuing project costs are self funded.

	<u>FY 2005</u> <u>Approp.</u>	<u>FY 2006</u> <u>Approp.</u>	<u>FY 2005</u> <u>Revenue</u>	<u>FY 2006</u> <u>Revenue</u>
Restricted Funds	\$896,100	\$637,500	\$400,000	\$750,000
TOTAL	\$896,100	\$637,500	\$400,000	\$750,000

Individual and Business Impact

Commercial construction companies will save \$30 to \$125 per commencement notice. They will also save on certified mailings. Licensed contractors will incur filing fees.

Office of the Legislative Fiscal Analyst