

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

CONSTRUCTION LIEN AMENDMENTS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Stephen D. Clark

LONG TITLE

General Description:

This bill modifies the Liens Code.

Highlighted Provisions:

This bill:

- ▶ requires a ten day advance written notice to the person or entity the claimant supplied labor, materials, equipment, or services stating the amount of any claim and from whom it is due;
 - ▶ states that failure to file a notice of lien results in a waiver of the right to file a lien;
- and
- ▶ applies to liens filed on or after July 1, 2004.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

ENACTS:

38-1-30, Utah Code Annotated 1953

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



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

29 **38-1-11. Enforcement -- Time for -- Lis pendens -- Action for debt not affected --**
30 **Instructions and form affidavit and motion.**

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

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

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

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

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

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

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

51 (i) instructions to the owner of the residence relating to the owner's rights under Title
52 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act; and

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

56 (b) The lien claimant may file a notice to submit for decision on the motion for
57 summary judgment. The motion may be ruled upon after the service of the summons and
58 complaint upon the nonpaying party, as defined in Section 38-11-102, and the time for the

59 nonpaying party to respond, as provided in the Utah Rules of Civil Procedure, has elapsed.

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

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

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

70 (5) The written notice requirement applies to liens filed on or after July 1, 2004.

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

72 **38-1-30. Lien notification.**

73 (1) Before filing a mechanics lien pursuant to Section 38-1-11, the person or entity
74 claiming a lien shall give ten days written notice by certified mail to the person or entity to
75 whom the lien claimant supplied labor, materials, equipment, or services for the improvement
76 of real property, stating the amount of any claim and from whom it is due.

77 (2) There is a rebuttable presumption that failure to file written notice as required in
78 Subsection (1) results in a waiver of the right to file a lien pursuant to Section 38-1-11.

79 (3) This section applies to liens filed on or after July 1, 2004.

Legislative Review Note

as of 10-24-03 1:28 PM

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

Office of Legislative Research and General Counsel