

**REAL ESTATE AND MECHANICS LIENS -
SECURITY ALTERNATIVES**

2005 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael T. Morley

Senate Sponsor: Thomas V. Hatch

LONG TITLE

General Description:

This bill addresses provisions related to the substitution of alternate security for certain liens.

Highlighted Provisions:

This bill:

- ▶ addresses the recording of a notice of release of lien and substitution of alternate security;
- ▶ addresses the amount of the bond required for a substitution of alternate security;
- ▶ clarifies that a notice of release of lien and substitution of alternate security remains in effect when a lien is amended if the bond amount remains at the appropriate amount; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

38-1-28, as last amended by Chapter 44, Laws of Utah 2002

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

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

38-1-28. Notice of release of lien and substitution of alternate security.

(1) The owner of any interest in real property [~~which~~] that is subject to a mechanics' lien recorded under this chapter, or any original contractor or subcontractor affected by the lien, who disputes the correctness or validity of the lien may [~~either before or after the commencement of an action to enforce the lien,~~] record a notice of release of lien and substitution of alternate security [~~;~~ ~~which~~]:

(a) that meets the requirements of Subsection (2) [~~;~~];

(b) in the office of the county recorder where the lien was recorded [~~;~~]; and

(c) at any time before the expiration of 90 days after the day on which the person filing a notice of release of lien and substitution of alternate security is served with a summons and lien foreclosure complaint.

(2) A notice of release of lien and substitution of alternate security recorded under Subsection (1) shall:

(a) meet the requirements for the recording of documents in Title 57, Chapter 3, Recording of Documents [~~;~~ ~~shall~~];

(b) reference the lien sought to be released, including an entry number, book number, and page number; and [~~shall~~]

(c) have as an attachment a surety bond or evidence of a cash deposit [~~which~~] that:

[~~(a)~~] (i) (A) if a surety bond, is executed by a surety company [~~which~~] that is treasury listed, A-rated by AM Best Company, and authorized to issue surety bonds in this state; or

[~~(ii)~~] (B) if evidence of a cash deposit, meets the requirements established by rule by the Department of Commerce in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act;

[~~(b)~~] (ii) is in an amount equal to [~~150% of the amount claimed by the lien claimant in connection with the parcel of real property sought to be released;~~];

(A) 150% of the amount claimed by the lien claimant on a notice of lien or determined under Subsection (7), if the lien claim is for \$25,000 or more;

(B) 175% of the amount claimed by the lien claimant on a notice of lien or determined under Subsection (7), if the lien claim is for at least \$15,000 but less than \$25,000; or

(C) 200% of the amount claimed by the lien claimant on a notice of lien or determined under Subsection (7), if the lien claim is for less than \$15,000;

~~(e)~~ (iii) is made payable to the lien claimant;

~~(d)~~ (iv) is conditioned for the payment of:

(A) the judgment ~~[which]~~ that would have been rendered, or has been rendered against the property in the action to enforce the lien ~~[together with]; and~~

(B) any costs and attorneys' fees awarded by the court; and

~~(e)~~ (v) has as principal:

(A) the owner of the interest in the real property~~[-];~~ or

(B) the original contractor or subcontractor affected by the lien.

(3) (a) Upon the recording of the notice of release of lien and substitution of alternate security under Subsection (1), the real property described in the notice shall be released from the mechanics' lien to which the notice applies.

(b) A recorded notice of release of lien and substitution of alternate security is effective as to any amendment to the lien being released if the bond amount remains enough to satisfy the requirements of Subsection (2)(c)(ii).

(4) (a) Upon the recording of a notice of release of lien and substitution of alternate security under Subsection (1), the person recording the notice shall ~~[cause]~~ serve a copy of the notice, together with any attachments, ~~[to be served]~~ within 30 days upon the lien claimant.

(b) If a suit is pending to foreclose the lien at the time the notice is served upon the lien claimant under Subsection (4)(a), the lien claimant shall, within 90 days from the receipt of the notice, institute proceedings to add the alternate security as a party to the lien foreclosure suit.

(5) The alternate security attached to a notice of release of lien shall be discharged and released upon:

(a) the failure of the lien claimant to commence a suit against the alternate security within the same time as an action to enforce the lien under Section 38-1-11;

(b) the failure of the lien claimant to institute proceedings to add the alternate security as a party to a lien foreclosure suit within the time required by Subsection (4)(b); ~~[or]~~

(c) the dismissal with prejudice of the lien foreclosure suit or suit against the alternate security as to the lien claimant; or

(d) the entry of judgment against the lien claimant in ~~[such a suit.];~~

(i) a lien foreclosure suit; or

(ii) suit against the alternate security.

(6) If a copy of the notice of release of lien and substitution of alternate security is not served upon the lien claimant as provided in Subsection (4)(a), the lien claimant shall have six months after the discovery of the notice to commence an action against the alternate security, except that no action may be commenced against the alternate security after two years from the date the notice was recorded.

(7) (a) The owner of any interest in real property that is subject to a mechanics' lien recorded under this chapter or an original contractor or subcontractor affected by a mechanics' lien recorded under this chapter who disputes the amount claimed in a notice of lien may petition the district court in the county in which the notice of lien is recorded for a summary determination of the correct amount of a lien claim for the sole purpose of providing alternate security.

(b) A petition under this Subsection (7) shall:

(i) state with specificity the factual and legal bases for disputing the amount of the lien claim; and

(ii) be supported by a sworn affidavit and any other evidence supporting the petition.

(c) A petitioner under Subsection (7)(a) shall, under Utah Rules of Civil Procedure, Rule 4, serve on the lien claimant:

(i) a copy of the petition; and

(ii) a notice of hearing if a hearing is scheduled.

(d) If a court finds a petition under Subsection (7)(a) insufficient, the court may dismiss the petition without a hearing.

(e) If a court finds a petition under Subsection (7)(a) sufficient, the court shall schedule a hearing within ten days to determine the correct amount of the lien claim for the sole purpose of providing alternate security.

(f) A lien claimant may:

(i) attend a hearing held under this Subsection (7); and

(ii) contest the petition.

(g) A determination under this section is limited to a determination of the amount of the lien claim for the sole purpose of providing alternate security and does not conclusively establish:

(i) the amount to which the lien claimant is entitled;

(ii) the validity of the lien claim; or

(iii) any person's right to any other legal remedy.

(h) If a court, in a proceeding under this Subsection (7), determines that the amount claimed in a notice of claim is excessive, the court shall set the amount of the lien claim for the sole purpose of providing alternate security.

(i) In an order under Subsection (7)(h), the court shall include a legal description of the property.

(j) A petitioner under this Subsection (7) may record a certified copy of any order issued under this Subsection (7) in the county in which the lien is recorded.

(k) Attorneys' fees may not be awarded for a proceeding under this Subsection (7), but shall be considered in any award of attorneys' fees under any other provision of this chapter.