

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

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: Michael T. Morley

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ allows the recording of a notice of release of lien and substitution of alternate security before execution of a judgment to enforce the lien;
- ▶ 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



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

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

30 **38-1-28. Notice of release of lien and substitution of alternate security.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

61 [~~(c)~~] (iii) is made payable to the lien claimant;

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

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

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

66 [~~(e)~~] (v) has as principal:

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

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

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

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

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

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

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

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

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

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

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

- 90 (i) a lien foreclosure suit; or
- 91 (ii) suit against the alternate security.

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

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

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

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

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

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

109 (i) a copy of the petition; and

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

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

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

116 (f) A lien claimant may:

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

118 (ii) contest the petition.

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

- 121 establish:
- 122 (i) the amount to which the lien claimant is entitled;
- 123 (ii) the validity of the lien claim; or
- 124 (iii) any person's right to any other legal remedy.
- 125 (h) If a court, in a proceeding under this Subsection (7), determines that the amount
- 126 claimed in a notice of claim is excessive, the court shall set the amount of the lien claim for the
- 127 sole purpose of providing alternate security.
- 128 (i) In an order under Subsection (7)(h), the court shall include a legal description of the
- 129 property.
- 130 (j) A petitioner under this Subsection (7) may record a certified copy of any order
- 131 issued under this Subsection (7) in the county in which the lien is recorded.
- 132 (k) Attorneys' fees may not be awarded for a proceeding under this Subsection (7), but
- 133 shall be considered in any award of attorneys' fees under any other provision of this chapter.

Legislative Review Note
as of 2-2-05 8:15 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

AMENDED NOTE

State Impact

Court costs are expected to increase by about \$16,900 and be off-set by revenue enhancements of \$15,500 for a net fiscal impact of \$1,400 in General Fund.

	<u>FY 2006</u> <u>Approp.</u>	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2006</u> <u>Revenue</u>	<u>FY 2007</u> <u>Revenue</u>
General Fund	\$16,900	\$16,900	\$15,500	\$15,500
TOTAL	\$16,900	\$16,900	\$15,500	\$15,500

Individual and Business Impact

Persons using the provisions of the bill will pay a \$155 fee.

Office of the Legislative Fiscal Analyst