



30 ENACTS:

31 **38-1-39**, Utah Code Annotated 1953



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

34 Section 1. Section **38-1-39** is enacted to read:

35 **38-1-39. Waiver or impairment of a lien right -- Forms -- Scope.**

36 (1) As used in this section:

37 (a) "Check" means a payment instrument on a depository institution including:

38 (i) a check;

39 (ii) a draft;

40 (iii) an order; or

41 (iv) other instrument.

42 (b) "Depository institution" is as defined in Section 7-1-103.

43 (c) "Lien claimant" means a person that claims a lien under this chapter.

44 (2) Notwithstanding Section 38-1-29, a written consent given by a lien claimant that  
45 waives or limits the lien claimant's lien rights is enforceable if the lien claimant:

46 (a) (i) executes a waiver and release that is:

47 (A) signed by the lien claimant or the lien claimant's authorized agent; and

48 (B) substantially in the form set forth in Subsection (4); or

49 (ii) includes a restrictive endorsement on a check that is:

50 (A) signed by the lien claimant or the lien claimant's authorized agent; and

51 (B) in substantially the same form set forth in Subsection (4); and

52 (b) receives payment of the amount identified in the waiver and release or check that  
53 includes the restrictive endorsement:

54 (A) including payment by a joint payee check; and

55 (B) only to the extent of the payment.

56 (3) (a) Notwithstanding the language of a waiver and release described in Subsection  
57 (2), Subsection (3)(b) applies if:

58 (i) the payment given in exchange for any waiver and release of lien is made by check;  
59 and

60 (ii) the check fails to clear the depository institution on which it is drawn for any  
61 reason.

62 (b) If the conditions of Subsection (3)(a) are met:

63 (i) the waiver and release described in Subsection (3)(a) is null, void, and of no legal  
64 effect; and

65 (ii) the following will not be affected by the lien claimant's execution of the waiver and  
66 release:

67 (A) any lien;

68 (B) any lien right;

69 (C) any bond right;

70 (D) any contract right; or

71 (E) any other right to recover payment afforded to the lien claimant in law or equity.

72 (4) A waiver and release given by a lien claimant meets the requirements of this section  
73 if it is in substantially the form provided in this Subsection (4) for the circumstance provided in  
74 this Subsection (4).

75 (a) (i) A waiver and release may be in substantially the following form if the lien  
76 claimant is required to execute a waiver and release in exchange for or to induce the payment  
77 of a progress billing:

78 "UTAH CONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT

79 Property Name: \_\_\_\_\_

80 Property Location: \_\_\_\_\_

81 Undersigned's Customer: \_\_\_\_\_

82 Invoice/Payment Application Number: \_\_\_\_\_

83 Payment Amount: \_\_\_\_\_

84 Payment Period: \_\_\_\_\_

85 To the extent provided below, this document becomes effective to release and the

86 undersigned is considered to waive any notice of lien or right under Utah Code Ann., Title 38,  
87 Chapter 1, Mechanics' Liens, or any bond right under Utah Code Ann., Title 14, Contractors'  
88 Bonds, or Section 63-56-504 related to payment rights the undersigned has on the above  
89 described Property once:

90 (1) the undersigned receives a check in the above referenced Payment Amount payable  
91 to the undersigned;

92 (2) the check is properly endorsed; and

93 (3) the check is paid by the depository institution on which it is drawn.

94 This waiver and release applies to a progress payment for the work, materials,  
95 equipment, or a combination of work, materials, and equipment furnished by the undersigned  
96 to the Property or to the Undersigned's Customer which are the subject of the Invoice or  
97 Payment Application, but only to the extent of the Payment Amount. This waiver and release  
98 does not apply to any retention withheld; any items, modifications, or changes pending  
99 approval; disputed items and claims; or items furnished or invoiced after the Payment Period.

100 The undersigned warrants that the undersigned either has already paid or will use the  
101 money the undersigned receives from this progress payment promptly to pay in full all the  
102 undersigned's laborers, subcontractors, materialmen, and suppliers for all work, materials,  
103 equipment, or combination of work, materials, and equipment that are the subject of this  
104 waiver and release.

105 Dated: \_\_\_\_\_

106 \_\_\_\_\_ (Company Name)

107 \_\_\_\_\_ By: \_\_\_\_\_

108 \_\_\_\_\_ Its: \_\_\_\_\_ "

109 (ii) A restrictive endorsement placed on a check to effectuate a waiver and release  
110 described in this Subsection (4)(a) meets the requirements of this section if it is in substantially  
111 the following form:

112 "This check is a progress payment for (property description sufficient for  
113 identification). Endorsement of this check is an acknowledgment by the endorser that the

114 waiver and release to which the payment applies is effective to the extent provided in Utah  
115 Code Ann. Subsection 38-1-39(4)(a)."

116 (b) (i) A waiver and release may be in substantially the following form if the lien  
117 claimant is required to execute a waiver and release in exchange for or to induce the payment  
118 of a final billing:

119 "UTAH CONDITIONAL WAIVER AND RELEASE UPON FINAL PAYMENT

120 Property Name: \_\_\_\_\_

121 Property Location: \_\_\_\_\_

122 Undersigned's Customer: \_\_\_\_\_

123 Invoice/Payment Application Number: \_\_\_\_\_

124 Payment Amount: \_\_\_\_\_

125 Amount of Disputed Claims: \_\_\_\_\_

126 To the extent provided below, this document becomes effective to release and the  
127 undersigned is considered to waive any notice of lien or right under Utah Code Ann., Title 38,  
128 Chapter 1, Mechanics' Liens, or any bond right under Utah Code Ann., Title 14, Contractors'  
129 Bonds, or Section 63-56-504 related to payment rights the undersigned has on the above  
130 described Property once:

131 (1) the undersigned receives a check in the above referenced Payment Amount payable  
132 to the undersigned;

133 (2) the check is properly endorsed; and

134 (3) the check is paid by the depository institution on which it is drawn.

135 This waiver and release applies to the final payment for the work, materials, equipment,  
136 or combination of work, materials, and equipment furnished by the undersigned to the Property  
137 or to the Undersigned's Customer. This waiver and release does not apply to payment of  
138 Disputed Claims, if any.

139 The undersigned warrants that the undersigned either has already paid or will use the  
140 money the undersigned receives from the final payment promptly to pay in full all the  
141 undersigned's laborers, subcontractors, materialmen, and suppliers for all work, materials,

142 equipment, or combination of work, materials, and equipment that are the subject of this  
143 waiver and release.

144 Dated: \_\_\_\_\_

145 \_\_\_\_\_ (Company Name)

146 \_\_\_\_\_ By: \_\_\_\_\_

147 \_\_\_\_\_ Its: \_\_\_\_\_ "

148 (ii) A restrictive endorsement placed on a check to effectuate a waiver and release  
149 described in this Subsection (4)(b) meets the requirements of this section if it is in substantially  
150 the following form:

151 "This check is a final payment for (property description sufficient for identification).  
152 Endorsement of this check is an acknowledgment by the endorser that the waiver and release to  
153 which the payment applies is effective to the extent provided in Utah Code Ann. Subsection  
154 38-1-39(4)(b)."

155 (5) (a) If the conditions of Subsection (5)(b) are met, this section does not affect the  
156 enforcement of:

- 157 (i) an accord and satisfaction regarding a bona fide dispute; or
- 158 (ii) an agreement made in settlement of an action pending in any court or arbitration.

159 (b) Pursuant to Subsection (5)(a), this section does not affect enforcement of an accord  
160 and satisfaction or settlement described in Subsection (5)(a) if the accord and satisfaction or  
161 settlement:

- 162 (i) is in a writing signed by the lien claimant; and
- 163 (ii) specifically references the lien rights waived or impaired.

164 (6) A lien waiver or lien release that is not substantially similar to the forms set forth in  
165 Subsection (4) is not enforceable under Section 38-1-29.

166 **Section 2. Effective date.**

167 This bill takes effect on January 1, 2007 and applies to a waiver and release or  
168 restrictive endorsement signed on or after January 1, 2007.