

**Representative Michael T. Morley** proposes the following substitute bill:

**CONSTRUCTION AMENDMENTS**

2007 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Michael T. Morley**

Senate Sponsor: Scott K. Jenkins

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**LONG TITLE**

**General Description:**

This bill addresses construction related lien provisions.

**Highlighted Provisions:**

This bill:

- ▶ clarifies the time limits for filing a lien notice;
- ▶ addresses information and forms required to be provided to the owner of a residence that is the subject of an action to enforce a lien;
- ▶ addresses the effect of a notice of commencement on earlier work;
- ▶ exempts wage laborers from filing a preliminary notice with the State Construction Registry;
- ▶ addresses rights under Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act; and
- ▶ makes technical changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**



26 AMENDS:

27 38-1-7, as last amended by Chapters 205 and 297, Laws of Utah 2006

28 38-1-11, as last amended by Chapter 297, Laws of Utah 2006

29 38-1-25, as last amended by Chapter 257, Laws of Utah 2001

30 38-1-31, as last amended by Chapter 297, Laws of Utah 2006

31 38-1-32, as last amended by Chapter 297, Laws of Utah 2006

32 38-1-33, as last amended by Chapter 297, Laws of Utah 2006

33 38-11-204, as last amended by Chapter 64, Laws of Utah 2005



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

36 Section 1. Section 38-1-7 is amended to read:

37 **38-1-7. Notice of claim -- Contents -- Recording -- Service on owner of property.**

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

41 (A) ~~§~~ → [180] 150 ← ~~§~~ days after the [date of] day on which occurs final completion of the  
41a original

42 contract [~~under which the claimant claims a lien under this chapter.~~] if no notice of completion  
43 is filed under Section 38-1-33; or

44 (B) 90 days after the day on which a notice of completion is filed under Section  
45 38-1-33.

46 (ii) For purposes of this Subsection (1), final completion of the original contract, and  
47 for purposes of Section 38-1-33, final completion of the project, means:

48 (A) if as a result of work performed under the original contract a permanent certificate  
49 of occupancy is required for the work, the date of issuance of a permanent certificate of  
50 occupancy by the local government entity having jurisdiction over the construction project;

51 (B) if no certificate of occupancy is required by the local government entity having  
52 jurisdiction over the construction project, but as a result of the work performed under the  
53 original contract an inspection is required as per state-adopted building codes for the work, the  
54 date of the final inspection for the work by the local government entity having jurisdiction over  
55 the construction project; or

56 (C) if with regard to work performed under the original contract no certificate of

57 occupancy and no final inspection are required as per state-adopted building codes by the local  
 58 government entity having jurisdiction over the construction project, the date on which there  
 59 remains no substantial work to be completed to finish the work on the original contract.

60 ~~§→ [(iii) For purposes of this determining final completion, the term "substantial work"~~  
 61 ~~does not include:~~

62 ~~—— (A) repair work; or~~

63 ~~—— (B) warranty work.] ←§~~

64 (b) Notwithstanding Section 38-1-2, where a subcontractor performs substantial work  
 65 after the applicable dates established by Subsections (1)(a)(ii)(A) and (B), that subcontractor's  
 66 subcontract shall be considered an original contract for the sole purpose of determining:

67 (i) the subcontractor's time frame to file a notice of intent to hold and claim a lien  
 68 under this Subsection (1); and

69 (ii) the original contractor's time frame to file a notice of intent to hold and claim a lien  
 70 under this Subsection (1) for that subcontractor's work.

71 (c) For purposes of this ~~§→ [section] chapter ←§~~, the term "substantial work" does not  
 71a include:

72 (i) repair work; or

73 (ii) warranty work.

74 (d) Notwithstanding Subsection (1)(a)(ii), final completion of the original contract does  
 75 not occur if work remains to be completed for which the owner is holding payment to ensure  
 76 completion of that work.

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

78 (i) the name of the reputed owner if known or, if not known, the name of the record  
 79 owner;

80 (ii) the name of the person:

81 (A) by whom the lien claimant was employed; or

82 (B) to whom the lien claimant furnished the equipment or material;

83 (iii) the time when:

84 (A) the first and last labor or service was performed; or

85 (B) the first and last equipment or material was furnished;

86 (iv) a description of the property, sufficient for identification;

87 (v) the name, current address, and current phone number of the lien claimant;

88 (vi) the amount of the lien claim;  
89 (vii) the signature of the lien claimant or the lien claimant's authorized agent;  
90 (viii) an acknowledgment or certificate as required under Title 57, Chapter 3,  
91 Recording of Documents; and  
92 (ix) if the lien is on an owner-occupied residence, as defined in Section 38-11-102, a  
93 statement describing what steps an owner, as defined in Section 38-11-102, may take to require  
94 a lien claimant to remove the lien in accordance with Section 38-11-107.

95 (b) Substantial compliance with the requirements of this chapter is sufficient to hold  
96 and claim a lien.

97 (3) (a) Within 30 days after filing the notice of lien, the lien claimant shall deliver or  
98 mail by certified mail a copy of the notice of lien to:

- 99 (i) the reputed owner of the real property; or
- 100 (ii) the record owner of the real property.

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

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

108 (4) The Division of Occupational and Professional Licensing shall make rules  
109 governing the form of the statement required under Subsection (2)(a)(ix).

110 Section 2. Section **38-1-11** is amended to read:

111 **38-1-11. Enforcement -- Time for -- Lis pendens -- Action for debt not affected --**  
112 **Instructions and form affidavit and motion.**

113 (1) As used in this section:

114 (a) "Owner" is as defined in Section 38-11-102.

115 (b) "Residence" is as defined in Section 38-11-102.

116 ~~(2)~~ (2) A lien claimant shall file an action to enforce the lien filed under this chapter  
117 within 180 days from the day on which the lien claimant filed a notice of claim under Section  
118 38-1-7.

119           ~~[(2)]~~ (3) (a) Within the time period provided for filing in Subsection ~~[(1)]~~ (2) the lien  
120 claimant shall file for record with the county recorder of each county in which the lien is  
121 recorded a notice of the pendency of the action, in the manner provided in actions affecting the  
122 title or right to possession of real property, or the lien shall be void, except as to persons who  
123 have been made parties to the action and persons having actual knowledge of the  
124 commencement of the action.

125           (b) The burden of proof ~~[shall be]~~ is upon the lien claimant and those claiming under  
126 the lien claimant to show actual knowledge under Subsection (3)(a).

127           ~~[(3)]~~ (4) (a) A lien filed under this chapter is automatically and immediately void if an  
128 action to enforce the lien is not filed within the time required by this section ~~[38-1-11]~~.

129           (b) Notwithstanding Section 78-12-40, a court has no subject matter jurisdiction to  
130 adjudicate a lien that becomes void under Subsection ~~[(3)]~~ (4)(a).

131           ~~[(4)]~~ (5) This section may not be interpreted to impair or affect the right of any person  
132 to whom a debt may be due for any work done or materials furnished to maintain a personal  
133 action to recover the ~~[same]~~ debt.

134           ~~[(5)]~~ (6) (a) If a lien claimant files an action to enforce a lien filed under this chapter  
135 involving a residence~~[, as defined in Section 38-11-102]~~, the lien claimant shall include with  
136 the service of the complaint on the owner of the residence:

137           (i) instructions to the owner of the residence relating to the owner's rights under Title  
138 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act; and

139           (ii) a form ~~[affidavit]~~ to enable the owner of the residence to specify the grounds upon  
140 which the owner may exercise available rights under Title 38, Chapter 11, Residence Lien  
141 Restriction and Lien Recovery Fund Act.

142           (b) The instructions and form ~~[affidavit]~~ required by Subsection ~~[(5)]~~ (6)(a) shall meet  
143 the requirements established by rule by the Division of Occupational and Professional  
144 Licensing in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

145           (c) If a lien claimant fails to provide to the owner of the residence the instructions and  
146 form ~~[affidavit]~~ required by Subsection ~~[(5)]~~ (6)(a), the lien claimant shall be barred from  
147 maintaining or enforcing the lien upon the residence.

148           (d) Judicial determination of the rights and liabilities of the owner of the residence  
149 under this chapter and Title 38, ~~[Chapters 1 and 11]~~ Chapter 11, Residence Lien Restriction

150 and Lien Recovery Fund Act, and Title 14, Chapter 2, Private Contracts, shall be stayed until  
151 after the owner [~~has been~~] is given a reasonable period of time to establish compliance with  
152 Subsections 38-11-204(4)(a) and (4)(b) through an informal proceeding, as set forth in Title 63,  
153 Chapter 46b, Administrative Procedures Act, commenced within 30 days of the owner being  
154 served summons in the foreclosure action, at the Division of Occupational and Professional  
155 Licensing and obtain a certificate of compliance or denial of certificate of compliance, as  
156 defined in Section 38-11-102.

157 (e) An owner applying for a certificate of compliance under Subsection [~~(5)~~] (6)(d)  
158 shall send by certified mail to all lien claimants:

159 (i) a copy of the application for a certificate of compliance; and

160 (ii) all materials filed in connection with the application.

161 (f) The Division of Occupational and Professional Licensing shall notify all lien  
162 claimants listed in an owner's application for a certificate of compliance under Subsection [~~(5)~~]  
163 (6)(d) of the issuance or denial of a certificate of compliance.

164 [~~(6)~~] (7) The written notice requirement applies to liens filed on or after July 1, 2004.

165 Section 3. Section **38-1-25** is amended to read:

166 **38-1-25. Abuse of lien right -- Penalty.**

167 (1) Any person entitled to record or file a lien under Section 38-1-3 is guilty of a class  
168 B misdemeanor who intentionally causes a claim of lien against any property[~~, which contains~~]  
169 containing a greater demand than the sum due to be recorded or filed:

170 (a) with the intent to cloud the title;

171 (b) to exact from the owner or person liable by means of the excessive claim of lien  
172 more than is due; or

173 (c) to procure any unjustified advantage or benefit.

174 (2) In addition to any criminal penalties under Subsection (1), a person who violates  
175 Subsection (1) is liable to the owner of the property or an original contractor or subcontractor  
176 who is affected by the lien for the greater of:

177 (a) twice the amount by which the [~~wrongful~~] abusive lien exceeds the amount actually  
178 due; or

179 (b) the actual damages incurred by the owner of the property.

180 Section 4. Section **38-1-31** is amended to read:

181 **38-1-31. Building permit -- Construction -- Notice registry -- Notice of**  
 182 **commencement of work.**

183 (1) (a) (i) (A) For a construction project where a building permit is issued to an original  
 184 contractor or owner-builder, within 15 days after the issuance of the building permit ~~§→~~ [;] :

184a (I) ←§ the local

185 government entity issuing that building permit shall input the building permit application and  
 186 transmit the building permit information to the database electronically by way of the Internet or  
 187 computer modem or by any other means ~~[and such]~~ ~~§→~~ ; **and**

187a **(II) the original contractor or owner-builder may file a notice of commencement based**  
 187b **on the building permit issued by the local government entity ←§** .

188 (B) The information ~~[shall form]~~ submitted under Subsection (1)(a)(i)(A) forms the  
 189 basis of a notice of commencement.

190 (ii) The person to whom a building permit, filed under Subsection (1)(a)(i), is issued is  
 191 responsible for the accuracy of the information in the building permit.

192 (iii) For the purposes of classifying a record under Title 63, Chapter 2, Government  
 193 Records Access and Management Act, building permit information transmitted from a local  
 194 governmental entity to the database shall be classified in the database by the division  
 195 notwithstanding the local governmental entity's classification of the building permit  
 196 information.

197 (b) ~~§→~~ ~~[For a construction project where a building permit is not issued, within]~~ Within ←§  
 197a 15 days

198 after commencement of physical construction work at the project site, the original contractor or  
 199 owner-builder may file a notice of commencement with the database ~~§→~~ [;

200 ~~—— (c) If a building permit is issued more than 15 days after commencement of physical~~  
 201 ~~construction work at the project site, a notice of commencement based on that building permit~~  
 202 ~~is effective only as to a person who did not provide labor, service, equipment, or material~~  
 203 ~~before the filing of the notice of commencement]~~ ~~§→~~ [if:

203a ~~—— (i) a building permit is not issued; or~~

203b ~~—— (ii) a building permit is issued but a notice of commencement under Subsection (1)(a) is~~  
 203c ~~not obtained]~~ **whether or not a building permit is issued or a notice of commencement is filed under**

203d **Subsection (1)(a) ←§** .

204 ~~[(←)]~~ (d) An owner of construction or an original contractor may file a notice of  
 205 commencement with the designated agent within the time prescribed by Subsections (1)(a) and

206 (b).

207 ~~[(←)]~~ (e) (i) If duplicate notices of commencement are filed, they shall be combined into

208 one notice for each project and any notices filed relate back to the date of the earliest-filed  
209 notice of commencement for the project.

210 (ii) A duplicate notice of commencement that is untimely filed relates back under  
211 Subsection (1)[~~(d)~~] (e)(i) if the earlier filed notice of commencement is timely filed.



212 (iii) [~~On January 1, 2007 and thereafter, duplicate~~] Duplicate notices of  
213 commencement shall be automatically linked by the designated agent.

214 [~~(e)~~] (f) The designated agent shall assign each construction project a unique project  
215 number that:

216 (i) identifies each construction project; and

217 (ii) can be associated with all notices of commencement, preliminary notices, and  
218 notices of completion.

219 [~~(f)~~] (g) A notice of commencement is effective only as to any labor, service,  
220 equipment, and material furnished to the construction project that is furnished subsequent to  
221 the filing of the notice of commencement.

222 (2) (a) [~~The content of a~~] A notice of commencement shall include the following:

223 (i) the name and address of the owner of the project;

224 (ii) the name and address of the:

225 (A) original contractor; and

226 (B) surety providing any payment bond for the project, or if none exists, a statement  
227 that a payment bond was not required for the work being performed; and

228 (iii) (A) the project address if the project can be reasonably identified by an address; or

229 (B) the name and general description of the location of the project if the project cannot  
230 be reasonably identified by an address.

231 (b) A notice of commencement may include:

232 (i) a general description of the project; or

233 (ii) the lot or parcel number, and any subdivision, development, or other project name,  
234 of the real property upon which the project is to be constructed if the project is subject to  
235 mechanics' liens.

236 (c) [~~The content of a~~] A notice of commencement need not include all of the items  
237 listed in Subsection (2)(a) if:

238 (i) a building permit is issued for the project; and

239 (ii) all items listed in Subsection (2)(a) that are available on the building permit are  
240 included in the notice of commencement.

241 (3) If a notice of commencement for a construction project is not filed within the time  
242 set forth in Subsections [~~38-1-31~~](1)(a) and (b), the following do not apply:

243 (a) Section 38-1-32; and

244 (b) Section 38-1-33.

245 (4) (a) Unless a person indicates to the division or designated agent that the person  
246 does not wish to receive a notice under this section, electronic notice of the filing of a notice of  
247 commencement or alternate notice as prescribed in Subsection (1), shall be provided to:

248 (i) all persons who have filed notices of commencement for the project; and

249 (ii) all interested persons who have requested [~~such notice for~~] notices concerning the  
250 project.

251 (b) (i) A person to whom notice is required under Subsection (4)(a) is responsible for:

252 (A) providing an e-mail address, mailing address, or telefax number to which a notice  
253 required by Subsection (4)(a) is to be sent; and

254 (B) the accuracy of any e-mail address, mailing address, or telefax number to which  
255 notice is to be sent.

256 (ii) The designated agent fulfills the notice requirement of Subsection (4)(a) when it  
257 sends the notice to the e-mail address, mailing address, or telefax number provided to the  
258 designated agent whether or not the notice is actually received.

259 (5) (a) The burden is upon any person seeking to enforce a notice of commencement to  
260 verify the accuracy of information in the notice of commencement and prove that the notice of  
261 commencement is filed timely and meets all of the requirements in this section.

262 (b) A substantial inaccuracy in a notice of commencement renders the notice of  
263 commencement unenforceable.

264 (c) A person filing a notice of commencement by alternate filing is responsible for  
265 verifying and changing any incorrect information in the notice of commencement before the  
266 expiration of the time period during which the notice is required to be filed.

267 (6) At the time a building permit is obtained, each original contractor shall  
268 conspicuously post at the project site a copy of the building permit obtained for the project.

269 Section 5. Section **38-1-32** is amended to read:

270 **38-1-32. Preliminary notice by subcontractor.**

271 (1) (a) (i) Except for a person who has a contract with an owner or an owner-builder or  
272 a laborer compensated with wages, a subcontractor shall file a preliminary notice with the  
273 database within the later of:

274 (A) 20 days after commencement of its own work or the commencement of furnishing  
275 labor, service, equipment, and material to a construction project; or

276 (B) 20 days after the filing of a notice of commencement.

277 (ii) A preliminary notice filed within the period described in Subsection (1)(a)(i) is  
278 effective as to all labor, service, equipment, and material furnished to the construction project,  
279 including labor, service, equipment, and material provided to more than one contractor or  
280 subcontractor.

281 (iii) (A) If more than one notice of commencement is filed for a project, a person may  
282 attach a preliminary notice to any of the notices of commencement filed for the project.

283 (B) A preliminary notice attached to an untimely notice of commencement is valid if  
284 there is also a valid and timely notice of commencement for the project to which the  
285 preliminary notice may attach.

286 (b) If a person files a preliminary notice after the period prescribed by Subsection  
287 (1)(a), the preliminary notice becomes effective five days after the day on which the  
288 preliminary notice is filed.

289 (c) [~~Failure~~] Except as provided in Subsection (1)(e), failure to file a preliminary notice  
290 within the period required by Subsection (1)(a) precludes a person from maintaining any claim  
291 for compensation earned for performance of labor or service or supply of materials or  
292 equipment furnished to the construction project before the expiration of five days after the late  
293 filing of a preliminary notice, except as against the person with whom the person contracted.

294 (d) (i) (A) If a person who is required to file a preliminary notice under this chapter  
295 fails to file the preliminary notice, that person may not hold a valid lien under this chapter.

296 (B) A county recorder need not verify that a valid preliminary notice is filed when a  
297 person files a notice to hold and claim a lien under Section [~~38-1-17~~] 38-1-7.

298 (ii) The content of a preliminary notice shall include:

299 (A) the building permit number for the project, or the number assigned to the project  
300 by the designated agent;

301 (B) the name, address, and telephone number of the person furnishing the labor,  
302 service, equipment, or material;

303 (C) the name and address of the person who contracted with the claimant for the  
304 furnishing of the labor, service, equipment, or material;

305 (D) the name of the record or reputed owner of the project;

306 (E) the name of the original contractor under which the claimant is performing or will  
307 perform its work; and

308 (F) the address of the project or a description of the location of the project.

309 (iii) Upon request by person identified in Subsection (1)(a)(i), an original contractor  
310 shall provide the person with the building permit number for the project, or the number  
311 assigned to the project by the designated agent.

312 (e) If a person provides labor, service, equipment, or material before the filing of a  
313 notice of commencement and the notice of commencement is filed more than 15 days after the  
314 day on which the person providing labor service, equipment, or material begins work on the  
315 project, the person providing labor, service, equipment, or material need not file a preliminary  
316 notice to maintain the person's right to hold a lien under this chapter or any other right,  
317 including a right referenced under Subsection (1)(c).

318 (2) (a) (i) Unless a person indicates to the division or designated agent that the person  
319 does not wish to receive a notice under this section, electronic notification of the filing of a  
320 preliminary notice or alternate notice as prescribed in Subsection (1), shall be provided to:

321 (A) the person filing the preliminary notice;

322 (B) each person that filed a notice of commencement for the project; and

323 (C) all interested persons who have requested [~~such notice for~~] notices concerning the  
324 project.

325 (ii) A person to whom notice is required under Subsection (2)(a)(i) is responsible for:

326 (A) providing an e-mail address, mailing address, or telefax number to which a notice  
327 required by Subsection (2)(a) is to be sent; and

328 (B) the accuracy of any e-mail address, mailing address, or telefax number to which  
329 notice is to be sent.

330 (iii) The designated agent fulfills the notice requirement of Subsection (2)(a)(i) when it  
331 sends the notice to the e-mail address, mailing address, or telefax number provided to the  
332 designated agent whether or not the notice is actually received.

333 (b) The burden is upon the person filing the preliminary notice to prove that the person  
334 has substantially complied with the requirements of this section.

335 (c) Subject to Subsection (1)(d), a person required by this section to give preliminary

336 notice is only required to give one notice for each project.

337 (d) If the labor, service, equipment, or material is furnished pursuant to contracts under  
338 more than one original contract, the notice requirements must be met with respect to the labor,  
339 service, equipment, or material furnished under each original contract.

340 (3) (a) If a construction project owner, original contractor, subcontractor, or other  
341 interested person believes that a preliminary notice has been filed erroneously, that owner,  
342 original contractor, subcontractor, or other interested person can request from the person who  
343 filed the preliminary notice evidence establishing the validity of the preliminary notice.

344 (b) Within ten days after the request described in Subsection (3)(a), the person or entity  
345 that filed the preliminary notice shall provide the requesting person or entity proof that the  
346 preliminary notice is valid.

347 (c) If the person or entity that filed the preliminary notice does not provide proof of the  
348 validity of the preliminary notice, that person or entity shall immediately cancel the preliminary  
349 notice from the database in any manner prescribed by the division pursuant to rule.

350 (4) A person filing a preliminary notice by alternate filing is responsible for verifying  
351 and changing any incorrect information in the preliminary notice before the expiration of the  
352 time period during which the notice is required to be filed.

353 (5) Until June 1, 2008, nothing in this section affects a person's rights under Title 38,  
354 Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act.

355 Section 6. Section **38-1-33** is amended to read:

356 **38-1-33. Notice of completion.**

357 (1) (a) [(†)] Upon final completion of a construction project:

358 [(A)] (i) an owner of a construction project or an original contractor may file a notice  
359 of completion with the database; and

360 [(B)] (ii) a lender that has provided financing for the construction project, a surety that  
361 has provided bonding for the construction project, or a title company issuing a title insurance  
362 policy on the construction project, may file a notice of completion.

363 [(ii) Final completion, for purposes of this Subsection (1), shall mean:]

364 [(A) if as a result of work performed under the original contract a permanent certificate  
365 of occupancy is required for such work, the date of issuance of a permanent certificate of  
366 occupancy by the local government entity having jurisdiction over the construction project;]

367 ~~[(B) if no certificate of occupancy is required by the local government entity having~~  
368 ~~jurisdiction over the construction project, but as a result of the work performed under the~~  
369 ~~original contract an inspection is required for such work, the date of the final inspection for~~  
370 ~~such work by the local government entity having jurisdiction over the construction project; or]~~

371 ~~[(C) if with regard to the work performed under the original contract no certificate of~~  
372 ~~occupancy and no final inspection are required by the local government entity having~~  
373 ~~jurisdiction over the construction project, the date on which there remains no substantial work~~  
374 ~~to be completed to finish such work on the original contract.]~~

375 (b) Notwithstanding Section 38-1-2, [where] if a subcontractor performs substantial  
376 work after the applicable dates established by Subsections (1)(a)(i) and (ii), that subcontractor's  
377 subcontract [~~shall be~~] is considered an original contract for the sole purpose of determining:

378 (i) the subcontractor's time frame to file a notice to hold and claim a lien under  
379 Subsection 38-1-7(1); and

380 (ii) the original contractor's time frame to file a notice to hold and claim a lien under  
381 Subsection 38-1-7(1) for that subcontractor's work.

382 ~~[(c) For purposes of this section, the term "substantial work" does not include:]~~

383 ~~[(i) repair work; or]~~

384 ~~[(ii) warranty work.]~~

385 ~~[(d)]~~ (c) A notice of completion shall include:

386 (i) the building permit number for the project, or the number assigned to the project by  
387 the designated agent;

388 (ii) the name, address, and telephone number of the person filing the notice of  
389 completion;

390 (iii) the name of the original contractor for the project;

391 (iv) the address of the project or a description of the location of the project;

392 (v) the date on which final completion is alleged to have occurred; and

393 (vi) the method used to determine final completion.

394 ~~[(e)]~~ (d) ~~[Notwithstanding Subsection (1)(a)(ii)]~~ For purposes of this section, final  
395 completion of the original contract does not occur if work remains to be completed for which  
396 the owner is holding payment to ensure completion of the work.

397 ~~[(f)]~~ (e) (i) Unless a person indicates to the division or designated agent that the person

398 does not wish to receive a notice under this section, electronic notification of the filing of a  
399 notice of completion or alternate notice as prescribed in Subsection (1)(a), shall be provided to:

- 400 (A) each person that filed a notice of commencement for the project;  
401 (B) each person that filed preliminary notice for the project; and  
402 (C) all interested persons who have requested [~~notice for~~] notices concerning the  
403 project.

404 (ii) A person to whom notice is required under this Subsection (1)[~~(f)~~] (e) is  
405 responsible for:

406 (A) providing an e-mail address, mailing address, or telefax number to which a notice  
407 required by this Subsection (1)[~~(f)~~] (e) is to be sent; and

408 (B) the accuracy of any e-mail address, mailing address, or telefax number to which  
409 notice is to be sent.

410 (iii) The designated agent fulfills the notice requirement of Subsection (1)[~~(f)~~] (e)(i)  
411 when it sends the notice to the e-mail address, mailing address, or telefax number provided to  
412 the designated agent, whether or not the notice is actually received.

413 (iv) Upon the filing of a notice of completion, the time periods for filing preliminary  
414 notices stated in Section 38-1-27 are modified such that all preliminary notices shall be filed  
415 subsequent to the notice of completion and within ten days from the day on which the notice of  
416 completion is filed.

417 [~~(g)~~] (f) A subcontract that is considered an original contract for purposes of this  
418 section [~~shall~~] does not create a requirement for an additional preliminary notice if a  
419 preliminary notice has already been given for the labor, service, equipment, and material  
420 furnished to the subcontractor who performs substantial work.

421 (2) (a) If a construction project owner, original contractor, subcontractor, or other  
422 interested person believes that a notice of completion has been filed erroneously, that owner,  
423 original contractor, subcontractor, or other interested person can request from the person who  
424 filed the notice of completion evidence establishing the validity of the notice of completion.

425 (b) Within ten days after the request described in Subsection (2)(a), the person [~~that~~]  
426 who filed the notice of completion shall provide the requesting person proof that the notice of  
427 completion is valid.

428 (c) If the person that filed the notice of completion does not provide proof of the

429 validity of the notice of completion, that person shall immediately cancel the notice of  
430 completion from the database in any manner prescribed by the division pursuant to rule.

431 ~~[(3) Notwithstanding Subsection 38-1-7(1)(a)(i), a person claiming benefits under this~~  
432 ~~chapter shall file for record with the county recorder of the county in which the property, or~~  
433 ~~some part of the property is situated, a written notice to hold and claim a lien within:]~~

434 ~~[(a) 90 days after the day on which a notice of completion is filed under this section;~~  
435 ~~or]~~

436 ~~[(b) 180 days after the day on which occurs final completion, if no notice of~~  
437 ~~completion is filed under this section.]~~

438 ~~[(4)]~~ (3) A person filing a notice of completion by alternate filing is responsible for  
439 verifying and changing any incorrect information in the notice of completion before the  
440 expiration of the time period during which the notice is required to be filed.

441 Section 7. Section **38-11-204** is amended to read:

442 **38-11-204. Claims against the fund -- Requirement to make a claim --**

443 **Qualifications to receive compensation -- Qualifications to receive a certificate of**  
444 **compliance.**

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

446 (a) meet the requirements of either Subsection (4) or (7);

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

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

450 (i) that the person meets the requirements of either Subsection (4) or (7);

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

453 (iii) the basis for the claim.

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

456 (a) from the date the judgment required by Subsection (4)(d) is entered;

457 (b) from the date the nonpaying party filed bankruptcy, if the claimant is precluded  
458 from obtaining a judgment or from satisfying the requirements of Subsection (4)(d) because the  
459 nonpaying party filed bankruptcy within one year after the entry of judgment; or



460 (c) from the date the laborer, trying to recover from the fund, completed the laborer's  
461 qualified services.

462 (3) To obtain a certificate of compliance an owner or agent of the owner shall establish  
463 with the division that the owner meets the requirements of Subsections (4)(a) and (4)(b).

464 (4) To recover from the fund, regardless of whether the residence is occupied by the  
465 owner, a subsequent owner, or the owner or subsequent owner's tenant or lessee, a qualified  
466 beneficiary shall establish that:

467 (a) (i) the owner of the owner-occupied residence or the owner's agent entered into a  
468 written contract with an original contractor licensed or exempt from licensure under Title 58,  
469 Chapter 55, Utah Construction Trades Licensing Act:

470 (A) for the performance of qualified services;

471 (B) to obtain the performance of qualified services by others; or

472 (C) for the supervision of the performance by others of qualified services in  
473 construction on that residence;

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

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

480 (b) the owner has paid in full the original contractor, licensed or exempt from licensure  
481 under Title 58, Chapter 55, Utah Construction Trades Licensing Act, real estate developer, or  
482 factory built housing retailer under Subsection (4)(a) with whom the owner has a written  
483 contract in accordance with the written contract and any amendments to the contract;

484 (c) (i) the original contractor, licensed or exempt from licensure under Title 58,  
485 Chapter 55, Utah Construction Trades Licensing Act, the real estate developer, or the factory  
486 built housing retailer subsequently failed to pay a qualified beneficiary who is entitled to  
487 payment under an agreement with that original contractor or real estate developer licensed or  
488 exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, for  
489 services performed or materials supplied by the qualified beneficiary;

490 (ii) a subcontractor who contracts with the original contractor, licensed or exempt from

491 licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, the real estate  
492 developer, or the factory built housing retailer failed to pay a qualified beneficiary who is  
493 entitled to payment under an agreement with that subcontractor or supplier; or

494 (iii) a subcontractor who contracts with a subcontractor or supplier failed to pay a  
495 qualified beneficiary who is entitled to payment under an agreement with that subcontractor or  
496 supplier;

497 (d) (i) unless precluded from doing so by the nonpaying party's bankruptcy filing  
498 within the applicable time, the qualified beneficiary filed an action against the nonpaying party  
499 to recover monies owed to the qualified beneficiary within the earlier of:

500 (A) 180 days from the date the qualified beneficiary filed a notice of claim under  
501 Section 38-1-7; or

502 (B) 270 days from the completion of the original contract pursuant to Subsection  
503 38-1-7(1);

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

507 (iii) (A) the qualified beneficiary has:

508 (I) obtained from a court of competent jurisdiction the issuance of an order requiring  
509 the judgment debtor, or if a corporation any officer of the corporation, to appear before the  
510 court at a specified time and place to answer concerning the debtor's or corporation's property;

511 (II) received return of service of the order from a person qualified to serve documents  
512 under the Utah Rules of Civil Procedure, Rule 4(b); and

513 (III) made reasonable efforts to obtain asset information from the supplemental  
514 proceedings; and

515 (B) if assets subject to execution are discovered as a result of the order required under  
516 Subsection (4)(d)(iii)(A) or for any other reason, to obtain the issuance of a writ of execution  
517 from a court of competent jurisdiction; or

518 (iv) the qualified beneficiary timely filed a proof of claim where permitted in the  
519 bankruptcy action, if the nonpaying party has filed bankruptcy;

520 (e) the qualified beneficiary is not entitled to reimbursement from any other person;

521 and

522 (f) the qualified beneficiary provided qualified services to a contractor, licensed or  
523 exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act.

524 (5) The requirements of Subsections (4)(d)~~[(i);~~ (ii)~~;~~ and (iii) need not be met if the  
525 qualified beneficiary ~~[has been precluded from obtaining a judgment against the nonpaying~~  
526 ~~party or from satisfying the requirements of Subsections (4)(d)(i), (ii), and (iii)]~~ is prevented  
527 from compliance because the nonpaying party ~~[filed]~~ files bankruptcy.

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

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

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

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

534 (8) The requirements of Subsections (4)(a) and (4)(b) may be satisfied if an owner or  
535 agent of the owner establishes to the satisfaction of the director that the owner of the  
536 owner-occupied residence or the owner's agent entered into a written contract with an original  
537 contractor who:

538 (a) was a business entity that was not licensed under Title 58, Chapter 55, Utah  
539 Construction Trades Licensing Act, but was solely or partly owned by an individual who was  
540 licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act; or

541 (b) was a natural person who was not licensed under Title 58, Chapter 55, Utah  
542 Construction Trades Licensing Act, but who was the sole or partial owner and qualifier of a  
543 business entity that was licensed under Title 58, Chapter 55, Utah Construction Trades  
544 Licensing Act.

545 (9) The director shall have equitable power to determine if the requirements of  
546 Subsections (4)(a) and (4)(b) have been met, but any decision by the director under this chapter  
547 shall not alter or have any effect on any other decision by the division under Title 58,  
548 Occupations and Professions.

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**H.B. 277 3rd Sub. (Cherry) - Construction Amendments**

**Fiscal Note**

2007 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

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