

1                                   **MECHANICS LIENS ON CERTAIN NEW**  
2                                   **DEVELOPMENT HOUSING**

3                                   2007 GENERAL SESSION

4                                   STATE OF UTAH

5                                   **Chief Sponsor: Patrick Painter**

6                                   Senate Sponsor: Gregory S. Bell

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8 **LONG TITLE**

9 **General Description:**

10                   This bill changes the definition of "real estate developer" for purposes of Title 38,  
11 Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act.

12 **Highlighted Provisions:**

13                   This bill:

- 14                   ▶ defines "real estate developer" to include a licensed contractor as a real estate  
15 developer under certain circumstances; and  
16                   ▶ makes technical changes.

17 **Monies Appropriated in this Bill:**

18                   None

19 **Other Special Clauses:**

20                   None

21 **Utah Code Sections Affected:**

22 **AMENDS:**

23                   **38-11-102**, as last amended by Chapters 42 and 85, Laws of Utah 2004

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

26                   Section 1. Section **38-11-102** is amended to read:

27                   **38-11-102. Definitions.**

28                   (1) "Board" means the Residence Lien Recovery Fund Advisory Board established  
29 under Section 38-11-104.

30 (2) "Certificate of compliance" means an order issued by the director to the owner  
31 finding that the owner is in compliance with the requirements of Subsections 38-11-204(4)(a)  
32 and (4)(b) and is entitled to protection under Section 38-11-107.

33 (3) "Construction on an owner-occupied residence" means designing, engineering,  
34 constructing, altering, remodeling, improving, repairing, or maintaining a new or existing  
35 residence.

36 (4) "Department" means the Department of Commerce.

37 (5) "Director" means the director of the Division of Occupational and Professional  
38 Licensing.

39 (6) "Division" means the Division of Occupational and Professional Licensing.

40 (7) "Duplex" means a single building having two separate living units.

41 (8) "Encumbered fund balance" means the aggregate amount of outstanding claims  
42 against the fund. The remainder of monies in the fund are unencumbered funds.

43 (9) "Executive director" means the executive director of the Department of Commerce.

44 (10) "Factory built housing" is as defined in Section 58-56-3.

45 (11) "Factory built housing retailer" means a person that sells factory built housing to  
46 consumers.

47 (12) "Fund" means the Residence Lien Recovery Fund established under Section  
48 38-11-201.

49 (13) "Laborer" means a person who provides services at the site of the construction on  
50 an owner-occupied residence as an employee of an original contractor or other qualified  
51 beneficiary performing qualified services on the residence.

52 (14) "Licensee" means any holder of a license issued under Title 58, Chapters 3a, 22,  
53 53, and 55.

54 (15) "Nonpaying party" means the original contractor, subcontractor, or real estate  
55 developer who has failed to pay the qualified beneficiary making a claim against the fund.

56 (16) "Original contractor" means a person who contracts with the owner of real  
57 property or the owner's agent to provide services, labor, or material for the construction of an

58 owner-occupied residence.

59 (17) "Owner" means a person who:

60 (a) contracts with a person who is licensed as a contractor or is exempt from licensure  
61 under Title 58, Chapter 55, Utah Construction Trades Licensing Act, for the construction on an  
62 owner-occupied residence upon real property owned by that person;

63 (b) contracts with a real estate developer to buy a residence upon completion of the  
64 construction on the owner-occupied residence; or

65 (c) buys a residence from a real estate developer after completion of the construction  
66 on the owner-occupied residence.

67 (18) "Owner-occupied residence" means a residence that is, or after completion of the  
68 construction on the residence will be, occupied by the owner or the owner's tenant or lessee as a  
69 primary or secondary residence within 180 days from the date of the completion of the  
70 construction on the residence.

71 (19) "Qualified beneficiary" means a person who:

72 (a) provides qualified services;

73 (b) pays necessary fees or assessments required under this chapter; and

74 (c) registers with the division:

75 (i) as a licensed contractor under Subsection 38-11-301(1) or (2), if that person seeks  
76 recovery from the fund as a licensed contractor; or

77 (ii) as a person providing qualified services other than as a licensed contractor under  
78 Subsection 38-11-301(3) if the person seeks recovery from the fund in a capacity other than as  
79 a licensed contractor.

80 (20) (a) "Qualified services" means the following performed in construction on an  
81 owner-occupied residence:

82 (i) contractor services provided by a contractor licensed or exempt from licensure  
83 under Title 58, Chapter 55, Utah Construction Trades Licensing Act;

84 (ii) architectural services provided by an architect licensed under Title 58, Chapter 3a,  
85 Architects Licensing Act;

86 (iii) engineering and land surveying services provided by a professional engineer or  
87 land surveyor licensed or exempt from licensure under Title 58, Chapter 22, Professional  
88 Engineers and Professional Land Surveyors Licensing Act;

89 (iv) landscape architectural services by a landscape architect licensed or exempt from  
90 licensure under Title 58, Chapter 53, Landscape Architects Licensing Act;

91 (v) design and specification services of mechanical or other systems;

92 (vi) other services related to the design, drawing, surveying, specification, cost  
93 estimation, or other like professional services;

94 (vii) providing materials, supplies, components, or similar products;

95 (viii) renting equipment or materials;

96 (ix) labor at the site of the construction on the owner-occupied residence; and

97 (x) site preparation, set up, and installation of factory built housing.

98 (b) "Qualified services" do not include the construction of factory built housing in the  
99 factory.

100 (21) "Real estate developer" means a person having an ownership interest in real  
101 property who:

102 (a) contracts with a person who is licensed as a contractor or is exempt from licensure  
103 under Title 58, Chapter 55, Utah Construction Trades Licensing Act, for the construction of a  
104 residence that is offered for sale to the public[-]; or

105 (b) is a licensed contractor under Title 58, Chapter 55, Utah Construction Trades  
106 Licensing Act, who engages in the construction of a residence that is offered for sale to the  
107 public.

108 (22) (a) "Residence" means an improvement to real property used or occupied, to be  
109 used or occupied as, or in conjunction with:

110 (i) a primary or secondary detached single-family dwelling; or

111 (ii) a multifamily dwelling up to and including duplexes.

112 (b) "Residence" includes factory built housing.

113 (23) "Subsequent owner" means a person who purchases a residence from an owner

114 within 180 days from the date the construction on the residence is completed.