

- 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

34

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 days after the [date of] day on which occurs final completion of the 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 (b) Notwithstanding Section 38-1-2, where a subcontractor performs substantial work
61 after the applicable dates established by Subsections (1)(a)(ii)(A) and (B), that subcontractor's
62 subcontract shall be considered an original contract for the sole purpose of determining:

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

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

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

68 (i) repair work; or

69 (ii) warranty work.

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

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

74 (i) the name of the reputed owner if known or, if not known, the name of the record
75 owner;

76 (ii) the name of the person:

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

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

79 (iii) the time when:

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

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

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

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

84 (vi) the amount of the lien claim;

85 (vii) the signature of the lien claimant or the lien claimant's authorized agent;

86 (viii) an acknowledgment or certificate as required under Title 57, Chapter 3,
87 Recording of Documents; and

88 (ix) if the lien is on an owner-occupied residence, as defined in Section 38-11-102, a
89 statement describing what steps an owner, as defined in Section 38-11-102, may take to require
90 a lien claimant to remove the lien in accordance with Section 38-11-107.

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

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

95 (i) the reputed owner of the real property; or

96 (ii) the record owner of the real property.

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

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

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

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

107 **38-1-11. Enforcement -- Time for -- Lis pendens -- Action for debt not affected --**

108 **Instructions and form affidavit and motion.**

109 (1) As used in this section:

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

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

112 [(+)] (2) A lien claimant shall file an action to enforce the lien filed under this chapter
113 within 180 days from the day on which the lien claimant filed a notice of claim under Section

114 38-1-7.

115 ~~[(2)]~~ (3) (a) Within the time period provided for filing in Subsection ~~[(1)]~~ (2) the lien
116 claimant shall file for record with the county recorder of each county in which the lien is
117 recorded a notice of the pendency of the action, in the manner provided in actions affecting the
118 title or right to possession of real property, or the lien shall be void, except as to persons who
119 have been made parties to the action and persons having actual knowledge of the
120 commencement of the action.

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

123 ~~[(3)]~~ (4) (a) A lien filed under this chapter is automatically and immediately void if an
124 action to enforce the lien is not filed within the time required by this section ~~[38-1-11]~~.

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

127 ~~[(4)]~~ (5) This section may not be interpreted to impair or affect the right of any person
128 to whom a debt may be due for any work done or materials furnished to maintain a personal
129 action to recover the ~~[same]~~ debt.

130 ~~[(5)]~~ (6) (a) If a lien claimant files an action to enforce a lien filed under this chapter
131 involving a residence~~[, as defined in Section 38-11-102]~~, the lien claimant shall include with
132 the service of the complaint on the owner of the residence:

133 (i) instructions to the owner of the residence relating to the owner's rights under Title
134 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act; and

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

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

141 (c) If a lien claimant fails to provide to the owner of the residence the instructions and

142 form [~~affidavit~~] required by Subsection [~~(5)~~] (6)(a), the lien claimant shall be barred from
 143 maintaining or enforcing the lien upon the residence.

144 (d) Judicial determination of the rights and liabilities of the owner of the residence
 145 under this chapter and Title 38, [~~Chapters 1 and 11~~] Chapter 11, Residence Lien Restriction
 146 and Lien Recovery Fund Act, and Title 14, Chapter 2, Private Contracts, shall be stayed until
 147 after the owner [~~has been~~] is given a reasonable period of time to establish compliance with
 148 Subsections 38-11-204(4)(a) and (4)(b) through an informal proceeding, as set forth in Title 63,
 149 Chapter 46b, Administrative Procedures Act, commenced within 30 days of the owner being
 150 served summons in the foreclosure action, at the Division of Occupational and Professional
 151 Licensing and obtain a certificate of compliance or denial of certificate of compliance, as
 152 defined in Section 38-11-102.

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

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

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

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

160 [~~(6)~~] (7) The written notice requirement applies to liens filed on or after July 1, 2004.
 161 Section 3. Section **38-1-25** is amended to read:

162 **38-1-25. Abuse of lien right -- Penalty.**

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

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

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

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

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

173 (a) twice the amount by which the ~~wrongful~~ abusive lien exceeds the amount actually
174 due; or

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

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

177 **38-1-31. Building permit -- Construction -- Notice registry -- Notice of**
178 **commencement of work.**

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

181 (I) the local government entity issuing that building permit shall input the building
182 permit application and transmit the building permit information to the database electronically
183 by way of the Internet or computer modem or by any other means ~~[and such]; and~~

184 (II) the original contractor or owner-builder may file a notice of commencement based
185 on the building permit issued by the local government entity.

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

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

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

195 (b) ~~[For a construction project where a building permit is not issued, within]~~ Within 15
196 days after commencement of physical construction work at the project site, the original
197 contractor or owner-builder may file a notice of commencement with the database whether or

198 not a building permit is issued or a notice of commencement is filed under Subsection (1)(a).

199 (c) An owner of construction or an original contractor may file a notice of
200 commencement with the designated agent within the time prescribed by Subsections (1)(a) and
201 (b).

202 (d) (i) If duplicate notices of commencement are filed, they shall be combined into one
203 notice for each project and any notices filed relate back to the date of the earliest-filed notice of
204 commencement for the project.

205 (ii) A duplicate notice of commencement that is untimely filed relates back under
206 Subsection (1)(d)(i) if the earlier filed notice of commencement is timely filed.

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

209 (e) The designated agent shall assign each construction project a unique project number
210 that:

211 (i) identifies each construction project; and

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

214 (f) A notice of commencement is effective only as to any labor, service, equipment,
215 and material furnished to the construction project that is furnished subsequent to the filing of
216 the notice of commencement.

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

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

219 (ii) the name and address of the:

220 (A) original contractor; and

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

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

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

226 (b) A notice of commencement may include:

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

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

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

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

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

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

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

239 (b) Section 38-1-33.

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

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

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

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

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

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

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

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

257 (b) A substantial inaccuracy in a notice of commencement renders the notice of
258 commencement unenforceable.

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

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

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

265 **38-1-32. Preliminary notice by subcontractor.**

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

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

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

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

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

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

281 (b) If a person files a preliminary notice after the period prescribed by Subsection

282 (1)(a), the preliminary notice becomes effective five days after the day on which the
283 preliminary notice is filed.

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

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

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

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

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

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

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

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

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

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

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

307 (e) If a person provides labor, service, equipment, or material before the filing of a
308 notice of commencement and the notice of commencement is filed more than 15 days after the
309 day on which the person providing labor, service, equipment, or material begins work on the

310 project, the person providing labor, service, equipment, or material need not file a preliminary
311 notice to maintain the person's right to hold a lien under this chapter or any other right,
312 including a right referenced under Subsection (1)(c).

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

316 (A) the person filing the preliminary notice;

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

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

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

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

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

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

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

330 (c) Subject to Subsection (1)(d), a person required by this section to give preliminary
331 notice is only required to give one notice for each project.

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

335 (3) (a) If a construction project owner, original contractor, subcontractor, or other
336 interested person believes that a preliminary notice has been filed erroneously, that owner,
337 original contractor, subcontractor, or other interested person can request from the person who

338 filed the preliminary notice evidence establishing the validity of the preliminary notice.

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

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

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

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

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

351 **38-1-33. Notice of completion.**

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

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

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

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

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

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

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

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

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

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

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

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

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

380 ~~[(f)]~~ (c) A notice of completion shall include:

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

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

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

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

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

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

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

392 ~~[(f)]~~ (e) (i) Unless a person indicates to the division or designated agent that the person
393 does not wish to receive a notice under this section, electronic notification of the filing of a

394 notice of completion or alternate notice as prescribed in Subsection (1)(a), shall be provided to:

395 (A) each person that filed a notice of commencement for the project;

396 (B) each person that filed preliminary notice for the project; and

397 (C) all interested persons who have requested [~~notice for~~] notices concerning the
398 project.

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

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

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

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

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

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

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

420 (b) Within ten days after the request described in Subsection (2)(a), the person [~~that~~]
421 who filed the notice of completion shall provide the requesting person proof that the notice of

422 completion is valid.

423 (c) If the person that filed the notice of completion does not provide proof of the
424 validity of the notice of completion, that person shall immediately cancel the notice of
425 completion from the database in any manner prescribed by the division pursuant to rule.

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

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

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

433 [~~(4)~~] (3) A person filing a notice of completion by alternate filing is responsible for
434 verifying and changing any incorrect information in the notice of completion before the
435 expiration of the time period during which the notice is required to be filed.

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

437 **38-11-204. Claims against the fund -- Requirement to make a claim --**
438 **Qualifications to receive compensation -- Qualifications to receive a certificate of**
439 **compliance.**

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

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

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

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

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

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

448 (iii) the basis for the claim.

449 (2) To recover from the fund, the application required by Subsection (1) shall be filed

450 no later than one year:

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

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

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

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

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

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

465 (A) for the performance of qualified services;

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

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

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

471 or

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

475 (b) the owner has paid in full the original contractor, licensed or exempt from licensure
476 under Title 58, Chapter 55, Utah Construction Trades Licensing Act, real estate developer, or
477 factory built housing retailer under Subsection (4)(a) with whom the owner has a written

478 contract in accordance with the written contract and any amendments to the contract;

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

485 (ii) a subcontractor who contracts with the original contractor, licensed or exempt from
486 licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, the real estate
487 developer, or the factory built housing retailer failed to pay a qualified beneficiary who is
488 entitled to payment under an agreement with that subcontractor or supplier; or

489 (iii) a subcontractor who contracts with a subcontractor or supplier failed to pay a
490 qualified beneficiary who is entitled to payment under an agreement with that subcontractor or
491 supplier;

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

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

497 (B) 270 days from the completion of the original contract pursuant to Subsection
498 38-1-7(1);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

533 (a) was a business entity that was not licensed under Title 58, Chapter 55, Utah

534 Construction Trades Licensing Act, but was solely or partly owned by an individual who was
535 licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act; or

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

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