

**MECHANICS LIENS ON CERTAIN NEW
DEVELOPMENT HOUSING**

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Patrick Painter

Senate Sponsor: Gregory S. Bell

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

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

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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

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.

Legislative Review Note
as of 1-10-07 2:05 PM

Office of Legislative Research and General Counsel

H.B. 259 - Mechanics Liens on Certain New Development Housing

Fiscal Note

2007 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

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.

1/17/2007, 5:51:52 PM, Lead Analyst: Eckersley, S.

Office of the Legislative Fiscal Analyst