

**CONSTRUCTION AMENDMENTS**

2007 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Michael T. Morley**

Senate Sponsor: \_\_\_\_\_

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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 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:**

AMENDS:

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

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

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



28 **38-1-33**, as last amended by Chapter 297, Laws of Utah 2006



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

31 Section 1. Section **38-1-7** is amended to read:

32 **38-1-7. Notice of claim -- Contents -- Recording -- Service on owner of property.**

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

36 (A) 180 days after the [date of] day on which occurs final completion of the original  
37 contract [under which the claimant claims a lien under this chapter.]; or

38 (B) 90 days after the day on which a notice of completion is filed under Section  
39 38-1-33.

40 (ii) For purposes of this Subsection (1), final completion of the original contract  
41 means:

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

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

50 (C) if with regard to work performed under the original contract no certificate of  
51 occupancy and no final inspection are required as per state-adopted building codes by the local  
52 government entity having jurisdiction over the construction project, the date on which there  
53 remains no substantial work to be completed to finish the work on the original contract.

54 (iii) For purposes of this determining final completion, the term "substantial work"  
55 does not include:

56 (A) repair work; or

57 (B) warranty work.

58 (b) Notwithstanding Section 38-1-2, where a subcontractor performs substantial work

59 after the applicable dates established by Subsections (1)(a)(ii)(A) and (B), that subcontractor's  
60 subcontract shall be considered an original contract for the sole purpose of determining:

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

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

65 (c) For purposes of this section, the term "substantial work" does not include:

66 (i) repair work; or

67 (ii) warranty work.

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

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

72 (i) the name of the reputed owner if known or, if not known, the name of the record  
73 owner;

74 (ii) the name of the person:

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

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

77 (iii) the time when:

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

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

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

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

82 (vi) the amount of the lien claim;

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

84 (viii) an acknowledgment or certificate as required under Title 57, Chapter 3,

85 Recording of Documents; and

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

89 (b) Substantial compliance with the requirements of this chapter is sufficient to hold

90 and claim a lien.

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

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

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

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

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

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

104 Section 2. Section **38-1-31** is amended to read:

105 **38-1-31. Building permit -- Construction -- Notice registry -- Notice of**  
106 **commencement of work.**

107 (1) (a) (i) (A) For a construction project where a building permit is issued to an original  
108 contractor or owner-builder, within 15 days after the issuance of the building permit, the local  
109 government entity issuing that building permit shall input the building permit application and  
110 transmit the building permit information to the database electronically by way of the Internet or  
111 computer modem or by any other means [~~and such~~].

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

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

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

121 (b) For a construction project where a building permit is not issued, within 15 days  
122 after commencement of physical construction work at the project site, the original contractor or  
123 owner-builder may file a notice of commencement with the database.

124 (c) If a building permit is issued more than 15 days after commencement of physical  
125 construction work at the project site, a notice of commencement based on that building permit  
126 is effective only as to a person who did not provide labor, service, equipment, or material  
127 before the filing of the notice of commencement.

128 ~~(c)~~ (d) An owner of construction or an original contractor may file a notice of  
129 commencement with the designated agent within the time prescribed by Subsections (1)(a) and  
130 (b).

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

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

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

138 ~~(e)~~ (f) The designated agent shall assign each construction project a unique project  
139 number that:

140 (i) identifies each construction project; and

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

143 ~~(f)~~ (g) A notice of commencement is effective only as to any labor, service,  
144 equipment, and material furnished to the construction project that is furnished subsequent to  
145 the filing of the notice of commencement.

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

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

148 (ii) the name and address of the:

149 (A) original contractor; and

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

152 (iii) (A) the project address if the project can be reasonably identified by an address; or  
153 (B) the name and general description of the location of the project if the project cannot  
154 be reasonably identified by an address.

155 (b) A notice of commencement may include:

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

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

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

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

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

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

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

168 (b) Section 38-1-33.

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

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

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

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

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

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

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

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

186 (b) A substantial inaccuracy in a notice of commencement renders the notice of  
187 commencement unenforceable.

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

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

193 Section 3. Section **38-1-32** is amended to read:

194 **38-1-32. Preliminary notice by subcontractor.**

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

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

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

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

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

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

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

213 (c) [~~Failure~~] Except as provided in Subsection (1)(e), failure to file a preliminary notice

214 within the period required by Subsection (1)(a) precludes a person from maintaining any claim  
215 for compensation earned for performance of labor or service or supply of materials or  
216 equipment furnished to the construction project before the expiration of five days after the late  
217 filing of a preliminary notice, except as against the person with whom the person contracted.

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

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

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

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

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

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

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

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

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

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

236 (e) If a person provides labor, service, equipment, or material before the filing of a  
237 notice of commencement and the notice of commencement is filed more than 15 days after the  
238 day on which the person providing labor service, equipment, or material begins work on the  
239 project, the person providing labor, service, equipment, or material need not file a preliminary  
240 notice to maintain the person's right to hold a lien under this chapter.

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

244 (A) the person filing the preliminary notice;



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

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

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

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

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

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

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

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

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

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

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

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

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

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

278 Section 4. Section **38-1-33** is amended to read:

279 **38-1-33. Notice of completion.**

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

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

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

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

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

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

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

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

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

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

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

306 [(i) repair work; or]

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

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

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

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

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

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

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

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

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

320 ~~[(f)]~~ (e) (i) Unless a person indicates to the division or designated agent that the person  
321 does not wish to receive a notice under this section, electronic notification of the filing of a  
322 notice of completion or alternate notice as prescribed in Subsection (1)(a), shall be provided to:

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

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

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

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

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

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

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

336 (iv) Upon the filing of a notice of completion, the time periods for filing preliminary  
337 notices stated in Section 38-1-27 are modified such that all preliminary notices shall be filed

338 subsequent to the notice of completion and within ten days from the day on which the notice of  
339 completion is filed.

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

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

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

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

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

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

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

361 ~~[(4)]~~ (3) A person filing a notice of completion by alternate filing is responsible for  
362 verifying and changing any incorrect information in the notice of completion before the  
363 expiration of the time period during which the notice is required to be filed.

**Legislative Review Note**  
**as of 1-16-07 2:51 PM**

**Office of Legislative Research and General Counsel**

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**H.B. 277 - 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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*1/20/2007, 1:24:29 PM, Lead Analyst: Eckersley, S.*

**Office of the Legislative Fiscal Analyst**