

**MECHANICS LIEN AMENDMENTS**

2007 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Gage Froerer**

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

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**LONG TITLE****General Description:**

This bill makes changes to mechanics' lien provisions.

**Highlighted Provisions:**

This bill:

- addresses the time for filing a notice of a lien;
- 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; 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**38-1-11**, as last amended by Chapter 297, Laws of Utah 2006**38-1-25**, as last amended by Chapter 257, Laws of Utah 2001**38-1-33**, as last amended by Chapter 297, Laws of Utah 2006

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) repair work; or

(ii) warranty work.

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

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

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

(ii) the name of the person:

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

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

(iii) the time when:

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

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

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

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

(vi) the amount of the lien claim;

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

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

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

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

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

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

(ii) the record owner of the real property.

(b) If the record owner's current address is not readily available to the lien claimant, the

copy of the claim may be mailed to the last-known address of the record owner, using the names and addresses appearing on the last completed real property assessment rolls of the county where the affected property is located.

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

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

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

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

(1) As used in this section:

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

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

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

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

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

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

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

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

121 action to recover the ~~[same]~~ debt.

122 ~~[(5)]~~ (6) (a) If a lien claimant files an action to enforce a lien filed under this chapter  
123 involving a residence, ~~[as defined in Section 38-11-102,]~~ the lien claimant shall include with  
124 the service of the complaint on the owner of the residence:

125 (i) instructions to the owner of the residence relating to the owner's rights under Title  
126 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act; and

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

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

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

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

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

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

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

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

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

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

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

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

(a) with the intent to cloud the title;

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

(c) to procure any unjustified advantage or benefit.

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

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

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

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

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

(1) (a) (i) Upon final completion of a construction project:

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

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

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

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

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

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

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

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

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

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

(i) repair work; or

(ii) warranty work.

(d) A notice of completion shall include:

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

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

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

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

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

(vi) the method used to determine final completion.

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

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

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

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

(C) all interested persons who have requested notice for the project.

(ii) A person to whom notice is required under this Subsection (1)(f) is responsible for:

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

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

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

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

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

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

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

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

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



245           ~~[(a) 90 days after the day on which a notice of completion is filed under this section;~~  
246 ~~or]~~  
247           ~~[(b) 180 days after the day on which occurs final completion , if no notice of~~  
248 ~~completion is filed under this section.]~~  
249           [(4)] (3) A person filing a notice of completion by alternate filing is responsible for  
250 verifying and changing any incorrect information in the notice of completion before the  
251 expiration of the time period during which the notice is required to be filed.

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Legislative Review Note  
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Office of Legislative Research and General Counsel