

Representative Michael T. Morley proposes the following substitute bill:

CONSTRUCTION AMENDMENTS

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael T. Morley

Senate Sponsor: _____

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 information and forms required to be provided to the owner of a residence that is the subject of an action to enforce a lien;
- ▶ 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:

H.B. 277



26 AMENDS:

27 38-1-7, as last amended by Chapters 205 and 297, Laws of Utah 2006

28 38-1-11, as last amended by Chapter 297, Laws of Utah 2006

29 38-1-25, as last amended by Chapter 257, Laws of Utah 2001

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



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

62 (A) repair work; or

63 (B) warranty work.

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

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

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

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

72 (i) repair work; or

73 (ii) warranty work.

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

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

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

80 (ii) the name of the person:

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

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

83 (iii) the time when:

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

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

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

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

88 (vi) the amount of the lien claim;
 89 (vii) the signature of the lien claimant or the lien claimant's authorized agent;
 90 (viii) an acknowledgment or certificate as required under Title 57, Chapter 3,
 91 Recording of Documents; and
 92 (ix) if the lien is on an owner-occupied residence, as defined in Section 38-11-102, a
 93 statement describing what steps an owner, as defined in Section 38-11-102, may take to require
 94 a lien claimant to remove the lien in accordance with Section 38-11-107.

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

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

- 99 (i) the reputed owner of the real property; or
- 100 (ii) the record owner of the real property.

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

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

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

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

111 **38-1-11. Enforcement -- Time for -- Lis pendens -- Action for debt not affected --**
 112 **Instructions and form affidavit and motion.**

113 (1) As used in this section:

- 114 (a) "Owner" is as defined in Section 38-11-102.
- 115 (b) "Residence" is as defined in Section 38-11-102.

116 ~~(2)~~ (2) A lien claimant shall file an action to enforce the lien filed under this chapter
 117 within 180 days from the day on which the lien claimant filed a notice of claim under Section
 118 38-1-7.

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

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

127 ~~[(3)]~~ (4) (a) A lien filed under this chapter is automatically and immediately void if an
128 action to enforce the lien is not filed within the time required by this section ~~[38-1-11]~~.

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

131 ~~[(4)]~~ (5) This section may not be interpreted to impair or affect the right of any person
132 to whom a debt may be due for any work done or materials furnished to maintain a personal
133 action to recover the ~~[same]~~ debt.

134 ~~[(5)]~~ (6) (a) If a lien claimant files an action to enforce a lien filed under this chapter
135 involving a residence~~[, as defined in Section 38-11-102]~~, the lien claimant shall include with
136 the service of the complaint on the owner of the residence:

137 (i) instructions to the owner of the residence relating to the owner's rights under Title
138 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act; and

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

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

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

148 (d) Judicial determination of the rights and liabilities of the owner of the residence
149 under this chapter and Title 38, ~~[Chapters 1 and 11]~~ Chapter 11, Residence Lien Restriction

150 and Lien Recovery Fund Act, and Title 14, Chapter 2, Private Contracts, shall be stayed until
151 after the owner [~~has been~~] is given a reasonable period of time to establish compliance with
152 Subsections 38-11-204(4)(a) and (4)(b) through an informal proceeding, as set forth in Title 63,
153 Chapter 46b, Administrative Procedures Act, commenced within 30 days of the owner being
154 served summons in the foreclosure action, at the Division of Occupational and Professional
155 Licensing and obtain a certificate of compliance or denial of certificate of compliance, as
156 defined in Section 38-11-102.

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

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

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

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

164 [~~(6)~~] (7) The written notice requirement applies to liens filed on or after July 1, 2004.

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

166 **38-1-25. Abuse of lien right -- Penalty.**

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

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

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

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

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

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

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

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

181 **38-1-31. Building permit -- Construction -- Notice registry -- Notice of**
182 **commencement of work.**

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

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

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

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

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

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

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

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

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

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

214 [~~(e)~~] (f) The designated agent shall assign each construction project a unique project
215 number that:

216 (i) identifies each construction project; and

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

219 [~~(f)~~] (g) A notice of commencement is effective only as to any labor, service,
220 equipment, and material furnished to the construction project that is furnished subsequent to
221 the filing of the notice of commencement.

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

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

224 (ii) the name and address of the:

225 (A) original contractor; and

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

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

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

231 (b) A notice of commencement may include:

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

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

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

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

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

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

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

244 (b) Section 38-1-33.

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

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

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

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

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

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

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

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

262 (b) A substantial inaccuracy in a notice of commencement renders the notice of
263 commencement unenforceable.

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

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

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

270 **38-1-32. Preliminary notice by subcontractor.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

320 (A) the person filing the preliminary notice;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

355 **38-1-33. Notice of completion.**

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

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

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

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

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

366 [(B) if no certificate of occupancy is required by the local government entity having

367 jurisdiction over the construction project, but as a result of the work performed under the
 368 original contract an inspection is required for such work, the date of the final inspection for
 369 such work by the local government entity having jurisdiction over the construction project; or]
 370 [~~(C)~~ if with regard to the work performed under the original contract no certificate of
 371 occupancy and no final inspection are required by the local government entity having
 372 jurisdiction over the construction project, the date on which there remains no substantial work
 373 to be completed to finish such work on the original contract.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

427 (c) If the person that filed the notice of completion does not provide proof of the
428 validity of the notice of completion, that person shall immediately cancel the notice of

429 completion from the database in any manner prescribed by the division pursuant to rule.

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

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

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

437 ~~[(4)]~~ (3) A person filing a notice of completion by alternate filing is responsible for
438 verifying and changing any incorrect information in the notice of completion before the
439 expiration of the time period during which the notice is required to be filed.

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

441 **38-11-204. Claims against the fund -- Requirement to make a claim --**

442 **Qualifications to receive compensation -- Qualifications to receive a certificate of**
443 **compliance.**

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

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

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

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

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

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

452 (iii) the basis for the claim.

453 (2) To recover from the fund, the application required by Subsection (1) shall be filed
454 no later than one year:

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

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

459 (c) from the date the laborer, trying to recover from the fund, completed the laborer's

460 qualified services.

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

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

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

469 (A) for the performance of qualified services;

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

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

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

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

479 (b) the owner has paid in full the original contractor, licensed or exempt from licensure
480 under Title 58, Chapter 55, Utah Construction Trades Licensing Act, real estate developer, or
481 factory built housing retailer under Subsection (4)(a) with whom the owner has a written
482 contract in accordance with the written contract and any amendments to the contract;

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

489 (ii) a subcontractor who contracts with the original contractor, licensed or exempt from
490 licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, the real estate

491 developer, or the factory built housing retailer failed to pay a qualified beneficiary who is
492 entitled to payment under an agreement with that subcontractor or supplier; or

493 (iii) a subcontractor who contracts with a subcontractor or supplier failed to pay a
494 qualified beneficiary who is entitled to payment under an agreement with that subcontractor or
495 supplier;

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

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

501 (B) 270 days from the completion of the original contract pursuant to Subsection
502 38-1-7(1);

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

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

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

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

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

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

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

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

521 (f) the qualified beneficiary provided qualified services to a contractor, licensed or

522 exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act.

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

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

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

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

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

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

537 (a) was a business entity that was not licensed under Title 58, Chapter 55, Utah
538 Construction Trades Licensing Act, but was solely or partly owned by an individual who was
539 licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act; or

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

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