

Representative Kevin S. Garn proposes the following substitute bill:

LIEN AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: Kevin S. Garn

LONG TITLE

General Description:

This bill modifies provisions of the Residence Lien Restriction and Lien Recovery Fund Act.

Highlighted Provisions:

This bill:

- ▶ modifies the time for filing an action to enforce a mechanic's lien if an owner files bankruptcy;
- ▶ changes a notice of intent to file a notice of completion into a notice of intent to obtain final completion and modifies a provision relating to its filing;
- ▶ bars a person otherwise qualified to file a lien from maintaining a lien on an owner-occupied residence under certain circumstances, including if the general contract is no more than \$5,000;
- ▶ modifies provisions relating to the issuance of a certificate of compliance;
- ▶ modifies mechanic's lien provisions to exclude liens for architects, engineers, and artisans;
- ▶ enacts the Construction Design Consultant Lien Act, providing for liens in favor of architects, engineers, landscape architects, professional land surveyors, and others who provide design services for a construction project; and



26 ▶ makes technical changes.

27 **Monies Appropriated in this Bill:**

28 None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 **AMENDS:**

33 **38-1-3**, as last amended by Laws of Utah 1994, Chapter 308

34 **38-1-11**, as last amended by Laws of Utah 2008, Chapters 3 and 382

35 **38-1-40**, as enacted by Laws of Utah 2009, Chapter 239

36 **38-11-102**, as last amended by Laws of Utah 2007, Chapter 84

37 **38-11-107**, as last amended by Laws of Utah 2006, Chapter 205

38 **38-11-110**, as last amended by Laws of Utah 2008, Chapter 382

39 **38-11-204**, as last amended by Laws of Utah 2009, Chapter 183

40 **ENACTS:**

41 **38-14-101**, Utah Code Annotated 1953

42 **38-14-102**, Utah Code Annotated 1953

43 **38-14-103**, Utah Code Annotated 1953

44 **38-14-104**, Utah Code Annotated 1953

45 **38-14-201**, Utah Code Annotated 1953

46 **38-14-202**, Utah Code Annotated 1953

47 **38-14-203**, Utah Code Annotated 1953

48 **38-14-204**, Utah Code Annotated 1953

49 **38-14-205**, Utah Code Annotated 1953

50 **38-14-206**, Utah Code Annotated 1953

51 **38-14-207**, Utah Code Annotated 1953

52 **38-14-208**, Utah Code Annotated 1953

53 **38-14-209**, Utah Code Annotated 1953

54 **38-14-301**, Utah Code Annotated 1953

55 **38-14-302**, Utah Code Annotated 1953

56 **38-14-303**, Utah Code Annotated 1953

- 57 **38-14-304**, Utah Code Annotated 1953
- 58 **38-14-305**, Utah Code Annotated 1953
- 59 **38-14-306**, Utah Code Annotated 1953
- 60 **38-14-307**, Utah Code Annotated 1953
- 61 **38-14-308**, Utah Code Annotated 1953
- 62 **38-14-309**, Utah Code Annotated 1953
- 63 **38-14-310**, Utah Code Annotated 1953
- 64 **38-14-311**, Utah Code Annotated 1953
- 65 **38-14-401**, Utah Code Annotated 1953
- 66 **38-14-402**, Utah Code Annotated 1953
- 67 **38-14-403**, Utah Code Annotated 1953
- 68 **38-14-404**, Utah Code Annotated 1953
- 69 **38-14-405**, Utah Code Annotated 1953



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

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

73 **38-1-3. Those entitled to lien -- What may be attached.**

74 Contractors, subcontractors, and all persons performing any [~~services~~] supervision of,
75 labor for, or furnishing or renting any materials or equipment used in the construction,
76 alteration, or improvement of any building or structure or improvement to any premises in any
77 manner [~~and licensed architects and engineers and artisans who have furnished designs, plats,~~
78 ~~plans, maps, specifications, drawings, estimates of cost, surveys or superintendence~~], or who
79 have rendered other like [~~professional~~] service, or bestowed labor, shall have a lien upon the
80 property upon or concerning which they have rendered service, performed labor, or furnished
81 or rented materials or equipment for the value of the service rendered, labor performed, or
82 materials or equipment furnished or rented by each respectively, whether at the instance of the
83 owner or of any other person acting by his authority as agent, contractor, or otherwise except as
84 the lien is barred under Section 38-11-107 of the Residence Lien Restriction and Lien
85 Recovery Fund Act. This lien shall attach only to such interest as the owner may have in the
86 property.

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

88 **38-1-11. Enforcement -- Time for -- Lis pendens -- Action for debt not affected --**
89 **Instructions and form affidavit and motion.**

90 (1) As used in this section:

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

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

93 (2) A lien claimant shall file an action to enforce the lien filed under this chapter;

94 (a) except as provided in Subsection (2)(b), within 180 days [from] after the day on
95 which the lien claimant filed a notice of claim under Section 38-1-7[-]; or

96 (b) if an owner files for protection under the bankruptcy laws of the United States
97 before the expiration of the 180-day period under Subsection (2)(a), within 90 days after the
98 automatic stay under the bankruptcy proceeding is lifted or expires.

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

105 (b) The burden of proof is upon the lien claimant and those claiming under the lien
106 claimant to show actual knowledge under Subsection (3)(a).

107 (4) (a) A lien filed under this chapter is automatically and immediately void if an action
108 to enforce the lien is not filed within the time required by this section.

109 (b) Notwithstanding Section 78B-2-111, a court has no subject matter jurisdiction to
110 adjudicate a lien that becomes void under Subsection (4)(a).

111 (5) This section may not be interpreted to impair or affect the right of any person to
112 whom a debt may be due for any work done or materials furnished to maintain a personal
113 action to recover the debt.

114 (6) (a) If a lien claimant files an action to enforce a lien filed under this chapter
115 involving a residence, the lien claimant shall include with the service of the complaint on the
116 owner of the residence:

117 (i) instructions to the owner of the residence relating to the owner's rights under Title
118 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act; and

119 (ii) a form to enable the owner of the residence to specify the grounds upon which the
120 owner may exercise available rights under Title 38, Chapter 11, Residence Lien Restriction and
121 Lien Recovery Fund Act.

122 (b) The instructions and form required by Subsection (6)(a) shall meet the requirements
123 established by rule by the Division of Occupational and Professional Licensing in accordance
124 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

125 (c) If a lien claimant fails to provide to the owner of the residence the instructions and
126 form required by Subsection (6)(a), the lien claimant shall be barred from maintaining or
127 enforcing the lien upon the residence.

128 (d) Judicial determination of the rights and liabilities of the owner of the residence
129 under this chapter and Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery
130 Fund Act, and Title 14, Chapter 2, Private Contracts, shall be stayed until after the owner is
131 given a reasonable period of time to establish compliance with Subsections 38-11-204(4)(a)
132 and (4)(b) through an informal proceeding, as set forth in Title 63G, Chapter 4, Administrative
133 Procedures Act, commenced within 30 days of the owner being served summons in the
134 foreclosure action, at the Division of Occupational and Professional Licensing and obtain a
135 certificate of compliance or denial of certificate of compliance, as defined in Section
136 38-11-102.

137 (e) An owner applying for a certificate of compliance under Subsection (6)(d) shall
138 send by certified mail to all lien claimants:

- 139 (i) a copy of the application for a certificate of compliance; and
140 (ii) all materials filed in connection with the application.

141 (f) The Division of Occupational and Professional Licensing shall notify all lien
142 claimants listed in an owner's application for a certificate of compliance under Subsection
143 (6)(d) of the issuance or denial of a certificate of compliance.

144 (7) The written notice requirement applies to liens filed on or after July 1, 2004.

145 Section 3. Section **38-1-40** is amended to read:

146 **38-1-40. Notice of intent to obtain final completion.**

147 (1) An owner, as defined in Section 14-2-1, of a nonresidential construction project
148 that is registered with the database [~~who intends to file a notice of completion in accordance~~
149 ~~with the provisions of Subsection 38-1-33(1)(a)~~], or a contractor of a commercial

150 nonresidential construction project that is registered with the database [~~who intends to file a~~
151 ~~notice of completion in accordance with the provisions of Subsection 38-1-33(1)(a)] under
152 Section 38-1-33, shall [~~first~~] file with the database a notice of intent to [~~file a notice of~~] obtain
153 final completion [~~with the database in accordance with the provisions of Section 38-1-40~~] as
154 provided in this section if:~~

155 (a) the completion of performance time under the original contract is greater than 120
156 days;

157 (b) the total original construction contract price exceeds \$500,000; and

158 (c) the contractor or owner has not obtained a payment bond in accordance with
159 Section 14-2-1.

160 (2) The notice of intent described in Subsection (1) shall be filed at least 45 days before
161 the day on which the owner or contractor of a commercial nonresidential construction project
162 files or could have filed a notice of completion under Section 38-1-33.

163 (3) A person supplying labor, materials, or services to an owner, a contractor, or
164 subcontractor who files a notice of intent in accordance with Subsection (1) shall file an
165 amendment to the person's preliminary notice previously filed by the person as required in
166 Section 38-1-32:

167 (a) that includes:

168 (i) a good faith estimate of the total amount remaining due to complete the contract,
169 purchase order, or agreement relating to the person's approved labor, approved materials, and
170 approved services;

171 (ii) the identification of each contractor or subcontractor with whom the person has a
172 contract or contracts for supplying project labor, materials, or services; and

173 (iii) a separate statement of all known amounts or categories of work in dispute; and

174 (b) no later than 20 days after the day on which the owner or contractor files a notice of
175 intent.

176 (4) (a) A person identified in accordance with Subsection (3)(a)(i) who has complied
177 with, or is exempt from, the provisions of Section 38-1-22, may demand a statement of
178 adequate assurance from the owner, contractor, or subcontractor with whom the person has
179 privity of contract no later than 10 days after the day on which the person files a balance
180 statement in accordance with Subsection (3) from an owner, contractor, or subcontractor who is

181 in privity of contract with the person.

182 (b) A demand for adequate assurance as described in Subsection (4)(a) may include a
183 request for a statement from the owner, contractor, or subcontractor that the owner, contractor,
184 or subcontractor has sufficient funds dedicated and available to pay for all sums due to the
185 person filing for the adequate assurances or that will become due in order to complete a
186 construction project.

187 (c) A person who demands adequate assurance under Subsection (4)(a) shall deliver
188 copies of the demand to the owner and contractor:

189 (i) by hand delivery with a responsible party's acknowledgment of receipt;

190 (ii) by certified mail with a return receipt; or

191 (iii) as provided under Rule 4, Utah Rules of Civil Procedure.

192 (5) (a) A person identified in accordance with Subsection (3)(a)(i) who has complied
193 with, or is exempt from, the provisions of Section 38-1-32 may bring a legal action against a
194 party with whom the person is in privity of contract, including a request for injunctive or
195 declaratory relief, to determine the adequacy of an owner's, with whom the demanding person
196 contracted, contractor's, with whom the demanding person contracted, or subcontractor's, with
197 whom the demanding person contracted, funds if, after the person demands adequate assurance
198 in accordance with the requirements of this section:

199 (i) the owner, contractor, or subcontractor fails to provide adequate assurance that the
200 owner, contractor, or subcontractor has sufficient available funds, or access to financing or
201 other sufficient available funds, to pay for the completion of the demanding person's approved
202 work on the construction project; or

203 (ii) the parties disagree, in good faith, as to whether there are adequate funds, or access
204 to financing or other sufficient available funds, to pay for the completion of the demanding
205 person's approved work on the construction project.

206 (b) If a court finds that an owner, contractor, or subcontractor has failed to provide
207 adequate assurance in accordance with Subsection (4)(a), the court may require the owner,
208 contractor, or subcontractor to post adequate security with the court sufficient to assure timely
209 payment of the remaining contract balance for the approved work of the person seeking
210 adequate assurance, including:

211 (i) cash;

- 212 (ii) a bond;
- 213 (iii) an irrevocable letter of credit;
- 214 (iv) property;
- 215 (v) financing; or
- 216 (vi) another form of security approved by the court.
- 217 (6) (a) A person is subject to the civil penalty described in Subsection (6)(b), if the
- 218 person files a balance statement described in Subsection (3):
- 219 (i) that misrepresents the amount due under the contract; and
- 220 (ii) with the intent to:
- 221 (A) charge an owner, contractor, or subcontractor more than the actual amount due; or
- 222 (B) procure any other unfair advantage or benefit on the person's behalf.
- 223 (b) The civil penalty described in Subsection (6)(a) is the greater of:
- 224 (i) twice the amount by which the balance statement filed under Subsection (3) exceeds
- 225 the amount actually remaining due under the contract for completion of construction; or
- 226 (ii) the actual damages incurred by the owner, contractor, or subcontractor.
- 227 (7) A court shall award reasonable attorney fees to a prevailing party for an action
- 228 brought under this section.
- 229 (8) Failure to comply with the requirements established in this section does not affect
- 230 any other requirement or right under this chapter.
- 231 (9) A person who has not complied with, or is not exempt from, the provisions of
- 232 Section 38-1-32 may not be entitled to a right or a remedy provided in this section.
- 233 (10) This section does not create a cause of action against a person with whom the
- 234 demanding party is not in privity of contract.
- 235 Section 4. Section **38-11-102** is amended to read:
- 236 **38-11-102. Definitions.**
- 237 (1) "Board" means the Residence Lien Recovery Fund Advisory Board established
- 238 under Section 38-11-104.
- 239 (2) "Certificate of compliance" means an order issued by the director to the owner
- 240 finding that the owner is in compliance with the requirements of Subsections 38-11-204(4)(a)
- 241 and (4)(b) and is entitled to protection under Section 38-11-107.
- 242 (3) "Construction on an owner-occupied residence" means designing, engineering,

243 constructing, altering, remodeling, improving, repairing, or maintaining a new or existing
244 residence.

245 (4) "Department" means the Department of Commerce.

246 (5) "Director" means the director of the Division of Occupational and Professional
247 Licensing.

248 (6) "Division" means the Division of Occupational and Professional Licensing.

249 (7) "Duplex" means a single building having two separate living units.

250 (8) "Encumbered fund balance" means the aggregate amount of outstanding claims
251 against the fund. The remainder of monies in the fund are unencumbered funds.

252 (9) "Executive director" means the executive director of the Department of Commerce.

253 (10) "Factory built housing" is as defined in Section 58-56-3.

254 (11) "Factory built housing retailer" means a person that sells factory built housing to
255 consumers.

256 (12) "Fund" means the Residence Lien Recovery Fund established under Section
257 38-11-201.

258 (13) "Laborer" means a person who provides services at the site of the construction on
259 an owner-occupied residence as an employee of an original contractor or other qualified
260 beneficiary performing qualified services on the residence.

261 (14) "Licensee" means any holder of a license issued under Title 58, Chapters 3a, 22,
262 53, and 55.

263 (15) "Nonpaying party" means the original contractor, subcontractor, or real estate
264 developer who has failed to pay the qualified beneficiary making a claim against the fund.

265 (16) "Original contractor":

266 (a) means a person who contracts with the owner of real property or the owner's agent
267 to provide services, labor, or material for the construction of an owner-occupied residence[-];
268 and

269 (b) includes a prime consultant, as defined in Section 38-14-102.

270 (17) "Owner" means a person who:

271 (a) contracts with a person who is licensed as a contractor or is exempt from licensure
272 under Title 58, Chapter 55, Utah Construction Trades Licensing Act, for the construction on an
273 owner-occupied residence upon real property owned by that person;

274 (b) contracts with a real estate developer to buy a residence upon completion of the
275 construction on the owner-occupied residence; or

276 (c) buys a residence from a real estate developer after completion of the construction
277 on the owner-occupied residence.

278 (18) "Owner-occupied residence" means a residence that is, or after completion of the
279 construction on the residence will be, occupied by the owner or the owner's tenant or lessee as a
280 primary or secondary residence within 180 days from the date of the completion of the
281 construction on the residence.

282 (19) "Qualified beneficiary" means a person who:

283 (a) provides qualified services;

284 (b) pays necessary fees or assessments required under this chapter; and

285 (c) registers with the division:

286 (i) as a licensed contractor under Subsection 38-11-301(1) or (2), if that person seeks
287 recovery from the fund as a licensed contractor; or

288 (ii) as a person providing qualified services other than as a licensed contractor under
289 Subsection 38-11-301(3) if the person seeks recovery from the fund in a capacity other than as
290 a licensed contractor.

291 (20) (a) "Qualified services" means the following performed in construction on an
292 owner-occupied residence:

293 (i) contractor services provided by a contractor licensed or exempt from licensure
294 under Title 58, Chapter 55, Utah Construction Trades Licensing Act;

295 (ii) architectural services provided by an architect licensed under Title 58, Chapter 3a,
296 Architects Licensing Act;

297 (iii) engineering and land surveying services provided by a professional engineer or
298 land surveyor licensed or exempt from licensure under Title 58, Chapter 22, Professional
299 Engineers and Professional Land Surveyors Licensing Act;

300 (iv) landscape architectural services by a landscape architect licensed or exempt from
301 licensure under Title 58, Chapter 53, Landscape Architects Licensing Act;

302 (v) design and specification services of mechanical or other systems;

303 (vi) other services related to the design, drawing, surveying, specification, cost
304 estimation, or other like professional services;

- 305 (vii) providing materials, supplies, components, or similar products;
- 306 (viii) renting equipment or materials;
- 307 (ix) labor at the site of the construction on the owner-occupied residence; and
- 308 (x) site preparation, set up, and installation of factory built housing.
- 309 (b) "Qualified services" do not include the construction of factory built housing in the
- 310 factory.

311 (21) "Real estate developer" means a person having an ownership interest in real
 312 property who:

313 (a) contracts with a person who is licensed as a contractor or is exempt from licensure
 314 under Title 58, Chapter 55, Utah Construction Trades Licensing Act, for the construction of a
 315 residence that is offered for sale to the public; or

316 (b) is a licensed contractor under Title 58, Chapter 55, Utah Construction Trades
 317 Licensing Act, who engages in the construction of a residence that is offered for sale to the
 318 public.

319 (22) (a) "Residence" means an improvement to real property used or occupied, to be
 320 used or occupied as, or in conjunction with:

- 321 (i) a primary or secondary detached single-family dwelling; or
- 322 (ii) a multifamily dwelling up to and including duplexes.

323 (b) "Residence" includes factory built housing.

324 (23) "Subsequent owner" means a person who purchases a residence from an owner
 325 within 180 days from the date the construction on the residence is completed.

326 Section 5. Section **38-11-107** is amended to read:

327 **38-11-107. Restrictions upon maintaining a lien against residence or owner's**
 328 **interest in the residence.**

329 (1) (a) A person qualified to file a lien upon an owner-occupied residence and the real
 330 property associated with that residence under [~~the provisions of Title 38,~~] Chapter 1,
 331 Mechanics' Liens, or Chapter 14, Construction Design Consultant Lien Act, who provides
 332 qualified services under an agreement [~~effective on or after January 1, 1995,~~] other than
 333 directly with the owner, [~~shall be~~] is barred [~~after January 1, 1995,~~] from maintaining a lien
 334 upon that residence and real property or recovering a judgment in any civil action against the
 335 owner or the owner-occupied residence to recover monies owed for qualified services provided

336 by that person if:

337 ~~[(a)]~~ (i) an owner meets the conditions described in Subsections 38-11-204(4)(a) and

338 ~~[(4)]~~(b); or

339 ~~[(b)(i)]~~ (ii) (A) a subsequent owner purchases a residence from an owner;

340 ~~[(i)]~~ (B) the subsequent owner who purchased the residence under Subsection

341 (1)~~[(b)(i)]~~(a)(ii)(A) occupies the residence as a primary or secondary residence within 180 days

342 from the date of transfer or the residence is occupied by the subsequent owner's tenant or lessee

343 as a primary or secondary residence within 180 days from the date of transfer; and

344 ~~[(iii)]~~ (C) the owner from whom the subsequent owner purchased the residence met the

345 conditions described in Subsections 38-11-204(4)(a) and ~~[(4)]~~(b).

346 (b) (i) As used in this Subsection (1)(b):

347 (A) "Contract residence":

348 (I) means the owner-occupied residence for which a subcontractor provides service,
349 labor, or materials; and

350 (II) includes the real property associated with that owner-occupied residence.

351 (B) "General contract" means an oral or written contract between an owner and an

352 original contractor for providing service, labor, or materials for construction on an

353 owner-occupied residence.

354 (C) "Subcontractor" means a person who provides service, labor, or materials for

355 construction on an owner-occupied residence under an agreement other than directly with the

356 owner.

357 (ii) A subcontractor qualified to file a lien upon a contract residence under Chapter 1,

358 Mechanics' Liens, is barred from maintaining a lien upon that contract residence or from

359 recovering a judgment in a civil action against the owner, the contract residence, or, as

360 provided in Subsection (1)(b)(iii), a subsequent owner to recover for service, labor, or materials

361 provided by the subcontractor:

362 (A) if the amount of the general contract under which the subcontractor provides

363 service, labor, or materials totals no more than \$5,000; and

364 (B) whether or not the original contractor is licensed under Title 58, Chapter 55, Utah

365 Construction Trades Licensing Act.

366 (iii) A subsequent owner is protected under Subsection (1)(b)(ii) to the same extent as

367 an owner if:

368 (A) the subsequent owner purchases the contract residence from the owner; and

369 (B) (I) the subsequent owner occupies the residence as a primary or secondary
370 residence within 180 days after the date of transfer; or

371 (II) the subsequent owner's tenant or lessee occupies the residence as a primary or
372 secondary residence within 180 days after the date of the transfer.

373 (2) If a residence is constructed under conditions that do not meet all of the provisions
374 of Subsection (1)(a) or (b), that residence and the real property associated with that residence as
375 provided in Section 38-1-4 shall be subject to any mechanics' lien as provided in Section
376 38-1-3.

377 (3) A lien claimant who files a mechanics' lien ~~[or foreclosure]~~ under Chapter 1,
378 Mechanics' Liens, a design consultant lien under Chapter 14, Construction Design Consultant
379 Lien Act, or a foreclosure or enforcement action upon an owner-occupied residence is not
380 liable for costs and ~~[attorneys']~~ attorney fees under Sections 38-1-17 and 38-1-18 or for any
381 damages arising from a civil action related to the lien filing or foreclosure action if the lien
382 claimant removes the lien within 15 days from the date the owner obtains a certificate of
383 compliance and mails a copy of the certificate of compliance by certified mail to the lien
384 claimant at the address provided for by Subsection 38-1-7(2)(a)(v). The 15-day period begins
385 accruing from the date postmarked on the certificate of compliance sent to the lien claimant.

386 Section 6. Section **38-11-110** is amended to read:

387 **38-11-110. Issuance of certificates of compliance.**

388 (1) (a) The director ~~[shall have authority to]~~ may issue ~~[or deny]~~ a certificate of
389 compliance only after determining through an informal proceeding, as set forth in Title 63G,
390 Chapter 4, Administrative Procedures Act[-];

391 (i) that the owner is in compliance with Subsections 38-11-204(4)(a) and ~~[(+)](b)[-]; or~~

392 (ii) subject to Subsection (2), that the owner is entitled to protection under Subsection
393 38-11-107(1)(b).

394 (b) If the director determines through an informal proceeding under Subsection (1)(a)
395 that an owner seeking the issuance of a certificate of compliance under Subsection (1)(a)(i) is
396 not in compliance as provided in that subsection, the director may not issue a certificate of
397 compliance.

398 (2) (a) An owner seeking the issuance of a certificate of compliance under Subsection
399 (1)(a)(ii) shall submit an affidavit, as defined by the division by rule, affirming that the owner
400 is entitled to protection under Subsection 38-11-107(1)(b).

401 (b) If an owner's affidavit under Subsection (2)(a) is disputed, the owner may file a
402 complaint in small claims court or district court to resolve the dispute.

403 (c) The director may issue a certificate of compliance to an owner seeking issuance of a
404 certificate under Subsection (1)(a)(ii) if:

405 (i) the owner's affidavit under Subsection (2)(a) is undisputed; or

406 (ii) a small claims court or district court resolves any dispute over the owner's affidavit
407 in favor of the owner.

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

409 **38-11-204. Claims against the fund -- Requirement to make a claim --**

410 **Qualifications to receive compensation -- Qualifications to receive a certificate of**
411 **compliance.**

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

413 (a) meet the requirements of [~~either~~] Subsection (4) or [~~(7)~~] (6);

414 (b) pay an application fee determined by the division under Section 63J-1-504; and

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

417 (i) that the person meets the requirements of [~~either~~] Subsection (4) or [~~(7)~~] (6);

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

420 (iii) the basis for the claim.

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

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

424 (b) from the date the nonpaying party filed bankruptcy, if the claimant is precluded

425 from obtaining a judgment or from satisfying the requirements of Subsection (4)(d) because the

426 nonpaying party filed bankruptcy within one year after the entry of judgment; or

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

428 qualified services.

429 (3) ~~[To obtain]~~ The issuance of a certificate of compliance ~~[an owner or agent of the~~
430 ~~owner shall establish with the division that the owner meets the requirements of Subsections~~
431 ~~(4)(a) and (4)(b)]~~ is governed by Section 38-11-110.

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

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

438 (A) for the performance of qualified services;

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

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

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

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

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

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

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

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

462 (iii) a subcontractor who contracts with a subcontractor or supplier failed to pay a
463 qualified beneficiary who is entitled to payment under an agreement with that subcontractor or
464 supplier;

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

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

470 (B) 270 days from the completion of the original contract pursuant to Subsection
471 38-1-7(1);

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

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

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

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

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

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

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

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

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

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

492 (5) The requirements of Subsections (4)(d)(ii) and (iii) need not be met if the qualified
493 beneficiary is prevented from compliance because the nonpaying party files bankruptcy.

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

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

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

498 (7) A fee determined by the division under Section 63J-1-504 shall be deducted from
499 any recovery from the fund received by a laborer.

500 (8) The requirements of Subsections (4)(a) and ~~[(4)]~~(b) may be satisfied if an owner or
501 agent of the owner establishes to the satisfaction of the director that the owner of the
502 owner-occupied residence or the owner's agent entered into a written contract with an original
503 contractor who:

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

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

511 (9) The director shall have equitable power to determine if the requirements of
512 Subsections (4)(a) and ~~[(4)]~~(b) have been met, but any decision by the director under this
513 chapter shall not alter or have any effect on any other decision by the division under Title 58,
514 Occupations and Professions.

515 Section 8. Section **38-14-101** is enacted to read:

516 **CHAPTER 14. CONSTRUCTION DESIGN CONSULTANT LIEN ACT**

517 **Part 1. General Provisions**

518 **38-14-101. Title.**

519 This chapter is known as the "Construction Design Consultant Lien Act."

520 Section 9. Section **38-14-102** is enacted to read:

521 **38-14-102. Definitions.**

522 As used in this chapter:

523 (1) "Applicable county recorder" means the office of the recorder of each county in
524 which any part of the property on which a claimant claims or intends to claim a lien under this
525 chapter is located.

526 (2) "Benefitted property" means the property for which a design consultant provides
527 design services under a design services contract.

528 (3) "Claimant" means a person entitled to claim a lien under this chapter.

529 (4) "Compensation" means payment:

530 (a) for design services that a design consultant renders or expenses that a design
531 consultant incurs; and

532 (b) that is:

533 (i) based on time spent and expenses incurred;

534 (ii) a stipulated sum;

535 (iii) based on a percentage of construction cost;

536 (iv) a cost plus fixed or percentage fee;

537 (v) a commission; or

538 (vi) a combination of Subsection (4)(b)(i) through (v).

539 (5) "Design consultant" means a person engaged in the business of providing design
540 services for compensation, including:

541 (a) an architect licensed under Title 58, Chapter 3, Part 3a, Licensing;

542 (b) a professional engineer or professional land surveyor licensed under Title 58,
543 Chapter 22, Part 3, Licensure; and

544 (c) a landscape architect licensed under Title 58, Chapter 53, Part 3, Licensing.

545 (6) "Design services":

546 (a) means services:

547 (i) that are preliminary to actual construction activities on a construction project;

548 (ii) by which a construction project is conceptualized, planned, designed, and
549 facilitated; and

550 (iii) that include:

551 (A) preparing and providing a study, report, rendering, model, plat, map, plan,
552 drawing, specification, constructability review, or cost estimate; and

553 (B) consultation, site investigation, soil investigation, programming, planning,
554 designing, interior designing, drawing, scheduling, materials testing, construction staking,
555 construction procurement, construction contract administration, observation, and inspection;
556 and

557 (C) similar service regarding an improvement to real property; and

558 (b) does not include supervision of, labor for, or furnishing or renting materials or
559 equipment used in the construction, alteration, or improvement of real property or any building,
560 structure, or improvement on real property.

561 (7) "Design services contract" means a contract under which a design consultant agrees
562 to provide design services as an independent contractor for compensation.

563 (8) "Division" means the Division of Occupational and Professional Licensing created
564 in Section 58-1-103.

565 (9) "Enforcement action" means an action filed under Section 38-14-301 to enforce a
566 lien under this chapter.

567 (10) "Liened property" means property that is subject to a lien under this chapter.

568 (11) "Mechanic's lien" means a lien under Chapter 1, Mechanics' Lien.

569 (12) "Owner-occupied residence" has the same meaning as defined in Section
570 38-11-102.

571 (13) "Preliminary notice" means a notice described in Subsection 38-14-202(2).

572 (14) "Prime consultant" means a design consultant who enters a design services
573 contract with an owner, the owner's agent, or any other person other than another design
574 consultant.

575 (15) "Service period" means the period beginning the date on which a design
576 consultant first provides a design service under a design services contract and ends at the end
577 of the day on which the design consultant completes the design services that the design
578 consultant was engaged to provide.

579 (16) "Subconsultant" means a design consultant who enters into a design services
580 contract with another design consultant.

581 Section 10. Section **38-14-103** is enacted to read:

582 **38-14-103. Inapplicability to public facilities.**

583 This chapter does not apply to a public building, structure, or improvement.

584 Section 11. Section **38-14-104** is enacted to read:

585 **38-14-104. Prohibition against waiving or altering rights and privileges --**

586 **Exception.**

587 (1) (a) A design services contract may not in advance waive or alter any of the rights
588 and privileges provided under this chapter.

589 (b) A provision of a design services contract purporting to waive or alter any of the
590 rights and privileges provided under this chapter is void.

591 (2) Notwithstanding Subsection (1), a claimant may waive or limit the claimant's lien
592 rights under this chapter, in part or in whole, if the claimant has received payment for design
593 services the claimant provided.

594 Section 12. Section **38-14-201** is enacted to read:

595 **Part 2. Design Consultant Lien**

596 **38-14-201. Design consultant has a lien for value of design services.**

597 (1) As provided in this chapter, a design consultant has a lien on benefitted property for
598 the value of the design services the design consultant provides for the property under a design
599 services contract, whether or not the improvements envisioned in the design services are
600 ultimately constructed or installed.

601 (2) (a) A lien under this chapter is entirely separate and independent from a mechanic's
602 lien.

603 (b) A design consultant is not entitled to a mechanic's lien for design services that the
604 design consultant provides.

605 Section 13. Section **38-14-202** is enacted to read:

606 **38-14-202. Preliminary notice of design consultant lien.**

607 (1) (a) A design consultant may, during the service period, submit a preliminary notice
608 to each applicable county recorder for recording.

609 (b) A design consultant who fails to submit a preliminary notice during the service
610 period may not claim a lien under this chapter.

611 (2) A preliminary notice shall include:

612 (a) the name, mailing address, and telephone number of the design consultant on whose
613 behalf the notice is submitted;

614 (b) a declaration that the design consultant intends to hold and claim a lien under this

615 chapter if the design consultant is not paid for the design services provided;

616 (c) a general description of the design services that the design consultant has provided
617 or will provide;

618 (d) the name of the person with whom the design consultant has a design services
619 contract;

620 (e) a description of the benefitted property sufficient for identification;

621 (f) the signature of the design consultant or authorized agent; and

622 (g) a certificate or jurat under Subsection 57-3-101(1) entitling a document to be
623 recorded.

624 Section 14. Section **38-14-203** is enacted to read:

625 **38-14-203. Notice of lien -- Time for filing -- Content of notice -- Mailing a copy of**
626 **the notice.**

627 (1) (a) A design consultant who has submitted a preliminary notice under Section
628 38-14-202 may file a notice of lien for recording with each applicable county recorder if the
629 design consultant does not receive full payment for the design services.

630 (b) A design consultant who fails to file a notice of lien as provided in Subsection
631 (1)(a) within 90 days after completion of providing design services under a design services
632 contract may not claim a lien under this chapter.

633 (2) A notice of lien shall include:

634 (a) the claimant's name, mailing address, and telephone number;

635 (b) a declaration that the claimant claims a lien under this chapter;

636 (c) the date the preliminary notice was recorded;

637 (d) the name of the person with whom the claimant has a design services contract;

638 (e) a general description of the design services that the claimant provided;

639 (f) the date the claimant completed providing design services, if the claimant has
640 completed providing the design services;

641 (g) the name, if known, of the reputed owner of the property or, if the name is not
642 known, the name of the record owner of the property;

643 (h) a description of the benefitted property sufficient for identification;

644 (i) the principal amount claimed under the lien, exclusive of interest, costs, and
645 attorney fees;

646 (j) the signature of the claimant or the claimant's authorized agent;

647 (k) a certificate or jurat under Subsection 57-3-101(1) entitling a document to be
648 recorded; and

649 (l) if the lien is claimed against an owner-occupied residence, a statement meeting the
650 requirements that the division establishes by rule in accordance with Title 63G, Chapter 3,
651 Utah Administrative Rulemaking Act, describing the steps an owner may take to require a
652 claimant to remove a lien, as provided in Section 38-11-107.

653 (3) A prime consultant's notice of lien may include an amount claimed by a
654 subconsultant whether or not the subconsultant submitted a preliminary notice or filed a notice
655 of lien.

656 (4) (a) Within 30 days after filing a notice of lien, a claimant shall mail a copy of the
657 notice of lien by certified mail, return receipt requested, to:

658 (i) the record owner of the benefitted property; or

659 (ii) if the claimant does not readily know the record owner's address, to the owner's last
660 known address according to the last completed real property assessment roll of the county in
661 which the property is located.

662 (b) A claimant who fails to mail a copy of the notice of lien as required in Subsection
663 (4)(a) is precluded from being awarded costs and attorney fees against the record or reputed
664 owner in an enforcement action.

665 (5) Nothing in this section may be construed to prohibit a design consultant from filing
666 a notice of lien before completing the design services under a design services contract.

667 Section 15. Section **38-14-204** is enacted to read:

668 **38-14-204. Recording and indexing of notices -- Constructive notice.**

669 (1) A county recorder shall:

670 (a) record each preliminary notice submitted and notice of lien filed under this chapter;
671 and

672 (b) maintain an index of recorded preliminary notices and notices of lien.

673 (2) All persons are considered to have notice of a preliminary notice or notice of lien
674 from the time of its recording.

675 Section 16. Section **38-14-205** is enacted to read:

676 **38-14-205. Scope of lien -- Multiple lots or subdivisions.**

677 (1) A lien under this chapter:

678 (a) extends to and covers as much of the land on which a building, structure, or
679 improvement is made as is necessary for convenient use and occupation; and

680 (b) attaches to each franchise, privilege, appurtenance, machinery, and fixture
681 pertaining to or used in connection with the land, building, structure, or improvement.

682 (2) For purposes of this chapter, multiple lots or other subdivisions of land occupied by
683 a single building are considered to be a single lot or subdivision.

684 Section 17. Section **38-14-206** is enacted to read:

685 **38-14-206. Single lien on multiple buildings or improvements.**

686 (1) Subject to Subsection (2), a claimant may claim a single lien against two or more
687 buildings or other improvements owned by the same person.

688 (2) A claimant claiming a lien as described in Subsection (1) shall designate the
689 amount claimed to be due on each of the buildings or other improvements included in the lien.

690 Section 18. Section **38-14-207** is enacted to read:

691 **38-14-207. Relation back and priority of lien.**

692 (1) A lien under this chapter:

693 (a) relates back to and takes effect as of the earliest recording of a preliminary notice
694 submitted by a prime consultant or any of the prime consultant's subconsultants claiming under
695 the lien; and

696 (b) except as provided in Section 38-14-209, has priority over a lien, mortgage, or
697 other encumbrance:

698 (i) that attaches after the preliminary notice is recorded; or

699 (ii) (A) that had not been recorded at the time that the preliminary notice was recorded;
700 and

701 (B) of which the claimant had no notice.

702 (2) Notwithstanding Subsection (1):

703 (a) a prime consultant's lien is on equal footing with a lien of a subconsultant of the
704 prime consultant; and

705 (b) a lien under this chapter for design services provided on or after the effective date,
706 under Section 38-1-5, of a mechanic's lien is on equal footing with a mechanic's lien on the
707 benefitted property arising from the construction of the structure or improvement for which the

708 design services giving rise to the lien under this chapter were provided.

709 Section 19. Section **38-14-208** is enacted to read:

710 **38-14-208. Invalidity of attachment, garnishment, or executive levy.**

711 (1) An attachment, garnishment, or execution levy upon money that an owner of
712 property subject to a lien under this chapter owes a prime consultant is not valid against a
713 subconsultant's lien.

714 (2) An attachment, garnishment, or execution levy upon money that a subconsultant's
715 employer owes to the subconsultant is not valid against a lien of the subconsultant's
716 subconsultant.

717 Section 20. Section **38-14-209** is enacted to read:

718 **38-14-209. Payment for design services -- Subordination of design consultant lien.**

719 (1) A lien of a design consultant who receives payment in full for design services
720 provided as of a specified date, together with accrued interest and lien costs, is subordinate to a
721 lien, mortgage, or other encumbrance that attaches:

722 (a) after the recording of a preliminary notice submitted by the design consultant or a
723 subconsultant of the design consultant; and

724 (b) before the specified date.

725 (2) For purposes of this section:

726 (a) a payment for design services is applied first to accrued lien costs, then to accrued
727 interest allowed by contract or statute, whichever is greater, then to accrued principal; and

728 (b) lien costs:

729 (i) include:

730 (A) any cost of preparing and recording a notice of lien; and

731 (B) if an enforcement action has been filed, accrued attorney fees and costs, if allowed
732 under this chapter; and

733 (ii) do not include the cost of preparing and recording a preliminary notice.

734 Section 21. Section **38-14-301** is enacted to read:

735 **Part 3. Enforcement of Design Consultant Lien**

736 **38-14-301. Action to enforce a lien -- Time for filing -- Notice of pendency of**
737 **action.**

738 (1) To enforce a lien under this chapter, a claimant shall, within 180 days after the date

739 on which the claimant filed a notice of lien under Section 38-14-203:

740 (a) file an action; and

741 (b) file for recording with each applicable county recorder a notice of the pendency of
742 the action, in the manner provided for an action affecting title to or right to possess real
743 property.

744 (2) (a) If a claimant fails to file an action to enforce a lien under this chapter within the
745 time provided in Subsection (1), the lien is void and unenforceable.

746 (b) If a claimant fails to file a notice of the pendency of the action within the time
747 provided in Subsection (1), the lien is void except as to:

748 (i) those who have been made parties to the action; and

749 (ii) those with actual knowledge of the commencement of the action.

750 (c) The claimant or anyone claiming under the claimant bears the burden of proof to
751 show actual knowledge under Subsection (2)(b)(ii).

752 (3) This section does not impair or affect the right of a person to maintain a personal
753 action to recover a debt due for work done or materials provided.

754 Section 22. Section **38-14-302** is enacted to read:

755 **38-14-302. Lien enforcement action against an owner of a residence.**

756 (1) As used in this section:

757 (a) "Owner" has the same meaning as defined in Section 38-11-102.

758 (b) "Residence" has the same meaning as defined in Section 38-11-102.

759 (2) (a) A claimant who files an enforcement action with respect to a lien against a
760 residence shall include with the service of the complaint on the owner of the residence:

761 (i) instructions explaining the owner's rights under Chapter 11, Residence Lien
762 Restriction and Lien Recovery Fund Act; and

763 (ii) a form to enable the owner to exercise those rights.

764 (b) The instructions and form required under Subsection (2)(a) shall meet requirements
765 that the division establishes by rule under Title 63G, Chapter 3, Utah Administrative
766 Rulemaking Act.

767 (3) A claimant who fails to provide an owner the instructions and form required under
768 Subsection (2) is barred from maintaining or enforcing a lien upon the owner's residence.

769 (4) (a) Adjudication of a residence owner's rights and liabilities under this chapter and

770 Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act, is stayed until after the
771 owner has a reasonable period to establish compliance with Subsections 38-11-204(4)(a) and
772 (b) through an informal proceeding under Section 38-11-110, if the informal proceeding is
773 commenced within 30 days after the owner is served with a summons in an enforcement action.

774 (b) An owner who applies to the division for a certificate of compliance, as defined in
775 Section 38-11-102, shall send by certified mail to each claimant a copy of:

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

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

778 (c) The division shall notify each claimant listed in the owner's application of the
779 issuance or denial of a certificate of compliance.

780 Section 23. Section **38-14-303** is enacted to read:

781 **38-14-303. Parties -- Consolidation -- Intervention.**

782 (1) A claimant who does not contest the claims of other claimants may join an
783 enforcement action as a plaintiff.

784 (2) The court may consolidate separate enforcement actions and make all parties in the
785 separate actions parties in the consolidated action.

786 (3) The court may make a person claiming a lien a defendant if the person fails or
787 refuses to become a plaintiff.

788 (4) A claimant who is not made a party to an enforcement action may intervene at any
789 time before the final hearing.

790 Section 24. Section **38-14-304** is enacted to read:

791 **38-14-304. Priority in satisfying liens -- Proceeds of sale of property subject to lien**
792 **-- Deficiency judgment -- Excess proceeds.**

793 (1) The court in an enforcement action shall:

794 (a) provide for the satisfaction of liens claimed against the same property in the
795 following order:

796 (i) the lien of a subconsultant employed by another subconsultant;

797 (ii) the lien of a subconsultant employed by a prime consultant; and

798 (iii) the lien of a prime consultant;

799 (b) cause the benefitted property to be sold to satisfy the liens and to pay costs in the
800 same manner as a mortgage foreclosure under Title 78B, Chapter 6, Part 9, Mortgage

801 Foreclosure, subject to the same right of redemption applicable in a mortgage foreclosure
802 action.

803 (2) If the proceeds of a sale under Subsection (1)(b), after payment of costs, are not
804 sufficient to satisfy the amount of all liens, the court shall order the proceeds to be paid:

805 (a) in the order specified in Subsection (1)(a); and

806 (b) pro rata to claimants in each category under Subsection (1)(a) if the proceeds are
807 not sufficient to pay in full all claimants in that category.

808 (3) A claimant whose claim is not paid in full through an enforcement action may:

809 (a) be awarded a judgment for the unpaid balance; and

810 (b) execute on the judgment.

811 (4) The court in an enforcement action shall order any excess proceeds from a sale
812 under Subsection (1)(b) to be paid to each person that the court determines is entitled to
813 payment.

814 Section 25. Section **38-14-305** is enacted to read:

815 **38-14-305. Attorney fees -- Offer of judgment.**

816 (1) Except as provided in Subsection (2) and Section 38-11-107, the court in an
817 enforcement action shall award the prevailing party reasonable attorney fees, in an amount
818 determined by the court, to be taxed as costs in the action.

819 (2) A person who is guilty of a violation under Subsection 38-14-310(1) may not be
820 awarded attorney fees under Subsection (1).

821 (3) (a) A person against whom an enforcement action is brought may make an offer of
822 judgment as provided in Rule 68 of the Utah Rules of Civil Procedure.

823 (b) The claimant to whom an offer is made under Subsection (3)(a) shall pay the costs
824 and attorney fees that are incurred by the person making the offer after the offer is made if:

825 (i) the claimant does not accept the offer; and

826 (ii) the final judgement obtained by the claimant is not more favorable than the offer.

827 Section 26. Section **38-14-306** is enacted to read:

828 **38-14-306. Subconsultant lien not affected by payment to prime consultant.**

829 If a subconsultant has begun to furnish service for which the subconsultant is entitled to
830 a lien under this chapter, a payment to the prime consultant may not impair or defeat the
831 subconsultant's lien.

832 Section 27. Section **38-14-307** is enacted to read:

833 **38-14-307. Prime consultant lien not affected by premature payment.**

834 A payment to a prime consultant before the payment is due under the prime consultant's
835 contract:

836 (1) does not defeat, diminish, or discharge a lien in favor of any person except the
837 prime consultant; and

838 (2) is considered as if not made, even if the prime consultant to whom the payment is
839 made:

840 (a) abandons the prime consultant's contract; or

841 (b) becomes liable to the owner for the nonperformance of the contract.

842 Section 28. Section **38-14-308** is enacted to read:

843 **38-14-308. Scope of subconsultant lien -- Limit on design services contract.**

844 (1) A lien in favor of a subconsultant under this chapter extends to the full price of the
845 subconsultant's design services contract, subject to Subsection (2).

846 (2) If, at the time of the commencement to provide consultant services, the owner has
847 paid some or all of the prime consultant's design services contract according to the terms of the
848 contract:

849 (a) the prime consultant's lien extends only to the unpaid balance under the contract;

850 and

851 (b) the lien of a subconsultant who has notice of the payment is limited to the unpaid
852 balance under the contract.

853 (3) A design services contract may not make some or all of the contract price payable,
854 and a payment under a design service contract may not be made, before the commencement of
855 providing design services in order to evade or defeat a provision of this chapter.

856 Section 29. Section **38-14-309** is enacted to read:

857 **38-14-309. Cancellation of lien -- Penalty for untimely cancellation.**

858 (1) A claimant shall submit for recording to each applicable county recorder an
859 instrument cancelling the claimant's lien:

860 (a) if:

861 (i) the amount secured by the lien is paid in full, including:

862 (A) all costs incurred; and

863 (B) the fees for cancellation; and
864 (ii) a person interested in the benefitted property requests the claimant to cancel the
865 lien; and

866 (b) within 10 days after the request to cancel the lien is made.

867 (2) If a claimant fails to cancel a lien within the time provided under Subsection (1),
868 the claimant is liable to the person making the request for the greater of:

869 (a) \$100 per day after the time provided under Subsection (1) until the lien is
870 cancelled; and

871 (b) actual damages.

872 Section 30. Section **38-14-310** is enacted to read:

873 **38-14-310. Pursuing a lien with improper intent for more than is due -- Criminal**
874 **penalty and civil liability.**

875 (1) A claimant is guilty of a class B misdemeanor if the claimant intentionally pursues
876 a lien under this chapter for an amount greater than the amount actually due, with the intent to:

877 (a) cloud the property's title;

878 (b) exact by the lien more than is due; or

879 (c) procure an unjustified advantage or benefit.

880 (2) A claimant who is guilty of a violation under Subsection (1) is liable to the property
881 owner, prime consultant, or subconsultant affected by the lien for an amount equal to the
882 greater of:

883 (a) twice the amount by which the amount claimed under the lien exceeds the amount
884 actually due; and

885 (b) actual damages.

886 Section 31. Section **38-14-311** is enacted to read:

887 **38-14-311. Assignable nature of lien.**

888 (1) A lien under this chapter is assignable to the same extent that another chose in
889 action is assignable.

890 (2) An assignee of a lien under this chapter may commence and prosecute an
891 enforcement action in the assignee's own name.

892 Section 32. Section **38-14-401** is enacted to read:

893 **Part 4. Alternate Security for Design Consultant Lien**

894 **38-14-401. Definitions.**

895 As used in this part:

896 (1) "Affected party" means:

897 (a) an owner of an interest in lien property; or

898 (b) a prime consultant or subconsultant affected by the lien.

899 (2) "Alternate security" means, as described in Subsection 38-14-402(2)(a)(iii), a surety
900 bond or evidence of a cash deposit.

901 (3) "Lien amount" means the amount of a lien under this chapter as:

902 (a) claimed by a claimant in a notice of lien; or

903 (b) determined under Section 38-14-405, if the amount of the lien is determined under
904 that section.

905 Section 33. Section **38-14-402** is enacted to read:

906 **38-14-402. Notice of release of lien and substitution of alternate security.**

907 (1) An affected party may submit for recording with each applicable county recorder a
908 notice of release of lien and substitution of alternate security:

909 (a) if:

910 (i) the affected party disputes the correctness or validity of the lien; and

911 (ii) the notice meets the requirements of Subsection (2); and

912 (b) within 90 days after the affected party is served with a summons and complaint in
913 an enforcement action.

914 (2) (a) A notice under Subsection (1) shall:

915 (i) meet the requirements for the recording of a document under Title 57, Chapter 3,
916 Recording of Documents;

917 (ii) refer to the lien sought to be released, including the entry number, book number,
918 and page number applicable to the lien's recording;

919 (iii) have attached to it:

920 (A) a surety bond executed by a surety company that is treasury listed, A-rated by AM
921 Best Company, and authorized to issue surety bonds in the state; or

922 (B) evidence of a cash deposit that meets the requirements that the Department of
923 Commerce establishes by rule in accordance with Title 63G, Chapter 3, Utah Administrative
924 Rulemaking Act.

925 (b) The alternate security under Subsection (2)(a)(iii) shall:
926 (i) be in an amount equal to:
927 (A) 150% of the lien amount, if the lien amount is \$25,000 or more;
928 (B) 175% of the lien amount, if the lien amount is at least \$15,000 but less than
929 \$25,000; and
930 (C) 200% of the lien amount, if the lien amount is less than \$15,000;
931 (ii) be made payable to the claimant;
932 (iii) be conditioned for the payment of:
933 (A) the judgment that has been or may be rendered against the lien property in an
934 enforcement action; and
935 (B) any costs and attorney fees that the court awards; and
936 (iv) has the affected party as principal.
937 (3) (a) Within 30 days after a notice of release of lien and substitution of alternate
938 security under this section is recorded, the affected party shall serve a copy of the notice,
939 together with any attachments, on the claimant.
940 (b) If an enforcement action is pending at the time the copy of the notice is served on
941 the claimant under Subsection (3)(a), the claimant shall, within 90 days after being served with
942 the notice, file a motion to add the alternate security as a party to the enforcement action.
943 (c) (i) If a copy of the notice is not served on the claimant as required under Subsection
944 (3)(a) and subject to Subsection (3)(c)(ii), the claimant has until six months after discovery of
945 the notice to file a motion to add the alternate security as a party to the enforcement action.
946 (ii) Notwithstanding Subsections (3)(b) and (c)(i), an action may not be commenced
947 against the alternate security more than two years after the date the notice is recorded.
948 Section 34. Section **38-14-403** is enacted to read:
949 **38-14-403. Releasing property from lien -- Effect of lien release and alternate**
950 **security.**
951 (1) Upon the recording of a notice of release and substitution of alternate security
952 under Section 38-14-402, the lien property is released from a lien under this chapter.
953 (2) A recorded notice of release and substitution of alternate security under Section
954 38-14-402 is effective as to any amendment to the lien being released if the amount of the
955 surety bond or cash deposit is enough to satisfy the requirements of Subsection

956 38-14-402(2)(b)(i) with respect to the amended lien.

957 Section 35. Section **38-14-404** is enacted to read:

958 **38-14-404. Release of alternate security.**

959 The alternate security attached to a notice of release of lien and substitution of alternate
960 security under Section 38-14-402 is discharged and released upon:

961 (1) the claimant's failure to commence an action against the alternate security within
962 the time allowed under Section 38-14-301 for filing an enforcement action;

963 (2) the claimant's failure to file a motion to add the alternate security as a party to an
964 enforcement action within the time required under Subsection 38-14-402(3);

965 (3) the dismissal with prejudice, as to the claimant, of an enforcement action or action
966 against the alternate security; or

967 (4) the entry of judgment against the claimant in:

968 (a) an enforcement action; or

969 (b) an action against the alternate security.

970 Section 36. Section **38-14-405** is enacted to read:

971 **38-14-405. Petition to determine lien amount -- Procedure -- Requirements for**
972 **and limits on court order or judgment.**

973 (1) For the sole purpose of determining the amount of alternate security under
974 Subsection 38-14-401(2)(b)(ii)(A), an affected party may file a petition in district court of the
975 county in which the lien property is located to obtain a summary determination of the correct
976 amount of the lien claim for the sole purpose of determining the required amount of alternate
977 security.

978 (2) A petition under Subsection (1) shall:

979 (a) state with specificity the factual and legal bases for disputing the amount of the lien
980 claim; and

981 (b) be supported by a sworn affidavit and any other evidence the petitioner has to
982 support the petition.

983 (3) A petitioner under Subsection (1) shall serve a copy of the petition on the claimant
984 as provided under Rule 4 of the Utah Rules of Civil Procedure, together with a notice of
985 hearing, if a hearing is scheduled before the petition is served.

986 (4) A court that finds a petition under this section to be insufficient may dismiss the

987 petition without a hearing.

988 (5) A court that finds a petition under this section to be sufficient shall schedule a
989 hearing within 10 days after service of the petition to determine the correct amount of the lien
990 claim for the sole purpose of determining the required amount of alternate security.

991 (6) A claimant may attend a hearing held under Subsection (5) and contest the petition.

992 (7) A court order or judgment under this section:

993 (a) is limited to a determination of the amount of a lien claim for the sole purpose of
994 determining the amount of alternate security; and

995 (b) does not conclusively establish:

996 (i) the amount to which a claimant is entitled;

997 (ii) the validity of the lien claim; or

998 (iii) any person's right to any other legal remedy.

999 (8) The court shall include in its order or judgment a legal description of the lien
1000 property.

1001 (9) A petitioner under this section may submit for recording to an applicable county
1002 recorder a certified copy of an order or judgment issued under this section.

1003 (10) (a) A court may not award attorney fees in a proceeding under this section.

1004 (b) A court may consider the result in a proceeding under this section in an award of
1005 attorney fees under other provisions of this chapter.