

57 **38-1-2. Definitions.**58 As used in this chapter:59 (1) "Anticipated improvement" means the improvement:60 (a) for which a preconstruction service is performed; and61 (b) that is anticipated to follow the performing of the preconstruction service.62 (2) "Applicable county recorder" means the office of the recorder of each county in63 which any part of the property on which a claimant claims or intends to claim a lien under this
64 chapter is located.65 (3) "Bona fide loan" means a loan to an owner or owner-builder by a lender in which
66 the owner or owner-builder has no financial or beneficial interest greater than 5% of the voting
67 shares or other ownership interest.68 (4) "Claimant" means a person entitled to claim a lien under this chapter.69 (5) "Compensation" means the payment of money for a service rendered or an expense
70 incurred, whether based on:71 (a) time and expense, lump sum, stipulated sum, percentage of cost, cost plus fixed or
72 percentage fee, or commission; or73 (b) a combination of the bases listed in Subsection (5)(a).74 (6) "Construction service":75 (a) means to provide labor, material, or equipment for the purpose and during the
76 process of constructing, altering, or repairing an improvement; and77 (b) includes the scheduling, estimating, staking, supervising, managing, materials
78 testing, inspection, observation, and quality control or assurance involved in constructing,
79 altering, or repairing an improvement.80 (7) "Construction service lien" means a lien under this chapter for construction service.81 (8) "General preconstruction contractor" means a claimant,81a ~~H~~→ [whether] other than ~~←H~~ an original82 contractor ~~H~~→ [or subcontractor] ~~←H~~, who contracts with one or more subcontractors for the
83 subcontractor or subcontractors to provide preconstruction service that the claimant is under
84 contract to provide.85 (9) "Improvement" means:86 (a) a building, infrastructure, utility, or other human-made structure or object
87 constructed on or for and affixed to real property; or

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

370 (7) The written notice requirement applies to liens filed on or after July 1, 2004.
 371 Section 12. Section **38-1-19** is amended to read:

372 **38-1-19. Payment by owner to contractor -- Subcontractor's lien not affected.**

373 [~~When any~~] (1) If a subcontractor [~~shall have~~] has actually begun to furnish [~~labor or~~
 374 ~~materials~~] preconstruction service or construction service for which [~~he~~] the subcontractor is
 375 entitled to a lien [~~no~~], a payment to the original contractor [~~shall~~] may not impair or defeat
 376 [~~such~~] the lien[~~; and no~~].

377 (2) An alteration of [~~any~~] a contract [~~shall~~] may not affect [~~any~~] a lien acquired under
 378 [~~the provisions of~~] this chapter.

379 Section 13. Section **38-1-27** is amended to read:

380 **38-1-27. State Construction Registry -- Form and contents of notice of**
 381 **commencement, preliminary notice, and notice of completion.**

382 (1) As used in this section, Sections 38-1-30 through 38-1-37, and Section 38-1-40:

383 (a) "Alternate filing" means a legible and complete filing made in a manner established
 384 by the division under Subsection (2)(e) other than an electronic filing.

385 (b) "Cancel" means to indicate that a filing is no longer given effect.

386 (c) "Construction project ~~↔~~ [;] ~~↔~~ " ~~↔~~ or ~~↔~~ "project ~~↔~~ [;] ~~↔~~ "

386a ~~↔~~ [~~or "improvement"~~] ~~↔~~ means all labor, equipment,
 387 and materials provided:

388 (i) under an original contract; or

389 (ii) by, or under contracts with, an owner-builder.

390 (d) "Database" means the State Construction Registry created in this section.

391 (e) (i) "Designated agent" means the third party the Division of Occupational and
 392 Professional Licensing contracts with to create and maintain the State Construction Registry.

393 (ii) The designated agent is not an agency, instrumentality, or a political subdivision of
 394 the state.

395 (f) "Division" means the Division of Occupational and Professional Licensing.

395a ~~↔~~ (g) **"Entry number" means the reference number that:**

395b **(i) the designated agent assigns to each notice or other document filed with the**
 395c **database; and**

395d **(ii) is unique for each notice or other document.**

396 [~~(g)~~] (h) ~~↔~~ "Interested person" means a person who may be affected by a
 396a construction project.

397 ~~↔~~ [~~(h)~~] (i) ~~↔~~ "Program" means the State Construction Registry Program
 397a created in this section.

491 Administrative Procedures Act.

492 (c) Any order issued in a proceeding described in Subsection (8)(b) may prescribe the
493 method of that person's payment of fees for filing notices with the database after issuance of the
494 order.

495 (9) If a notice is filed by a third party on behalf of another, the notice is considered to
496 be filed by the person on whose behalf the notice is filed.

497 (10) A person filing a notice of commencement, preliminary notice, or notice of
498 completion is responsible for verifying the accuracy of information entered into the database,
499 whether the person files electronically or by alternate or third party filing.

500 Section 14. Section **38-1-29** is repealed and reenacted to read:

501 **38-1-29. No waiver of rights.**

502 (1) (a) A right or privilege under this chapter may not be waived or limited by contract.

503 (b) A provision of a contract purporting to waive or limit a right or privilege under this
504 chapter is void.

505 (2) Notwithstanding Subsection (1), a claimant may waive or limit, in whole or in part,
506 a lien right under this chapter in consideration of payment as provided in Section 38-1-39.

507 (3) Unless an agreement waiving or limiting a lien right expressly provides that a
508 payment is required to be applied to a specific lien, mortgage, or encumbrance, a payment to a
509 person claiming or included within a preconstruction service lien and a construction service
510 lien shall be applied first to the preconstruction service lien until paid in full.

511 Section 15. Section **38-1-30.5** is enacted to read:

512 **38-1-30.5. Notice of retention.**

513 (1) (a) A person who, under Section 38-1-3, is entitled to a preconstruction service lien
514 on real property under this chapter shall file a notice of retention with the database no later than
515 20 days after the person commences performing preconstruction service for the anticipated
516 improvement on the real property.

517 (b) A person who fails to file a timely notice of retention as required in this section
518 may not hold a valid preconstruction service lien under this chapter.

519 (c) A timely filed notice of retention is effective as to each preconstruction service that
520 the person filing the notice performs for the anticipated improvement

520a ~~it~~ → **under an original contract** ← ~~it~~ , including
521 preconstruction service that the person performs for more than one general preconstruction

522 contractor ~~H→~~ **under the same original contract** ~~←H~~ .

523 ~~(d) H→ [For purposes of this section, an improvement that benefits the development as a~~
 524 ~~whole and is preparatory to the construction of an improvement on individual lots is separate~~
 525 ~~from an improvement on an individual lot within the development.] A notice of retention filed for~~
 525a ~~preconstruction service performed or to be performed under an original contract for an~~
 525b ~~anticipated improvement on real property is not valid for preconstruction service performed~~
 525c ~~or to be performed under a separate original contract for an anticipated improvement on the~~
 525d ~~same real property. ←H~~

526 ~~(e) A notice of retention that is timely filed with the database with respect to an~~
 527 ~~anticipated improvement is considered to have been filed at the same time as the earliest timely~~
 528 ~~filed preliminary notice for that anticipated improvement.~~

529 ~~(f) A notice of retention shall include:~~

530 ~~(i) the name, address, telephone number, and email address of the person performing~~
 531 ~~the preconstruction service;~~

532 ~~(ii) the name, address, telephone number, and email address of the person who~~
 533 ~~employed the person performing the preconstruction service;~~

534 ~~(iii) a general description of the preconstruction service the person provided or will~~
 535 ~~provide;~~

536 ~~(iv) the name of the record or reputed owner of the property for which the~~
 537 ~~preconstruction service is or will be provided;~~

538 ~~(v) the name of the county in which the property on which the anticipated improvement~~
 539 ~~will occur is located;~~

540 ~~(vi) H→ (A) ←H the tax parcel identification number of each parcel included in that~~
 540a ~~property; H→ or~~

540b ~~(B) the entry number of a previously filed notice of retention that includes the tax~~
 540c ~~parcel identification number of each parcel included in that property; ←H and~~

541 ~~(vii) a statement that the person filing the notice intends to hold and claim a~~
 542 ~~preconstruction service lien if the person is not paid for the preconstruction service the person~~
 543 ~~performs.~~

544 ~~(g) (i) A claimant who is a general preconstruction contractor may include in a notice~~
 545 ~~of retention the name, address, and telephone number of each subcontractor who is under~~
 546 ~~contract with the claimant to provide preconstruction service that the claimant is under contract~~
 547 ~~to provide.~~

548 ~~(ii) The inclusion of a subcontractor in a notice of retention filed by another claimant is~~
 549 ~~not a substitute for the subcontractor's own submission of a notice of retention.~~

550 ~~(2) (a) Unless a person indicates to the division or designated agent that the person~~
 551 ~~does not wish to receive a notice under this section, the designated agent shall provide~~
 552 ~~electronic notification of the filing of a notice of retention or alternate filing to:~~

- 553 (i) the person filing the notice of retention; ~~H~~→ and ←~~H~~
554 (ii) each person who has requested a notice concerning the anticipated improvement.
555 (b) A person to whom notice is required to be provided under Subsection (2)(a) is
556 responsible to provide an email address, mailing address, or telefax number to which notice
557 may be sent and for the accuracy of the email address, mailing address, or telefax number.
558 (c) The designated agent fulfills the notice requirement of Subsection (2)(a) by sending
559 the notice to the email address, mailing address, or telefax number provided to the designated
560 agent, whether or not the notice is actually received.
561 (3) The burden is on the person filing the notice of retention to prove that the person
562 has substantially complied with the requirements of this section.
563 (4) (a) Subject to Subsection (4)(b), a person required by this section to file a notice of
564 retention is required to give only one notice for each anticipated improvement.
565 (b) If a person performs preconstruction service under more than one original contract,
566 the person shall file a notice of retention for preconstruction service performed under each
567 original contract.
568 (5) (a) An owner of property that is the subject of an anticipated improvement, an
569 original contractor, a subcontractor, or another interested person who believes that a notice of
570 retention has been erroneously filed may request from the person who filed the notice evidence
571 establishing the validity of the notice of retention.
572 (b) Within 10 days after a request under Subsection (5)(a), the person who filed the
573 notice of retention shall provide the requesting person proof that the notice of retention is valid.
574 (c) If the person who filed the notice of retention does not provide timely proof of the
575 validity of the notice of retention, that person shall immediately cancel the notice of retention
576 from the database in the manner prescribed by the division by rule.
577 (6) A person filing a notice of retention by alternate filing is responsible for verifying
578 and changing any incorrect information in the notice of retention before the expiration of the
579 period during which the notice is required to be filed.
580 Section 16. Section **38-1-31** is amended to read:
581 **38-1-31. Building permit -- Construction -- Notice registry -- Notice of**
582 **commencement of work.**
583 (1) (a) (i) (A) For a construction project where a building permit is issued to an original