

88 performing labor for wages[;or].

89 ~~[(b) if a notice of commencement is not filed as prescribed in Section 38-1-31 for the~~  
90 ~~project or improvement for which labor, service, equipment, or material is furnished.]~~

91 (2) Any person who fails to provide the preliminary notice required by Subsection (1)  
92 may not make a payment bond claim under this chapter.

93 (3) The preliminary notice required by Subsection (1) shall be provided prior to  
94 commencement of any action on the payment bond.

95 Section 3. Section 38-1-1 is amended to read:

96 **38-1-1. Public buildings not subject to act.**

97 ~~[The provisions of this]~~ Except as provided in Sections 38-1-27, 38-1-30 through  
98 38-1-37, and 38-1-40 relating to the State Construction Registry, this chapter [shall] does not  
99 apply to any public building, structure, or improvement.

100 Section 4. Section 38-1-5 is amended to read:

101 **38-1-5. Priority -- Over other encumbrances.**

102 ~~[The liens herein provided for shall relate]~~

102a **§→ (1) As used in this section: ←§**

103 (a) "First preliminary notice filing" means the filing of a preliminary notice that is:

104 (i) the earliest preliminary notice filed on a private project, as defined in Section  
105 38-1-27;

106 (ii) filed on or after August 1, 2011;

107 (iii) not filed on a project that, according to the law in effect before August 1, 2011,  
108 commenced before August 1, 2011;

109 (iv) not canceled under Subsection 38-1-32(6); and

110 (v) not withdrawn under Subsection 38-1-32(8).

110a **§→ (b) "Project property" means the real property on which a building or structure is being**  
110b **constructed or altered or on which an improvement is made. ←§**

111 (2) A lien under this chapter relates back to, and [take] takes effect as of, the time of  
112 the [commencement to do work or furnish materials on the ground for the structure or  
113 improvement, and shall have] first preliminary notice filing.

114 (3) (a) Subject to Subsection (3)(b), a lien under this chapter has priority over:

115 (i) any lien, mortgage, or other encumbrance [which may have attached subsequently to  
116 the time when the building, improvement or structure was commenced, work begun, or first  
117 material furnished on the ground; also over] that attaches after the first preliminary notice  
118 filing; and

119 (ii) any lien, mortgage, or other encumbrance of which the lien holder had no notice  
 120 and which was unrecorded at the time [~~the building, structure or improvement was~~  
 121 ~~commenced, work begun, or first material furnished on the ground~~] of the first preliminary  
 122 notice filing.

123 (b) A recorded mortgage or trust deed of a construction lender ~~§~~ **→**, as defined in Section  
 123a 38-1-27, ←§ has priority over each  
 124 lien under this chapter of a claimant who files a preliminary notice in accordance with Section  
 125 38-1-32 before the mortgage or trust deed is recorded if the claimant:

126 (i) accepts payment in full for labor, service, equipment, and material that the claimant  
 127 furnishes to the project before the mortgage or trust deed is recorded; and

128 (ii) withdraws the claimant's preliminary notice by filing a notice of withdrawal under  
 129 Subsection 38-1-32(8).

130 Section 5. Section **38-1-27** is amended to read:

131 **38-1-27. State Construction Registry.**

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

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

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

136 (c) "Construction lender" means a lender who provides construction financing for a  
 137 private project.

138 ~~(d)~~ (d) "Construction project[;]" or "project[;]" [or "improvement"] means all labor,  
 139 service, equipment, and materials provided[;-(;)] under an original contract[;-(;)].

140 ~~[(ii) by, or under contracts with, an owner-builder.]~~

141 ~~(e)~~ (e) "Database" means the State Construction Registry created in this section.

142 ~~(f)~~ (f) (i) "Designated agent" means the third party the ~~[Division of Occupational and~~  
 143 ~~Professional Licensing]~~ division contracts with to create and maintain the State Construction  
 144 Registry.

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

147 ~~(g)~~ (g) "Division" means the Division of Occupational and Professional Licensing.

148 (h) "Entry number" means the reference number that:

149 (i) the designated agent assigns to each notice or other document filed with the

150 database; and

151 (ii) is unique for each notice or other document.

152 (i) "Government project" means a construction project undertaken by or for:

153 (i) the state, including a department, division, or other agency of the state; or

154 (ii) a county, city, town, school district, local district, special service district,

155 community development and renewal agency, or other political subdivision of the state.

156 (j) "Government project-identifying information" means:

157 (i) the lot or parcel number of each lot included in ~~§~~→ the ←~~§~~ project property that has a

157a lot or

158 parcel number; and

159 (ii) the unique project number assigned by the designated agent.

160 ~~[(g)]~~ (k) "Interested person" means a person who may be affected by a construction

161 project.

162 (l) "Private project" means a construction project that is not a government project.

163 ~~[(h)]~~ (m) "Program" means the State Construction Registry Program created in this

164 section.

165 (n) "Project property" means the real property on which a construction project occurs  
166 or will occur.

167 (2) Subject to receiving adequate funding through a legislative appropriation and  
168 contracting with an approved third party vendor who meets the requirements of Sections  
169 38-1-30 through 38-1-37, there is created the State Construction Registry Program that shall:

170 (a) (i) assist in protecting public health, safety, and welfare; and

171 (ii) promote a fair working environment;

172 (b) be overseen by the division with the assistance of the designated agent;

173 (c) provide a central repository for ~~[notices of commencement, preliminary notices, and~~  
174 ~~notices of completion filed in connection with all privately owned construction projects as well~~  
175 ~~as all state and local government owned construction projects throughout Utah]~~ all notices filed  
176 with the database under Section 38-1-30.5, 38-1-31.5, 38-1-32, 38-1-32.5, 38-1-32.7, 38-1-33,  
177 or 38-1-40;

178 (d) ~~[be]~~ make accessible ~~[for filing and review]~~, by way of the program Internet  
179 website ~~[of]~~:

180 (i) the filing and reviewing of notices described in Subsection (2)(c); and

212 ~~§~~→ [(iv) ~~project address;~~

213 ~~—~~ [(v)] (iv) ←~~§~~ lot or parcel number;

214 [(vi) ~~unique project number assigned by the designated agent; and]~~

215 ~~§~~→ [(vi)] (v) ←~~§~~ the address of the project property;

216 ~~§~~→ [(vii)] (vi) ←~~§~~ entry number;

217 ~~§~~→ [(viii)] (vii) ←~~§~~ the name of the county in which the project property is located;

218 ~~§~~→ [(ix)] (viii) ←~~§~~ for private projects:

219 (A) the tax parcel identification number of each parcel included in the project property;

220 and

221 (B) the building permit number;

222 ~~§~~→ [(x)] (ix) ←~~§~~ for government projects, the government project-identifying information;

222a and

223 [(vii)] ~~§~~→ [(xi)] (x) ←~~§~~ any other identifier that the division considers reasonably

223a appropriate in

224 collaboration with the designated agent.

225 (4) (a) In accordance with the process required by Section 63J-1-504, the division shall

226 establish the fees for:

227 [(i) ~~a notice of commencement;~~]

228 [(ii) ~~a preliminary notice;~~]

229 [(iii) ~~a notice of intent to file notice of final completion;~~]

230 [(iv) ~~a notice for remaining amounts due to complete the contract;~~]

231 [(v) ~~a notice of completion;~~]

232 (i) notices described in Subsection (2)(c);

233 [(vi)] (ii) a request for notice;

234 [(vii)] (iii) providing a required notice by an alternate [~~method of delivery~~] filing;

235 [(viii)] (iv) a duplicate receipt of a filing; and

236 [(ix)] (v) account setup for a person who wishes to be billed periodically for filings

237 with the database.

238 (b) The fees allowed under Subsection (4)(a) may not exceed the amount reasonably

239 necessary to create and maintain the database.

240 (c) The fees established by the division may vary by method of filing if one form of

241 filing is more costly to process than another form of filing.

242 (d) The division may provide by contract that the designated agent may retain all fees

336 in an alternate filing it enters into the database.

337 Section 7. Section **38-1-30.5** is enacted to read:

338 **38-1-30.5. Notice of construction loan.**

339 (1) As used in this section, "construction loan" does not include a consumer loan  
 340 secured by the equity in the consumer's home.

341 (2) ~~§~~→ [Promptly after] After ~~←~~§ recording a mortgage or trust deed securing a  
 341a construction loan on a  
 342 private project, the construction lender on the loan shall ~~§~~→ promptly, in conjunction with the  
 342a closing of the construction loan, ~~←~~§ file with the database a notice of  
 343 construction loan.

344 (3) A notice under Subsection (2) shall accurately state:

345 (a) the lender's name, address, and telephone number;

346 (b) the name of the trustor on the trust deed securing the loan;

347 (c) the tax parcel identification number of each parcel included or to be included in the  
 348 construction project for which the loan was given;

349 (d) the address of the project property; and

350 (e) the name of the county in which the project property is located.

351 (4) A construction lender that files a notice of construction loan containing incomplete  
 352 or inaccurate information may not be held liable for damages suffered by any other person who  
 353 relies on the inaccurate or incomplete information in filing a preliminary notice.

354 Section 8. Section **38-1-31** is amended to read:

355 **38-1-31. Building permit -- Transmission to database -- Posting at project site.**

356 [(1) (a) (i) (A) For a construction project where a building permit is issued to an  
 357 original contractor or owner-builder, no later than 15 days after the issuance of the building  
 358 permit:]

359 [(1) the local government entity issuing that]

360 (1) (a) A county, city, or town issuing a building permit for a private project:

361 (i) shall, no later than 15 days after issuing the permit, input the building permit  
 362 application and transmit the building permit information to the database electronically by way  
 363 of the Internet or computer modem or by any other means; [~~or~~] and

364 (ii) may collect a building permit fee related to the issuance of the building permit, but  
 365 may not spend or otherwise use the building permit fee until the county, city, or town complies  
 366 with Subsection (1)(a)(i) with respect to the building permit for which the fee is charged.

894 (b) modify Section 38-1-5 to read:

895 **"38-1-5. Priority -- Over other encumbrances.**

896 [~~The liens herein provided for shall relate~~]

897 (1) As used in this section:

898 (a) "First preliminary notice filing" means the filing of a preliminary notice that is:

899 (i) the earliest preliminary notice filed on a private project, as defined in Section

900 38-1-27;

901 (ii) filed on or after August 1, 2011;

902 (iii) not filed on a project that, according to the law in effect before August 1, 2011,

903 commenced before August 1, 2011;

904 (iv) not canceled under Subsection 38-1-32(6); and

905 (v) not withdrawn under Subsection 38-1-32(8).

905a **§→ (b) "Project property" means the real property on which an improvement is being**  
 905b **constructed or made. ←§**

906 (2) A construction service lien relates back to, and [take] takes effect as of, the time of

907 the [commencement to do work or furnish materials on the ground for the structure or

908 improvement, and shall have] first preliminary notice filing.

909 (3) (a) Subject to Subsection (3)(b), a construction service lien has priority over:

910 (i) any lien, mortgage, or other encumbrance [which may have attached subsequently to

911 the time when the building, improvement or structure was commenced, work begun, or first

912 material furnished on the ground; also over] that attaches after the first preliminary notice

913 filing; and

914 (ii) any lien, mortgage, or other encumbrance of which the lien holder had no notice

915 and which was unrecorded at the time [the building, structure or improvement was

916 commenced, work begun, or first material furnished on the ground] of the first preliminary

917 notice filing.

918 (b) A recorded mortgage or trust deed of a construction lender has priority over each

919 construction service lien of a claimant who files a preliminary notice in accordance with

920 Section 38-1-32 before the mortgage or trust deed is recorded if the claimant:

921 (i) accepts payment in full for construction service that the claimant furnishes to the

922 project before the mortgage or trust deed is recorded; and

923 (ii) withdraws the claimant's preliminary notice by filing a notice of withdrawal under

924 Subsection 38-1-32(8)." §→ ; ←§

925 (c) modify Subsection 38-1-19(1) to read:

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

930 (d) modify Subsection 38-1-27(2)(c) to read:

931 ~~"(c) provide a central repository for [notices of commencement, preliminary notices,~~  
932 ~~and notices of completion filed in connection with all privately owned construction projects as~~  
933 ~~well as all state and local government owned construction projects throughout Utah] all notices~~  
934 ~~filed with the database under Section 38-1-30.5, 38-1-30.7, 38-1-31.5, 38-1-32, 38-1-32.5,~~  
935 ~~38-1-32.7, 38-1-33, or 38-1-40;"~~ ~~§→ ; ←§~~

936 (e) modify Subsection 38-1-32(2) to read:

937 ~~"[(1)] (2) (a) (i) [Except for a person who has a contract with an owner or an~~  
938 ~~owner-builder or a laborer compensated with wages, a subcontractor] A person who, under~~  
939 Section 38-1-3, is entitled to a construction service lien with respect to a private project shall  
940 file a preliminary notice with the database [by the] no later [of: (A)] than 20 days after  
941 [commencement of its own work or the commencement of] the person commences furnishing  
942 [labor, service, equipment, and material] construction service to [a construction] the project[;  
943 or].

944 (ii) A pre-lender claimant who, under Section 38-1-3, is entitled to claim a construction  
945 service lien for construction service the claimant furnishes to a private project after the  
946 recording of a construction lender's mortgage or trust deed on the project property shall file a  
947 preliminary notice within 20 days after the recording of the mortgage or trust deed.

948 ~~[(B) 20 days after the filing of a notice of commencement if the subcontractor's work~~  
949 ~~commences before the filing of the first notice of commencement.]~~

950 ~~[(ii)] (b) [A] Subject to Subsection (2)(c), a preliminary notice [filed within the period~~  
951 ~~described in Subsection (1)(a)(i)] is effective as to all [labor, service, equipment, and material~~  
952 ~~furnished] construction service that the person filing the notice furnishes to the [construction]~~  
953 private project, including [labor, service, equipment, and material provided] construction  
954 service that the person furnishes to more than one contractor or subcontractor on that same  
955 project.

956 ~~[(iii) (A) If more than one notice of commencement is filed for a project, a person may~~  
 957 ~~attach a preliminary notice to any notice of commencement filed for the project by a party~~  
 958 ~~authorized in Section 38-1-31.]~~

959 ~~[(B) A preliminary notice attached to an untimely notice of commencement is valid if~~  
 960 ~~there is also a valid and timely notice of commencement for the project filed by a party~~  
 961 ~~authorized in Section 38-1-31.]~~

962 ~~[(b) (c) [If a person files a] A preliminary notice filed after the period [prescribed by]~~  
 963 ~~provided in Subsection ~~[(1)] (2)(a)[, the preliminary notice]:~~~~

964 ~~(i) becomes effective five days after the day [on which] the preliminary notice is~~  
 965 ~~filed[-]; and~~

966 ~~(ii) is not effective for construction service that the person who files the preliminary~~  
 967 ~~notice furnishes to the construction project before five days after the preliminary notice is filed.~~

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

973 ~~(d) (i) (A) [If a] A person who [is required to file a preliminary notice under this~~  
 974 ~~chapter] fails to file [the] a preliminary notice[-, that person] as required in this section may not~~  
 975 ~~hold a valid construction service lien under this chapter.~~

976 ~~(B) A person who files a preliminary notice after the period provided in Subsection~~  
 977 ~~(2)(a) may not hold a valid construction service lien for construction service the person~~  
 978 ~~furnishes to the construction project before five days after the preliminary notice is filed.~~

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

981 ~~[(ii) The content of a]~~

982 ~~(e) (i) Except as provided in Subsection ~~§→ [(3)] (2) ←§~~ (e)(ii), a preliminary notice that is~~  
 982a ~~timely~~

983 ~~filed with the database with respect to a private project is considered to be filed at the time of~~  
 984 ~~the first preliminary notice filing, as defined in Section 38-1-5.~~

985 ~~(ii) A timely filed preliminary notice that is a refiled preliminary notice is considered to~~  
 986 ~~be filed immediately after the recording of a mortgage or trust deed of the construction lender~~