

HB0115S01 compared with HB0115

~~{deleted text}~~ shows text that was in HB0115 but was deleted in HB0115S01.

inserted text shows text that was not in HB0115 but was inserted into HB0115S01.

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Representative Michael T. Morley proposes the following substitute bill:

MECHANICS' LIENS AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael T. Morley

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions relating to mechanics' liens.

Highlighted Provisions:

This bill:

- ▶ clarifies the applicability of mechanics' liens provisions;
- ▶ modifies definitions;
- ▶ provides for liens for preconstruction service, establishes a procedure for perfecting and enforcing the liens, and provides for the priority of the liens;
- ▶ modifies a provision relating to the waiver or limitation of lien rights;
- ▶ provides that a person who knowingly falsifies information for the purpose of obtaining priority of a preconstruction service lien is guilty of a misdemeanor; and
- ▶ makes technical and conforming changes.

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Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

38-1-1, Utah Code Annotated 1953

38-1-4, as last amended by Laws of Utah 1987, Chapter 170

38-1-5, Utah Code Annotated 1953

38-1-7, as last amended by Laws of Utah 2009, Chapter 50

38-1-9, as last amended by Laws of Utah 1987, Chapter 50

38-1-11, as last amended by Laws of Utah 2010, Chapter 31

38-1-19, Utah Code Annotated 1953

38-1-27, as last amended by Laws of Utah 2009, Chapters 183 and 239

38-1-31, as last amended by Laws of Utah 2009, Chapter 50

38-1-32, as last amended by Laws of Utah 2009, Chapter 50

38-1-33, as last amended by Laws of Utah 2010, Chapter 76

38-1-40, as last amended by Laws of Utah 2010, Chapter 31

ENACTS:

38-1-2.1, Utah Code Annotated 1953

38-1-4.7, Utah Code Annotated 1953

38-1-6.5, ~~Utah Code Annotated 1953~~

~~**38-1-6.7**~~, Utah Code Annotated 1953

38-1-30.5, Utah Code Annotated 1953

76-6-524, Utah Code Annotated 1953

REPEALS AND REENACTS:

38-1-2, as last amended by Laws of Utah 2006, Chapter 297

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

38-1-29, as enacted by Laws of Utah 2001, Chapter 229

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

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

38-1-1. Public improvements not subject to chapter -- Exception.

[The provisions of this]

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

Section 2. Section **38-1-2** is repealed and reenacted to read:

38-1-2. Definitions.

As used in this chapter:

(1) "Anticipated improvement" means the improvement:

(a) for which a preconstruction service is performed; and

(b) that is anticipated to follow the performing of the preconstruction service.

(~~1~~2) "Applicable county recorder" means the office of the recorder of each county in which any part of the property on which a claimant claims or intends to claim a lien under this chapter is located.

(~~2~~3) "Bona fide loan" means a loan to an owner or owner-builder by a lender in which the owner or owner-builder has no financial or beneficial interest greater than 5% of the voting shares or other ownership interest.

(~~3~~4) "Claimant" means a person entitled to claim a lien under this chapter.

(~~4~~5) "Compensation" means the payment of money for a service rendered or an expense incurred, whether based on:

(a) time and expense, lump sum, stipulated sum, percentage of cost, cost plus fixed or percentage fee, or commission; or

(b) a combination of the bases listed in Subsection (~~4~~5)(a).

(~~5~~6) "Construction service":

(a) means to provide labor, material, or equipment for the purpose and during the process of constructing, altering, or repairing an improvement; and

(b) includes the scheduling, estimating, staking, supervising, managing, materials testing, inspection, observation, and quality control or assurance involved in constructing, altering, or repairing an improvement.

(~~6~~7) "Construction service lien" means a lien under this chapter for construction

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service.

~~(7;8)~~ "General preconstruction contractor" means a claimant, whether an original contractor or subcontractor, who contracts with one or more subcontractors for the subcontractor or subcontractors to provide preconstruction service that the claimant is under contract to provide.

~~(8;9)~~ "Improvement" means:

(a) a building, infrastructure, utility, or other human-made structure or object constructed on or for and affixed to real property; or

(b) a repair, modification, or alteration of a building, infrastructure, utility, or object referred to in Subsection ~~(8;9)~~(a).

~~(9) "Included preconstruction subcontractor" means a subcontractor who is:~~

~~(a) under contract with a general preconstruction contractor to provide preconstruction service; and~~

~~(b) included in the general preconstruction contractor's initial or amended notice of intent to claim a preconstruction service lien under Section 38-1-6.7.~~

~~(10) "Original contract":~~

~~(a) means a contract between an owner of real property and an original contractor for preconstruction service or construction service; and~~

~~(b) does not include a contract between an owner-builder and another person.~~

~~(11) "Original contractor" means a person who contracts with an owner of real property to provide preconstruction service or construction service.~~

~~(12) "Owner-builder" means an owner of real property who:~~

~~(a) contracts with one or more other persons for preconstruction service or construction service for an improvement on the owner's real property; and~~

~~(b) obtains a building permit for the improvement.~~

~~(13) "Preconstruction service":~~

~~(a) means to plan or design, or to assist in the planning or design of, an improvement or a proposed improvement:~~

~~(i) before construction of the improvement commences; and~~

~~(ii) for compensation separate from any compensation paid or to be paid for construction service for the improvement; and~~

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(b) includes consulting, conducting a site investigation or assessment, programming, preconstruction cost or quantity estimating, preconstruction scheduling, performing a preconstruction construction feasibility review, procuring construction services, and preparing a study, report, rendering, model, boundary or topographic survey, plat, map, design, plan, drawing, specification, or contract document.

(14) "Preconstruction service lien" means a lien under this chapter for a preconstruction service.

(15) "Subcontractor" means a person who contracts to provide preconstruction service or construction service to a person other than the owner of the real property for which the preconstruction service or construction service is provided.

Section 3. Section **38-1-2.1** is enacted to read:

38-1-2.1. Owner-builder original contract.

For purposes of this chapter, an original contract is considered to exist between an owner-builder as owner and the owner-builder as original contractor.

Section 4. Section **38-1-3** is repealed and reenacted to read:

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

(1) Subject to the provisions of this chapter, a person who performs preconstruction service or construction service on or for real property has a lien on the real property for the reasonable value of the preconstruction service or construction service, respectively, except as provided in Section 38-11-107.

(2) A person may claim a preconstruction service lien and a separate construction service lien on the same real property.

(3) (a) A construction service lien may include an amount claimed for a preconstruction service.

(b) A preconstruction service lien may not include an amount claimed for construction service.

(4) A lien under this chapter attaches only to the interest that the owner or owner-builder has in the real property that is the subject of the lien.

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

38-1-4. Land covered by lien -- Multiple lots occupied by improvement -- What a lien attaches to.

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[The liens granted by]

(1) A lien under this chapter ~~[shall extend]~~ extends to and ~~[cover so]~~ covers as much of the land ~~[whereon such building, structure, or]~~ on which the improvement ~~[shall be]~~ is made as ~~[may be]~~ necessary for the convenient use and occupation of the land. ~~[In case any such building shall occupy]~~

(2) If an improvement occupies two or more lots or other subdivisions of land, ~~[such]~~ the lots or subdivisions ~~[shall be]~~ are considered as one for the purposes of this chapter. ~~[The liens provided for in]~~

(3) A lien under this chapter ~~[shall attach]~~ attaches to all franchises, privileges, appurtenances, ~~[and to all]~~ machinery, and fixtures~~[;]~~ pertaining to or used in connection with ~~[any such lands, buildings, structures, or improvements]~~ the improvement.

Section 6. Section ~~38-1-4.7~~ is enacted to read:

38-1-4.7. Preconstruction service lien -- Priority.

(1) Except as otherwise provided in this chapter, a preconstruction service lien:

(a) relates back to and takes effect as of the time a notice of ~~{intent to claim a preconstruction service lien}~~ retention under Section ~~{38-1-6}~~ 38-1-30.5 is ~~{recorded}~~ filed; and

(b) has priority over:

(i) any lien, mortgage, or other encumbrance that attaches after the notice of ~~{intent to claim a preconstruction service lien}~~ retention is ~~{recorded}~~ filed; and

(ii) any lien, mortgage, or other encumbrance of which the claimant had no notice and that was unrecorded at the time the notice of ~~{intent to claim a preconstruction service lien}~~ retention is ~~{recorded}~~ filed.

(2) A preconstruction service lien is subordinate to an interest securing a bona fide loan if and to the extent that the lien covers preconstruction service provided after the interest securing a bona fide loan is recorded.

(3) Preconstruction service is considered complete for any project, project phase, or bid package as of the date that construction service for that project, project phase, or bid package, respectively, commences.

Section 7. Section ~~38-1-5~~ is amended to read:

38-1-5. ~~{Priority of construction}~~ Construction service lien -- Priority.

[The liens herein provided for shall relate]

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A construction service lien:

(1) ~~relates~~ back to, and ~~[take]~~ takes effect as of, the time of the commencement [~~to do work or furnish materials~~] of construction service on the ground for the [~~structure or~~] improvement~~[-];~~ and [~~shall have~~]

(2) has priority over:

(a) any lien, mortgage, or other encumbrance [~~which may have attached subsequently to the time when the building, improvement or structure was commenced, work begun, or first material furnished~~] that attaches after the construction service for the improvement commences on the ground; [~~also over~~] and

(b) any lien, mortgage, or other encumbrance of which the [~~lien holder~~] claimant had no notice and [~~which~~] that was unrecorded at the time the [~~building, structure or~~] construction service for the improvement [~~was commenced, work begun, or first material furnished~~] commences on the ground.

Section 8. Section ~~38-1-6. {5}~~7 is enacted to read:

~~38-1-6. {5. Notice of intent to claim a preconstruction service lien -- Requirements:~~

~~—— (1) (a) On or after the date a claimant first provides a preconstruction service but no later than the date the claimant completes the service, a claimant shall submit for recording with the applicable county recorder a notice of intent to claim a preconstruction service lien.~~

~~—— (b) A claimant who is an included preconstruction subcontractor is considered to have submitted a notice of intent to claim a preconstruction service lien at the same time that the claimant's general preconstruction contractor submits a notice of intent or amended notice of intent that includes the claimant as a subcontractor.~~

~~—— (2) A claimant who fails to submit a notice of intent as provided in Subsection (1) may not claim a preconstruction service lien.~~

~~—— (3) A notice of intent to claim a preconstruction service lien shall include:~~

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

~~—— (b) if the claimant is a general preconstruction contractor, the name, mailing address, and telephone number of each subcontractor under contract with the claimant at the time the notice is filed;~~

~~—— (c) a statement that the claimant intends to hold and claim a preconstruction~~

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~~service lien if the claimant is not paid for the preconstruction service the claimant and, if the claimant is a general contractor, the claimant's subcontractors provide;~~

~~—— (d) a general description of the preconstruction service the claimant and any subcontractor of the claimant provided or will provide;~~

~~—— (e) the name of the person who employed the claimant;~~

~~—— (f) the name, if known, of the reputed owner of the property on which the preconstruction service lien is intended to be claimed or, if not known, the name of the record owner of the property;~~

~~—— (g) a description of the property sufficient for identification;~~

~~—— (h) the claimant's signature or the signature of the claimant's authorized agent; and~~

~~—— (i) an acknowledgment or certificate as required under Title 57, Chapter 3, Recording of Documents.~~

~~—— (4) A claimant who is a general preconstruction contractor shall submit for recording with the applicable county recorder an amended notice of intent to claim a preconstruction service lien that complies with Subsection (3) if, after filing the initial notice of intent, the claimant contracts with a subcontractor to provide preconstruction service who was not included in the initial notice of intent.~~

~~—— Section 9. Section 38-1-6.7 is enacted to read:~~

~~—— 38-1-6.7. Notice of preconstruction service lien -- Requirements.~~

~~(1) ~~{(a)}~~ Within 90 days after completing a preconstruction service for which a claimant is not paid in full, the claimant shall submit for recording with the applicable county recorder a notice of preconstruction service lien.~~

~~{ —— (b) A claimant who is an included preconstruction subcontractor is considered to have submitted a notice of preconstruction service lien at the same time that the claimant's general preconstruction contractor submits a notice of preconstruction service lien that includes the claimant as a subcontractor.~~

~~‡ (2) A claimant who fails to submit a notice of preconstruction service lien as provided in Subsection (1) may not claim a preconstruction service lien.~~

~~(3) (a) A notice of preconstruction service lien shall include:~~

~~{a}i) the claimant's name, mailing address, and telephone number;~~

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~~{ (b) if the claimant is a general preconstruction contractor, the name, mailing address, and telephone number of each included preconstruction subcontractor;~~

~~{ (c) ii) a statement that the claimant claims a preconstruction service lien;~~

~~{ (d) iii) the date the claimant's notice of intent to claim a preconstruction service lien was recorded and, if the claimant submitted an amended notice of intent to claim a preconstruction service lien, the date the amended notice of intent was recorded;~~

~~{ (e) retention was filed;~~

~~{ (iv) the name of the person who employed the claimant;~~

~~{ (ff) v) a general description of the preconstruction service provided by the claimant and any included preconstruction subcontractor};~~

~~{ (g) vi) the date that the claimant last provided preconstruction service;~~

~~{ (h) vii) the name, if known, of the reputed owner of the property on which the preconstruction service lien is claimed or, if not known, the name of the record owner of the property;~~

~~{ (i) viii) a description of the property sufficient for identification;~~

~~{ (j) ix) the principal amount, excluding interest, costs, and attorney fees, claimed by the claimant and by each included preconstruction subcontractor};~~

~~{ (k) x) the claimant's signature or the signature of the claimant's authorized agent;~~

~~{ (l) xi) an acknowledgment or certificate as required under Title 57, Chapter 3, Recording of Documents; and~~

~~{ (m) xii) if the lien is against an owner-occupied residence, as defined in Section 38-11-102, a statement meeting the requirements that the Division of Occupational and Professional Licensing has established in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, describing the steps an owner may take to require a claimant to remove the lien as provided in Section 38-11-107.~~

~~{ (4) b) (i) A claimant who is a general preconstruction contractor's notice of lien may include an amount claimed by a subcontractor, regardless of tier, who was required under Subsection 38-1-6.5(3)(a) to be listed in the general preconstruction contractor's notice of intent to claim a contractor may include in a notice of preconstruction service lien only if the name, address, and telephone number of each subcontractor who is under contract with the claimant to provide preconstruction service that the claimant is under contract to provide.~~

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(ii) The inclusion of a subcontractor in a notice of preconstruction service lien filed by another claimant is not a substitute for the ~~subcontractor was listed in the~~ subcontractor's own submission of a notice of ~~intent~~ preconstruction service lien.

(~~5~~4) (a) Within 30 days after a claimant's notice of preconstruction service lien is recorded, the claimant shall send by certified mail a copy of the notice to the reputed or record owner of the real property.

(b) If the record owner's address is not readily available to the claimant, the claimant may mail a copy of the notice to the owner's last-known address as it appears on the last completed assessment roll of the county in which the property is located.

(c) A claimant's failure to mail a copy of the notice as required in this Subsection (~~5~~4) precludes the claimant from being awarded costs and attorney fees against the reputed or record owner in an action to enforce the lien.

(~~6~~5) Nothing in this section may be construed to prohibit a claimant from recording a notice of preconstruction services lien before completing the preconstruction service the claimant contracted to provide.

Section ~~10~~9. Section 38-1-7 is amended to read:

38-1-7. Notice of claim for construction service lien -- Contents -- Recording -- Service on owner of property.

(1) (a) (i) Except as modified in Section 38-1-27, a person claiming [~~benefits under this chapter~~] a construction service lien shall file for record with the applicable county recorder [~~of the county in which the property, or some part of the property, is situated,~~] a written notice to hold and claim a lien no later than:

(A) 180 days after the day on which occurs final completion of the original contract if no notice of completion is filed under Section 38-1-33; or

(B) 90 days after the day on which a notice of completion is filed under Section 38-1-33 but not later than the time frame established in Subsection (1)(a)(i)(A).

(ii) For purposes of this Subsection (1), final completion of the original contract, and for purposes of Section 38-1-33, final completion of the project, means:

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

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

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

(D) if as a result of termination of the original contract prior to the completion of the work defined by the original contract, the compliance agency does not issue a certificate of occupancy or final inspection, the last date on which substantial work was performed under the original contract.

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

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

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

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

(i) repair work; or

(ii) warranty work.

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

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

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

(ii) the name of the person:

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- (A) by whom the [lien] claimant was employed; or
- (B) to whom the [lien] claimant furnished the equipment or material;
- (iii) the time when:
 - (A) the first and last labor or service was performed; or
 - (B) the first and last equipment or material was furnished;
- (iv) a description of the property, sufficient for identification;
- (v) the name, current address, and current phone number of the [lien] claimant;
- (vi) the amount of the lien claim;
- (vii) the signature of the [lien] claimant or the [lien] claimant's authorized agent;
- (viii) an acknowledgment or certificate as required under Title 57, Chapter 3,

Recording of Documents; and

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

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

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

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

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

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

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

Section ~~38-1-10~~10. Section **38-1-9** is amended to read:

38-1-9. Notice imparted by record.

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(1) The recorder [~~must~~] shall record [~~the claim~~] each notice of ~~intent under Subsection 38-1-6.5(1), notice of~~ preconstruction service lien under Section 38-1-6.7~~(1)~~ and notice to hold and claim a construction service lien under Section 38-1-7 in an index maintained for that purpose.

(2) From the time [~~the claim~~] a notice described in Subsection (1) is filed for record, all persons are considered to have notice of [~~the claim~~] it.

Section ~~{12}~~11. Section **38-1-11** is amended to read:

38-1-11. Enforcement -- Time for -- Lis pendens -- Action for debt not affected --

Instructions and form affidavit and motion.

(1) As used in this section:

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

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

(2) A [~~lien~~] claimant shall file an action to enforce the lien filed under this chapter:

(a) except as provided in Subsection (2)(b), within 180 days after the day on which the [~~lien~~] claimant [~~filed~~] files:

(i) a notice of preconstruction service lien under Section 38-1-6.7, for a preconstruction service lien; or

(ii) a notice of claim under Section 38-1-7, for a construction service lien; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section ~~{13}~~12. Section **38-1-19** is amended to read:

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

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

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

Section ~~{14}~~13. Section **38-1-27** is amended to read:

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

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

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

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

(c) "Construction project," "project," or "improvement" means all labor, equipment, and materials provided:

(i) under an original contract; or

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

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

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

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

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

(g) "Interested person" means a person who may be affected by a construction project.

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(h) "Program" means the State Construction Registry Program created in this section.

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

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

(ii) promote a fair working environment;

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

(c) provide a central repository for notices of commencement, preliminary notices, and notices of completion filed in connection with all privately owned construction projects as well as all state and local government owned construction projects throughout Utah;

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

(i) notices of retention;

~~[(+)]~~ (ii) notices of commencement;

~~[(+)]~~ (iii) preliminary notices;

~~[(+)]~~ (iv) a notice of intent to file notice of final completion;

~~[(+)]~~ (v) a notice for remaining amounts due to complete the contract; and

~~[(+)]~~ (vi) notices of completion;

(e) accommodate:

(i) electronic filing of the notices described in Subsection (2)(d); and

(ii) alternate filing of the notices described in Subsection (2)(d) by U.S. mail, telefax, or any other alternate method as provided by rule made by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

(f) (i) provide electronic notification for up to three email addresses for each interested person or company who requests notice from the construction notice registry; and

(ii) provide alternate means of notification for a person who makes an alternate filing, including U.S. mail, telefax, or any other method as prescribed by rule made by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(g) provide hard-copy printing of electronic receipts for an individual filing evidencing the date and time of the individual filing and the content of the individual filing.

(3) (a) The designated agent shall provide notice of all other filings for a project to any

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person who files a notice of commencement, preliminary notice, or notice of completion for that project, unless the person:

- (i) requests that the person not receive notice of other filings; or
- (ii) does not provide the designated agent with the person's contact information in a manner that adequately informs the designated agent.

(b) An interested person may request notice of filings related to a project.

(c) The database shall be indexed by:

- (i) owner name;
- (ii) original contractor name;
- (iii) subdivision, development, or other project name, if any;
- (iv) project address;
- (v) lot or parcel number;
- (vi) unique project number assigned by the designated agent; and
- (vii) any other identifier that the division considers reasonably appropriate in

collaboration with the designated agent.

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

(i) a notice of retention;

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

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

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

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

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

~~[(vi)]~~ (vii) a request for notice;

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

~~[(viii)]~~ (ix) a duplicate receipt of a filing; and

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

with the database.

(b) The fees allowed under Subsection (4)(a) may not exceed the amount reasonably necessary to create and maintain the database.

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

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

(d) The division may provide by contract that the designated agent may retain all fees collected by the designated agent except that the designated agent shall remit to the division the cost of the division's oversight under Subsection (2)(b).

(5) (a) The database is classified as a public record under Title 63G, Chapter 2, Government Records Access and Management Act, unless otherwise classified by the division.

(b) A request for information submitted to the designated agent is not subject to Title 63G, Chapter 2, Government Records Access and Management Act.

(c) Information contained in a public record contained in the database shall be requested from the designated agent.

(d) The designated agent may charge a commercially reasonable fee allowed by the designated agent's contract with the division for providing information under Subsection (5)(c).

(e) Notwithstanding Title 63G, Chapter 2, Government Records Access and Management Act, if information is available in a public record contained in the database, a person may not request the information from the division.

(f) (i) A person may request information that is not a public record contained in the database from the division in accordance with Title 63G, Chapter 2, Government Records Access and Management Act.

(ii) The division shall inform the designated agent of how to direct inquiries made to the designated agent for information that is not a public record contained in the database.

(6) The following are not an adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act:

(a) the filing of a notice permitted by this chapter;
(b) the rejection of a filing permitted by this chapter; or
(c) other action by the designated agent in connection with a filing of any notice permitted by this chapter.

(7) The division and the designated agent need not determine the timeliness of any notice before filing the notice in the database.

(8) (a) A person who is delinquent on the payment of a fee established under Subsection (4) may not file a notice with the database.

(b) A determination that a person is delinquent on the payment of a fee for filing

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established under Subsection (4) shall be made in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

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

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

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

Section ~~{15}~~14. Section **38-1-29** is repealed and reenacted to read:

38-1-29. No waiver of rights.

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

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

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

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

Section ~~{16}~~15. Section **38-1-30.5** is enacted to read:

38-1-30.5. Notice of retention.

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

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

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

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preconstruction service that the person performs for more than one general preconstruction contractor.

(d) For purposes of this section, an improvement that benefits the development as a whole and is preparatory to the construction of an improvement on individual lots is separate from an improvement on an individual lot within the development.

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

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

~~(a)~~ the name, ~~mailing~~ address, ~~email address, and~~ telephone number, and email address of the person ~~filing~~ performing the ~~notice~~:

~~(b)~~ preconstruction service;

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

(iii) a general description of the preconstruction service the person ~~is under contract to~~ provided or will provide; ~~and~~

~~(c)~~ ~~(i)~~ iv) the ~~street address~~ name of the record or reputed owner of the property for which the ~~person~~ preconstruction service is or will be provided;

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

(vi) the tax parcel identification number of each parcel included in that property; and

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

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

~~(ii) if the property cannot reasonably be identified by a street address, a general description of the location of the property sufficient for reasonable identification of its location.~~

~~Section 17~~ that the claimant is under contract to provide.

(ii) The inclusion of a subcontractor in a notice of retention filed by another claimant is

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not a substitute for the subcontractor's own submission of a notice of retention.

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

(i) the person filing the notice of retention;

(ii) each person who has requested a notice concerning the anticipated improvement.

(b) A person to whom notice is required to be provided under Subsection (2)(a) is responsible to provide an email address, mailing address, or telefax number to which notice may be sent and for the accuracy of the email address, mailing address, or telefax number.

(c) The designated agent fulfills the notice requirement of Subsection (2)(a) by sending the notice to the email address, mailing address, or telefax number provided to the designated agent, whether or not the notice is actually received.

(3) The burden is on the person filing the notice of retention to prove that the person has substantially complied with the requirements of this section.

(4) (a) Subject to Subsection (4)(b), a person required by this section to file a notice of retention is required to give only one notice for each anticipated improvement.

(b) If a person performs preconstruction service under more than one original contract, the person shall file a notice of retention for preconstruction service performed under each original contract.

(5) (a) An owner of property that is the subject of an anticipated improvement, an original contractor, a subcontractor, or another interested person who believes that a notice of retention has been erroneously filed may request from the person who filed the notice evidence establishing the validity of the notice of retention.

(b) Within 10 days after a request under Subsection (5)(a), the person who filed the notice of retention shall provide the requesting person proof that the notice of retention is valid.

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

(6) A person filing a notice of retention by alternate filing is responsible for verifying and changing any incorrect information in the notice of retention before the expiration of the period during which the notice is required to be filed.

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Section 16. Section 38-1-31 is amended to read:

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

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

(I) the local government entity issuing that building permit shall input the building permit application and transmit the building permit information to the database electronically by way of the Internet or computer modem or by any other means; or

(II) the original contractor for construction service, owner, or owner-builder may file a notice of commencement with the database whether or not a building permit is issued or a notice of commencement is filed under Subsection (1)(a)(i)(A)(I).

(B) The information submitted under Subsection (1)(a)(i)(A) forms the basis of a notice of commencement.

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

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

(b) No later than 15 days after commencement of physical construction work at the project site, the original contractor for construction service, owner, or owner-builder may file a notice of commencement with the database whether or not a building permit is issued or a notice of commencement is filed under Subsection (1)(a).

(c) An original contractor for construction service, owner, or owner-builder may file a notice of commencement with the designated agent prior to the time frames established in Subsections (1)(a) and (b).

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

(e) (i) If duplicate notices of commencement are filed, they shall be combined into one

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notice for each project and any notices filed relate back to the date of the earliest-filed notice of commencement for the project.

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

(iii) Duplicate notices of commencement shall be automatically linked by the designated agent.

(f) The designated agent shall assign each construction project a unique project number that:

(i) identifies each construction project; and

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

(g) A notice of commencement is effective only as to any labor, service, equipment, and material furnished to the construction project that is furnished subsequent to the filing of the notice of commencement.

(2) (a) A notice of commencement shall include the following:

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

(ii) the name and address of the:

(A) original contractor for construction service; and

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

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

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

(b) A notice of commencement may include:

(i) a general description of the project; or

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

(c) A notice of commencement need not include all of the items listed in Subsection (2)(a) if:

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

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

(3) If a notice of commencement for a construction project is not filed within the time set forth in Subsections(1)(a) and (b), the following do not apply:

(a) Section 38-1-32; and

(b) Section 38-1-33.

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

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

(ii) all interested persons who have requested notices concerning the project.

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

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

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

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

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

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

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

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

Section ~~{18}~~17. Section **38-1-32** is amended to read:

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38-1-32. Preliminary notice by subcontractor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) If a person provides labor, service, equipment, or material before the filing of a notice of commencement and the notice of commencement is filed more than 15 days after the day on which the person providing labor, service, equipment, or material begins work on the project, the person providing labor, service, equipment, or material need not file a preliminary notice to maintain the person's right to hold a lien under this chapter or any other right, including a right referenced under Subsection (1)(c).

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

(A) the person filing the preliminary notice;

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

(C) all interested persons who have requested notices concerning the project.

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

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

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

(iii) The designated agent fulfills the notice requirement of Subsection (2)(a)(i) when it

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sends the notice to the email address, mailing address, or telefax number provided to the designated agent whether or not the notice is actually received.

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

(c) Subject to Subsection (2)(d), a person required by this section to give preliminary notice is only required to give one notice for each project.

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

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

(b) Within 10 days after the request described in Subsection (3)(a), the person or entity that filed the preliminary notice shall provide the requesting person or entity proof that the preliminary notice is valid.

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

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

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

Section ~~{19}~~18. Section **38-1-33** is amended to read:

38-1-33. Notice of completion.

(1) (a) Upon final completion of a construction project, and in accordance with Section 38-1-40, the following with a construction project registered with the database may file a notice of completion with the database:

(i) an owner of the construction project;

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- (ii) an original contractor [~~of the~~] for construction [project] service;
- (iii) a lender that has provided financing for the construction project;
- (iv) a surety that has provided bonding for the construction project; or
- (v) a title company issuing a title insurance policy on the construction project.

(b) Notwithstanding Section 38-1-2, if a subcontractor for construction service performs substantial work after the applicable dates established by Subsection (1)(a), that subcontractor's subcontract is considered an original contract for construction service for the sole purpose of determining:

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

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

(c) A notice of completion shall include:

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

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

(iii) the name of the original contractor for [~~the project~~] construction service;

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

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

(vi) the method used to determine final completion.

(d) For purposes of this section, final completion of the original contract does not occur if work remains to be completed for which the owner is holding payment to ensure completion of the work.

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

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

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

(C) all interested persons who have requested notices concerning the project.

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

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

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

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

(iv) Upon the filing of a notice of completion, the time periods for filing preliminary notices stated in Section 38-1-27 are modified such that all preliminary notices shall be filed subsequent to the notice of completion and within 10 days from the day on which the notice of completion is filed.

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

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

(b) Within 10 days after the request described in Subsection (2)(a), the person who filed the notice of completion shall provide the requesting person proof that the notice of completion is valid.

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

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

Section ~~20~~19. Section **38-1-40** is amended to read:

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

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(1) An owner, as defined in Section 14-2-1, of a nonresidential construction project that is registered with the database, or a contractor of a commercial nonresidential construction project that is registered with the database under Section 38-1-33, shall file with the database a notice of intent to obtain final completion as provided in this section if:

(a) the completion of performance time under the original contract for construction service is greater than 120 days;

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

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

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

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

(a) that includes:

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

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

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

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

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

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

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

- (i) by hand delivery with a responsible party's acknowledgment of receipt;
- (ii) by certified mail with a return receipt; or
- (iii) as provided under Rule 4, Utah Rules of Civil Procedure.

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

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

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

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

- (i) cash;
- (ii) a bond;

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- (iii) an irrevocable letter of credit;
- (iv) property;
- (v) financing; or
- (vi) another form of security approved by the court.

(6) (a) A person is subject to the civil penalty described in Subsection (6)(b), if the person files a balance statement described in Subsection (3):

- (i) that misrepresents the amount due under the contract; and
- (ii) with the intent to:
 - (A) charge an owner, contractor, or subcontractor more than the actual amount due; or
 - (B) procure any other unfair advantage or benefit on the person's behalf.

(b) The civil penalty described in Subsection (6)(a) is the greater of:

- (i) twice the amount by which the balance statement filed under Subsection (3) exceeds the amount actually remaining due under the contract for completion of construction; or
- (ii) the actual damages incurred by the owner, contractor, or subcontractor.

(7) A court shall award reasonable attorney fees to a prevailing party for an action brought under this section.

(8) Failure to comply with the requirements established in this section does not affect any other requirement or right under this chapter.

(9) A person who has not complied with, or is not exempt from, the provisions of Section 38-1-32 may not be entitled to a right or a remedy provided in this section.

(10) This section does not create a cause of action against a person with whom the demanding party is not in privity of contract.

Section ~~21~~20. Section **76-6-524** is enacted to read:

76-6-524. Falsifying information for preconstruction service lien purposes.

A person who knowingly falsifies information for the purpose of obtaining priority of a preconstruction service lien under Title 38, Chapter 1, Mechanics' Liens, is guilty of a class B misdemeanor.

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HB0115S01 compared with HB0115

Legislative Review Note

~~as of 2-3-11 9:47 AM~~

~~Office of Legislative Research and General Counsel~~