

462 (c) unless the owner is holding payment to ensure completion of construction work, the
 463 date on which there remains no substantial work to be completed to finish the construction
 464 work under the original contract, if a certificate of occupancy is not required and a final
 465 inspection is not required under an applicable state-adopted building code; or

466 (d) the last date on which substantial work was performed under the original contract,
 467 if, because the original contract is terminated before completion of the construction work
 468 defined by the original contract, the local government entity having jurisdiction over the
 469 construction project does not issue a certificate of occupancy or perform a final inspection.

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

471 (a) the earliest preliminary notice filed on a construction project;

472 (b) filed on or after August 1, 2011;

473 (c) not filed on a project that, according to the law in effect before August 1, 2011,
 474 commenced before August 1, 2011;

475 (d) not canceled under Section 38-1a-307; and

476 (e) not withdrawn under Subsection 38-1a-501 ~~H~~→ ~~(6)~~ (5) ←~~H~~ .

477 ~~[(8) "General preconstruction contractor" means a claimant, other than an original~~
 478 ~~contractor, who contracts with one or more subcontractors for the subcontractor or~~
 479 ~~subcontractors to provide preconstruction service that the claimant is under contract to~~
 480 ~~provide.]~~

481 (18) "Government project-identifying information" has the same meaning as defined in
 482 Section 38-1b-102.

483 ~~[(9)]~~ (19) "Improvement" means:

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

486 (b) a repair, modification, or alteration of a building, infrastructure, utility, or object
 487 referred to in Subsection ~~[(9)]~~ (19)(a).

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

489 (21) "Notice of commencement" means a notice required under Section 38-1b-201 for
 490 a government project, as defined in Section 38-1b-102.

491 ~~[(10)]~~ (22) "Original contract":

492 (a) means a contract between an owner ~~[of real property]~~ and an original contractor for

493 preconstruction service or construction [~~service~~] work; and

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

495 [~~(11)~~] (23) "Original contractor" means a person who contracts with an owner [~~of real~~

496 property], other than an owner-builder, to provide preconstruction service or construction

497 [~~service~~] work.

498 (24) "Owner" means the person who owns the project property.

499 [~~(12)~~] (25) "Owner-builder" means an owner [~~of real property~~] who:

500 (a) contracts with one or more other persons for preconstruction service or construction

501 [~~service~~] work for an improvement on the owner's real property; and

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

503 [~~(13)~~] (26) "Preconstruction service":

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

505 a proposed improvement:

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

507 (ii) for compensation separate from any compensation paid or to be paid for

508 construction [~~service~~] work for the improvement; and

509 (b) includes consulting, conducting a site investigation or assessment, programming,

510 preconstruction cost or quantity estimating, preconstruction scheduling, performing a

511 preconstruction construction feasibility review, procuring construction services, and preparing

512 a study, report, rendering, model, boundary or topographic survey, plat, map, design, plan,

513 drawing, specification, or contract document.

514 [~~(14)~~] (27) "Preconstruction [~~service~~] lien" means a lien under this chapter for a

515 preconstruction service.

516 (28) "Prelender claimant" means a person whose construction lien is made subject to a

517 construction lender's mortgage or trust deed, as provided in Section 38-1a- ~~H~~→ [4] 503 ←~~H~~, by

517a the person's

518 acceptance of payment in full and the person's withdrawal of the person's preliminary notice.

519 (29) "Private project" means a construction project that is not a government project.

520 (30) "Project property" means the real property on or for which preconstruction service

521 or construction work is or will be provided.

522 (31) "Refiled preliminary notice" means a preliminary notice that a prelender claimant

523 files with the registry on a construction project after withdrawing a preliminary notice that the

524 claimant previously filed for the same project.

525 (32) "Registry" means the State Construction Registry under Part 2, State Construction
526 Registry.

527 (33) "Required notice" means:

528 (a) a notice of retention under Section 38-1a-401;

529 (b) a preliminary notice under Section 38-1a-501 or Section 38-1b- ~~H~~ → [201] 202 ← ~~H~~ ;

530 (c) a notice of commencement;

531 (d) a notice of construction loan under Section 38-1a-601;

532 (e) a notice under Section 38-1a-602 concerning a construction loan default;

533 (f) a notice of intent to obtain final completion under Section 38-1a-506; or

534 (g) a notice of completion under Section 38-1a-507.

535 ~~[(15)]~~ (34) "Subcontractor" means a person who contracts to provide preconstruction
536 service or construction [service] work to:

537 (a) a person other than the owner [of the real property for which the preconstruction
538 service or construction service is provided.]; or

539 (b) the owner, if the owner is an owner-builder.

540 (35) "Substantial work" does not include repair work or warranty work.

541 (36) "Supervisory subcontractor" means a person who:

542 (a) is a subcontractor under contract to provide preconstruction service or construction
543 work; and

544 (b) contracts with one or more other subcontractors for the other subcontractor or
545 subcontractors to provide preconstruction service or construction work that the person is under
546 contract to provide.

547 Section 8. Section **38-1a-103**, which is renumbered from Section 38-1-1 is renumbered
548 and amended to read:

549 ~~[38-1-1].~~ **38-1a-103. Government projects not subject to chapter -- Exception.**

550 Except as provided in ~~[Sections 38-1-27, 38-1-30 through 38-1-36, and 38-1-40 relating~~
551 ~~to the]~~ Section 38-1a-102, Part 2, State Construction Registry, and Chapter 1b, Government
552 Construction Projects, this chapter does not apply to [any public improvement] a government
553 project, as defined in Section 38-1b-102.

554 Section 9. Section **38-1a-104**, which is renumbered from Section 38-1-2.1 is

555 renumbered and amended to read:

556 ~~[38-1-2.1].~~ **38-1a-104. Owner-builder original contract.**

557 For purposes of this chapter ~~H→~~ [;] :

557a **(1) ←H** an original contract is considered to exist between an

558 owner-builder as owner and the owner-builder as original contractor ~~H→~~ [;] ; **and**

558a **(2) in addition to being an owner, an owner-builder is considered to be an original**

558b **contractor.** ←H

559 Section 10. Section **38-1a-105**, which is renumbered from Section 38-1-29 is

560 renumbered and amended to read:

561 ~~[38-1-29].~~ **38-1a-105. No waiver of rights -- Exception -- Payment applied first**
562 **to preconstruction lien.**

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

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

566 (2) Notwithstanding Subsection (1), a claimant may waive or limit, in whole or in part,

567 a lien right under this chapter in consideration of payment as provided in Section ~~[38-1-39]~~

568 38-1a-802.

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

573 Section 11. Section **38-1a-201**, which is renumbered from Section 38-1-27 is

574 renumbered and amended to read:

575 **Part 2. State Construction Registry**

576 ~~[38-1-27].~~ **38-1a-201. Establishment of State Construction Registry -- Filing**
577 **index.**

578 ~~[(1) As used in this section, Sections 38-1-30 through 38-1-36, and Section 38-1-40:]~~

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

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

582 ~~[(c) "Construction lender" means a lender who provides construction financing for a
583 private project.]~~

584 ~~[(d) "Construction project" or "project" means all labor, service, equipment, and
585 materials provided under an original contract.]~~

989 (3) The preconstruction or construction lien of a subcontractor may not be diminished,
 990 impaired, or otherwise affected by:

991 (a) a payment, whether in cash or in-kind, to the original contractor or another
 992 subcontractor;

993 (b) a debt owed by the original contractor to the owner;

994 (c) a debt owed by another subcontractor to the original contractor or to a third
 995 subcontractor; or

996 (d) an offset or counterclaim in favor of the owner against the original contractor, or in
 997 favor of the original contractor against another subcontractor, or in favor of another
 998 subcontractor against a third subcontractor.

999 Section 25. Section **38-1a-304**, which is renumbered from Section 38-1-8 is
 1000 renumbered and amended to read:

1001 **[38-1-8]. 38-1a-304. Liens on several separate properties in one claim.**

1002 [Liens] (1) A claimant may claim a preconstruction or construction lien against two or
 1003 more [buildings or other] improvements owned by the same person [may be included in one
 1004 claim; but in such case the person filing the claim must].

1005 (2) If a claimant claims a preconstruction or construction lien against two or more
 1006 improvements owned by the same person, the claimant shall designate the amount claimed to
 1007 be due [to him] on each of [such buildings or other] the improvements.

1008 Section 26. Section **38-1a-305** is enacted to read:

1009 **38-1a-305. Payments applied first to preconstruction lien.**

1010 Unless an agreement waiving or limiting a right under a preconstruction or construction
 1011 lien expressly provides that a payment is required to be applied to a specific lien, mortgage, or
 1012 encumbrance, a payment to a person claiming both a preconstruction lien and a construction
 1013 lien shall be applied first to the preconstruction lien until paid in full.

1014 Section 27. Section **38-1a-306** is enacted to read:

1015 **38-1a-306. Substantial compliance.**

1016 **Ĥ→ (1) ←Ĥ** Substantial compliance with the requirements of this chapter is sufficient
 1016a to claim, as

1017 applicable, a preconstruction lien or a construction lien.

1017a **Ĥ→ (2) Subsection (1) may not be construed to excuse compliance with or affect the**
 1017b **requirement to file:**

1017c **(a) a notice of retention as provided in Section 38-1a-401 in order to claim a**
 1017d **preconstruction lien; or**

1017e **(b) a preliminary notice as provided in Section 38-1a-501 in order to claim a**
 1017f **construction lien. ←Ĥ**

1018 Section 28. Section **38-1a-307** is enacted to read:

1019 **38-1a-307. Contesting certain notices.**

1020 (1) A contesting person who believes that a contestable notice lacks proper basis and is
 1021 therefore invalid may request from the person who filed the notice evidence establishing the
 1022 validity of the notice.

1023 (2) Within 10 days after receiving a request under Subsection (1), the person who filed
 1024 the contestable notice shall provide the requesting person evidence that the notice is valid.

1025 (3) If the person who filed the notice does not provide timely evidence of the validity
 1026 of the contestable notice ~~Ĥ→ [or if the contesting person believes that the evidence is insufficient to~~
 1027 establish the validity of the notice, the contesting person may submit a written request to the
 1028 division to determine the validity of the notice.

1029 ~~—— (4) If the division determines that the notice is invalid] ←Ĥ~~ , the person who filed the notice
 1030 shall immediately cancel the notice from the registry in the manner prescribed by the division
 1031 by rule.

1032 ~~Ĥ→ [(5) The division shall establish by rule a procedure for determining the validity of a~~
 1033 ~~notice that is the subject of a request under Subsection (3).] ←Ĥ~~

1034 Section 29. Section **38-1a-308**, which is renumbered from Section 38-1-25 is
 1035 renumbered and amended to read:

1036 **[38-1-25]. 38-1a-308. Intentional submission of excessive lien notice --**
 1037 **Criminal and civil liability.**

1038 (1) ~~[Any]~~ A person ~~[entitled to record or file a lien under Section 38-1-3]~~ is guilty of a
 1039 class B misdemeanor ~~[who]~~ if:

1040 (a) the person intentionally [causes a claim of] submits for recording a notice of
 1041 preconstruction lien or notice of construction lien against any property containing a greater
 1042 demand than the sum due [to be recorded or filed:(a) with the intent]; and

1043 (b) by submitting the notice, the person intends:

1044 (i) to cloud the title;

1045 ~~[(b)]~~ (ii) to exact from the owner or person liable by means of the excessive [claim of]
 1046 notice of preconstruction or construction lien more than is due; or

1047 ~~[(c)]~~ (iii) to procure any unjustified advantage or benefit.

1048 (2) (a) As used in this Subsection (2), "third party" means an owner, original contractor,
 1049 or subcontractor.

1050 ~~[(2)]~~ (b) In addition to any criminal [penalties] penalty under Subsection (1), a person

1454 ~~[(iii) not filed on a project that, according to the law in effect before August 1, 2011,~~
 1455 ~~commenced before August 1, 2011;]~~

1456 ~~[(iv) not canceled under Subsection 38-1-32(6); and]~~

1457 ~~[(v) not withdrawn under Subsection 38-1-32(8).]~~

1458 ~~[(b) "Project property" means the real property on which an improvement is being~~
 1459 ~~constructed or made.]~~

1460 ~~[(2)] (1) A construction [service] lien relates back to, and takes effect as of, the time of~~
 1461 ~~the first preliminary notice filing.~~

1462 ~~[(3)] (2) (a) Subject to Subsection [(3)](2)(b), a construction [service] lien has priority~~
 1463 ~~over:~~

1464 (i) any lien, mortgage, or other encumbrance that attaches after the first preliminary
 1465 notice filing; and

1466 (ii) any lien, mortgage, or other encumbrance of which the [~~lien holder~~] claimant had
 1467 no notice and which was unrecorded at the time of the first preliminary notice filing.

1468 (b) A recorded mortgage or trust deed of a construction lender has priority over [~~each~~]
 1469 a construction [service] lien of a claimant who files a preliminary notice in accordance with
 1470 Section [~~38-1-32~~] 38-1a-501 before the mortgage or trust deed is recorded if the claimant:

1471 (i) accepts payment in full for construction [service] work that the claimant [~~furnishes~~]
 1472 provides to the construction project before the mortgage or trust deed is recorded; and

1473 (ii) withdraws the claimant's preliminary notice by filing a notice of withdrawal under
 1474 Subsection [~~38-1-32(8)~~] 38-1a-501 ~~Ĥ→ [(6)] (5) ←Ĥ .~~

1475 Section 37. Section **38-1a-504** is enacted to read:

1476 **38-1a-504. Construction liens on equal footing.**

1477 ~~Ĥ→ [Subject to Subsection 38-1a-503(2)(b);] (1) [f] Construction [}] [construction] ←Ĥ~~
 1477a1 liens on a

1477a project property are on an equal footing with one another,

1478 regardless of when the notices of construction lien relating to the construction liens are

1479 submitted for recording and regardless of when construction work for which the liens are

1480 claimed is provided.

1480a ~~Ĥ→ (2) **Subsection (1) relates to the relationship between claimants' construction liens and**~~
 1480b ~~**does not affect the priority of a construction lender's mortgage or trust deed, as established**~~
 1480c ~~**under this chapter.** ←Ĥ~~

1481 Section 38. Section **38-1a-505** is enacted to read:

1482 **38-1a-505. Materials for a construction project not subject to process --**

1483 **Exception.**

1484 (1) Materials provided for use in a construction project are not subject to attachment.

1733 ~~in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act].~~

1734 (c) If a claimant fails to provide to the owner of the residence the instructions and form
1735 required by Subsection (6)(a), the claimant is barred from maintaining or enforcing the
1736 preconstruction or construction lien upon the residence.

1737 (d) ~~[Judicial determination of]~~ A court shall stay an action to determine the rights and
1738 liabilities of ~~[the]~~ an owner of ~~[the]~~ a residence under this chapter ~~[and]~~, Title 38, Chapter 11,
1739 Residence Lien Restriction and Lien Recovery Fund Act, and Title 14, Chapter 2, Private
1740 Contracts, ~~[shall be stayed]~~ until after the owner is given a reasonable period of time to:

1741 (i) establish compliance with Subsections 38-11-204(4)(a) and (4)(b) through an
1742 informal proceeding, as set forth in Title 63G, Chapter 4, Administrative Procedures Act,
1743 commenced at the division within 30 days ~~[of]~~ after the owner ~~[being]~~ is served with summons
1744 in the foreclosure action~~[-, at the Division of Occupational and Professional Licensing];~~ and

1745 (ii) obtain a certificate of compliance or denial of certificate of compliance, as defined
1746 in Section 38-11-102.

1747 (e) An owner applying for a certificate of compliance under Subsection (6)(d) shall
1748 send by certified mail to all ~~[hen]~~ claimants:

1749 (i) a copy of the application for a certificate of compliance; and
1750 (ii) all materials filed in connection with the application.

1751 (f) The ~~[Division of Occupational and Professional Licensing]~~ division shall notify all
1752 claimants listed in an owner's application for a certificate of compliance under Subsection
1753 (6)(d) of the issuance or denial of a certificate of compliance.

1754 ~~[(7) The written notice requirement applies to liens filed on or after July 1, 2004.]~~
1755 Section 44. Section **38-1a-702** is enacted to read:

1756 **38-1a-702. Parties -- Consolidation of separate actions.**

1757 (1) In an action under this part ~~H→~~ H→, subject to the time restrictions under
1757a Subsection 38-1a-701(2) ←H :

1758 (a) a claimant who is not contesting the claim of another claimant may join as a
1759 plaintiff;

1760 (b) a claimant who fails or refuses to become a plaintiff may be made a defendant; and

1761 (c) a claimant who is not made a party may intervene at any time before the final
1762 hearing.

1763 (2) If separate actions are commenced under this part to enforce preconstruction or

2074 (ii) the validity of the ~~[lien]~~ claim; or

2075 (iii) any person's right to any other legal remedy.

2076 (h) If a court, in a proceeding under this Subsection (7), determines that the amount
2077 claimed ~~[in a notice of claim]~~ under a preconstruction or construction lien is excessive, the
2078 court shall set the amount ~~[of the lien claim]~~ for the sole purpose of providing alternate
2079 security.

2080 (i) In an order under Subsection (7)(h), the court shall include a legal description of the
2081 project property.

2082 (j) A petitioner under this Subsection (7) may record a certified copy of any order
2083 issued under this Subsection (7) in the county in which the lien is recorded.

2084 (k) ~~[Attorneys' fees]~~ A court may not [be awarded] award attorney fees for a
2085 proceeding under this Subsection (7), but shall ~~[be considered]~~ consider those attorney fees in
2086 any award of ~~[attorneys']~~ attorney fees under any other provision of this chapter.

2087 Section 54. Section **38-1b-101** is enacted to read:

2088 **CHAPTER 1b. GOVERNMENT CONSTRUCTION PROJECTS**

2089 **38-1b-101. Title.**

2090 This chapter is known as "Government Construction Projects."

2091 Section 55. Section **38-1b-102** is enacted to read:

2092 **38-1b-102. Definitions.**

2093 As used in this chapter:

2094 (1) "Alternate means" has the same meaning as defined in Section 38-1a-102.

2095 (2) "Construction project" has the same meaning as defined in Section 38-1a-102.

2096 (3) "Construction work" has the same meaning as defined in Section 38-1a-102.

2097 (4) "Designated agent" has the same meaning as defined in Section 38-1a-102.

2098 (5) "Division" means the Division of Occupational and Professional Licensing created
2099 in Section 58-1-103.

2100 (6) "Government project" means a construction project undertaken by or for:

2101 (a) the state, including a department, division, or other agency of the state; or

2102 (b) a county, city, town, school district, local district, special service district,
2103 community development and renewal agency, or other political subdivision of the state.

2104 (7) "Government project-identifying ~~H~~→ [number] information ←~~H~~" means: