

**LIENS FOR PRECONSTRUCTION SERVICE AND
CONSTRUCTION WORK**

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael T. Morley

Senate Sponsor: J. Stuart Adams

LONG TITLE

General Description:

This bill modifies provisions relating to liens for preconstruction service and construction work.

Highlighted Provisions:

This bill:

- ▶ reorganizes and modifies provisions relating to liens for preconstruction service and construction work;
- ▶ modifies provisions relating to contesting the validity of certain notices;
- ▶ modifies some terminology relating to liens for preconstruction service and construction work;
- ▶ modifies the time when a preconstruction lien takes effect;
- ▶ repeals redundant and obsolete provisions; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



- 28 **13-8-4**, as enacted by Laws of Utah 1997, Chapter 86
- 29 **13-8-5**, as last amended by Laws of Utah 2001, Chapter 9
- 30 **14-1-20**, as last amended by Laws of Utah 2011, Chapter 299
- 31 **14-2-5**, as last amended by Laws of Utah 2011, Chapter 299
- 32 **15A-1-209**, as enacted by Laws of Utah 2011, Chapter 14 and last amended by
- 33 Coordination Clause, Laws of Utah 2011, Chapter 299
- 34 **38-3-2**, as last amended by Laws of Utah 1977, Chapter 272
- 35 **38-9-2**, as last amended by Laws of Utah 2008, Chapters 3 and 223
- 36 **38-10-105**, as last amended by Laws of Utah 1990, Chapter 203
- 37 **38-10-106**, as enacted by Laws of Utah 1987, Chapter 170
- 38 **38-10-110**, as enacted by Laws of Utah 1987, Chapter 170
- 39 **38-10-111**, as enacted by Laws of Utah 1987, Chapter 170
- 40 **38-10-112**, as enacted by Laws of Utah 1987, Chapter 170
- 41 **38-10-114**, as enacted by Laws of Utah 1987, Chapter 170
- 42 **38-11-107**, as last amended by Laws of Utah 2010, Chapter 31
- 43 **38-11-204**, as last amended by Laws of Utah 2010, Chapter 31
- 44 **38-12-102**, as last amended by Laws of Utah 2005, Chapter 187
- 45 **40-6-8**, as enacted by Laws of Utah 1983, Chapter 205
- 46 **58-55-501**, as last amended by Laws of Utah 2011, Chapters 195 and 413
- 47 **63G-6-506**, as last amended by Laws of Utah 2011, Chapter 299
- 48 **73-22-7**, as last amended by Laws of Utah 1988, Chapter 72
- 49 **76-6-524**, as enacted by Laws of Utah 2011, Chapter 339

50 ENACTS:

- 51 **38-1a-101**, Utah Code Annotated 1953
- 52 **38-1a-203**, Utah Code Annotated 1953
- 53 **38-1a-204**, Utah Code Annotated 1953
- 54 **38-1a-206**, Utah Code Annotated 1953
- 55 **38-1a-207**, Utah Code Annotated 1953
- 56 **38-1a-208**, Utah Code Annotated 1953
- 57 **38-1a-303**, Utah Code Annotated 1953
- 58 **38-1a-305**, Utah Code Annotated 1953

- 59 **38-1a-306**, Utah Code Annotated 1953
- 60 **38-1a-307**, Utah Code Annotated 1953
- 61 **38-1a-404**, Utah Code Annotated 1953
- 62 **38-1a-504**, Utah Code Annotated 1953
- 63 **38-1a-505**, Utah Code Annotated 1953
- 64 **38-1a-702**, Utah Code Annotated 1953
- 65 **38-1a-705**, Utah Code Annotated 1953
- 66 **38-1a-706**, Utah Code Annotated 1953
- 67 **38-1a-801**, Utah Code Annotated 1953
- 68 **38-1a-803**, Utah Code Annotated 1953
- 69 **38-1b-101**, Utah Code Annotated 1953
- 70 **38-1b-102**, Utah Code Annotated 1953
- 71 **38-1b-203**, Utah Code Annotated 1953

72 RENUMBERS AND AMENDS:

- 73 **38-1a-102**, (Renumbered from 38-1-2, as repealed and reenacted by Laws of Utah
- 74 2011, Chapter 339 and last amended by Coordination Clause, Laws of Utah 2011,
- 75 Chapter 299)
- 76 **38-1a-103**, (Renumbered from 38-1-1, as last amended by Laws of Utah 2011, Chapters
- 77 299 and 339)
- 78 **38-1a-104**, (Renumbered from 38-1-2.1, as enacted by Laws of Utah 2011, Chapter
- 79 339)
- 80 **38-1a-105**, (Renumbered from 38-1-29, as repealed and reenacted by Laws of Utah
- 81 2011, Chapter 339)
- 82 **38-1a-201**, (Renumbered from 38-1-27, as last amended by Laws of Utah 2011,
- 83 Chapters 299, 339 and last amended by Coordination Clause, Laws of Utah 2011,
- 84 Chapter 299)
- 85 **38-1a-202**, (Renumbered from 38-1-30, as last amended by Laws of Utah 2011,
- 86 Chapter 299)
- 87 **38-1a-205**, (Renumbered from 38-1-31, as last amended by Laws of Utah 2011,
- 88 Chapters 299, 339 and last amended by Coordination Clause, Laws of Utah 2011,
- 89 Chapter 299)

- 90 **38-1a-209**, (Renumbered from 38-1-34, as enacted by Laws of Utah 2004, Chapter 250)
- 91 **38-1a-210**, (Renumbered from 38-1-35, as last amended by Laws of Utah 2006,
- 92 Chapter 297)
- 93 **38-1a-211**, (Renumbered from 38-1-36, as enacted by Laws of Utah 2004, Chapter 250)
- 94 **38-1a-301**, (Renumbered from 38-1-3, as repealed and reenacted by Laws of Utah
- 95 2011, Chapter 339)
- 96 **38-1a-302**, (Renumbered from 38-1-4, as last amended by Laws of Utah 2011, Chapter
- 97 339)
- 98 **38-1a-304**, (Renumbered from 38-1-8, as last amended by Laws of Utah 1987, Chapter
- 99 170)
- 100 **38-1a-308**, (Renumbered from 38-1-25, as last amended by Laws of Utah 2007,
- 101 Chapter 332)
- 102 **38-1a-401**, (Renumbered from 38-1-30.5, as enacted by Laws of Utah 2011, Chapter
- 103 339)
- 104 **38-1a-402**, (Renumbered from 38-1-6.7, as enacted by Laws of Utah 2011, Chapter
- 105 339)
- 106 **38-1a-403**, (Renumbered from 38-1-4.7, as enacted by Laws of Utah 2011, Chapter
- 107 339)
- 108 **38-1a-501**, (Renumbered from 38-1-32, as last amended by Laws of Utah 2011,
- 109 Chapters 299, 339 and last amended by Coordination Clause, Laws of Utah 2011,
- 110 Chapter 299)
- 111 **38-1a-502**, (Renumbered from 38-1-7, as last amended by Laws of Utah 2011, Chapter
- 112 339)
- 113 **38-1a-503**, (Renumbered from 38-1-5, as last amended by Laws of Utah 2011, Chapters
- 114 299, 339 and last amended by Coordination Clause, Laws of Utah 2011, Chapter
- 115 299)
- 116 **38-1a-506**, (Renumbered from 38-1-40, as last amended by Laws of Utah 2011,
- 117 Chapter 339)
- 118 **38-1a-507**, (Renumbered from 38-1-33, as last amended by Laws of Utah 2011,
- 119 Chapters 299, 339 and last amended by Coordination Clause, Laws of Utah 2011,
- 120 Chapter 299)

121 **38-1a-601**, (Renumbered from 38-1-30.7, as enacted by Laws of Utah 2011, Chapter
122 299)

123 **38-1a-602**, (Renumbered from 38-1-32.7, as enacted by Laws of Utah 2011, Chapter
124 299)

125 **38-1a-701**, (Renumbered from 38-1-11, as last amended by Laws of Utah 2011,
126 Chapter 339)

127 **38-1a-703**, (Renumbered from 38-1-14, Utah Code Annotated 1953)

128 **38-1a-704**, (Renumbered from 38-1-15, Utah Code Annotated 1953)

129 **38-1a-707**, (Renumbered from 38-1-18, as last amended by Laws of Utah 2001,
130 Chapter 257)

131 **38-1a-802**, (Renumbered from 38-1-39, as last amended by Laws of Utah 2008,
132 Chapter 382)

133 **38-1a-804**, (Renumbered from 38-1-28, as last amended by Laws of Utah 2008,
134 Chapter 382)

135 **38-1b-201**, (Renumbered from 38-1-31.5, as enacted by Laws of Utah 2011, Chapter
136 299)

137 **38-1b-202**, (Renumbered from 38-1-32.5, as enacted by Laws of Utah 2011, Chapter
138 299)

139 REPEALS:

140 **38-1-6**, Utah Code Annotated 1953

141 **38-1-9**, as last amended by Laws of Utah 2011, Chapter 339

142 **38-1-10**, Utah Code Annotated 1953

143 **38-1-13**, Utah Code Annotated 1953

144 **38-1-16**, Utah Code Annotated 1953

145 **38-1-17**, as last amended by Laws of Utah 1996, Chapter 79

146 **38-1-19**, as last amended by Laws of Utah 2011, Chapter 339 and last amended by
147 Coordination Clause, Laws of Utah 2011, Chapter 299

148 **38-1-20**, Utah Code Annotated 1953

149 **38-1-21**, Utah Code Annotated 1953

150 **38-1-22**, Utah Code Annotated 1953

151 **38-1-23**, Utah Code Annotated 1953

152 **38-1-24**, as last amended by Laws of Utah 2006, Chapter 297
 153 **38-1-26**, Utah Code Annotated 1953
 154 **38-1-27.2**, as last amended by Laws of Utah 2005, Chapter 71

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

157 Section 1. Section **13-8-4** is amended to read:

158 **13-8-4. Obligation to pay under construction contracts -- Rights of parties under**
 159 **contingent payment provisions.**

160 (1) For purposes of this section:

161 (a) "Construction contract" means a contract or agreement to provide services, labor, or
 162 materials for the design, construction, installation, or repair of an improvement to real property
 163 located in Utah.

164 (b) "Contingent payment contract" means a construction contract between a contractor
 165 and a subcontractor that makes a payment from the contractor to the subcontractor contingent
 166 on the contractor receiving a corresponding payment from any other public or private party,
 167 including a private owner.

168 (c) "Contractor" means a person who is or may be awarded a contract for the
 169 construction, alteration, or repair of any building, structure, or improvement to real property.

170 (d) "Subcontractor" means any person engaged by a contractor to provide services,
 171 labor, or materials for the design, construction, installation, or repair of an improvement to real
 172 property and includes a trade contractor or specialty contractor.

173 (2) A party to a construction contract shall make all scheduled payments under the
 174 terms of the construction contract.

175 (3) (a) The existence of a contingent payment contract is not a defense to a claim to
 176 enforce a [~~mechanics~~²] preconstruction or construction lien [~~filed~~] under Title 38, Chapter [~~1~~
 177 ~~Mechanics~~⁴] 1a, Preconstruction and Construction Liens.

178 (b) Subsection (3) does not apply to contracts for private construction work for the
 179 building, improvement, repair, or remodeling of residential property consisting of four units or
 180 less.

181 (4) If a construction contract is a contingent payment contract:

182 (a) the subcontractor may request from the contractor the financial information that the

183 contractor has received from the public or private party regarding:

184 (i) the project financing; and

185 (ii) the public or private party; and

186 (b) if information is requested by the subcontractor under Subsection (4)(a), the

187 contractor shall provide the information prior to the subcontractor signing the construction

188 contract between the contractor and the subcontractor.

189 (5) This section applies to a contract executed on or after May 5, 1997.

190 Section 2. Section 13-8-5 is amended to read:

191 **13-8-5. Definitions -- Limitation on retention proceeds withheld -- Deposit in**
192 **interest-bearing escrow account -- Release of proceeds -- Payment to subcontractors --**
193 **Penalty -- No waiver.**

194 (1) As used in this section:

195 (a) (i) "Construction contract" means a written agreement between the parties relative
196 to the design, construction, alteration, repair, or maintenance of a building, structure, highway,
197 appurtenance, appliance, or other improvements to real property, including moving,
198 demolition, and excavating for nonresidential commercial or industrial construction projects.

199 (ii) If the construction contract is for construction of a project that is part residential
200 and part nonresidential, this section applies only to that portion of the construction project that
201 is nonresidential as determined pro rata based on the percentage of the total square footage of
202 the project that is nonresidential.

203 (b) "Construction lender" means any person, including a bank, trust company, savings
204 bank, industrial bank, land bank, safe deposit company, private banker, savings and loan
205 association, credit union, cooperative bank, small loan company, sales finance company,
206 investment company, or any other financial institution that advances money to a borrower for
207 the purpose of making alterations or improvements to real property. A construction lender
208 does not include a person or entity who is acting in the capacity of contractor, original
209 contractor, or subcontractor.

210 (c) "Contractor" means a person who, for compensation other than wages as an
211 employee, undertakes any work in a construction trade, as defined in Section 58-55-102 and
212 includes:

213 (i) any person engaged as a maintenance person who regularly engages in activities set

214 forth in Section 58-55-102 as a construction trade; or

215 (ii) a construction manager who performs management and counseling services on a
216 construction project for a fee.

217 (d) "Original contractor" [is] has the same meaning as provided in Section [38-1-2]
218 38-1a-102.

219 (e) "Owner" means the person who holds any legal or equitable title or interest in
220 property. Owner does not include a construction lender unless the construction lender has an
221 ownership interest in the property other than solely as a construction lender.

222 (f) "Public agency" means any state agency or political subdivision of the state that
223 enters into a construction contract for an improvement of public property.

224 (g) "Retention payment" means release of retention proceeds as defined in Subsection
225 (1)(h).

226 (h) "Retention proceeds" means money earned by a contractor or subcontractor but
227 retained by the owner or public agency pursuant to the terms of a construction contract to
228 guarantee payment or performance by the contractor or subcontractor of the construction
229 contract.

230 (i) "Subcontractor" [is] has the same meaning as defined in Section [38-1-2]
231 38-1a-102.

232 [~~(j) "Successful party" has the same meaning as it does under Section 38-1-18.~~]

233 (2) (a) This section is applicable to all construction contracts relating to construction
234 work or improvements entered into on or after July 1, 1999, between:

235 (i) an owner or public agency and an original contractor;

236 (ii) an original contractor and a subcontractor; and

237 (iii) subcontractors under a contract described in Subsection (2)(a)(i) or (ii).

238 (b) This section does not apply to a construction lender.

239 (3) (a) Notwithstanding Section 58-55-603, the retention proceeds withheld and
240 retained from any payment due under the terms of the construction contract may not exceed 5%
241 of the payment:

242 (i) by the owner or public agency to the original contractor;

243 (ii) by the original contractor to any subcontractor; or

244 (iii) by a subcontractor.

245 (b) The total retention proceeds withheld may not exceed 5% of the total construction
246 price.

247 (c) The percentage of the retention proceeds withheld and retained pursuant to a
248 construction contract between the original contractor and a subcontractor or between
249 subcontractors shall be the same retention percentage as between the owner and the original
250 contractor if:

251 (i) the retention percentage in the original construction contract between an owner and
252 the original contractor is less than 5%; or

253 (ii) after the original construction contract is executed but before completion of the
254 construction contract the retention percentage is reduced to less than 5%.

255 (4) (a) If any payment on a contract with a private contractor, firm, or corporation to do
256 work for an owner or public agency is retained or withheld by the owner or the public agency,
257 as retention proceeds, it shall be placed in an interest-bearing account.

258 (b) The interest accrued under Subsection (4)(a) shall be:

259 (i) for the benefit of the contractor and subcontractors; and

260 (ii) paid after the project is completed and accepted by the owner or the public agency.

261 (c) The contractor shall ensure that any interest accrued on the retainage is distributed
262 by the contractor to subcontractors on a pro rata basis.

263 (5) Any retention proceeds retained or withheld pursuant to this section and any
264 accrued interest shall be released pursuant to a billing statement from the contractor within 45
265 days from the later of:

266 (a) the date the owner or public agency receives the billing statement from the
267 contractor;

268 (b) the date that a certificate of occupancy or final acceptance notice is issued to:

269 (i) the original contractor who obtained the building permit from the building inspector
270 or public agency;

271 (ii) the owner or architect; or

272 (iii) the public agency;

273 (c) the date that a public agency or building inspector having authority to issue its own
274 certificate of occupancy does not issue the certificate but permits partial or complete occupancy
275 of a newly constructed or remodeled building; or

276 (d) the date the contractor accepts the final pay quantities.

277 (6) If only partial occupancy of a building is permitted, any retention proceeds withheld
278 and retained pursuant to this section and any accrued interest shall be partially released within
279 45 days under the same conditions as provided in Subsection (5) in direct proportion to the
280 value of the part of the building occupied.

281 (7) The billing statement from the contractor as provided in Subsection (5)(a) shall
282 include documentation of lien releases or waivers.

283 (8) (a) Notwithstanding Subsection (3):

284 (i) if a contractor or subcontractor is in default or breach of the terms and conditions of
285 the construction contract documents, plans, or specifications governing construction of the
286 project, the owner or public agency may withhold from payment for as long as reasonably
287 necessary an amount necessary to cure the breach or default of the contractor or subcontractor;
288 or

289 (ii) if a project or a portion of the project has been substantially completed, the owner
290 or public agency may retain until completion up to twice the fair market value of the work of
291 the original contractor or of any subcontractor that has not been completed:

292 (A) in accordance with the construction contract documents, plans, and specifications;
293 or

294 (B) in the absence of plans and specifications, to generally accepted craft standards.

295 (b) An owner or public agency that refuses payment under Subsection (8)(a) shall
296 describe in writing within 45 days of withholding such amounts what portion of the work was
297 not completed according to the standards specified in Subsection (8)(a).

298 (9) (a) Except as provided in Subsection (9)(b), an original contractor or subcontractor
299 who receives retention proceeds shall pay each of its subcontractors from whom retention has
300 been withheld each subcontractor's share of the retention received within 10 days from the day
301 that all or any portion of the retention proceeds is received:

302 (i) by the original contractor from the owner or public agency; or

303 (ii) by the subcontractor from:

304 (A) the original contractor; or

305 (B) a subcontractor.

306 (b) Notwithstanding Subsection (9)(a), if a retention payment received by the original

307 contractor is specifically designated for a particular subcontractor, payment of the retention
308 shall be made to the designated subcontractor.

309 (10) (a) In any action for the collection of the retained proceeds withheld and retained
310 in violation of this section, the successful party is entitled to:

- 311 (i) ~~attorney's~~ attorney fees; and
- 312 (ii) other allowable costs.

313 (b) (i) Any owner, public agency, original contractor, or subcontractor who knowingly
314 and wrongfully withholds a retention shall be subject to a charge of 2% per month on the
315 improperly withheld amount, in addition to any interest otherwise due.

316 (ii) The charge described in Subsection (10)(b)(i) shall be paid to the contractor or
317 subcontractor from whom the retention proceeds have been wrongfully withheld.

318 (11) A party to a construction contract may not require any other party to waive any
319 provision of this section.

320 Section 3. Section **14-1-20** is amended to read:

321 **14-1-20. Preliminary notice requirement.**

322 (1) Any person furnishing labor, service, equipment, or material for which a payment
323 bond claim may be made under this chapter shall provide preliminary notice to the designated
324 agent as prescribed by Section ~~[38-1-32.5]~~ 38-1b-202, except that this section does not apply:

- 325 (a) to a person performing labor for wages; or
- 326 (b) if a notice of commencement is not filed as prescribed in Section ~~[38-1-31.5]~~
327 38-1b-201 for the project or improvement for which labor, service, equipment, or material is
328 furnished.

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

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

333 Section 4. Section **14-2-5** is amended to read:

334 **14-2-5. Preliminary notice requirement.**

335 (1) Any person furnishing labor, service, equipment, or material for which a payment
336 bond claim may be made under this chapter shall provide preliminary notice to the designated
337 agent as prescribed by Section ~~[38-1-32]~~ 38-1a-501, except that this section does not apply to a

338 person performing labor for wages.

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

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

343 Section 5. Section **15A-1-209** is amended to read:

344 **15A-1-209. Building permit requirements.**

345 (1) As used in this section, "project" means a "construction project" as defined in
346 Section [~~38-1-27~~] 38-1a-102.

347 (2) (a) The division shall develop a standardized building permit numbering system for
348 use by any compliance agency in the state that issues a permit for construction.

349 (b) The standardized building permit numbering system described under Subsection
350 (2)(a) shall include a combination of alpha or numeric characters arranged in a format
351 acceptable to the compliance agency.

352 (c) A compliance agency issuing a permit for construction shall use the standardized
353 building permit numbering system described under Subsection (2)(a).

354 (d) A compliance agency may not use a numbering system other than the system
355 described under Subsection (2)(a) to define a building permit number.

356 (3) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
357 the division shall adopt a standardized building permit form by rule.

358 (b) The standardized building permit form created under this Subsection (3) shall
359 include fields for indicating the following information:

360 (i) the name and address of the owner of each parcel of property on which the project
361 will occur;

362 (ii) the name and address of the contractor for the project;

363 (iii) (A) the address of the project; or

364 (B) a general description of the project;

365 (iv) the county in which the property on which the project will occur is located;

366 (v) the tax parcel identification number of each parcel of the property; and

367 (vi) whether the permit applicant is an original contractor or owner-builder.

368 (c) The standardized building permit form created under this Subsection (3) may

369 include any other information the division considers useful.

370 (d) A compliance agency shall issue a permit for construction only on a standardized
371 building permit form approved by the division.

372 (e) A permit for construction issued by a compliance agency under Subsection (3)(d)
373 shall print the standardized building permit number assigned under Subsection (2) in the upper
374 right-hand corner of the building permit form in at least 12-point font.

375 (f) (i) Except as provided in Subsection (3)(f)(ii), a compliance agency may not issue a
376 permit for construction if the information required by Subsection (3)(b) is not completed on the
377 building permit form.

378 (ii) If a compliance agency does not issue a separate permit for different aspects of the
379 same project, the compliance agency may issue a permit for construction without the
380 information required by Subsection (3)(b)(vi).

381 (g) A compliance agency may require additional information for the issuance of a
382 permit for construction.

383 (4) A local regulator issuing a single-family residential building permit application
384 shall include in the application or attach to the building permit the following notice
385 prominently placed in at least 14-point font: "Decisions relative to this application are subject
386 to review by the chief executive officer of the municipal or county entity issuing the
387 single-family residential building permit and appeal under the International Residential Code as
388 adopted by the Legislature."

389 (5) (a) A compliance agency shall:

390 (i) charge a 1% surcharge on a building permit it issues; and

391 (ii) transmit 80% of the amount collected to the division to be used by the division in
392 accordance with Subsection (5)(c).

393 (b) The portion of the surcharge transmitted to the division shall be deposited as a
394 dedicated credit.

395 (c) The division shall use the money received under this Subsection (5) to provide
396 education:

397 (i) regarding the codes and code amendments that under Section 15A-1-204 are
398 adopted, approved, or being considered for adoption or approval; and

399 (ii) to:

- 400 (A) building inspectors; and
- 401 (B) individuals engaged in construction-related trades or professions.

402 Section 6. Section **38-1a-101** is enacted to read:

403 **CHAPTER 1a. PRECONSTRUCTION AND CONSTRUCTION LIENS**

404 **Part 1. General Provisions**

405 **38-1a-101. Title.**

406 This chapter is known as "Preconstruction and Construction Liens."

407 Section 7. Section **38-1a-102**, which is renumbered from Section 38-1-2 is renumbered
408 and amended to read:

409 ~~[38-1-2].~~ **38-1a-102. Definitions.**

410 As used in this chapter:

411 (1) "Alternate means" means a method of filing a legible and complete notice or other
412 document with the registry other than electronically, as established by the division by rule.

413 ~~[(1)]~~ (2) "Anticipated improvement" means the improvement:

- 414 (a) for which [a] preconstruction service is performed; and
- 415 (b) that is anticipated to follow the performing of ~~[the]~~ preconstruction service.

416 ~~[(2)]~~ (3) "Applicable county recorder" means the office of the recorder of each county
417 in which any part of the property on which a claimant claims or intends to claim a
418 preconstruction or construction lien [under this chapter] is located.

419 ~~[(3)]~~ (4) "Bona fide loan" means a loan to an owner or owner-builder by a lender in
420 which the owner or owner-builder has no financial or beneficial interest greater than 5% of the
421 voting shares or other ownership interest.

422 ~~[(4)]~~ (5) "Claimant" means a person entitled to claim a preconstruction or construction
423 lien [under this chapter].

424 ~~[(5)]~~ (6) "Compensation" means the payment of money for a service rendered or an
425 expense incurred, whether based on:

- 426 (a) time and expense, lump sum, stipulated sum, percentage of cost, cost plus fixed or
427 percentage fee, or commission; or
- 428 (b) a combination of the bases listed in Subsection ~~[(5)]~~ (6)(a).

429 (7) "Construction ~~[service]~~ lien" means a lien under this chapter for construction
430 ~~[service]~~ work.

431 (8) "Construction loan" does not include a consumer loan secured by the equity in the
432 consumer's home.

433 (9) "Construction project" means construction work provided under an original
434 contract.

435 ~~[(6)]~~ (10) "Construction [service] work":

436 (a) means ~~[to furnish]~~ labor, service, material, or equipment provided for the purpose
437 and during the process of constructing, altering, or repairing an improvement; and

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

441 (11) "Contestable notice" means a notice of retention under Section 38-1a-401, a
442 preliminary notice under Section 38-1a-501, or a notice of completion under Section
443 38-1a-506.

444 (12) "Contesting person" means an owner, original contractor, subcontractor, or other
445 interested person.

446 (13) "Designated agent" means the third party the division contracts with as provided
447 in Section 38-1a-202 to create and maintain the registry.

448 (14) "Division" means the Division of Occupational and Professional Licensing created
449 in Section 58-1-103.

450 (15) "Entry number" means the reference number that:

451 (a) the designated agent assigns to each notice or other document filed with the
452 registry; and

453 (b) is unique for each notice or other document.

454 (16) "Final completion" means:

455 (a) the date of issuance of a permanent certificate of occupancy by the local
456 government entity having jurisdiction over the construction project, if a permanent certificate
457 of occupancy is required;

458 (b) the date of the final inspection of the construction work by the local government
459 entity having jurisdiction over the construction project, if an inspection is required under a
460 state-adopted building code applicable to the construction work, but no certificate of occupancy
461 is required;

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.]~~

586 ~~[(e) "Database" means the State Construction Registry created in this section.]~~
587 ~~[(f) (i) "Designated agent" means the third party the division contracts with to create~~
588 ~~and maintain the State Construction Registry.]~~
589 ~~[(ii) The designated agent is not an agency, instrumentality, or a political subdivision of~~
590 ~~the state.]~~
591 ~~[(g) "Division" means the Division of Occupational and Professional Licensing.]~~
592 ~~[(h) "Entry number" means the reference number that:]~~
593 ~~[(i) the designated agent assigns to each notice or other document filed with the~~
594 ~~database; and]~~
595 ~~[(ii) is unique for each notice or other document.]~~
596 ~~[(i) "Government project" means a construction project undertaken by or for:]~~
597 ~~[(i) the state, including a department, division, or other agency of the state; or]~~
598 ~~[(ii) a county, city, town, school district, local district, special service district,~~
599 ~~community development and renewal agency, or other political subdivision of the state.]~~
600 ~~[(j) "Government project-identifying information" means:]~~
601 ~~[(i) the lot or parcel number of each lot included in the project property that has a lot or~~
602 ~~parcel number; and]~~
603 ~~[(ii) the unique project number assigned by the designated agent.]~~
604 ~~[(k) "Interested person" means a person who may be affected by a construction~~
605 ~~project.]~~
606 ~~[(l) "Private project" means a construction project that is not a government project.]~~
607 ~~[(m) "Program" means the State Construction Registry Program created in this~~
608 ~~section.]~~
609 ~~[(n) "Project property" means the real property on which a construction project occurs~~
610 ~~or will occur.]~~
611 ~~[(2)] (1) Subject to receiving adequate funding through a legislative appropriation and~~
612 ~~contracting with an approved third party vendor [who meets the requirements of Sections~~
613 ~~38-1-30 through 38-1-36, there is created] as provided in Section 38-1a-202, the division shall~~
614 ~~establish and maintain the State Construction Registry [Program that shall] to:~~
615 ~~(a) (i) assist in protecting public health, safety, and welfare; and~~
616 ~~(ii) promote a fair working environment;~~

- 617 (b) be overseen by the division with the assistance of the designated agent;
- 618 (c) provide a central repository for all required notices [~~filed with the database under~~
619 ~~Section 38-1-30.5, 38-1-30.7, 38-1-31.5, 38-1-32, 38-1-32.5, 38-1-32.7, 38-1-33, or 38-1-40~~];
- 620 (d) make accessible, by way of [~~the program~~] an Internet website:
- 621 (i) the filing and review of required notices [~~described in Subsection (2)(c)~~]; and
- 622 (ii) the transmitting of building permit information under Subsection [~~38-1-31(2)(a)~~]
623 38-1a-205(1) and the reviewing of that information;
- 624 (e) accommodate:
- 625 (i) electronic filing of [~~the~~] required notices [~~described in Subsection (2)(c)~~] and
626 electronic transmitting of building permit information described in Subsection [~~(2)~~] (1)(d)(ii);
627 and
- 628 (ii) [~~alternate~~] the filing of [~~the~~] required notices [~~described in Subsection (2)(d)~~] by
629 alternate means, including [~~U.S.~~] United States mail, telefax, or any other [~~alternate~~] method as
630 [~~provided by rule made by~~] the division [~~in accordance with Title 63G, Chapter 3, Utah~~
631 ~~Administrative Rulemaking Act~~] provides by rule;
- 632 (f) (i) provide electronic notification for up to three email addresses for each interested
633 person [~~or company~~] who requests [~~notice~~] to receive notification under Section 38-1a-204
634 from the [~~construction notice registry~~] designated agent; and
- 635 (ii) provide alternate means of providing notification [~~for~~] to a person who makes [~~an~~
636 ~~alternate~~] a filing by alternate means, including [~~U.S.~~] United States mail, telefax, or any other
637 method as [~~prescribed by rule made by~~] the division [~~in accordance with Title 63G, Chapter 3,~~
638 ~~Utah Administrative Rulemaking Act~~] prescribes by rule; and
- 639 (g) provide hard-copy printing of electronic receipts for an individual filing evidencing
640 the date and time of the individual filing and the content of the individual filing.
- 641 [~~(3)(a) The designated agent shall provide notice of all other filings for a project to any~~
642 ~~person who files a notice of commencement, preliminary notice, or notice of completion for~~
643 ~~that project, unless the person:]~~
- 644 [~~(i) requests that the person not receive notice of other filings; or]~~
- 645 [~~(ii) does not provide the designated agent with the person's contact information in a~~
646 ~~manner that adequately informs the designated agent.]~~
- 647 [~~(b) An interested person may request notice of filings related to a project.]~~

648 ~~[(e)]~~ (2) The ~~[database shall be indexed]~~ designated agent shall index filings in the
649 registry by:

650 ~~[(i)]~~ (a) the name of the ~~[property]~~ owner;

651 ~~[(ii)]~~ (b) the name of the original contractor;

652 ~~[(iii)]~~ (c) subdivision, development, or other project name, if any;

653 ~~[(iv)]~~ (d) lot or parcel number;

654 ~~[(v)]~~ (e) the address of the project property;

655 ~~[(vi)]~~ (f) entry number;

656 ~~[(vii)]~~ (g) the name of the county in which the project property is located;

657 ~~[(viii)]~~ (h) for ~~[private]~~ construction projects that are not government projects:

658 ~~[(A)]~~ (i) the tax parcel identification number of each parcel included in the project
659 property; and

660 ~~[(B)]~~ (ii) the building permit number;

661 ~~[(ix)]~~ (i) for government projects, the government project-identifying information; and

662 ~~[(x)]~~ (j) any other identifier that the division considers reasonably appropriate in
663 collaboration with the designated agent.

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

666 ~~[(i) notices described in Subsection (2)(c);]~~

667 ~~[(ii) a request for notice;]~~

668 ~~[(iii) providing a required notice by an alternate filing;]~~

669 ~~[(iv) a duplicate receipt of a filing; and]~~

670 ~~[(v) account setup for a person who wishes to be billed periodically for filings with the~~
671 ~~database:]~~

672 ~~[(b) The fees allowed under Subsection (4)(a) may not exceed the amount reasonably~~
673 ~~necessary to create and maintain the database:]~~

674 ~~[(c) The fees established by the division may vary by method of filing if one form of~~
675 ~~filing is more costly to process than another form of filing:]~~

676 ~~[(d) The division may provide by contract that the designated agent may retain all fees~~
677 ~~collected by the designated agent except that the designated agent shall remit to the division the~~
678 ~~cost of the division's oversight under Subsection (2)(b):]~~

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

682 ~~[(b) A request for information submitted to the designated agent is not subject to Title~~
683 ~~63G, Chapter 2, Government Records Access and Management Act.]~~

684 ~~[(c) Information contained in a public record contained in the database shall be~~
685 ~~requested from the designated agent.]~~

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

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

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

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

697 ~~[(6) The following are not an adjudicative proceeding under Title 63G, Chapter 4,~~
698 ~~Administrative Procedures Act.]~~

699 ~~[(a) the filing of a notice permitted by this chapter;]~~

700 ~~[(b) the rejection of a filing permitted by this chapter; or]~~

701 ~~[(c) other action by the designated agent in connection with a filing of any notice~~
702 ~~permitted by this chapter.]~~

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

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

707 ~~[(b) A determination that a person is delinquent on the payment of a fee for filing~~
708 ~~established under Subsection (4) shall be made in accordance with Title 63G, Chapter 4,~~
709 ~~Administrative Procedures Act.]~~

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

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

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

718 ~~[(11) Each notice or other document submitted for inclusion in the database and for~~
719 ~~which this chapter does not specify information required to be included in the notice or other~~
720 ~~document shall contain:]~~

721 ~~[(a) the name of the county in which the project property to which the notice or other~~
722 ~~document applies is located;]~~

723 ~~[(b) for a private project;]~~

724 ~~[(i) the tax parcel identification number of each parcel included in the project property;~~
725 ~~or]~~

726 ~~[(ii) the number of the building permit for the construction project on the project~~
727 ~~property; and]~~

728 ~~[(c) for a government project, the government project-identifying information.]~~

729 Section 12. Section **38-1a-202**, which is renumbered from Section 38-1-30 is
730 renumbered and amended to read:

731 **38-1-30**. **38-1a-202**. **Third party contract -- Designated agent.**

732 (1) (a) The division shall contract, in accordance with Title 63G, Chapter 6, Utah
733 Procurement Code, with a third party to establish and maintain the [database] registry for the
734 purposes established under this [section, Section 38-1-27, and Sections 38-1-31 through
735 38-1-36] part.

736 (b) The designated agent is not an agency, instrumentality, or political subdivision of
737 the state.

738 (2) (a) The third party under contract under this section is the division's designated
739 agent, and shall develop and maintain a [database] registry from the information provided by:

740 (i) local government entities issuing building permits;

- 741 (ii) original contractors;
- 742 (iii) subcontractors; ~~and~~
- 743 (iv) construction lenders; and
- 744 ~~(iv)]~~ (v) other interested persons.
- 745 (b) The ~~[database]~~ registry shall accommodate filings by third parties on behalf of
- 746 clients.
- 747 ~~[(c) The division and the designated agent shall design, develop, and test the database~~
- 748 ~~for full implementation on May 1, 2005.]~~
- 749 (3) ~~(a) [In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,~~
- 750 ~~the] The~~ division shall make rules and develop procedures for:
- 751 ~~[(a)]~~ (i) the division to oversee and enforce this [section, Section 38-1-27, and Sections
- 752 ~~38-1-31 through 38-1-36] chapter and Chapter 1b, Government Construction Projects;~~
- 753 ~~[(b)]~~ (ii) the designated agent to administer this [section, Section 38-1-27, and Sections
- 754 ~~38-1-31 through 38-1-36] chapter and Chapter 1b, Government Construction Projects; and~~
- 755 ~~[(c)]~~ (iii) the form of submission of [an alternate] a filing by alternate means, which
- 756 may include procedures for rejecting an illegible or incomplete filing.
- 757 (b) If this chapter directs or authorizes the division to make a rule or adopt a procedure
- 758 to implement the provisions of this chapter or Chapter 1b, Government Construction Projects,
- 759 the division shall make the rule or adopt the procedure in accordance with Title 63G, Chapter
- 760 3, Utah Administrative Rulemaking Act.
- 761 (4) (a) The designated agent shall archive computer data files at least semiannually for
- 762 auditing purposes.
- 763 (b) ~~[In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,~~
- 764 ~~the] The~~ division shall make rules to allow the designated agent to periodically archive projects
- 765 from the [database] registry.
- 766 (c) ~~[A project shall be archived no]~~ The designated agent may not archive a project
- 767 earlier than:
- 768 (i) one year after the day on which a notice of completion is filed for a construction
- 769 project;
- 770 (ii) if no notice of completion is filed, two years after the last filing activity for a
- 771 project; or

772 (iii) one year after the day on which a [filing] contestable notice is cancelled under
773 ~~[Subsection 38-1-32(6)(c) or 38-1-33(2)(c)]~~ Section 38-1a-307.

774 (d) The division may audit the designated agent's administration of the ~~[database]~~
775 registry as often as the division considers necessary.

776 (5) The designated agent shall carry errors and omissions insurance in the amounts
777 ~~[established]~~ that the division establishes by rule ~~[made by the division in accordance with~~
778 ~~Title 63G, Chapter 3, Utah Administrative Rulemaking Act].~~

779 (6) (a) The designated agent shall make reasonable efforts to assure the accurate entry
780 into the ~~[database]~~ registry of information provided ~~[in]~~ by alternate ~~[filings]~~ means.

781 (b) The designated agent shall meet or exceed standards established by the division for
782 the accuracy of data entry for information on documents filed by alternate ~~[filings]~~ means.

783 (7) The designated agent is not liable for the correctness of the information contained
784 in ~~[an]~~ a document filed by alternate ~~[filing it]~~ means which the registered agent enters into the
785 database.

786 Section 13. Section **38-1a-203** is enacted to read:

787 **38-1a-203. Filings with the registry.**

788 (1) The division and the designated agent need not determine the timeliness of any
789 notice before filing the notice in the registry.

790 (2) A notice filed by a third party on behalf of another is considered to be filed by the
791 person on whose behalf the notice is filed.

792 (3) A person filing a notice of commencement, preliminary notice, or notice of
793 completion is responsible for verifying the accuracy of information entered into the registry,
794 whether the person files electronically, by alternate means, or through a third party.

795 (4) Each notice or other document submitted for inclusion in the registry and for which
796 this chapter does not specify information required to be included in the notice or other
797 document shall contain:

798 (a) the name of the county in which the project property to which the notice or other
799 document applies is located;

800 (b) for a private project:

801 (i) the tax parcel identification number of each parcel included in the project property;

802 or

803 (ii) the number of the building permit for the construction project on the project
804 property; and

805 (c) for a government project, the government project-identifying information.

806 Section 14. Section **38-1a-204** is enacted to read:

807 **38-1a-204. Notification of filings with the registry.**

808 (1) The designated agent shall provide notification of the filing of a required notice
809 relating to an anticipated improvement or construction project to:

810 (a) the person filing the required notice, unless the person indicates to the division or
811 designated agent that the person does not want to receive notification; and

812 (b) each person who requests notification of the filing of a required notice for that
813 anticipated improvement or construction project.

814 (2) (a) A person may request the designated agent to provide the person notification of
815 the filing of a required notice for any anticipated improvement or construction project.

816 (b) A person requesting notification under Subsection (2)(a) is responsible:

817 (i) to provide an email address, mailing address, or telefax number to which
818 notification may be sent; and

819 (ii) for the accuracy of the email address, mailing address, or telefax number.

820 (c) A person is considered to have requested notification under Subsection (2)(a) if the
821 person files, with respect to the same anticipated improvement or construction project that
822 relates to the required notice that is the subject of the notification:

823 (i) a notice of retention;

824 (ii) a notice of commencement;

825 (iii) a preliminary notice;

826 (iv) a notice of construction loan; or

827 (v) a notice of completion.

828 (3) The designated agent fulfills the notification requirement under Subsection (1) by
829 sending the notification to the email address, mailing address, or telefax number that the person
830 provides to the designated agent, whether or not the person actually receives the notification.

831 Section 15. Section **38-1a-205**, which is renumbered from Section 38-1-31 is
832 renumbered and amended to read:

833 **[38-1-31]. 38-1a-205. Building permit -- Transmission to database -- Posting at**

834 **project site.**

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

836 (i) shall, no later than 15 days after issuing the permit, input the building permit

837 application and transmit the building permit information to the ~~[database]~~ registry

838 electronically by way of the Internet or computer modem or by any other means; and

839 (ii) may collect a building permit fee related to the issuance of the building permit, but

840 may not spend or otherwise use the building permit fee until the county, city, or town complies

841 with Subsection (1)(a)(i) with respect to the building permit for which the fee is charged.

842 (b) The person to whom a building permit, filed under Subsection (1)(a), is issued is

843 responsible for the accuracy of the information in the building permit.

844 (c) For the purposes of classifying a record under Title 63G, Chapter 2, Government

845 Records Access and Management Act, the division shall classify in the registry building permit

846 information transmitted from a county, city, or town to the ~~[database shall be classified in the~~

847 ~~database by the division]~~ registry notwithstanding the classification of the building permit

848 information by the county, city, or town.

849 (2) At the time a building permit is obtained, each original contractor for construction

850 service shall conspicuously post at the project site a copy of the building permit obtained for

851 the project.

852 Section 16. Section **38-1a-206** is enacted to read:

853 **38-1a-206. Registry fees.**

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

855 establish the fees for:

856 (a) required notices, whether filed electronically or by alternate means;

857 (b) a request for notification under Section 38-1a-204;

858 (c) providing notification of a required notice, whether electronically or by alternate

859 means;

860 (d) a duplicate receipt of a filing; and

861 (e) account setup for a person who wishes to be billed periodically for filings with the

862 registry.

863 (2) The fees allowed under Subsection (1) may not in the aggregate exceed the amount

864 reasonably necessary to create and maintain the registry.

865 (3) The fees established by the division may vary by method of filing if one form or
866 means of filing is more costly to process than another form or means of filing.

867 (4) The division may provide by contract that the designated agent may retain all fees
868 collected by the designated agent, except that the designated agent shall remit to the division
869 the cost of the division's oversight.

870 (5) (a) A person who is delinquent on the payment of a fee established under this
871 section may not file a notice with the registry.

872 (b) The division shall make a determination whether a person is delinquent on the
873 payment of a fee for filing established under this section in accordance with Title 63G, Chapter
874 4, Administrative Procedures Act.

875 (c) Any order that the division issues in a proceeding described in Subsection (5)(b)
876 may prescribe the method of that person's payment of fees for filing notices with the registry
877 after issuance of the order.

878 Section 17. Section **38-1a-207** is enacted to read:

879 **38-1a-207. Registry classification.**

880 (1) The registry is classified as a public record under Title 63G, Chapter 2,
881 Government Records Access and Management Act, unless the division classifies it otherwise.

882 (2) A request for information submitted to the designated agent is not subject to Title
883 63G, Chapter 2, Government Records Access and Management Act.

884 (3) A person desiring information contained in a public record in the registry shall
885 request the information from the designated agent.

886 (4) The designated agent may charge a commercially reasonable fee allowed by the
887 designated agent's contract with the division for providing information under Subsection (3).

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

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

894 (b) The division shall inform the designated agent of how to direct an inquiry made to
895 the designated agent for information that is not a public record contained in the registry.

896 Section 18. Section **38-1a-208** is enacted to read:

897 **38-1a-208. Actions that are not adjudicative proceedings.**

898 None of the following is an adjudicative proceeding under Title 63G, Chapter 4,
899 Administrative Procedures Act:

- 900 (1) the filing of a notice permitted or required by this chapter;
- 901 (2) the rejection of a filing permitted or required by this chapter; or
- 902 (3) other action by the designated agent in connection with a filing of any notice
903 permitted or required by this chapter.

904 Section 19. Section **38-1a-209**, which is renumbered from Section 38-1-34 is
905 renumbered and amended to read:

906 **[38-1-34]. 38-1a-209. Abuse of registry -- Penalty.**

907 (1) As used in this section, "third party" means an owner, an original contractor, a
908 subcontractor, or any interested party.

909 [(+) (2) A person abuses the [database] registry if that person [records] files a notice in
910 the [database] registry:

- 911 (a) without a good faith basis for doing so;
- 912 (b) with the intent to exact more than is due from the [project] owner or any other
913 interested party; or
- 914 (c) to procure an unjustified advantage or benefit.

915 [(2)] (3) A person who [violates] abuses the registry as described in Subsection [(+)]
916 (2) is liable to [the owner of the construction project, an original contractor, a subcontractor, or
917 any interested] a third party who is affected by the notice for twice the amount of the actual
918 damages incurred by [such] the third party or \$2,000, whichever is greater.

919 Section 20. Section **38-1a-210**, which is renumbered from Section 38-1-35 is
920 renumbered and amended to read:

921 **[38-1-35]. 38-1a-210. Limitation of liability.**

922 (1) The state and the state's agencies, instrumentalities, political subdivisions, and an
923 employee of a governmental entity are immune from suit for any injury resulting from the
924 [state construction] registry.

925 (2) The designated agent and its principals, agents, and employees are not liable to any
926 person for the accuracy, coherence, suitability, completeness, or legal effectiveness of

927 information filed or searched in the [~~database~~] registry if the designated agent:

928 (a) develops and maintains the [~~database~~] registry in compliance with reliability,
929 availability, and security standards established by the division; and

930 (b) meets data entry accuracy standards established by the division under Subsection
931 [~~38-1-30(6)(b)~~] 38-1a-202(6)(b).

932 (3) The designated agent and its principals, agents, and employees are not liable for
933 their inability to perform obligations under this chapter to the extent performance of those
934 obligations is prevented by:

935 (a) [~~an~~] a storm, earthquake, or other act of God;

936 (b) a fire;

937 [~~(c) a storm;~~]

938 [~~(d) an earthquake;~~]

939 [~~(e)~~] (c) an accident;

940 [~~(f)~~] (d) governmental interference; or

941 [~~(g)~~] (e) any other event or cause beyond the designated agent's control.

942 Section 21. Section **38-1a-211**, which is renumbered from Section 38-1-36 is
943 renumbered and amended to read:

944 **[~~38-1-36~~]. 38-1a-211. Construction notice does not impart notice.**

945 The filing of a document in the [~~database~~] registry is not intended to give notice to all
946 persons of the content of the document within the meaning of Section 57-3-102 and does not
947 constitute constructive notice of matters relating to real property to purchasers for value and
948 without knowledge.

949 Section 22. Section **38-1a-301**, which is renumbered from Section 38-1-3 is
950 renumbered and amended to read:

951 **Part 3. Provisions Applicable to Preconstruction Liens and Construction Liens**

952 **[~~38-1-3~~]. 38-1a-301. Those entitled to lien -- What may be attached.**

953 (1) [~~Subject to the provisions of this chapter~~] Except as provided in Section 38-11-107,
954 a person who [~~performs~~] provides preconstruction service or construction [~~service~~] work on or
955 for [~~real~~] a project property has a lien on the [~~real~~] project property for the reasonable value of
956 the preconstruction service or construction [~~service~~] work, respectively, [~~except as provided in~~
957 Section 38-11-107] as provided in this chapter.

958 (2) A person may claim a preconstruction [~~service~~] lien and a separate construction
959 [~~service~~] lien on the same [~~real~~] project property.

960 (3) (a) A construction [~~service~~] lien may include an amount claimed for a
961 preconstruction service.

962 (b) A preconstruction [~~service~~] lien may not include an amount claimed for
963 construction [~~service~~] work.

964 (4) A preconstruction or construction lien [~~under this chapter~~] attaches only to the
965 interest that the owner [~~or owner-builder~~] has in the [~~real~~] project property that is the subject of
966 the lien.

967 Section 23. Section **38-1a-302**, which is renumbered from Section 38-1-4 is
968 renumbered and amended to read:

969 ~~[38-1-4]~~. **38-1a-302. Land covered by lien -- Multiple lots occupied by**
970 **improvement -- What a lien attaches to.**

971 (1) A preconstruction or construction lien [~~under this chapter~~] extends to and covers as
972 much of the land on which the improvement is made as necessary for the convenient use and
973 occupation of the land.

974 (2) If an improvement occupies two or more lots or other subdivisions of land, the lots
975 or subdivisions are considered as one for the purposes of this chapter.

976 (3) A preconstruction or construction lien [~~under this chapter~~] attaches to all franchises,
977 privileges, appurtenances, machinery, and fixtures pertaining to or used in connection with the
978 improvement.

979 Section 24. Section **38-1a-303** is enacted to read:

980 **38-1a-303. Limits on attachment, garnishment, and execution levy --**
981 **Subcontractor lien not affected by payments, debts, offsets, and counterclaims involving**
982 **other parties.**

983 (1) An assignment, attachment, or garnishment of or encumbrance or execution levy on
984 money that an owner owes to an original contractor is not valid as against a subcontractor's
985 preconstruction or construction lien.

986 (2) An assignment, attachment, or garnishment of or encumbrance or execution levy on
987 money that an original contractor owes to a subcontractor is not valid as against a lien of a
988 laborer employed by the day or piece.

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 ~~It~~ **It** ~~→~~ **[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 ~~←It~~ **It** , 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 ~~It~~ **It** ~~→~~ ~~(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).~~ ~~←It~~ **It**

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~~ 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

1051 who ~~[violates]~~ submits a notice of preconstruction lien or notice of construction lien as
 1052 described in Subsection (1) is liable to ~~[the owner of the property or an original contractor or~~
 1053 ~~subcontractor]~~ a third party who is affected by the lien for ~~[the greater of: (a)]~~ twice the amount
 1054 by which the ~~[abusive]~~ excessive lien notice exceeds the amount actually due~~;~~ or ~~[(b)]~~ the
 1055 actual damages incurred by the owner ~~[of the property], original contractor, or subcontractor,~~
 1056 whichever is greater.

1057 Section 30. Section **38-1a-401**, which is renumbered from Section 38-1-30.5 is
 1058 renumbered and amended to read:

1059 **Part 4. Preconstruction Lien Provisions**

1060 ~~[38-1-30.5].~~ **38-1a-401. Notice of retention.**

1061 (1) (a) A person who~~[, under Section 38-1-3, is entitled to]~~ desires to claim a
 1062 preconstruction ~~[service]~~ lien on real property ~~[under this chapter]~~ shall file a notice of
 1063 retention with the ~~[database]~~ registry no later than 20 days after the person commences
 1064 ~~[performing]~~ providing preconstruction service for the anticipated improvement on the real
 1065 property.

1066 (b) A person who fails to file a timely notice of retention as required in this section
 1067 may not ~~[hold]~~ claim a valid preconstruction ~~[service]~~ lien ~~[under this chapter]~~.

1068 (c) A timely filed notice of retention is effective as to each preconstruction service that
 1069 the person filing the notice ~~[performs]~~ provides for the anticipated improvement under ~~[an]~~ a
 1070 single original contract, including preconstruction service that the person ~~[performs for]~~
 1071 provides to more than one ~~[general preconstruction contractor]~~ supervising subcontractor under
 1072 ~~[the same]~~ that original contract.

1073 (d) A notice of retention filed for preconstruction service ~~[performed]~~ provided or to be
 1074 ~~[performed]~~ provided under an original contract for an anticipated improvement on real
 1075 property is not valid for preconstruction service ~~[performed]~~ provided or to be ~~[performed]~~
 1076 provided under a separate original contract for an anticipated improvement on the same real
 1077 property.

1078 (e) A notice of retention that is timely filed with the database with respect to an
 1079 anticipated improvement is considered to have been filed at the same time as the earliest timely
 1080 filed ~~[preliminary]~~ notice of retention for that anticipated improvement.

1081 (f) A notice of retention shall include:

1082 (i) the name, address, telephone number, and email address of the person [performing]
1083 providing the preconstruction service;

1084 (ii) the name, address, telephone number, and email address of the person who
1085 employed the person [performing] providing the preconstruction service;

1086 (iii) a general description of the preconstruction service the person provided or will
1087 provide;

1088 (iv) the name of the record or reputed owner [~~of the property for which the~~
1089 ~~preconstruction service is or will be provided~~];

1090 (v) the name of the county in which the property on which the anticipated improvement
1091 will occur is located;

1092 (vi) (A) the tax parcel identification number of each parcel included in that property; or

1093 (B) the entry number of a previously filed notice of retention that includes the tax
1094 parcel identification number of each parcel included in that property; and

1095 (vii) a statement that the person filing the notice intends to [~~hold and~~] claim a
1096 preconstruction [~~service~~] lien if the person is not paid for the preconstruction service the person
1097 [~~performs~~] provides.

1098 (g) (i) A claimant who is an original contractor or a [~~general preconstruction~~
1099 ~~contractor~~] supervisory subcontractor may include in a notice of retention the name, address,
1100 and telephone number of each subcontractor who is under contract with the claimant to provide
1101 preconstruction service that the claimant is under contract to provide.

1102 (ii) The inclusion of a subcontractor in a notice of retention filed by another claimant is
1103 not a substitute for the subcontractor's own submission of a notice of retention.

1104 [~~(2) (a) Unless a person indicates to the division or designated agent that the person~~
1105 ~~does not wish to receive a notice under this section, the designated agent shall provide~~
1106 ~~electronic notification of the filing of a notice of retention or alternate filing to:]~~

1107 [~~(i) the person filing the notice of retention; and]~~

1108 [~~(ii) each person who has requested a notice concerning the anticipated improvement.]~~

1109 [~~(b) A person to whom notice is required to be provided under Subsection (2)(a) is~~
1110 ~~responsible to provide an email address, mailing address, or telefax number to which notice~~
1111 ~~may be sent and for the accuracy of the email address, mailing address, or telefax number.]~~

1112 [~~(c) The designated agent fulfills the notice requirement of Subsection (2)(a) by~~

1113 ~~sending the notice to the email address, mailing address, or telefax number provided to the~~
 1114 ~~designated agent, whether or not the notice is actually received.]~~

1115 ~~[(3)] (2)~~ The burden is on the person filing the notice of retention to prove that the
 1116 person has substantially complied with the requirements of this section.

1117 ~~[(4)] (3)~~ (a) Subject to Subsection ~~[(4)] (3)~~(b), a person required by this section to file a
 1118 notice of retention is required to give only one notice for each anticipated improvement.

1119 (b) ~~[If a]~~ A person [performs] who provides preconstruction service under more than
 1120 one original contract~~[, the person]~~ for the same anticipated improvement and desires to claim a
 1121 preconstruction lien for preconstruction service provided under each original contract shall file
 1122 a separate notice of retention for preconstruction service ~~[performed]~~ provided under each
 1123 original contract.

1124 ~~[(5) (a) An owner of property that is the subject of an anticipated improvement, an~~
 1125 ~~original contractor, a subcontractor, or another interested person who believes that a notice of~~
 1126 ~~retention has been erroneously filed may request from the person who filed the notice evidence~~
 1127 ~~establishing the validity of the notice of retention.]~~

1128 ~~[(b) Within 10 days after a request under Subsection (5)(a), the person who filed the~~
 1129 ~~notice of retention shall provide the requesting person proof that the notice of retention is~~
 1130 ~~valid.]~~

1131 ~~[(c) If the person who filed the notice of retention does not provide timely proof of the~~
 1132 ~~validity of the notice of retention, that person shall immediately cancel the notice of retention~~
 1133 ~~from the database in the manner prescribed by the division by rule.]~~

1134 ~~[(6)] (4)~~ A person filing a notice of retention by alternate ~~[filing]~~ means is responsible
 1135 for verifying and changing any incorrect information in the notice of retention before the
 1136 expiration of the period during which the notice is required to be filed.

1137 Section 31. Section **38-1a-402**, which is renumbered from Section 38-1-6.7 is
 1138 renumbered and amended to read:

1139 ~~[38-1-6.7].~~ **38-1a-402. Notice of preconstruction lien -- Requirements.**

1140 (1) Within 90 days after completing a preconstruction service for which a claimant is
 1141 not paid in full, ~~[the]~~ a claimant who desires to claim a preconstruction lien shall submit for
 1142 recording with ~~[the]~~ each applicable county recorder a notice of preconstruction ~~[service]~~ lien.

1143 (2) A claimant who fails to submit a notice of preconstruction ~~[service]~~ lien as

1144 provided in Subsection (1) may not claim a preconstruction [service] lien.

1145 (3) (a) A notice of preconstruction service lien shall include:

1146 (i) the claimant's name, mailing address, and telephone number;

1147 (ii) a statement that the claimant claims a preconstruction [service] lien;

1148 (iii) the date the claimant's notice of retention was filed;

1149 (iv) the name of the person who employed the claimant;

1150 (v) a general description of the preconstruction service provided by the claimant;

1151 (vi) the date that the claimant last provided preconstruction service;

1152 (vii) the name, if known, of the reputed owner [~~of the property on which the~~

1153 ~~preconstruction service lien is claimed~~] or, if not known, the name of the record owner [~~of the~~

1154 ~~property~~];

1155 (viii) a description of the project property sufficient for identification;

1156 (ix) the principal amount, excluding interest, costs, and attorney fees, claimed by the

1157 claimant;

1158 (x) the claimant's signature or the signature of the claimant's authorized agent;

1159 (xi) an acknowledgment or certificate as required under Title 57, Chapter 3, Recording

1160 of Documents; and

1161 (xii) if the lien is against an owner-occupied residence, as defined in Section

1162 38-11-102, a statement meeting the requirements that the [~~Division of Occupational and~~

1163 ~~Professional Licensing~~] division has established [~~in accordance with Title 63G, Chapter 3,~~

1164 ~~Utah Administrative Rulemaking Act~~] by rule, describing the steps [~~an~~] the owner of the

1165 owner-occupied residence may take to require a claimant to remove the lien as provided in

1166 Section 38-11-107.

1167 (b) (i) A claimant who is an original contractor or a [~~general preconstruction~~

1168 ~~contractor~~] supervising subcontractor may include in a notice of preconstruction [service] lien

1169 the name, address, and telephone number of each subcontractor who is under contract with the

1170 claimant to provide preconstruction service that the claimant is under contract to provide.

1171 (ii) The inclusion of a subcontractor in a notice of preconstruction [service] lien filed

1172 by another claimant is not a substitute for the subcontractor's own submission of a notice of

1173 preconstruction [service] lien.

1174 (4) (a) A county recorder:

1175 (i) shall record each notice of preconstruction lien in an index maintained for that
 1176 purpose; and

1177 (ii) need not verify that a valid notice of retention is filed with respect to the claimed
 1178 preconstruction lien.

1179 (b) All persons are considered to have notice of a notice of preconstruction lien from
 1180 the time it is recorded.

1181 [~~4~~] (5) (a) Within 30 days after a claimant's notice of preconstruction [~~service~~] lien is
 1182 recorded, the claimant shall send by certified mail a copy of the notice to the reputed or record
 1183 owner [~~of the real property~~].

1184 (b) If the record owner's address is not readily available to the claimant, the claimant
 1185 may mail a copy of the notice to the owner's last-known address as it appears on the last
 1186 completed assessment roll of the county in which the property is located.

1187 (c) A claimant's failure to mail a copy of the notice as required in this Subsection [~~4~~]
 1188 (5) precludes the claimant from being awarded costs and attorney fees against the reputed or
 1189 record owner in an action to enforce the lien.

1190 [~~5~~] (6) Nothing in this section may be construed to prohibit a claimant from recording
 1191 a notice of preconstruction [~~service~~] lien before completing the preconstruction service the
 1192 claimant contracted to provide.

1193 Section 32. Section **38-1a-403**, which is renumbered from Section 38-1-4.7 is
 1194 renumbered and amended to read:

1195 [~~38-1-4.7~~]. **38-1a-403. Effective date and priority of preconstruction lien --**
 1196 **Subordination to bona fide loan.**

1197 (1) Except as otherwise provided in this chapter, a preconstruction [~~service~~] lien:

1198 (a) relates back to and takes effect as of the time [~~a~~] of filing of the earliest timely filed
 1199 notice of retention under Section [~~38-1-30.5 is filed~~] 38-1a-401 for the anticipated
 1200 improvement for which the preconstruction lien is claimed; and

1201 (b) has priority over:

1202 (i) any lien, mortgage, or other encumbrance that attaches after the earliest timely filed
 1203 notice of retention is filed; and

1204 (ii) any lien, mortgage, or other encumbrance of which the claimant had no notice and
 1205 that was unrecorded at the time the earliest timely filed notice of retention is filed.

1206 (2) A preconstruction [~~service~~] lien is subordinate to an interest securing a bona fide
 1207 loan if and to the extent that the lien covers preconstruction service provided after the interest
 1208 securing a bona fide loan is recorded.

1209 [~~(3) Preconstruction service is considered complete for any project, project phase, or
 1210 bid package as of the date that construction service for that project, project phase, or bid
 1211 package, respectively, commences.~~]

1212 Section 33. Section ~~38-1a-404~~ is enacted to read:

1213 **38-1a-404. When preconstruction service considered complete.**

1214 Preconstruction service is considered complete for any project, project phase, or bid
 1215 package as of the date that construction work for that project, project phase, or bid package,
 1216 respectively, commences.

1217 Section 34. Section ~~38-1a-501~~, which is renumbered from Section 38-1-32 is
 1218 renumbered and amended to read:

1219 **Part 5. Construction Lien Provisions**

1220 **[38-1-32]. 38-1a-501. Preliminary notice.**

1221 [~~(1) As used in this section:~~]

1222 [~~(a) "Pre-lender claimant" means a person whose lien under this chapter is made
 1223 subject to a construction lender's mortgage or trust deed, as provided in Subsection
 1224 38-1-5(3)(b), by the person's acceptance of payment in full and the person's withdrawal of the
 1225 person's preliminary notice.~~]

1226 [~~(b) "Refiled preliminary notice" means a preliminary notice that a pre-lender claimant
 1227 files under Subsection (2)(a)(ii) with the database on a project after withdrawing a preliminary
 1228 notice that the claimant previously filed for the same project.~~]

1229 [~~(2)~~] (1) (a) (i) A person who [~~, under Section 38-1-3, is entitled to~~] desires to claim a
 1230 construction [~~service~~] lien [~~with respect to a private project~~] on real property shall file a
 1231 preliminary notice with the [~~database~~] registry no later than 20 days after the person
 1232 commences [~~furnishing~~] providing construction [~~service to the project~~] work on the real
 1233 property.

1234 (ii) A prelender claimant who [~~, under Section 38-1-3, is entitled to claim a construction
 1235 service lien for construction service the claimant furnishes~~] provides construction work to a
 1236 [~~private~~] construction project after the recording of a construction lender's mortgage or trust

1237 deed on the project property and who desires to claim a construction lien for that construction
 1238 work shall file a preliminary notice [within] with the registry no later than 20 days after the
 1239 recording of the mortgage or trust deed.

1240 (b) Subject to Subsection ~~[(2)]~~ (1)(c), a preliminary notice is effective as to all
 1241 construction ~~[service]~~ work that the person filing the notice [furnishes] provides to the [private]
 1242 construction project under a single original contract, including construction [service] work that
 1243 the person [furnishes] provides to more than one [contractor or] supervisory subcontractor [on
 1244 that same project] under that original contract.

1245 ~~[(c) A preliminary notice filed after the period provided in Subsection (2)(a):]~~
 1246 ~~[(i) becomes effective five days after the day the preliminary notice is filed; and]~~
 1247 ~~[(ii) is not effective for construction service that the person who files the preliminary~~
 1248 ~~notice furnishes to the construction project before five days after the preliminary notice is~~
 1249 ~~filed.]~~

1250 (c) (i) A person who desires to claim a construction lien on real property but fails to
 1251 file a timely preliminary notice within the period specified in Subsection (1)(a) may, subject to
 1252 Subsection (1)(d), file a preliminary notice with the registry after the period specified in
 1253 Subsection (1)(a).

1254 (ii) A person who files a preliminary notice under Subsection (1)(c)(i) may not claim a
 1255 construction lien for construction work the person provides to the construction project before
 1256 the date that is five days after the preliminary notice is filed.

1257 (d) Notwithstanding Subsections (1)(a) and (c), a preliminary notice has no effect if it
 1258 is filed more than 10 days after the filing of a notice of completion under Section 38-1a-507 for
 1259 the construction project for which the preliminary notice is filed.

1260 ~~[(d) (i) (A)]~~ (e) A person who fails to file a preliminary notice as required in this
 1261 section may not ~~[hold]~~ claim a ~~[valid]~~ construction ~~[service]~~ lien ~~[under this chapter].~~

1262 ~~[(B) A person who files a preliminary notice after the period provided in Subsection~~
 1263 ~~(2)(a) may not hold a valid construction service lien for construction service the person~~
 1264 ~~furnishes to the construction project before five days after the preliminary notice is filed.]~~

1265 ~~[(ii) A county recorder need not verify that a valid preliminary notice is filed when a~~
 1266 ~~person files a notice to hold and claim a lien under Section 38-1-7.]~~

1267 ~~[(e)]~~ (f) (i) Except as provided in Subsection ~~[(2)(e)]~~ (1)(f)(ii), a preliminary notice that

1268 is ~~[timely]~~ filed with the ~~[database with respect to a private project]~~ registry as provided in this
1269 section is considered to be filed at the time of the first preliminary notice filing ~~[, as defined in~~
1270 Section 38-1-5].

1271 (ii) A timely filed preliminary notice that is a refiled preliminary notice is considered to
1272 be filed immediately after the recording of a mortgage or trust deed of the construction lender
1273 that paid the pre-lender claimant in full for construction ~~[service]~~ work the claimant ~~[furnished]~~
1274 provided before the recording of the mortgage or trust deed.

1275 ~~[(f)]~~ (g) If a preliminary notice filed with the ~~[database]~~ registry includes the tax parcel
1276 identification number of a parcel not previously associated in the ~~[database]~~ registry with a
1277 ~~[private]~~ construction project, the designated agent shall promptly notify the person who filed
1278 the preliminary notice that:

1279 (i) the preliminary notice includes a tax parcel identification number of a parcel not
1280 previously associated in the ~~[database]~~ registry with a ~~[private]~~ construction project; and

1281 (ii) the likely explanation is that:

1282 (A) the preliminary notice is the first filing for the project; or

1283 (B) the tax parcel identification number is incorrectly stated in the preliminary notice.

1284 ~~[(g)]~~ (h) A preliminary notice ~~[for a private project]~~ shall include:

1285 (i) the name, address, telephone number, and email address of the person ~~[furnishing]~~
1286 providing the construction ~~[service]~~ work for which the preliminary notice is filed;

1287 (ii) the name and address of the person who contracted with the claimant for the
1288 ~~[furnishing of the]~~ construction ~~[service]~~ work;

1289 (iii) the name of the record or reputed owner ~~[of the project property]~~;

1290 (iv) the name of the original contractor for construction ~~[service]~~ work under which the
1291 claimant is ~~[furnishing]~~ providing or will ~~[furnish]~~ provide construction ~~[service]~~ work;

1292 (v) the address of the project property or a description of the location of the project;

1293 (vi) the name of the county in which the project property is located; and

1294 (vii) (A) the tax parcel identification number of each parcel included in the project
1295 property;

1296 (B) the entry number of a previously filed notice of construction loan under Section
1297 ~~[38-1-30.7]~~ 38-1a-601 on the same project;

1298 (C) the entry number of a previously filed preliminary notice on the same project that

1299 includes the tax parcel identification number of each parcel included in the project property; or

1300 (D) the entry number of the building permit issued for the project.

1301 ~~[(h)]~~ (i) A preliminary notice ~~[for a private project]~~ may include:

1302 (i) the subdivision, development, or other project name applicable to the construction
1303 project for which the preliminary notice is filed; and

1304 (ii) the lot or parcel number of each lot or parcel that is included in the project
1305 property.

1306 ~~[(3)(a) Unless a person indicates to the division or designated agent that the person
1307 does not wish to receive a notice under this section, electronic notification of the filing of a
1308 preliminary notice or alternate filing shall be provided to:]~~

1309 ~~[(i) the person filing the preliminary notice; and]~~

1310 ~~[(ii) each person who has requested a notice concerning the project.]~~

1311 ~~[(b) A person to whom notice is required to be provided under Subsection (2)(a) is
1312 responsible for:]~~

1313 ~~[(i) providing an email address, mailing address, or telefax number to which a notice
1314 required by Subsection (2)(a) is to be sent; and]~~

1315 ~~[(ii) the accuracy of any email address, mailing address, or telefax number to which
1316 notice is to be sent.]~~

1317 ~~[(c) The designated agent fulfills the notice requirement of Subsection (2)(a) by
1318 sending the notice to the email address, mailing address, or telefax number provided to the
1319 designated agent, whether or not the notice is actually received.]~~

1320 ~~[(4)]~~ (2) (a) The burden is upon the person filing the preliminary notice to prove that
1321 the person has substantially complied with the requirements of this section.

1322 (b) Substantial compliance with the requirements of ~~[Subsection (2)(g)]~~ Subsections
1323 (1)(h)(iii) through (vii) may be established by a person's reasonable reliance on information in
1324 the ~~[database]~~ registry provided by a previously filed:

1325 (i) notice of construction loan under Section ~~[38-1-30.7]~~ 38-1a-601;

1326 (ii) preliminary notice; or

1327 (iii) building permit.

1328 ~~[(5)]~~ (3) (a) Subject to Subsection ~~[(5)]~~ (3)(b), a person required by this section to give
1329 preliminary notice is ~~[only]~~ required to give only one notice for each construction project.

1330 (b) If the construction [~~service is furnished~~] work is provided pursuant to contracts
1331 under more than one original contract for construction [~~service~~] work, the notice requirements
1332 shall be met with respect to the construction [~~service furnished~~] work provided under each
1333 original contract.

1334 [~~(6)(a) A construction project owner, original contractor, or subcontractor for~~
1335 ~~construction service, or other interested person who believes that a preliminary notice has been~~
1336 ~~filed erroneously may request from the person who filed the preliminary notice evidence~~
1337 ~~establishing the validity of the preliminary notice.]~~

1338 [~~(b) Within 10 days after the request described in Subsection (6)(a), the person or entity~~
1339 ~~that filed the preliminary notice shall provide the requesting person or entity proof that the~~
1340 ~~preliminary notice is valid.]~~

1341 [~~(c) If the person or entity that filed the preliminary notice does not provide proof of~~
1342 ~~the validity of the preliminary notice, that person or entity shall immediately cancel the~~
1343 ~~preliminary notice from the database in any manner prescribed by the division pursuant to~~
1344 ~~rule.]~~

1345 [~~(7)~~] (4) A person filing a preliminary notice by alternate [~~filing~~] means is responsible
1346 for verifying and changing any incorrect information in the preliminary notice before the
1347 expiration of the time period during which the notice is required to be filed.

1348 [~~(8)~~] (5) (a) A person who files a preliminary notice before the recording of a
1349 construction lender's mortgage or trust deed may withdraw the preliminary notice by filing with
1350 the [~~database~~] registry a notice of withdrawal as provided in Subsection [~~(8)~~] (5)(b).

1351 (b) A notice of withdrawal shall include:

- 1352 (i) the information required for a preliminary notice under Subsection [~~(2)~~] (1)(g); and
1353 (ii) the entry number of the preliminary notice being withdrawn.

1354 [~~(9)~~] (6) A person who files a preliminary notice that contains inaccurate or incomplete
1355 information may not be held liable for damages suffered by any other person who relies on the
1356 inaccurate or incomplete information in filing a preliminary notice.

1357 Section 35. Section **38-1a-502**, which is renumbered from Section 38-1-7 is
1358 renumbered and amended to read:

1359 [~~38-1-7~~]. **38-1a-502**. **Notice of construction lien -- Contents -- Recording --**
1360 **Service on owner.**

1361 (1) (a) ~~[(i) Except as modified in Section 38-1-27, a]~~ A person [claiming] who desires
1362 to claim a construction [service] lien shall [file for record with the] submit for recording in the
1363 office of each applicable county recorder a [written] notice [to hold and claim a] of
1364 construction lien no later than, except as provided in Subsection (1)(b):

1365 ~~[(A) (i) 180 days after the [day] date on which [occurs] final completion of the~~
1366 ~~original contract occurs, if no notice of completion is filed under Section [38-1-33] 38-1a-507;~~
1367 ~~or~~

1368 ~~[(B) (ii) 90 days after the [day] date on which a notice of completion is filed under~~
1369 ~~Section [38-1-33] 38-1a-507, but not later than [the time frame established in Subsection~~
1370 ~~(1)(a)(i)(A)] 180 days after the date on which final completion of the original contract occurs.~~

1371 ~~[(ii) For purposes of this Subsection (1), final completion of the original contract, and~~
1372 ~~for purposes of Section 38-1-33, final completion of the project, means:]~~

1373 ~~[(A) if as a result of work performed under the original contract a permanent certificate~~
1374 ~~of occupancy is required for the work, the date of issuance of a permanent certificate of~~
1375 ~~occupancy by the local government entity having jurisdiction over the construction project;]~~

1376 ~~[(B) if no certificate of occupancy is required by the local government entity having~~
1377 ~~jurisdiction over the construction project, but as a result of the work performed under the~~
1378 ~~original contract an inspection is required as per state-adopted building codes for the work, the~~
1379 ~~date of the final inspection for the work by the local government entity having jurisdiction over~~
1380 ~~the construction project;]~~

1381 ~~[(C) if with regard to work performed under the original contract no certificate of~~
1382 ~~occupancy and no final inspection are required as per state-adopted building codes by the local~~
1383 ~~government entity having jurisdiction over the construction project, the date on which there~~
1384 ~~remains no substantial work to be completed to finish the work on the original contract; or]~~

1385 ~~[(D) if as a result of termination of the original contract prior to the completion of the~~
1386 ~~work defined by the original contract, the compliance agency does not issue a certificate of~~
1387 ~~occupancy or final inspection, the last date on which substantial work was performed under the~~
1388 ~~original contract.]~~

1389 (b) ~~[Notwithstanding Section 38-1-2, if a]~~ A subcontractor [performs] who provides
1390 substantial work after [the applicable dates established by Subsections (1)(a)(ii)(A) and (B);
1391 that subcontractor's subcontract shall be considered an original contract for the sole purpose of

1392 ~~determining;~~ a certificate of occupancy is issued or a required final inspection is completed
 1393 and desires to claim a construction lien shall submit for recording in the office of each
 1394 applicable county recorder a notice of construction lien no later than 180 days after final
 1395 completion of that subcontractor's work.

1396 ~~[(i) the subcontractor's time frame to file a notice of intent to hold and claim a lien~~
 1397 ~~under this Subsection (1); and]~~

1398 ~~[(ii) the original contractor's time frame to file a notice of intent to hold and claim a~~
 1399 ~~lien under this Subsection (1) for that subcontractor's work.]~~

1400 ~~[(c) For purposes of this chapter, the term "substantial work" does not include:]~~

1401 ~~[(i) repair work; or]~~

1402 ~~[(ii) warranty work.]~~

1403 ~~[(d) Notwithstanding Subsection (1)(a)(ii)(C), final completion of the original contract~~
 1404 ~~does not occur if work remains to be completed for which the owner is holding payment to~~
 1405 ~~ensure completion of that work.]~~

1406 (2) ~~[(a) The]~~ A notice [required by Subsection (1)] of construction lien shall contain [a
 1407 statement setting forth]:

1408 ~~[(i)]~~ (a) the name of the reputed owner if known or, if not known, the name of the
 1409 record owner;

1410 ~~[(ii)]~~ (b) the name of the person~~[-(A)]~~ by whom the claimant was employed~~[:]~~ or ~~[(B)]~~
 1411 to whom the claimant ~~[furnished the equipment or material]~~ provided construction work;

1412 ~~[(iii)]~~ (c) the time when~~[-(A)]~~ the claimant first and last ~~[labor or service was~~
 1413 ~~performed]~~ provided construction work; [or]

1414 ~~[(B) the first and last equipment or material was furnished;]~~

1415 ~~[(iv)]~~ (d) a description of the project property, sufficient for identification;

1416 ~~[(v)]~~ (e) the name, current address, and current phone number of the claimant;

1417 ~~[(vi)]~~ (f) the amount ~~[of]~~ claimed under the construction lien [claim];

1418 ~~[(vii)]~~ (g) the signature of the claimant or the claimant's authorized agent;

1419 ~~[(viii)]~~ (h) an acknowledgment or certificate as required under Title 57, Chapter 3,
 1420 Recording of Documents; and

1421 ~~[(ix)]~~ (i) if the construction lien is on an owner-occupied residence, as defined in
 1422 Section 38-11-102, a statement describing what steps an owner, as defined in Section

1423 38-11-102, may take to require a lien claimant to remove the lien in accordance with Section
 1424 38-11-107.

1425 ~~[(b) Substantial compliance with the requirements of this chapter is sufficient to hold~~
 1426 ~~and claim a lien.]~~

1427 (3) (a) A county recorder:

1428 (i) shall record each notice of construction lien in an index maintained for that purpose;

1429 and

1430 (ii) need not verify that a valid preliminary notice is filed with respect to the claimed

1431 construction lien.

1432 (b) All persons are considered to have notice of a notice of construction lien from the

1433 time it is recorded.

1434 ~~[(3)]~~ (4) (a) Within 30 days after filing [the] a notice of construction lien, the claimant

1435 shall deliver or mail by certified mail a copy of the notice ~~[of lien]~~ to ~~[(i)]~~ the reputed owner

1436 ~~[of the real property;]~~ or ~~[(ii)]~~ the record owner ~~[of the real property].~~

1437 (b) If the record owner's current address is not readily available to the claimant, the

1438 ~~[copy of the claim may be mailed]~~ claimant may mail a copy of the notice to the last known

1439 address of the record owner, using the names and addresses appearing on the last completed

1440 real property assessment rolls of the county where the ~~[affected]~~ project property is located.

1441 (c) Failure to deliver or mail the notice of lien to the reputed owner or record owner

1442 precludes the claimant from an award of costs and attorney fees against the reputed owner or

1443 record owner in an action to enforce the construction lien.

1444 ~~[(4)]~~ (5) The [Division of Occupational and Professional Licensing] division shall

1445 make rules governing the form of the statement required under Subsection (2)~~[(a)(ix)]~~(i).

1446 Section 36. Section **38-1a-503**, which is renumbered from Section 38-1-5 is

1447 renumbered and amended to read:

1448 ~~[38-1-5].~~ **38-1a-503. Relation back and priority of liens.**

1449 ~~[(1) As used in this section:]~~

1450 ~~[(a) "First preliminary notice filing" means the filing of a preliminary notice that is:]~~

1451 ~~[(i) the earliest preliminary notice filed on a private project, as defined in Section~~

1452 ~~38-1-27;]~~

1453 ~~[(ii) filed on or after August 1, 2011;]~~

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 [i] [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.

1485 execution, or other legal process to enforce a debt owed by the purchaser of the materials, if the
 1486 materials are in good faith about to be applied to the construction, alteration, or repair of an
 1487 improvement that is the subject of the construction project.

1488 (2) Subsection (1) does not apply to an attachment, execution, or other legal process to
 1489 enforce a debt incurred to purchase the materials described in Subsection (1).

1490 Section 39. Section **38-1a-506**, which is renumbered from Section 38-1-40 is
 1491 renumbered and amended to read:

1492 ~~[38-1-40].~~ **38-1a-506. Notice of intent to obtain final completion.**

1493 (1) An owner, as defined in Section 14-2-1, of a nonresidential construction project
 1494 that is registered with the [~~database~~] registry, or [~~a~~] an original contractor of a commercial
 1495 nonresidential construction project that is registered with the [~~database~~] registry under Section
 1496 [~~38-1-33~~] 38-1a-501, shall file with the [~~database~~] registry a notice of intent to obtain final
 1497 completion as provided in this section if:

1498 (a) the completion of performance time under the original contract for construction
 1499 [~~service~~] work is greater than 120 days;

1500 (b) the total original construction contract price exceeds \$500,000; and

1501 (c) the original contractor or owner has not obtained a payment bond in accordance
 1502 with Section 14-2-1.

1503 (2) The notice of intent described in Subsection (1) shall be filed at least 45 days before
 1504 the day on which the owner or original contractor of a commercial nonresidential construction
 1505 project files or could have filed a notice of completion under Section [~~38-1-33~~] 38-1a-507.

1506 (3) A person [~~supplying labor, materials, or services~~] who provides construction work
 1507 to an owner[~~, a~~] or original contractor[~~, or subcontractor~~] who files a notice of intent in
 1508 accordance with Subsection (1) shall file an amendment to the person's preliminary notice
 1509 previously filed by the person as required in Section [~~38-1-32~~] 38-1a-501:

1510 (a) that includes:

1511 (i) a good faith estimate of the total amount remaining due to complete the contract,
 1512 purchase order, or agreement relating to the person's approved [~~labor, approved materials, and~~
 1513 ~~approved services~~] construction work;

1514 (ii) the identification of each original contractor or subcontractor with whom the
 1515 person has a contract or contracts for [~~supplying project labor, materials, or services~~] providing

1516 construction work; and

1517 (iii) a separate statement of all known amounts or categories of work in dispute; and

1518 (b) no later than 20 days after the day on which the owner or contractor files a notice of
1519 intent.

1520 (4) (a) A person [~~identified in accordance with Subsection (3)(a)(i) who has complied~~
1521 ~~with, or is exempt from, the provisions of Section 38-1-22;~~] described in Subsection (3) may
1522 demand a statement of adequate assurance from the owner, contractor, or subcontractor with
1523 whom the person has privity of contract no later than 10 days after the day on which the person
1524 files a balance statement in accordance with Subsection (3) from an owner, contractor, or
1525 subcontractor who is in privity of contract with the person.

1526 (b) A demand for adequate assurance as described in Subsection (4)(a) may include a
1527 request for a statement from the owner, contractor, or subcontractor that the owner, contractor,
1528 or subcontractor has sufficient funds dedicated and available to pay for all sums due to the
1529 person filing for the adequate assurances or that will become due in order to complete a
1530 construction project.

1531 (c) A person who demands adequate assurance under Subsection (4)(a) shall deliver
1532 copies of the demand to the owner and contractor:

1533 (i) by hand delivery with a responsible party's acknowledgment of receipt;

1534 (ii) by certified mail with a return receipt; or

1535 (iii) as provided under Rule 4, Utah Rules of Civil Procedure.

1536 (5) (a) A person [~~identified in accordance with Subsection (3)(a)(i) who has complied~~
1537 ~~with, or is exempt from, the provisions of Section 38-1-32]~~ described in Subsection (3) may
1538 bring a legal action against a party with whom the person is in privity of contract, including a
1539 request for injunctive or declaratory relief, to determine the adequacy of [~~an owner's, with~~
1540 ~~whom the demanding person contracted, contractor's, with whom the demanding person~~
1541 ~~contracted, or subcontractor's, with whom the demanding person contracted, funds]~~ the funds
1542 of the owner, contractor, or subcontractor with whom the demanding person contracted if, after
1543 the person demands adequate assurance in accordance with the requirements of this section:

1544 (i) the owner, contractor, or subcontractor fails to provide adequate assurance that the
1545 owner, contractor, or subcontractor has sufficient available funds, or access to financing or
1546 other sufficient available funds, to pay for the completion of the demanding person's approved

1547 work on the construction project; or

1548 (ii) the parties disagree, in good faith, as to whether there are adequate funds, or access
1549 to financing or other sufficient available funds, to pay for the completion of the demanding
1550 person's approved work on the construction project.

1551 (b) If a court finds that an owner, contractor, or subcontractor has failed to provide
1552 adequate assurance in accordance with Subsection (4)(a), the court may require the owner,
1553 contractor, or subcontractor to post adequate security with the court sufficient to assure timely
1554 payment of the remaining contract balance for the approved work of the person seeking
1555 adequate assurance, including:

1556 (i) cash;

1557 (ii) a bond;

1558 (iii) an irrevocable letter of credit;

1559 (iv) property;

1560 (v) financing; or

1561 (vi) another form of security approved by the court.

1562 (6) (a) A person is subject to the civil penalty described in Subsection (6)(b), if the
1563 person files a balance statement described in Subsection (3)~~[(i)]~~ that misrepresents the amount
1564 due under the contract~~[-and (ii)]~~ with the intent to:

1565 ~~[(A)]~~ (i) charge an owner, contractor, or subcontractor more than the actual amount
1566 due; or

1567 ~~[(B)]~~ (ii) procure any other unfair advantage or benefit on the person's behalf.

1568 (b) The civil penalty described in Subsection (6)(a) is the greater of:

1569 (i) twice the amount by which the balance statement filed under Subsection (3) exceeds
1570 the amount actually remaining due under the contract for completion of construction; ~~[or]~~ and

1571 (ii) the actual damages incurred by the owner, contractor, or subcontractor.

1572 (7) A court shall award reasonable attorney fees to a prevailing party for an action
1573 brought under this section.

1574 (8) Failure to comply with the requirements established in this section does not affect
1575 any other requirement or right under this chapter.

1576 (9) A person who has not ~~[complied with, or is not exempt from, the provisions of~~
1577 ~~Section 38-1-32 may not be]~~ filed a preliminary notice as required under Section 38-1a-501 is

1578 not entitled to a right or a remedy provided in this section.

1579 (10) This section does not create a cause of action against a person with whom the
1580 demanding party is not in privity of contract.

1581 Section 40. Section **38-1a-507**, which is renumbered from Section 38-1-33 is
1582 renumbered and amended to read:

1583 ~~[38-1-33].~~ **38-1a-507. Notice of completion.**

1584 (1) (a) Upon final completion of a construction project, ~~[and in accordance with~~
1585 ~~Section 38-1-40, the following with a construction project registered with the database may~~
1586 ~~file]~~ a notice of completion may be filed with the ~~[database]~~ registry by:

- 1587 (i) an owner ~~[of the construction project];~~
- 1588 (ii) an original contractor for construction ~~[service]~~ work;
- 1589 (iii) a lender that has provided financing for the construction project;
- 1590 (iv) a surety that has provided bonding for the construction project; or
- 1591 (v) a title company issuing a title insurance policy on the construction project.

1592 ~~[(b) Notwithstanding Section 38-1-2, if a subcontractor for construction service~~
1593 ~~performs substantial work after the applicable dates established by Subsection (1)(a), that~~
1594 ~~subcontractor's subcontract is considered an original contract for construction service for the~~
1595 ~~sole purpose of determining:]~~

1596 ~~[(i) the subcontractor's time frame to file a notice to hold and claim a lien under~~
1597 ~~Subsection 38-1-7(1); and]~~

1598 ~~[(ii) the original contractor's time frame to file a notice to hold and claim a lien under~~
1599 ~~Subsection 38-1-7(1) for that subcontractor's work.]~~

1600 ~~[(c)]~~ (b) A notice of completion shall include:

1601 (i) the name, address, telephone number, and email address of the person filing the
1602 notice of completion;

1603 (ii) the name of the county in which the project property is located;

1604 (iii) for a private project:

1605 (A) the tax parcel identification number of each parcel included in the project property;

1606 (B) the entry number of a preliminary notice on the same project that includes the tax
1607 parcel identification number of each parcel included in the project property; or

1608 (C) the entry number of the building permit issued for the project;

- 1609 (iv) for a government project, the government project-identifying information;
1610 (v) the date on which final completion is alleged to have occurred; and
1611 (vi) the method used to determine final completion.

1612 ~~[(d) For purposes of this section, final completion of the original contract does not
1613 occur if work remains to be completed for which the owner is holding payment to ensure
1614 completion of the work.]~~

1615 ~~[(e) (i) Unless a person indicates to the division or designated agent that the person
1616 does not wish to receive a notice under this section, electronic notification of the filing of a
1617 notice of completion or alternate filing shall be provided to:]~~

1618 ~~[(A) each person that filed a notice of commencement for the project;]~~

1619 ~~[(B) each person that filed preliminary notice for the project; and]~~

1620 ~~[(C) all interested persons who have requested notices concerning the project.]~~

1621 ~~[(ii) A person to whom notice is required under this Subsection (1)(e) is responsible
1622 for:]~~

1623 ~~[(A) providing an email address, mailing address, or telefax number to which a notice
1624 required by this Subsection (1)(e) is to be sent; and]~~

1625 ~~[(B) the accuracy of any email address, mailing address, or telefax number to which
1626 notice is to be sent.]~~

1627 ~~[(iii) The designated agent fulfills the notice requirement of Subsection (1)(e)(i) when
1628 it sends the notice to the email address, mailing address, or telefax number provided to the
1629 designated agent, whether or not the notice is actually received.]~~

1630 ~~[(iv) Upon the filing of a notice of completion, the time periods for filing a preliminary
1631 notice stated in Section 38-1-32 or 38-1-32.5 are modified such that all preliminary notices
1632 shall be filed subsequent to the notice of completion and within 10 days from the day on which
1633 the notice of completion is filed.]~~

1634 ~~[(f) A subcontract that is considered an original contract for construction service for
1635 purposes of this section does not create a requirement for an additional preliminary notice if a
1636 preliminary notice has already been given for the labor, service, equipment, and material
1637 furnished to the subcontractor who performs substantial work.]~~

1638 ~~[(2) (a) If a construction project owner, original contractor, or subcontractor for
1639 construction service, or other interested person believes that a notice of completion has been~~

1640 filed erroneously, that owner, original contractor, subcontractor, or other interested person can
1641 request from the person who filed the notice of completion evidence establishing the validity of
1642 the notice of completion.]

1643 ~~[(b) Within 10 days after the request described in Subsection (2)(a), the person who~~
1644 ~~filed the notice of completion shall provide the requesting person proof that the notice of~~
1645 ~~completion is valid.]~~

1646 ~~[(c) If the person that filed the notice of completion does not provide proof of the~~
1647 ~~validity of the notice of completion, that person shall immediately cancel the notice of~~
1648 ~~completion from the database in any manner prescribed by the division pursuant to rule.]~~

1649 ~~[(3)]~~ (2) A person filing a notice of completion by alternate ~~[filing]~~ means is
1650 responsible for verifying and changing any incorrect information in the notice of completion
1651 before the expiration of the time period during which the notice is required to be filed.

1652 Section 41. Section **38-1a-601**, which is renumbered from Section 38-1-30.7 is
1653 renumbered and amended to read:

1654 **Part 6. Construction Loans**

1655 ~~[38-1-30.7].~~ **38-1a-601. Notice of construction loan.**

1656 ~~[(1) As used in this section, "construction loan" does not include a consumer loan~~
1657 ~~secured by the equity in the consumer's home.]~~

1658 ~~[(2)]~~ (1) After recording a mortgage or trust deed securing a construction loan on a
1659 private project, the construction lender on the loan shall promptly, in conjunction with the
1660 closing of the construction loan, file with the ~~[database]~~ registry a notice of construction loan.

1661 ~~[(3)]~~ (2) A notice under Subsection ~~[(2)]~~ (1) shall accurately state:

1662 (a) the lender's name, address, and telephone number;

1663 (b) the name of the trustor on the trust deed securing the loan;

1664 (c) the tax parcel identification number of each parcel included or to be included in the
1665 construction project for which the loan was given;

1666 (d) the address of the project property; and

1667 (e) the name of the county in which the project property is located.

1668 ~~[(4)]~~ (3) A construction lender that files a notice of construction loan containing
1669 incomplete or inaccurate information may not be held liable for damages suffered by any other
1670 person who relies on the inaccurate or incomplete information in filing a preliminary notice.

1671 Section 42. Section **38-1a-602**, which is renumbered from Section 38-1-32.7 is
 1672 renumbered and amended to read:

1673 **[38-1-32.7]. 38-1a-602. Notice concerning construction loan default.**

1674 (1) Within five business days after a notice of default is filed for recording under
 1675 Section 57-1-24 with respect to a trust deed on the project property securing a construction
 1676 loan, the construction lender under the loan shall file a notice with the ~~[database]~~ registry.

1677 (2) A notice under Subsection (1) shall:

1678 (a) include:

1679 (i) the information required to be included in a notice of construction loan under
 1680 ~~[Subsections 38-1-30.7(3)(a), (b), (c), (d), and (e)]~~ Subsection 38-1a-601(2); and

1681 (ii) the entry number of the notice of construction loan;

1682 (b) state that a notice of default with respect to the construction loan has been recorded;

1683 and

1684 (c) state the date that the notice of default was recorded.

1685 Section 43. Section **38-1a-701**, which is renumbered from Section 38-1-11 is
 1686 renumbered and amended to read:

1687 **Part 7. Enforcement of Preconstruction and Construction Liens**

1688 **[38-1-11]. 38-1a-701. Enforcement -- Time for -- Lis pendens -- Action for**
 1689 **debt not affected -- Instructions and form affidavit and motion.**

1690 (1) As used in this section:

1691 (a) "Owner" ~~[is]~~ has the same meaning as defined in Section 38-11-102.

1692 (b) "Residence" ~~[is]~~ has the same meaning as defined in Section 38-11-102.

1693 (2) ~~[A]~~ In order to enforce a preconstruction lien or construction lien, a claimant shall
 1694 file an action to enforce the lien ~~[filed under this chapter]~~:

1695 (a) except as provided in Subsection (2)(b), within 180 days after the day on which the
 1696 claimant files:

1697 (i) a notice of preconstruction ~~[service]~~ lien under Section ~~[38-1-6.7]~~ 38-1a-402, for a
 1698 preconstruction ~~[service]~~ lien; or

1699 (ii) a notice of ~~[claim]~~ construction lien under Section ~~[38-1-7]~~ 38-1a-502, for a
 1700 construction ~~[service]~~ lien; or

1701 (b) if an owner files for protection under the bankruptcy laws of the United States

1702 before the expiration of the 180-day period under Subsection (2)(a), within 90 days after the
1703 automatic stay under the bankruptcy proceeding is lifted or expires.

1704 (3) (a) (i) Within the time period provided [~~for filing~~] in Subsection (2) [~~the~~] for filing
1705 an action, a claimant shall file for record with [~~the~~] each applicable county recorder [~~of each~~
1706 ~~county in which the lien is recorded~~] a notice of the pendency of the action, in the manner
1707 provided [~~in~~] for actions affecting the title or right to possession of real property[~~, or the lien~~
1708 ~~shall be~~].

1709 (ii) If a claimant fails to file for record a notice of the pendency of the action, as
1710 required in Subsection (3)(a)(i), the preconstruction lien or construction lien, as applicable, is
1711 void, except as to persons who have been made parties to the action and persons having actual
1712 knowledge of the commencement of the action.

1713 (b) The burden of proof is upon the claimant and those claiming under the claimant to
1714 show actual knowledge under Subsection (3)(a)(ii).

1715 (4) (a) A preconstruction lien [~~filed under this chapter~~] or construction lien is
1716 automatically and immediately void if an action to enforce the lien is not filed within the time
1717 required by this section.

1718 (b) Notwithstanding Section 78B-2-111, a court has no subject matter jurisdiction to
1719 adjudicate a preconstruction or construction lien that becomes void under Subsection (4)(a).

1720 (5) This section may not be interpreted to impair or affect the right of any person to
1721 whom a debt may be due for any [~~work done or materials furnished~~] preconstruction service or
1722 construction work to maintain a personal action to recover the debt.

1723 (6) (a) If a claimant files an action to enforce a preconstruction or construction lien
1724 [~~filed under this chapter~~] involving a residence, the [~~lien~~] claimant shall include with the
1725 service of the complaint on the owner of the residence:

1726 (i) instructions to the owner of the residence relating to the owner's rights under Title
1727 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act; and

1728 (ii) a form to enable the owner of the residence to specify the grounds upon which the
1729 owner may exercise available rights under Title 38, Chapter 11, Residence Lien Restriction and
1730 Lien Recovery Fund Act.

1731 (b) The instructions and form required by Subsection (6)(a) shall meet the requirements
1732 established by the division by rule [~~by the Division of Occupational and Professional Licensing~~

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

1764 construction liens on the same property, the court may consolidate the actions and make all
 1765 claimants parties to the consolidated action.

1766 Section 45. Section **38-1a-703**, which is renumbered from Section 38-1-14 is
 1767 renumbered and amended to read:

1768 **[38-1-14]. 38-1a-703. Decree -- Order of satisfaction.**

1769 [In every case in which] If liens are claimed against the same property the decree shall
 1770 provide for their satisfaction in the following order:

1771 (1) subcontractors who are laborers or mechanics working by the day or piece, but

1772 [without furnishing] who have not furnished materials [therefor];

1773 (2) all other subcontractors and all materialmen; and

1774 (3) [The] original contractors.

1775 Section 46. Section **38-1a-704**, which is renumbered from Section 38-1-15 is
 1776 renumbered and amended to read:

1777 **[38-1-15]. 38-1a-704. Sale -- Redemption -- Disposition of proceeds.**

1778 (1) The court shall cause the property to be sold in satisfaction of the liens and costs as
 1779 in the case of a foreclosure of [mortgages] a mortgage, subject to the same right of redemption.

1780 (2) If the proceeds of sale after the payment of costs [shall] are not [be] sufficient to
 1781 satisfy the whole amount of liens included in the decree, then [such] the proceeds shall be paid
 1782 in the order [above] designated in Section 38-1a-703, and pro rata to the persons claiming in
 1783 each class [where] if the sum realized is insufficient to pay the persons of [such] the class in
 1784 full.

1785 (3) Any excess sale proceeds remaining after the payment of all liens and costs shall be
 1786 paid to the owner.

1787 Section 47. Section **38-1a-705** is enacted to read:

1788 **38-1a-705. Deficiency judgment.**

1789 A claimant whose preconstruction or construction lien is not paid in full through an
 1790 enforcement action as provided in this part may:

1791 (1) have judgment for the unpaid balance entered against the person liable; and

1792 (2) execute on the judgment in the same manner as execution on judgments generally.

1793 Section 48. Section **38-1a-706** is enacted to read:

1794 **38-1a-706. Costs -- Apportionment -- Costs and attorney fees to subcontractor.**

1795 (1) Except as provided in Section 38-11-107, the court shall apportion costs between
 1796 the owner and original contractor according to the right of the case.

1797 (2) The court shall award a subcontractor with a valid preconstruction or construction
 1798 lien:

1799 (a) all of the subcontractor's costs, including the costs of preparing and recording the
 1800 notice of preconstruction or construction lien; and

1801 (b) the subcontractor's reasonable attorney fees incurred in preparing and recording the
 1802 notice of preconstruction or construction lien.

1803 Section 49. Section **38-1a-707**, which is renumbered from Section 38-1-18 is
 1804 renumbered and amended to read:

1805 ~~[38-1-18].~~ **38-1a-707. Attorney fees -- Offer of judgment.**

1806 (1) Except as provided in Section 38-11-107 and in Subsection (2), in any action
 1807 brought to enforce any lien under this chapter the successful party shall be entitled to recover
 1808 [a] reasonable [attorneys' fee] attorney fees, to be fixed by the court, which shall be taxed as
 1809 costs in the action.

1810 (2) A person who files a wrongful lien as provided in Section [~~38-1-25 is not entitled~~
 1811 ~~to~~] 38-1a-308 may not recover [attorneys'] attorney fees under Subsection (1).

1812 (3) (a) A [party] person against whom [any] an action is brought to enforce a
 1813 preconstruction or construction lien [~~under this chapter~~] may make an offer of judgment
 1814 pursuant to Rule 68 of the Utah Rules of Civil Procedure.

1815 (b) If the offer is not accepted and the judgment finally obtained by the offeree is not
 1816 more favorable than the offer, the offeree shall pay the costs and [attorneys'] attorney fees
 1817 incurred by the offeror after the offer was made.

1818 Section 50. Section **38-1a-801** is enacted to read:

1819 **Part 8. Actions Affecting Preconstruction and Construction Liens**

1820 **38-1a-801. Preconstruction and construction liens assignable -- Action by assignee**
 1821 **to enforce lien.**

1822 (1) A preconstruction lien or construction lien is assignable as any other chose in
 1823 action.

1824 (2) An assignee of a preconstruction lien or construction lien may, in the assignee's
 1825 own name, commence and prosecute an action on the lien as provided in Part 7, Enforcement

1826 of Preconstruction and Construction Liens.

1827 Section 51. Section **38-1a-802**, which is renumbered from Section 38-1-39 is
1828 renumbered and amended to read:

1829 ~~[38-1-39].~~ **38-1a-802. Waiver or impairment of a lien right -- Forms -- Scope.**

1830 (1) As used in this section:

1831 (a) "Check" means a payment instrument on a depository institution including:

1832 (i) a check;

1833 (ii) a draft;

1834 (iii) an order; or

1835 (iv) other instrument.

1836 (b) "Depository institution" is as defined in Section 7-1-103.

1837 ~~[(c) "Lien claimant" means a person that claims a lien under this chapter.]~~

1838 ~~[(d)]~~ (c) "Receives payment" means, in the case of a restrictive endorsement, a payee
1839 has endorsed a check and the check is presented to and paid by the depository institution on
1840 which it is drawn.

1841 (2) Notwithstanding Section ~~[38-1-29]~~ 38-1a-105, a claimant's written consent ~~[given~~
1842 ~~by a lien claimant]~~ that waives or limits the ~~[lien]~~ claimant's lien rights is enforceable only if
1843 the ~~[lien]~~ claimant:

1844 (a) (i) executes a waiver and release that is signed by the ~~[lien]~~ claimant or the ~~[lien]~~
1845 claimant's authorized agent; or

1846 (ii) for a restrictive endorsement on a check, includes a restrictive endorsement on a
1847 check that is:

1848 (A) signed by the ~~[lien]~~ claimant or the ~~[lien]~~ claimant's authorized agent; and

1849 (B) in substantially the same form set forth in Subsection (4)(d); and

1850 (b) receives payment of the amount identified in the waiver and release or check that
1851 includes the restrictive endorsement:

1852 (i) including payment by a joint payee check; and

1853 (ii) for a progress payment, only to the extent of the payment.

1854 (3) (a) Notwithstanding the language of a waiver and release described in Subsection
1855 (2), Subsection (3)(b) applies if:

1856 (i) the payment given in exchange for any waiver and release of lien is made by check;

1857 and

1858 (ii) the check fails to clear the depository institution on which it is drawn for any
1859 reason.

1860 (b) If the conditions of Subsection (3)(a) are met:

1861 (i) the waiver and release described in Subsection (3)(a) is [~~null,~~] void[~~, and of no legal~~
1862 effect]; and

1863 (ii) the following will not be affected by the [~~lien~~] claimant's execution of the waiver
1864 and release:

1865 (A) any lien;

1866 (B) any lien right;

1867 (C) any bond right;

1868 (D) any contract right; or

1869 (E) any other right to recover payment afforded to the [~~lien~~] claimant in law or equity.

1870 (4) (a) A waiver and release given by a [~~lien~~] claimant meets the requirements of this
1871 section if it is in substantially the form provided in this Subsection (4) for the circumstance
1872 provided in this Subsection (4).

1873 (b) A waiver and release may be in substantially the following form if the [~~lien~~]
1874 claimant is required to execute a waiver and release in exchange for or to induce the payment
1875 of a progress billing:

1876 "UTAH CONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT

1877 Property Name: _____

1878 Property Location: _____

1879 Undersigned's Customer: _____

1880 Invoice/Payment Application Number: _____

1881 Payment Amount: _____

1882 Payment Period: _____

1883 To the extent provided below, this document becomes effective to release and the
1884 undersigned is considered to waive any notice of lien or right under Utah Code Ann., Title 38,
1885 Chapter [~~1, Mechanics' Liens~~] 1a, Preconstruction and Construction Liens, or any bond right
1886 under Utah Code Ann., Title 14, Contractors' Bonds, or Section 63G-6-505 related to payment
1887 rights the undersigned has on the above described Property once:

1888 (1) the undersigned endorses a check in the above referenced Payment Amount payable
1889 to the undersigned; and

1890 (2) the check is paid by the depository institution on which it is drawn.

1891 This waiver and release applies to a progress payment for the work, materials,
1892 equipment, or a combination of work, materials, and equipment furnished by the undersigned
1893 to the Property or to the Undersigned's Customer which are the subject of the Invoice or
1894 Payment Application, but only to the extent of the Payment Amount. This waiver and release
1895 does not apply to any retention withheld; any items, modifications, or changes pending
1896 approval; disputed items and claims; or items furnished or invoiced after the Payment Period.

1897 The undersigned warrants that the undersigned either has already paid or will use the
1898 money the undersigned receives from this progress payment promptly to pay in full all the
1899 undersigned's laborers, subcontractors, materialmen, and suppliers for all work, materials,
1900 equipment, or combination of work, materials, and equipment that are the subject of this
1901 waiver and release.

1902 Dated: _____
1903 _____ (Company Name)
1904 _____ By: _____
1905 _____ Its: _____ "

1906 (c) A waiver and release may be in substantially the following form if the lien claimant
1907 is required to execute a waiver and release in exchange for or to induce the payment of a final
1908 billing:

1909 "UTAH WAIVER AND RELEASE UPON FINAL PAYMENT

1910 Property Name: _____
1911 Property Location: _____
1912 Undersigned's Customer: _____
1913 Invoice/Payment Application Number: _____
1914 Payment Amount: _____

1915 To the extent provided below, this document becomes effective to release and the
1916 undersigned is considered to waive any notice of lien or right under Utah Code Ann., Title 38,
1917 Chapter [~~1, Mechanics' Liens~~] 1a, Preconstruction and Construction Liens, or any bond right
1918 under Utah Code Ann., Title 14, Contractors' Bonds, or Section 63G-6-505 related to payment

1919 rights the undersigned has on the above described Property once:

1920 (1) the undersigned endorses a check in the above referenced Payment Amount payable
1921 to the undersigned; and

1922 (2) the check is paid by the depository institution on which it is drawn.

1923 This waiver and release applies to the final payment for the work, materials, equipment,
1924 or combination of work, materials, and equipment furnished by the undersigned to the Property
1925 or to the Undersigned's Customer.

1926 The undersigned warrants that the undersigned either has already paid or will use the
1927 money the undersigned receives from the final payment promptly to pay in full all the
1928 undersigned's laborers, subcontractors, materialmen, and suppliers for all work, materials,
1929 equipment, or combination of work, materials, and equipment that are the subject of this
1930 waiver and release.

1931 Dated: _____

1932 _____(Company Name)

1933 _____By: _____

1934 _____Its: _____"

1935 (d) A restrictive endorsement placed on a check to effectuate a waiver and release
1936 described in this Subsection (4) meets the requirements of this section if it is in substantially
1937 the following form:

1938 "This check is a progress/ final payment for property described on this check sufficient
1939 for identification. Endorsement of this check is an acknowledgment by the endorser that the
1940 waiver and release to which the payment applies is effective to the extent provided in Utah
1941 Code Ann. Subsection [~~38-1-39~~] 38-1a-802(4)(b) or (c) respectively."

1942 (e) (i) If using a restrictive endorsement under Subsection (4)(d), the person preparing
1943 the check shall indicate whether the check is for a progress payment or a final payment by
1944 circling the word "progress" if the check is for a progress payment, or the word "final" if the
1945 check is for a final payment.

1946 (ii) If a restrictive endorsement does not indicate whether the check is for a progress
1947 payment or a final payment, it is considered to be for a progress payment.

1948 (5) (a) If the conditions of Subsection (5)(b) are met, this section does not affect the
1949 enforcement of:

- 1950 (i) an accord and satisfaction regarding a bona fide dispute; or
- 1951 (ii) an agreement made in settlement of an action pending in any court or arbitration.
- 1952 (b) Pursuant to Subsection (5)(a), this section does not affect enforcement of an accord
- 1953 and satisfaction or settlement described in Subsection (5)(a) if the accord and satisfaction or
- 1954 settlement:
- 1955 (i) is in a writing signed by the [~~lien~~] claimant; and
- 1956 (ii) specifically references the lien rights waived or impaired.

1957 Section 52. Section **38-1a-803** is enacted to read:

1958 **38-1a-803. Cancellation of preconstruction or construction lien -- Penalty for**
1959 **failure to cancel timely.**

1960 (1) After the full amount owing under a preconstruction or construction lien, including
1961 costs and cancellation fees, has been paid, a person interested in the property that is the subject
1962 of the lien may request the claimant to submit for recording with the office of each applicable
1963 county recorder a cancellation of the lien.

1964 (2) Within 10 days after receiving a request under Subsection (1), the claimant shall
1965 submit to the office of each applicable county recorder a cancellation of the preconstruction or
1966 construction lien, as applicable.

1967 (3) A claimant who fails to submit a cancellation within the time prescribed in
1968 Subsection (2) is liable to the person who requested the cancellation for \$100 for each day after
1969 the time prescribed in Subsection (2) that the cancellation is not submitted, or the person's
1970 actual damages, whichever is greater.

1971 Section 53. Section **38-1a-804**, which is renumbered from Section 38-1-28 is
1972 renumbered and amended to read:

1973 [~~38-1-28~~]. **38-1a-804. Notice of release of lien and substitution of alternate**
1974 **security.**

1975 (1) The owner of any interest in [~~real~~] a project property that is subject to a
1976 [~~mechanics'~~] recorded preconstruction or construction lien [~~recorded under this chapter~~], or any
1977 original contractor or subcontractor affected by the lien, who disputes the correctness or
1978 validity of the lien may [~~record~~] submit for recording a notice of release of lien and substitution
1979 of alternate security:

- 1980 (a) that meets the requirements of Subsection (2);

1981 (b) in the office of ~~[the]~~ each applicable county recorder where the lien was recorded;
1982 and

1983 (c) at any time before ~~[the expiration of 90 days after the day on which the person~~
1984 ~~filing a notice of release of lien and substitution of alternate security is served with a summons~~
1985 ~~and lien foreclosure complaint.]~~ the date that is 90 days after the first summons is served in an
1986 action to foreclose the preconstruction or construction lien for which the notice under this
1987 section is submitted for recording.

1988 (2) A notice of release of lien and substitution of alternate security recorded under
1989 Subsection (1) shall:

1990 (a) meet the requirements for the recording of documents in Title 57, Chapter 3,
1991 Recording of Documents;

1992 (b) reference the preconstruction or construction lien sought to be released, including
1993 ~~[an]~~ the applicable entry number, book number, and page number; and

1994 (c) have as an attachment a surety bond or evidence of a cash deposit that:

1995 (i) (A) if a surety bond, is executed by a surety company that is treasury listed, A-rated
1996 by AM Best Company, and authorized to issue surety bonds in this state; or

1997 (B) if evidence of a cash deposit, meets the requirements established by rule by the
1998 Department of Commerce in accordance with Title 63G, Chapter 3, Utah Administrative
1999 Rulemaking Act;

2000 (ii) is in an amount equal to:

2001 (A) 150% of the amount claimed by the ~~[lien]~~ claimant ~~[on a notice of]~~ under the
2002 preconstruction or construction lien or as determined under Subsection (7), if the lien claim is
2003 for \$25,000 or more;

2004 (B) 175% of the amount claimed by the ~~[lien]~~ claimant ~~[on a notice of]~~ under the
2005 preconstruction or construction lien or as determined under Subsection (7), if the lien claim is
2006 for at least \$15,000 but less than \$25,000; or

2007 (C) 200% of the amount claimed by the ~~[lien]~~ claimant ~~[on a notice of]~~ under the
2008 preconstruction or construction lien or as determined under Subsection (7), if the lien claim is
2009 for less than \$15,000;

2010 (iii) is made payable to the ~~[lien]~~ claimant;

2011 (iv) is conditioned for the payment of:

2012 (A) the judgment that would have been rendered, or has been rendered against the
2013 project property in the action to enforce the lien; and

2014 (B) any costs and [~~attorneys'~~] attorney fees awarded by the court; and

2015 (v) has as principal:

2016 (A) the owner of the interest in the [~~real~~] project property; or

2017 (B) the original contractor or subcontractor affected by the lien.

2018 (3) (a) Upon the recording of the notice of release of lien and substitution of alternate
2019 security under Subsection (1), the real property described in the notice shall be released from
2020 the [~~mechanics'~~] preconstruction lien or construction lien to which the notice applies.

2021 (b) A recorded notice of release of lien and substitution of alternate security is effective
2022 as to any amendment to the preconstruction or construction lien being released if the bond
2023 amount remains enough to satisfy the requirements of Subsection (2)(c)(ii).

2024 (4) (a) Upon the recording of a notice of release of lien and substitution of alternate
2025 security under Subsection (1), the person recording the notice shall serve a copy of the notice,
2026 together with any attachments, within 30 days upon the [~~lien~~] claimant.

2027 (b) If a suit is pending to foreclose the preconstruction or construction lien at the time
2028 the notice is served upon the [~~lien~~] claimant under Subsection (4)(a), the [~~lien~~] claimant shall,
2029 within 90 days [~~from~~] after the receipt of the notice, institute proceedings to add the alternate
2030 security as a party to the lien foreclosure suit.

2031 (5) The alternate security attached to a notice of release of lien shall be discharged and
2032 released upon:

2033 (a) the failure of the [~~lien~~] claimant to commence a suit against the alternate security
2034 within the same time as an action to enforce the lien under Section [~~38-1-11~~] 38-1a-701;

2035 (b) the failure of the lien claimant to institute proceedings to add the alternate security
2036 as a party to a lien foreclosure suit within the time required by Subsection (4)(b);

2037 (c) the dismissal with prejudice of the lien foreclosure suit or suit against the alternate
2038 security as to the [~~lien~~] claimant; or

2039 (d) the entry of judgment against the [~~lien~~] claimant in:

2040 (i) a lien foreclosure suit; or

2041 (ii) suit against the alternate security.

2042 (6) If a copy of the notice of release of lien and substitution of alternate security is not

2043 served upon the [lien] claimant as provided in Subsection (4)(a), the [lien] claimant [shall
2044 have] has six months after the discovery of the notice to commence an action against the
2045 alternate security, except that no action may be commenced against the alternate security after
2046 two years from the date the notice was recorded.

2047 (7) (a) The owner of any interest in [real] a project property that is subject to a
2048 [~~mechanics'~~] recorded preconstruction or construction lien [~~recorded under this chapter~~], or an
2049 original contractor or subcontractor affected by [~~a mechanics'~~] the lien [~~recorded under this~~
2050 ~~chapter~~], who disputes the amount claimed [~~in a notice of~~] under a preconstruction or
2051 construction lien may petition the district court in the county in which the notice of lien is
2052 recorded for a summary determination of the correct amount [~~of a~~] owing under the lien [~~claim~~]
2053 for the sole purpose of providing alternate security.

2054 (b) A petition under this Subsection (7) shall:

2055 (i) state with specificity the factual and legal bases for disputing the amount [~~of~~]
2056 claimed under the preconstruction or construction lien [~~claim~~]; and

2057 (ii) be supported by a sworn affidavit and any other evidence supporting the petition.

2058 (c) A petitioner under Subsection (7)(a) shall, [~~under~~] as provided in Utah Rules of
2059 Civil Procedure, Rule 4, serve on the [lien] claimant:

2060 (i) a copy of the petition; and

2061 (ii) a notice of hearing if a hearing is scheduled.

2062 (d) If a court finds a petition under Subsection (7)(a) insufficient, the court may
2063 dismiss the petition without a hearing.

2064 (e) If a court finds a petition under Subsection (7)(a) sufficient, the court shall schedule
2065 a hearing within 10 days to determine the correct amount [~~of the lien claim~~] claimed under the
2066 preconstruction or construction lien for the sole purpose of providing alternate security.

2067 (f) A [lien] claimant may:

2068 (i) attend a hearing held under this Subsection (7); and

2069 (ii) contest the petition.

2070 (g) A determination under this section is limited to a determination of the amount [~~of~~
2071 ~~the lien claim~~] claimed under a preconstruction or construction lien for the sole purpose of
2072 providing alternate security and does not conclusively establish:

2073 (i) the amount to which the [lien] claimant is entitled;

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:

2105 (a) the lot or parcel number of each lot included in the project property that has a lot or
 2106 parcel number; or

2107 (b) the unique project number assigned by the designated agent.

2108 (8) "Original contractor" has the same meaning as defined in Section 38-1a-102.

2109 (9) "Owner" has the same meaning as defined in Section 38-1a-102.

2110 (10) "Owner-builder" has the same meaning as defined in Section 38-1a-102.

2111 (11) "Private project" means a construction project that is not a government project.

2112 (12) "Project property" has the same meaning as defined in Section 38-1a-102.

2113 (13) "Registry" has the same meaning as defined in Section 38-1a-102.

2114 Section 56. Section **38-1b-201**, which is renumbered from Section 38-1-31.5 is
 2115 renumbered and amended to read:

2116 **Part 2. Notices Relating to Government Projects**

2117 **[38-1-31.5]. 38-1b-201. Notice of commencement for a government project.**

2118 (1) No later than 15 days after commencement of physical construction work at a
 2119 government project site, the original contractor, owner, or owner-builder shall file a notice of
 2120 commencement with the [database] registry.

2121 (2) An original contractor, owner, or owner-builder on a government project may file a
 2122 notice of commencement with the designated agent before the commencement of physical
 2123 construction work on the project property.

2124 (3) (a) If duplicate notices of commencement are filed, they shall be combined into one
 2125 notice for each government project, and any notices filed relate back to the date of the
 2126 earliest-filed notice of commencement for the project.

2127 (b) A duplicate notice of commencement that is untimely filed relates back under
 2128 Subsection (3)(a) if the earlier filed notice of commencement is timely filed.

2129 (c) Duplicate notices of commencement shall be automatically linked by the designated
 2130 agent.

2131 (4) The designated agent shall assign each government project a unique project number
 2132 that:

2133 (a) identifies the project; and

2134 (b) can be associated with all notices of commencement, preliminary notices, and
 2135 notices of completion filed in connection with the project.

2136 (5) A notice of commencement is effective only as to any [~~labor, service, equipment,~~
2137 ~~and material~~] construction work that is [~~furnished~~] provided after the notice of commencement
2138 is filed.

2139 (6) (a) A notice of commencement shall include:

2140 (i) the name, address, and email address of the owner [~~of the project~~];

2141 (ii) the name, address, and email address of the original contractor;

2142 (iii) the name, address, and email address of the surety providing any payment bond for
2143 the project or, if none exists, a statement that a payment bond was not required for the work
2144 being performed;

2145 (iv) (A) the [~~project~~] address of the project property if the project property can be
2146 reasonably identified by an address; or

2147 (B) the name and general description of the location of the project property, if the
2148 project property cannot be reasonably identified by an address; and

2149 (v) the government project-identifying information.

2150 (b) A notice of commencement may include a general description of the project.

2151 (7) If a notice of commencement for a government project is not filed within the time
2152 set forth in Subsection (1), [~~Sections 38-1-32.5~~] then Section 38-1b-202 and [~~38-1-33~~] Section
2153 38-1b-203, with respect to the filing of a notice of completion, do not apply.

2154 [~~(8) (a) Notwithstanding any other provision of this chapter, a notice of~~
2155 ~~commencement need not be filed for a private project.]~~

2156 [~~(b) A provision of this chapter does not apply to a private project if the provision~~
2157 ~~depends for its effectiveness upon the filing of a notice of commencement.]~~

2158 [~~(9) (a) Unless a person indicates to the division or designated agent that the person~~
2159 ~~does not wish to receive a notice under this section, the designated agent shall provide~~
2160 ~~electronic notice of the filing of a notice of commencement or alternate filing to:]~~

2161 [~~(i) all persons who have filed notices of commencement for the project; and]~~

2162 [~~(ii) all interested persons who have requested notices concerning the project.]~~

2163 [~~(b) A person to whom notice is required under Subsection (9)(a) is responsible for:]~~

2164 [~~(i) providing an email address, mailing address, or telefax number to which a notice~~
2165 ~~required by Subsection (9)(a) is to be sent; and]~~

2166 [~~(ii) the accuracy of any email address, mailing address, or telefax number to which~~

2167 ~~notice is to be sent.]~~

2168 ~~[(c) The designated agent fulfills the notice requirement of Subsection (9)(a) by~~
2169 ~~sending the notice to the email address, mailing address, or telefax number provided to the~~
2170 ~~designated agent, whether or not the notice is actually received.]~~

2171 ~~[(10)]~~ (8) (a) The burden is upon any person seeking to enforce a notice of
2172 commencement to verify the accuracy of information in the notice of commencement and
2173 prove that the notice of commencement is filed timely and meets all of the requirements of this
2174 section.

2175 (b) A substantial inaccuracy in a notice of commencement renders the notice of
2176 commencement invalid.

2177 (c) A person filing a notice of commencement by alternate ~~[filing]~~ means is responsible
2178 for verifying and changing any incorrect information in the notice of commencement before the
2179 expiration of the time period during which the notice is required to be filed.

2180 Section 57. Section **38-1b-202**, which is renumbered from Section 38-1-32.5 is
2181 renumbered and amended to read:

2182 ~~[38-1-32.5].~~ **38-1b-202. Preliminary notice on government project.**

2183 (1) Except for a person who has a contract with an owner or an owner-builder or a
2184 laborer compensated with wages, a subcontractor on a government project shall file a
2185 preliminary notice with the ~~[database]~~ registry by the later of:

2186 (a) 20 days after the subcontractor commences ~~[the subcontractor's own work or~~
2187 ~~commences furnishing labor, service, equipment, or material]~~ providing construction work to
2188 the construction project; and

2189 (b) 20 days after the filing of a notice of commencement, if the subcontractor's work
2190 commences before the filing of the first notice of commencement.

2191 (2) A preliminary notice filed within the period described in Subsection (1) is effective
2192 as to all ~~[labor, service, equipment, and material]~~ construction work that the subcontractor
2193 ~~[furnishes]~~ provides to the construction project, including ~~[labor, service, equipment, and~~
2194 ~~material provided]~~ construction work that the subcontractor ~~[furnishes]~~ provides to more than
2195 one contractor or subcontractor.

2196 (3) (a) If more than one notice of commencement is filed for a project, a person may
2197 attach a preliminary notice to any notice of commencement filed for the project.

2198 (b) A preliminary notice attached to an untimely notice of commencement is valid if
2199 there is also a valid and timely notice of commencement for the project.

2200 (4) ~~[If a person files a]~~ A preliminary notice filed after the period prescribed by
2201 Subsection (1)~~[, the preliminary notice]~~ becomes effective on the date that is five days after the
2202 ~~[day]~~ date on which the preliminary notice is filed.

2203 (5) Except as provided in Subsection (8), failure to file a preliminary notice within the
2204 period required by Subsection (1) precludes a person from maintaining any claim for
2205 compensation earned for ~~[labor, service, material, or equipment furnished]~~ construction work
2206 provided to the construction project before the ~~[expiration of]~~ the date that is five days after the
2207 ~~[late filing of a]~~ preliminary notice was filed, except as against the person with whom the
2208 person contracted.

2209 (6) A preliminary notice on a government project shall include:

2210 (a) the government project-identifying information;

2211 (b) the name, address, and telephone number of the person ~~[furnishing the labor,~~
2212 ~~service, equipment, or material]~~ providing the construction work;

2213 (c) the name and address of the person who contracted with the claimant for the
2214 ~~[furnishing of the labor, service, equipment, or material]~~ providing of construction work;

2215 (d) the name of the record or reputed owner ~~[of the project];~~

2216 (e) the name of the original contractor under which the claimant is performing or will
2217 perform its work; and

2218 (f) the address of the project property or a description of the location of the project
2219 property.

2220 (7) Upon request, an original contractor shall provide a subcontractor with the number
2221 assigned to the project by the designated agent.

2222 (8) A person who provides ~~[labor, service, equipment, or material]~~ construction work
2223 before the filing of a notice of commencement need not file a preliminary notice to maintain
2224 any right the person would otherwise have, if the notice of commencement is filed more than
2225 15 days after the day on which the person begins work on the project.

2226 (9) The burden is upon the person filing a preliminary notice to prove that the person
2227 has substantially complied with the requirements of this section.

2228 ~~[(9)]~~ (10) Subsections [38-1-32(2), (3), (4), (5), and (6)] 38-1a-501(1)(e) and (f) and

2229 (3) apply to a preliminary notice on a government project under this section to the same extent
 2230 that those subsections apply under Section 38-1a-501 to a preliminary notice on a [private]
 2231 project [~~under Section 38-1-32~~] that is not a government project.

2232 Section 58. Section **38-1b-203** is enacted to read:

2233 **38-1b-203. Notice of intent to obtain final completion and notice of completion.**

2234 Sections 38-1a-506 and 38-1a-507 apply to a government project to the same extent as
 2235 those sections apply to a construction project that is subject to Chapter 1a, Preconstruction and
 2236 Construction Liens.

2237 Section 59. Section **38-3-2** is amended to read:

2238 **38-3-2. Priority of lessor's lien.**

2239 [~~The lien provided for in this chapter shall be preferred to~~]

2240 (1) A lien under this chapter has preference over all other liens or claims except:

2241 (a) claims for taxes [and liens of mechanics];

2242 (b) preconstruction or construction liens under Title 38, Chapter [1,] 1a,

2243 Preconstruction and Construction Liens;

2244 (c) perfected security interests[;]; and

2245 (d) claims of employees for wages which are preferred by law[; provided, that when].

2246 (2) If a lessee [shall be] is adjudicated [a] as bankrupt[;] or [shall make] makes an
 2247 assignment for the benefit of creditors, or [when his] if the lessee's property [shall be] is put
 2248 into the possession of a receiver, [the] a lien [herein provided for shall be] under this chapter is
 2249 limited to the rent for 90 days [prior thereto] before the adjudication, assignment, or
 2250 receivership.

2251 Section 60. Section **38-9-2** is amended to read:

2252 **38-9-2. Scope.**

2253 (1) (a) The provisions of Sections 38-9-1, 38-9-3, 38-9-4, and 38-9-6 apply to any
 2254 recording or filing or any rejected recording or filing of a lien pursuant to this chapter on or
 2255 after May 5, 1997.

2256 (b) The provisions of Sections 38-9-1 and 38-9-7 apply to all liens of record regardless
 2257 of the date the lien was recorded or filed.

2258 (c) Notwithstanding Subsections (1)(a) and (b), the provisions of this chapter
 2259 applicable to the filing of a notice of interest do not apply to a notice of interest filed before

2260 May 5, 2008.

2261 (2) The provisions of this chapter shall not prevent a person from filing a lis pendens in
2262 accordance with Section 78B-6-1303 or seeking any other relief permitted by law.

2263 (3) This chapter does not apply to a person entitled to a preconstruction or construction
2264 lien under Section [~~38-1-3~~] 38-1a-301 who files a lien pursuant to Title 38, Chapter [~~±~~,
2265 Mechanics' Liens] 1a, Preconstruction and Construction.

2266 Section 61. Section **38-10-105** is amended to read:

2267 **38-10-105. Notice of lien -- Recording -- Service on owner of interest -- Failure to**
2268 **serve notice -- Time of filing.**

2269 (1) To perfect the lien provided by this chapter, a notice of lien as required by
2270 Subsection [~~38-1-7~~] 38-1a-502(2) [~~and Section 38-1-8~~] shall be filed with the county recorder
2271 in any county where any part of the land to which the lien may attach is situated. The notice of
2272 lien shall be filed within 180 days after the last day work was performed or materials or
2273 equipment were furnished by the lien claimant, except as provided in Subsection (3).

2274 (2) Within 30 days after filing the notice of lien, the lien claimant shall deliver or mail
2275 a copy of the notice by certified mail, return receipt requested, to the owner of the interest
2276 liened. If the owner's current address is not readily available, a copy of the notice may be
2277 mailed to the last-known address of the owner, as shown by the records of the county recorder
2278 in any county where the land is situated. Failure to deliver or mail the notice of lien to the
2279 owner shall not cause the lien to be void but precludes the lien claimant from an award of costs
2280 and [~~attorneys'~~] attorney fees against the owner in an action to enforce the lien.

2281 (3) The notice of lien by a nonoperating owner pursuant to Subsection 38-10-102(3)
2282 shall be filed within 60 days after receipt by such owner of a notice of lien claim filed by a lien
2283 claimant with respect to work performed or materials or equipment furnished by the lien
2284 claimant for which such owner has paid or advanced funds to a contractor or operator.

2285 Section 62. Section **38-10-106** is amended to read:

2286 **38-10-106. Enforcement -- Time for -- Lis pendens -- Action for debt not affected**
2287 **-- Execution on an interest.**

2288 (1) Actions to enforce the liens created by this chapter shall be commenced within 180
2289 days after the filing of the notice of lien required by Section 38-10-105. The lien claimant
2290 shall, within 10 working days after commencement of the action, file a notice of the pendency

2291 of the action with the county recorder of each county in which the lien is recorded or the lien
 2292 shall be void, except as to persons who have been served and made parties to the action.
 2293 Nothing in this chapter shall be construed to impair or affect the right of any person to whom a
 2294 debt may be due for any work performed or materials or equipment furnished to maintain an
 2295 action to recover the debt.

2296 (2) In any action to enforce a lien under this chapter, the provisions of Sections
 2297 [~~38-1-13~~] 38-1a-702 and [~~38-1-16~~] 38-1a-705 apply.

2298 (3) Upon the entry of a judgment foreclosing the lien, execution on an interest shall be
 2299 governed as follows:

2300 (a) upon real property by Section [~~38-1-15~~] 38-1a-704; and

2301 (b) upon personalty by the Utah Rules of Civil Procedure.

2302 Section 63. Section **38-10-110** is amended to read:

2303 **38-10-110. Cancellation of lien.**

2304 Cancellation of the liens provided for in this chapter shall be in accordance with the
 2305 provisions of Section [~~38-1-24~~] 38-1a-803.

2306 Section 64. Section **38-10-111** is amended to read:

2307 **38-10-111. Abuse of lien right -- Penalty.**

2308 [~~Abuses~~] An abuse of the lien rights provided for in this chapter [~~shall be~~] is governed
 2309 by Section [~~38-1-25~~] 38-1a-308.

2310 Section 65. Section **38-10-112** is amended to read:

2311 **38-10-112. Assignment of lien.**

2312 [~~Assignments~~] An assignment of the liens provided for in this chapter [~~shall be~~] is
 2313 governed by Section [~~38-1-26~~] 38-1a-801.

2314 Section 66. Section **38-10-114** is amended to read:

2315 **38-10-114. Attorney fees.**

2316 An award of [~~attorney's~~] attorney fees in an action to enforce any lien in this chapter
 2317 [~~shall be~~] is governed by Section [~~38-1-18~~] 38-1a-707.

2318 Section 67. Section **38-11-107** is amended to read:

2319 **38-11-107. Restrictions upon maintaining a lien against residence or owner's**
 2320 **interest in the residence.**

2321 (1) (a) A person qualified to file a lien upon an owner-occupied residence and the real

2322 property associated with that residence under Chapter [~~1, Mechanics~~] 1a, Preconstruction and
2323 Construction Liens, who provides qualified services under an agreement, other than directly
2324 with the owner, is barred from maintaining a lien upon that residence and real property or
2325 recovering a judgment in any civil action against the owner or the owner-occupied residence to
2326 recover money owed for qualified services provided by that person if:

2327 (i) an owner meets the conditions described in Subsections 38-11-204(4)(a) and (b); or

2328 (ii) (A) a subsequent owner purchases a residence from an owner;

2329 (B) the subsequent owner who purchased the residence under Subsection (1)(a)(ii)(A)

2330 occupies the residence as a primary or secondary residence within 180 days from the date of

2331 transfer or the residence is occupied by the subsequent owner's tenant or lessee as a primary or

2332 secondary residence within 180 days from the date of transfer; and

2333 (C) the owner from whom the subsequent owner purchased the residence met the

2334 conditions described in Subsections 38-11-204(4)(a) and (b).

2335 (b) (i) As used in this Subsection (1)(b):

2336 (A) "Contract residence":

2337 (I) means the owner-occupied residence for which a subcontractor provides service,

2338 labor, or materials; and

2339 (II) includes the real property associated with that owner-occupied residence.

2340 (B) "General contract" means an oral or written contract between an owner and an

2341 original contractor for providing service, labor, or materials for construction on an

2342 owner-occupied residence.

2343 (C) "Subcontractor" means a person who provides service, labor, or materials for

2344 construction on an owner-occupied residence under an agreement other than directly with the

2345 owner.

2346 (ii) A subcontractor qualified to file a lien upon a contract residence under Chapter [~~1,~~

2347 ~~Mechanics~~] 1a, Preconstruction and Construction Liens, is barred from maintaining a lien upon

2348 that contract residence or from recovering a judgment in a civil action against the owner, the

2349 contract residence, or, as provided in Subsection (1)(b)(iii), a subsequent owner to recover for

2350 service, labor, or materials provided by the subcontractor:

2351 (A) if the amount of the general contract under which the subcontractor provides

2352 service, labor, or materials totals no more than \$5,000; and

2353 (B) whether or not the original contractor is licensed under Title 58, Chapter 55, Utah
 2354 Construction Trades Licensing Act.

2355 (iii) A subsequent owner is protected under Subsection (1)(b)(ii) to the same extent as
 2356 an owner if:

2357 (A) the subsequent owner purchases the contract residence from the owner; and

2358 (B) (I) the subsequent owner occupies the residence as a primary or secondary
 2359 residence within 180 days after the date of transfer; or

2360 (II) the subsequent owner's tenant or lessee occupies the residence as a primary or
 2361 secondary residence within 180 days after the date of the transfer.

2362 (2) If a residence is constructed under conditions that do not meet all of the provisions
 2363 of Subsection (1)(a) or (b), that residence and the real property associated with that residence as
 2364 provided in Section [~~38-1-4 shall be~~] 38-1a-302 is subject to any [~~mechanics'~~] lien as provided
 2365 in Section [~~38-1-3~~] 38-1a-301.

2366 (3) A lien claimant who files a [~~mechanics'~~] preconstruction or construction lien under
 2367 Chapter [~~1, Mechanics'~~] 1a, Preconstruction and Construction Liens, or a foreclosure action
 2368 upon an owner-occupied residence is not liable for costs and attorney fees under Sections
 2369 [~~38-1-17~~] 38-1a-706 and [~~38-1-18~~] 38-1a-707 or for any damages arising from a civil action
 2370 related to the lien filing or foreclosure action if the lien claimant removes the lien within 15
 2371 days from the date the owner obtains a certificate of compliance and mails a copy of the
 2372 certificate of compliance by certified mail to the lien claimant at the address provided for by
 2373 Subsection [~~38-1-7(2)(a)(v)~~] 38-1a-502(2)(e). The 15-day period begins accruing from the date
 2374 postmarked on the certificate of compliance sent to the lien claimant.

2375 Section 68. Section **38-11-204** is amended to read:

2376 **38-11-204. Claims against the fund -- Requirement to make a claim --**

2377 **Qualifications to receive compensation -- Qualifications to receive a certificate of**
 2378 **compliance.**

2379 (1) To claim recovery from the fund a person shall:

2380 (a) meet the requirements of Subsection (4) or (6);

2381 (b) pay an application fee determined by the division under Section 63J-1-504; and

2382 (c) file with the division a completed application on a form provided by the division
 2383 accompanied by supporting documents establishing:

2384 (i) that the person meets the requirements of Subsection (4) or (6);
2385 (ii) that the person was a qualified beneficiary or laborer during the construction on the
2386 owner-occupied residence; and
2387 (iii) the basis for the claim.
2388 (2) To recover from the fund, the application required by Subsection (1) shall be filed
2389 no later than one year:
2390 (a) from the date the judgment required by Subsection (4)(d) is entered;
2391 (b) from the date the nonpaying party filed bankruptcy, if the claimant is precluded
2392 from obtaining a judgment or from satisfying the requirements of Subsection (4)(d) because the
2393 nonpaying party filed bankruptcy within one year after the entry of judgment; or
2394 (c) from the date the laborer, trying to recover from the fund, completed the laborer's
2395 qualified services.
2396 (3) The issuance of a certificate of compliance is governed by Section 38-11-110.
2397 (4) To recover from the fund, regardless of whether the residence is occupied by the
2398 owner, a subsequent owner, or the owner or subsequent owner's tenant or lessee, a qualified
2399 beneficiary shall establish that:
2400 (a) (i) the owner of the owner-occupied residence or the owner's agent entered into a
2401 written contract with an original contractor licensed or exempt from licensure under Title 58,
2402 Chapter 55, Utah Construction Trades Licensing Act:
2403 (A) for the performance of qualified services;
2404 (B) to obtain the performance of qualified services by others; or
2405 (C) for the supervision of the performance by others of qualified services in
2406 construction on that residence;
2407 (ii) the owner of the owner-occupied residence or the owner's agent entered into a
2408 written contract with a real estate developer for the purchase of an owner-occupied residence;
2409 or
2410 (iii) the owner of the owner-occupied residence or the owner's agent entered into a
2411 written contract with a factory built housing retailer for the purchase of an owner-occupied
2412 residence;
2413 (b) the owner has paid in full the original contractor, licensed or exempt from licensure
2414 under Title 58, Chapter 55, Utah Construction Trades Licensing Act, real estate developer, or

2415 factory built housing retailer under Subsection (4)(a) with whom the owner has a written
2416 contract in accordance with the written contract and any amendments to the contract;

2417 (c) (i) the original contractor, licensed or exempt from licensure under Title 58,
2418 Chapter 55, Utah Construction Trades Licensing Act, the real estate developer, or the factory
2419 built housing retailer subsequently failed to pay a qualified beneficiary who is entitled to
2420 payment under an agreement with that original contractor or real estate developer licensed or
2421 exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, for
2422 services performed or materials supplied by the qualified beneficiary;

2423 (ii) a subcontractor who contracts with the original contractor, licensed or exempt from
2424 licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, the real estate
2425 developer, or the factory built housing retailer failed to pay a qualified beneficiary who is
2426 entitled to payment under an agreement with that subcontractor or supplier; or

2427 (iii) a subcontractor who contracts with a subcontractor or supplier failed to pay a
2428 qualified beneficiary who is entitled to payment under an agreement with that subcontractor or
2429 supplier;

2430 (d) (i) unless precluded from doing so by the nonpaying party's bankruptcy filing
2431 within the applicable time, the qualified beneficiary filed an action against the nonpaying party
2432 to recover money owed to the qualified beneficiary within the earlier of:

2433 (A) 180 days from the date the qualified beneficiary filed a notice of claim under
2434 Section [~~38-1-7~~] 38-1a-502; or

2435 (B) 270 days from the completion of the original contract pursuant to Subsection
2436 [~~38-1-7~~] 38-1a-502(1);

2437 (ii) the qualified beneficiary has obtained a judgment against the nonpaying party who
2438 failed to pay the qualified beneficiary under an agreement to provide qualified services for
2439 construction of that owner-occupied residence;

2440 (iii) (A) the qualified beneficiary has:

2441 (I) obtained from a court of competent jurisdiction the issuance of an order requiring
2442 the judgment debtor, or if a corporation any officer of the corporation, to appear before the
2443 court at a specified time and place to answer concerning the debtor's or corporation's property;

2444 (II) received return of service of the order from a person qualified to serve documents
2445 under the Utah Rules of Civil Procedure, Rule 4(b); and

2446 (III) made reasonable efforts to obtain asset information from the supplemental
2447 proceedings; and

2448 (B) if assets subject to execution are discovered as a result of the order required under
2449 Subsection (4)(d)(iii)(A) or for any other reason, to obtain the issuance of a writ of execution
2450 from a court of competent jurisdiction; or

2451 (iv) the qualified beneficiary timely filed a proof of claim where permitted in the
2452 bankruptcy action, if the nonpaying party has filed bankruptcy;

2453 (e) the qualified beneficiary is not entitled to reimbursement from any other person;
2454 and

2455 (f) the qualified beneficiary provided qualified services to a contractor, licensed or
2456 exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act.

2457 (5) The requirements of Subsections (4)(d)(ii) and (iii) need not be met if the qualified
2458 beneficiary is prevented from compliance because the nonpaying party files bankruptcy.

2459 (6) To recover from the fund a laborer shall:

2460 (a) establish that the laborer has not been paid wages due for the work performed at the
2461 site of a construction on an owner-occupied residence; and

2462 (b) provide any supporting documents or information required by rule by the division.

2463 (7) A fee determined by the division under Section 63J-1-504 shall be deducted from
2464 any recovery from the fund received by a laborer.

2465 (8) The requirements of Subsections (4)(a) and (b) may be satisfied if an owner or
2466 agent of the owner establishes to the satisfaction of the director that the owner of the
2467 owner-occupied residence or the owner's agent entered into a written contract with an original
2468 contractor who:

2469 (a) was a business entity that was not licensed under Title 58, Chapter 55, Utah
2470 Construction Trades Licensing Act, but was solely or partly owned by an individual who was
2471 licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act; or

2472 (b) was a natural person who was not licensed under Title 58, Chapter 55, Utah
2473 Construction Trades Licensing Act, but who was the sole or partial owner and qualifier of a
2474 business entity that was licensed under Title 58, Chapter 55, Utah Construction Trades
2475 Licensing Act.

2476 (9) The director shall have equitable power to determine if the requirements of

2477 Subsections (4)(a) and (b) have been met, but any decision by the director under this chapter
2478 shall not alter or have any effect on any other decision by the division under Title 58,
2479 Occupations and Professions.

2480 Section 69. Section **38-12-102** is amended to read:

2481 **38-12-102. Notice requirements for lien filings -- Exceptions.**

2482 (1) A lien claimant or the lien claimant's agent shall send by certified mail a written
2483 copy of the notice of lien to the last-known address of the person against whom the notice of
2484 lien is filed no later than 30 days after the day on which a lien claimant or the lien claimant's
2485 authorized agent files a notice of lien meeting the requirements of Subsection (2):

2486 (a) for recordation with:

2487 (i) a county recorder;

2488 (ii) a county clerk; or

2489 (iii) a clerk of the court; or

2490 (b) in the case of a lien on an aircraft under Section 38-13-201, with the Federal
2491 Aviation Administration.

2492 (2) The notice of lien described in Subsection (1) shall contain the following
2493 information:

2494 (a) the name and address of the person against whom the lien is filed;

2495 (b) (i) a statement that certain property owned by the person against whom the lien is
2496 filed is subject to a lien;

2497 (ii) the amount of the judgment, settlement, or compromise if the lien is based on a
2498 charge against or interest in a judgment, settlement, or compromise; or

2499 (iii) the amount of state taxes owed;

2500 (c) the article number contained on the certified mail receipt;

2501 (d) the date the notice of lien was filed; and

2502 (e) the name and address of the lien claimant.

2503 (3) The notice requirements of Subsections (1) and (2) do not apply to:

2504 (a) a [~~mechanics'~~] preconstruction or construction lien as provided in Title 38, Chapter

2505 [~~1, Mechanics'~~] 1a, Preconstruction and Construction Liens;

2506 (b) a lessors' lien as provided in Title 38, Chapter 3, Lessors' Liens;

2507 (c) a federal tax lien as provided in Title 38, Chapter 6, Federal Tax Liens;

- 2508 (d) a hospital lien as provided in Title 38, Chapter 7, Hospital Lien Law;
- 2509 (e) a self-service storage facilities lien as provided in Title 38, Chapter 8, Self-Service
- 2510 Storage Facilities;
- 2511 (f) an oil, gas, or mining lien as provided in Title 38, Chapter 10, Oil, Gas, and Mining
- 2512 Liens;
- 2513 (g) a claim against the Residence Lien Recovery Fund as provided in Title 38, Chapter
- 2514 11, Residence Lien Restriction and Lien Recovery Fund Act;
- 2515 (h) a trust deed;
- 2516 (i) a mortgage;
- 2517 (j) any interests subject to a security agreement as defined in Section 70A-9a-102;
- 2518 (k) any other liens subject to the same or stricter notice requirements than those
- 2519 imposed by Subsections (1) and (2); or
- 2520 (l) a court judgment or abstract of a court judgment presented for recording in the
- 2521 office of a county recorder.

2522 Section 70. Section **40-6-8** is amended to read:

2523 **40-6-8. Field or pool units -- Procedure for establishment -- Operation.**

2524 (1) The board may hold a hearing to consider the need for the operation as a unit of one

2525 or more pools or parts of them in a field.

2526 (2) The board shall make an order providing for the unit operation of a pool or part of

2527 it, if the board finds that:

2528 (a) Such operation is reasonably necessary for the purposes of this chapter; and

2529 (b) The value of the estimated additional recovery of oil or gas substantially exceeds

2530 the estimated additional cost incident to conducting such operations.

2531 (3) The order shall prescribe a plan for unit operations that shall include:

2532 (a) a description of the lands and of the pool or pools or parts of them to be so

2533 operated, termed the unit area;

2534 (b) a statement of the nature of the operations contemplated;

2535 (c) an allocation to the separately owned tracts in the unit area of all the oil and gas that

2536 is produced from the unit area and is saved, being the production that is not used in the conduct

2537 of operations on the unit area or not unavoidably lost. The allocation shall be in accord with the

2538 agreement, if any, of the interested parties. If there is no such agreement, the board shall

2539 determine the relative value, from evidence introduced at the hearing of the separately owned
2540 tracts in the unit area, exclusive of physical equipment, for development of oil and gas by unit
2541 operations, and the production allocated to each tract shall be the proportion that the relative
2542 value of each tract so determined bears to the relative value of all tracts in the unit area;

2543 (d) a provision for adjustment among the owners of the unit area (not including royalty
2544 owners) of their respective investment in wells, tanks, pumps, machinery, materials,
2545 equipment, and other things and services of value attributable to the unit operations. The
2546 amount to be charged unit operations for any such item shall be determined by the owners of
2547 the unit area (not including royalty owners); but if the owners of the unit area are unable to
2548 agree upon the amount or correctness, the board shall determine them. The net amount charged
2549 against the owner of an interest in a separately owned tract shall be considered expense of unit
2550 operation chargeable against his interest in the tract. The adjustments provided for may be
2551 treated separately and handled by agreements separate from the unitization agreement;

2552 (e) a provision providing how the costs of unit operations, including capital
2553 investments, shall be determined and charged to the separately owned tracts and how these
2554 costs shall be paid, including a provision providing a procedure for the unit production
2555 allocated to an owner who does not pay the share of the cost of unit operations charged to such
2556 owner, or the interest of such owner, to be sold and the proceeds applied to the payment of
2557 such costs. The operator of the unit shall have a first and prior lien for costs incurred pursuant
2558 to the plan of unitization upon each owner's oil and gas rights and his share of unitized
2559 production to secure the payment of such owner's proportionate part of the cost of developing
2560 and operating the unit area. This lien may be ~~established and~~ enforced in the same manner as
2561 provided by ~~[Sections 38-1-8 to 38-1-26 inclusive]~~ Title 38, Chapter 1a, Part 7, Enforcement of
2562 Preconstruction and Construction Liens. For such purposes any nonconsenting owner shall be
2563 deemed to have contracted with the unit operator for his proportionate part of the cost of
2564 developing and operating the unit area. A transfer or conversion of any owner's interest or any
2565 portion of it, however accomplished, after the effective date of the order creating the unit, shall
2566 not relieve the transferred interest of the operator's lien on said interest for the cost and expense
2567 of unit operations;

2568 (f) a provision, if necessary, for carrying or otherwise financing any owner who elects
2569 to be carried or otherwise financed, allowing a reasonable interest charge for such service

2570 payable out of such owner's share of the production;

2571 (g) a provision for the supervision and conduct of the unit operations, in respect to
2572 which each owner shall have a percentage vote corresponding to the percentage of the costs of
2573 unit operations chargeable against the interest of the owner;

2574 (h) the time when the unit operations shall commence, and the manner in which, and
2575 the circumstances under which, the unit operations shall terminate;

2576 (i) such additional provisions that are found to be appropriate for carrying on the unit
2577 operations, and for the protection of correlative rights; and

2578 (j) the designation of a unit operator.

2579 (4) No order of the board providing for unit operations of a pool or pools shall become
2580 effective unless and until the plan for unit operations prescribed by the division has been
2581 approved in writing by those owners who, under the board's order, will be required to pay 70%
2582 of the costs of the unit operation, and also by the owners of 70% of the production or proceeds
2583 that will be credited to interests which are free of cost, such as royalties, overriding royalties,
2584 and production payments, and the board has made a finding, either in the order providing for
2585 unit operations or in a supplemental order, that the plan for unit operations has been so
2586 approved. If the persons owning required percentage of interest in that unit area do not approve
2587 the plan for unit operations within a period of six months from the date on which the order
2588 providing for unit operations is made, the order shall be ineffective and shall be revoked by the
2589 board unless for good cause shown the board extends this time.

2590 (5) An order providing for unit operations may be amended by an order made by the
2591 board in the same manner and subject to the same conditions as an original order providing for
2592 unit operations, provided:

2593 (a) If such an amendment affects only the rights and interests of the owners, the
2594 approval of the amendment by the owners of royalty, overriding royalty, production payments
2595 and other such interests which are free of costs shall not be required.

2596 (b) No such order of amendment shall change the percentage for the allocation of oil
2597 and gas as established for any separately owned tract by the original order, or change the
2598 percentage for allocation of cost as established for any separately owned tract by the original
2599 order.

2600 (6) The board, by an order, may provide for the unit operation of a pool or pools or

2601 parts thereof that embrace a unit area established by a previous order of the division. The order,
2602 in providing for the allocation of unit production, shall first treat the unit area previously
2603 established as a single tract, and the portion of the unit production allocated shall then be
2604 allocated among the separately owned tracts included in the previously established unit area in
2605 the same proportions of those specified in the previous order.

2606 (7) An order may provide for unit operations on less than the whole of a pool where the
2607 unit area is of such size and shape as may be reasonably required for that purpose, and the
2608 conduct will have no adverse effect upon other portions of the pool.

2609 (8) All operations, including, but not limited to, the commencement, drilling, or
2610 operation of a well upon any portion of the unit area shall be deemed for all purposes the
2611 conduct of such operations upon each separately owned tract in the unit area by the several
2612 owners. The portions of the unit production allocated to a separately owned tract in a unit area
2613 shall, when produced, be deemed, for all purposes, to have been actually produced from such
2614 tract by a well drilled. Operations conducted pursuant to an order of the board providing for
2615 unit operations shall constitute a fulfillment of all the express or implied obligations for each
2616 lease or contract covering lands in the unit area to the extent that compliance with such
2617 obligations cannot be had because of the order of the board.

2618 (9) The portion of the unit production allocated to any tract, and the proceeds from the
2619 sale, shall be the property and income of the several owners, subject to the rights of royalty
2620 owners, to whom, or to whose credit, they are allocated or payable under the order providing
2621 for unit operations.

2622 (10) No division order or other contract relating to the sale or purchase of production
2623 from a separately owned tract shall be terminated by the order providing for unit operations but
2624 shall remain in force and apply to oil and gas allocated to such tract until terminated in
2625 accordance with the provisions thereof.

2626 (11) Except to the extent that the parties affected agree and as provided in [~~(e)~~ of]
2627 Subsection (3)~~(e)~~ [of this section], no order providing for unit operations shall be construed to
2628 result in a transfer of all or any part of the title of any person to the oil and gas rights in any
2629 tract in the unit area. All property, whether real or personal, that may be acquired in the
2630 conduct of unit operations hereunder shall be acquired for the account of the owners within the
2631 unit area and shall be the property of the owners in the proportion that the expenses of unit

2632 operations are charged, unless otherwise provided in the plan of unit operation.

2633 (12) This section shall apply only to field or pool units and shall not apply to the
2634 unitization of interests within a drilling unit as may be authorized and governed under the
2635 provisions of Section 40-6-6.

2636 Section 71. Section **58-55-501** is amended to read:

2637 **58-55-501. Unlawful conduct.**

2638 Unlawful conduct includes:

2639 (1) engaging in a construction trade, acting as a contractor, an alarm business or
2640 company, or an alarm company agent, or representing oneself to be engaged in a construction
2641 trade or to be acting as a contractor in a construction trade requiring licensure, unless the
2642 person doing any of these is appropriately licensed or exempted from licensure under this
2643 chapter;

2644 (2) acting in a construction trade, as an alarm business or company, or as an alarm
2645 company agent beyond the scope of the license held;

2646 (3) hiring or employing in any manner an unlicensed person, other than an employee
2647 for wages who is not required to be licensed under this chapter, to engage in a construction
2648 trade for which licensure is required or to act as a contractor or subcontractor in a construction
2649 trade requiring licensure;

2650 (4) applying for or obtaining a building permit either for oneself or another when not
2651 licensed or exempted from licensure as a contractor under this chapter;

2652 (5) issuing a building permit to any person for whom there is no evidence of a current
2653 license or exemption from licensure as a contractor under this chapter;

2654 (6) applying for or obtaining a building permit for the benefit of or on behalf of any
2655 other person who is required to be licensed under this chapter but who is not licensed or is
2656 otherwise not entitled to obtain or receive the benefit of the building permit;

2657 (7) failing to obtain a building permit when required by law or rule;

2658 (8) submitting a bid for any work for which a license is required under this chapter by a
2659 person not licensed or exempted from licensure as a contractor under this chapter;

2660 (9) willfully or deliberately misrepresenting or omitting a material fact in connection
2661 with an application to obtain or renew a license under this chapter;

2662 (10) allowing one's license to be used by another except as provided by statute or rule;

2663 (11) doing business under a name other than the name appearing on the license, except
2664 as permitted by statute or rule;

2665 (12) if licensed as a specialty contractor in the electrical trade or plumbing trade,
2666 journeyman plumber, residential journeyman plumber, journeyman electrician, master
2667 electrician, or residential electrician, failing to directly supervise an apprentice under one's
2668 supervision or exceeding the number of apprentices one is allowed to have under the specialty
2669 contractor's supervision;

2670 (13) if licensed as a contractor or representing oneself to be a contractor, receiving any
2671 funds in payment for a specific project from an owner or any other person, which funds are to
2672 pay for work performed or materials and services furnished for that specific project, and after
2673 receiving the funds to exercise unauthorized control over the funds by failing to pay the full
2674 amounts due and payable to persons who performed work or furnished materials or services
2675 within a reasonable period of time;

2676 (14) employing an unlicensed alarm business or company or an unlicensed individual
2677 as an alarm company agent, except as permitted under the exemption from licensure provisions
2678 under Section 58-1-307;

2679 (15) if licensed as an alarm company or alarm company agent, filing with the division
2680 fingerprint cards for an applicant which are not those of the applicant, or are in any other way
2681 false or fraudulent and intended to mislead the division in its consideration of the applicant for
2682 licensure;

2683 (16) if licensed under this chapter, willfully or deliberately disregarding or violating:

2684 (a) the building or construction laws of this state or any political subdivision;

2685 (b) the safety and labor laws applicable to a project;

2686 (c) any provision of the health laws applicable to a project;

2687 (d) the workers' compensation insurance laws of the state applicable to a project;

2688 (e) the laws governing withholdings for employee state and federal income taxes,
2689 unemployment taxes, Social Security payroll taxes, or other required withholdings; or

2690 (f) reporting, notification, and filing laws of this state or the federal government;

2691 (17) aiding or abetting any person in evading the provisions of this chapter or rules
2692 established under the authority of the division to govern this chapter;

2693 (18) engaging in the construction trade or as a contractor for the construction of

2694 residences of up to two units when not currently registered or exempt from registration as a
2695 qualified beneficiary under Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery
2696 Fund Act;

2697 (19) failing, as an original contractor, as defined in Section 38-11-102, to include in a
2698 written contract the notification required in Section 38-11-108;

2699 (20) wrongfully filing a [~~mechanics~~^l] preconstruction or construction lien in violation
2700 of Section [~~38-1-25~~] 38-1a-308;

2701 (21) if licensed as a contractor, not completing the approved continuing education
2702 required under Section 58-55-302.5;

2703 (22) an alarm company allowing an employee with a temporary license under Section
2704 58-55-312 to engage in conduct on behalf of the company outside the scope of the temporary
2705 license, as provided in Subsection 58-55-312(3)(a)(ii);

2706 (23) an alarm company agent under a temporary license under Section 58-55-312
2707 engaging in conduct outside the scope of the temporary license, as provided in Subsection
2708 58-55-312(3)(a)(ii);

2709 (24) (a) an unincorporated entity licensed under this chapter having an individual who
2710 owns an interest in the unincorporated entity engage in a construction trade in Utah while not
2711 lawfully present in the United States; or

2712 (b) an unincorporated entity providing labor to an entity licensed under this chapter by
2713 providing an individual who owns an interest in the unincorporated entity to engage in a
2714 construction trade in Utah while not lawfully present in the United States;

2715 (25) an unincorporated entity failing to provide the following for an individual who
2716 engages, or will engage, in a construction trade in Utah for the unincorporated entity, or for an
2717 individual who engages, or will engage, in a construction trade in Utah for a separate entity for
2718 which the unincorporated entity provides the individual as labor:

2719 (a) workers' compensation coverage:

2720 (i) to the extent required by Title 34A, Chapter 2, Workers' Compensation Act, and
2721 Title 34A, Chapter 3, Utah Occupational Disease Act; or

2722 (ii) that would be required under the chapters listed in Subsection (25)(a)(i) if the
2723 unincorporated entity were licensed under this chapter; and

2724 (b) unemployment compensation in accordance with Title 35A, Chapter 4,

2725 Employment Security Act, for an individual who owns, directly or indirectly, less than an 8%
2726 interest in the unincorporated entity, as defined by rule made by the division in accordance with
2727 Title 63G, Chapter 3, Utah Administrative Rulemaking Act; or

2728 (26) the failure of a sign installation contractor or nonelectrical outdoor advertising
2729 sign contractor, as classified and defined in division rules, to:

2730 (a) display the contractor's license number prominently on a vehicle that:

2731 (i) the contractor uses; and

2732 (ii) displays the contractor's business name; or

2733 (b) carry a copy of the contractor's license in any other vehicle that the contractor uses
2734 at a job site, whether or not the vehicle is owned by the contractor.

2735 Section 72. Section **63G-6-506** is amended to read:

2736 **63G-6-506. Preliminary notice requirement.**

2737 (1) Any person furnishing labor, service, equipment, or material for which a payment
2738 bond claim may be made under this chapter shall provide preliminary notice to the designated
2739 agent as prescribed by Section [~~38-1-32.5~~] 38-1b-202, except that this section does not apply:

2740 (a) to a person performing labor for wages; or

2741 (b) if a notice of commencement is not filed as prescribed in Section [~~38-1-31.5~~]

2742 38-1b-201 for the project or improvement for which labor, service, equipment, or material is
2743 furnished.

2744 (2) Any person who fails to provide the preliminary notice required by Subsection (1)
2745 may not make a payment bond claim under this chapter.

2746 (3) The preliminary notice required by Subsection (1) must be provided before
2747 commencement of any action on the payment bond.

2748 Section 73. Section **73-22-7** is amended to read:

2749 **73-22-7. Cooperative or unit operation of geothermal area -- Order -- Plan of**
2750 **operation -- Approval of owners -- Amendment.**

2751 (1) The agency or any affected person may commence an adjudicative proceeding to
2752 consider the need for cooperative or unit operation of a geothermal area.

2753 (2) The division shall order the cooperative or unit operation of part or all of a
2754 geothermal area if the division finds that:

2755 (a) a developable resource exists; and

2756 (b) that this operation is reasonably necessary to prevent waste, to protect correlative
2757 rights, or to prevent the drilling of unnecessary wells and will not reduce the ultimate economic
2758 recovery of geothermal resources.

2759 (3) The division's order for cooperative or unit operations shall be upon terms and
2760 conditions that are just and reasonable and satisfy the requirements of Subsection (2).

2761 (4) An order by the division for unit operations shall prescribe a plan, including:

2762 (a) a description of the geothermal area to be unit operated, termed the unit area;

2763 (b) a statement of the nature of the operations contemplated, the time they will
2764 commence, and the manner and circumstances under which unit operations shall terminate;

2765 (c) an allocation to the separately-owned tracts in the unit area of the geothermal
2766 resources produced and of the costs incurred in unit operations. The allocations shall be in
2767 accord with the agreement, if any, of the affected parties. If there is no agreement, the division
2768 shall determine the allocations from evidence introduced at a hearing before the division.

2769 Production shall be allocated in proportion to the relative value that each tract bears to the
2770 value of all tracts in the unit area. The acreage of each tract in proportion to the total unit
2771 acreage shall be the measure of relative value, unless the division finds after public hearing that
2772 another method is likely to result in a more equitable allocation and protection of correlative
2773 rights. Resource temperature, pressure, fluid quality, geological conditions, distance to place
2774 of use, and productivity are among the factors that may be considered in evaluating other
2775 methods. The method for allocating production in unit operations shall be revised, if, after a
2776 hearing, the division finds that the revised method is likely to result in a more equitable
2777 allocation and protection of correlative rights. Any affected person may file a request for
2778 agency action to consider adoption of a revised allocation method, but the request may not be
2779 made until three years after the initial order by the division or at less than two-year intervals
2780 after that. Upon receipt of a request for consideration of a revised allocation method, the
2781 division shall hold a hearing;

2782 (d) a provision for adjustment among the owners of the unit area (not including royalty
2783 owners) of their respective investment in wells, tanks, pumps, machinery, materials,
2784 equipment, and other things and services of value attributable to the unit operations. The
2785 amount to be charged unit operations for each item shall be determined by the owners of the
2786 unit area (not including royalty owners). If the owners of the unit area are unable to agree upon

2787 the amount of the charges or to agree upon the correctness of the charges, any affected party
2788 may file a request for agency action. Upon receipt of the request, the division shall hold a
2789 hearing to determine them. The net amount charged against the owner of a separately-owned
2790 tract shall be considered an expense of unit operation chargeable against that tract. The
2791 adjustments provided for in this subsection may be treated separately and handled by
2792 agreements separate from the unitization agreement;

2793 (e) a provision providing how the costs of unit operations, including capital
2794 investments, shall be determined and charged to the separately-owned tracts and how these
2795 costs shall be paid, including a provision providing when, how, and by whom the unit
2796 production allocated to an owner who does not pay the share of the cost of unit operation
2797 charged to that owner, or the interest of that owner, may be sold and the proceeds applied to the
2798 payment of the costs. The operator of the unit shall have a first and prior lien for costs incurred
2799 pursuant to the plan of unitization upon each owner's geothermal rights and his share of
2800 unitized production to secure the payment of the owner's proportionate part of the cost of
2801 developing and operating the unit area. This lien may be ~~established and~~ enforced in the
2802 same manner as provided by ~~[Sections 38-1-8 through 38-1-26]~~ Title 38, Chapter 1a, Part 7,
2803 Enforcement of Preconstruction and Construction Liens. For these purposes any
2804 nonconsenting owner is considered to have contracted with the unit operator for his
2805 proportionate part of the cost of developing and operating the unit area. A transfer or
2806 conversion of any owner's interest or any portion of it, however accomplished, after the
2807 effective date of the order creating the unit, does not relieve the transferred interest of the
2808 operator's lien on the interest for the cost and expense of unit operations;

2809 (f) a provision, if necessary, for carrying or otherwise financing any person who elects
2810 to be carried or otherwise financed, allowing a reasonable interest charge for this service
2811 payable out of that person's share of the production;

2812 (g) a provision for the supervision and conduct of the unit operations, in respect to
2813 which each person shall have a vote with a value corresponding to the percentage of the costs
2814 of unit operations chargeable against the interest of that person;

2815 (h) any additional provisions that are necessary to carry on the unit operations.

2816 (5) (a) No order of the division providing for unit operations is effective unless and
2817 until the division finds that the plan for unit operations prescribed by the division has been

2818 approved in writing by:

2819 (i) those persons, who under the division's order, will be required to pay 66% of the
2820 costs of the unit operation; and

2821 (ii) the owners of 66% of the production or proceeds of the unit operation that are free
2822 of costs, such as royalties, overriding royalties, and production payments.

2823 (b) If the persons owning the required percentage of interest in the unit area do not
2824 approve the plan within six months from the date on which the order is made, the order is
2825 ineffective and shall be revoked by the division unless for good cause shown the division
2826 extends this time.

2827 (6) (a) An order providing for unit operations may be amended by an order of the
2828 division in the same manner and subject to the same conditions as an original order for unit
2829 operations.

2830 (b) If this amendment affects only the rights and interests of the owners, the approval
2831 of the amendment by the owners of royalty, overriding royalty, production payments, and other
2832 interests that are free of costs is required.

2833 (c) Production allocation may be amended only by following the procedures of
2834 Subsection (4)(c).

2835 (7) (a) All operations, including the commencement, drilling, or operation of a well
2836 upon any portion of the unit area are considered for all purposes to be the conduct of those
2837 operations upon each separately-owned tract in the unit by the several owners of tracts in the
2838 unit.

2839 (b) The portions of the unit production allocated to a separately-owned tract in a unit
2840 area are, when produced, considered for all purposes to have been actually produced from that
2841 tract by a well drilled on it. Good faith operations conducted pursuant to an order of the
2842 division providing for unit operations constitutes a complete defense to any suit alleging breach
2843 of lease or of contractual obligations covering lands in the unit area to the extent that
2844 compliance with these obligations cannot be had because of the order of the division.

2845 (8) The portion of the unit production allocated to any tract, and the proceeds from the
2846 sale of this production, are the property and income of the several persons to whom, or to
2847 whose credit, they are allocated or payable under the order providing for unit operations.

2848 (9) (a) Except to the extent that the parties affected so agree, and as provided in

2849 Subsection (4)(e), no order providing for unit operations may be construed to result in a
2850 transfer of all or any part of the title of any person to the geothermal resource rights in any tract
2851 in the unit area.

2852 (b) All property, whether real or personal, that is acquired in the conduct of unit
2853 operations, is acquired for the account of the owners within the unit area and is the property of
2854 those owners in the proportion that the expenses of unit operations are charged.

2855 Section 74. Section **76-6-524** is amended to read:

2856 **76-6-524. Falsifying information for preconstruction service lien purposes.**

2857 A person who knowingly falsifies information for the purpose of obtaining priority of a
2858 preconstruction [~~service~~] lien under Title 38, Chapter [~~1, Mechanics~~] 1a, Preconstruction and
2859 Construction Liens, is guilty of a class B misdemeanor.

2860 Section 75. **Repealer.**

2861 This bill repeals:

2862 Section **38-1-6, Priority over claims of creditors of original contractor or**
2863 **subcontractor.**

2864 Section **38-1-9, Notice imparted by record.**

2865 Section **38-1-10, Laborers' and materialmen's lien on equal footing regardless of**
2866 **time of filing.**

2867 Section **38-1-13, Parties -- Joinder -- Intervention.**

2868 Section **38-1-16, Deficiency judgment.**

2869 Section **38-1-17, Costs -- Apportionment -- Costs and attorneys' fee to**
2870 **subcontractor.**

2871 Section **38-1-19, Payment by owner to contractor -- Subcontractor's lien not**
2872 **affected.**

2873 Section **38-1-20, When contract price not payable in cash -- Notice.**

2874 Section **38-1-21, Advance payments -- Effect on subcontractor's lien.**

2875 Section **38-1-22, Advance payments under terms of contract -- Effect on liens.**

2876 Section **38-1-23, Creditors cannot reach materials furnished, except for purchase**
2877 **price.**

2878 Section **38-1-24, Cancellation of record -- Penalty.**

2879 Section **38-1-26, Assignment of lien.**

2880

Section 38-1-27.2, Notice to subcontractor.

Legislative Review Note

as of 1-31-12 11:38 AM

Office of Legislative Research and General Counsel