

CONSTRUCTION LIENS AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: R. Curt Webb

Senate Sponsor: Scott K. Jenkins

LONG TITLE

General Description:

This bill amends provisions relating to preconstruction and construction liens.

Highlighted Provisions:

This bill:

► clarifies the claims available under Title 14, Chapter 1, Public Contracts, and Title 14, Chapter 2, Private Contracts;

► defines and modifies terms in Title 38, Chapter 1a, Preconstruction and Construction Liens;

► provides that a person who files a preliminary notice that links to a preliminary notice filed by an original contractor has substantially complied with the provisions of Title 38, Chapter 1a, Preconstruction and Construction Liens;

► modifies the procedure by which a mortgage or a trust deed gains priority over an earlier-filed preliminary notice; and

► makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



28 14-1-20, as last amended by Laws of Utah 2012, Chapters 278 and 330

29 14-2-5, as last amended by Laws of Utah 2012, Chapters 278 and 330

30 38-1a-102, as last amended by Laws of Utah 2013, Chapter 464

31 38-1a-501, as renumbered and amended by Laws of Utah 2012, Chapter 278

32 38-1a-503, as renumbered and amended by Laws of Utah 2012, Chapter 278

33

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

35 Section 1. Section 14-1-20 is amended to read:

36 **14-1-20. Preliminary notice requirement.**

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

41 (a) to an individual performing labor for wages; or

42 (b) if a notice of commencement is not filed as prescribed in Section 38-1b-201 for the
43 project or improvement for which labor, service, equipment, or material is furnished.

44 (2) Any person who fails to provide the preliminary notice required by Subsection (1)
45 may not make a [~~payment bond~~] claim under this chapter.

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

48 (4) Subsection (1)(a) does not exempt the following from complying with the
49 requirements of this section:

50 (a) a temporary labor service company or organization;

51 (b) a professional employer company or organization; or

52 (c) any other entity that provides labor.

53 Section 2. Section 14-2-5 is amended to read:

54 **14-2-5. Preliminary notice requirement.**

55 (1) Any person [~~furnishing~~] who furnishes labor, service, equipment, or material for
56 which a [~~payment bond~~] claim may be made under this chapter shall provide preliminary notice
57 to the designated agent as prescribed by Section 38-1a-501, except that this section does not
58 apply to an individual performing labor for wages.

59 (2) Any person who fails to provide the preliminary notice required by Subsection (1)
60 may not make a [~~payment bond~~] claim under this chapter.

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

63 (4) Subsection (1) does not exempt the following from complying with the
64 requirements of this section:

- 65 (a) a temporary labor service company or organization;
- 66 (b) a professional employer company or organization; or
- 67 (c) any other entity that provides labor.

68 Section 3. Section **38-1a-102** is amended to read:

69 **38-1a-102. Definitions.**

70 As used in this chapter:

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

73 (2) "Anticipated improvement" means the improvement:

- 74 (a) for which preconstruction service is performed; and
- 75 (b) that is anticipated to follow the performing of preconstruction service.

76 (3) "Applicable county recorder" means the office of the recorder of each county in
77 which any part of the property on which a claimant claims or intends to claim a preconstruction
78 or construction lien is located.

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

82 (5) "Claimant" means a person entitled to claim a preconstruction or construction lien.

83 (6) "Compensation" means the payment of money for a service rendered or an expense
84 incurred, whether based on:

- 85 (a) time and expense, lump sum, stipulated sum, percentage of cost, cost plus fixed or
86 percentage fee, or commission; or
- 87 (b) a combination of the bases listed in Subsection (6)(a).

88 (7) "Construction lender" means a person who makes a construction loan.

89 [~~(7)~~] (8) "Construction lien" means a lien under this chapter for construction work.

90 [~~(8)~~] (9) "Construction loan" does not include ~~H→~~ ~~[a loan that:~~

91 ~~——(a) (i) is~~ ~~←H~~ a consumer loan ~~H→~~ ~~]; and~~

92 ~~——(ii) is~~ ~~←H~~ secured by the equity in the consumer's home ~~H→~~ ~~[H] . [H] [~~or~~~~

93 ~~——(b) is not a bona fide loan.] ←H~~

94 [(9)] (10) "Construction project" means [~~construction work provided under~~] an
95 improvement that is constructed pursuant to an original contract.

96 [(10)] (11) "Construction work":

97 (a) means labor, service, material, or equipment provided for the purpose and during
98 the process of constructing, altering, or repairing an improvement; and

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

102 [(11)] (12) "Contestable notice" means a notice of preconstruction service under
103 Section 38-1a-401, a preliminary notice under Section 38-1a-501, or a notice of completion
104 under Section 38-1a-506.

105 [(12)] (13) "Contesting person" means an owner, original contractor, subcontractor, or
106 other interested person.

107 [(13)] (14) "Designated agent" means the third party the division contracts with as
108 provided in Section 38-1a-202 to create and maintain the registry.

109 [(14)] (15) "Division" means the Division of Occupational and Professional Licensing
110 created in Section 58-1-103.

111 [(15)] (16) "Entry number" means the reference number that:

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

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

115 [(16)] (17) "Final completion" means:

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

119 (b) the date of the final inspection of the construction work by the local government
120 entity having jurisdiction over the construction project, if an inspection is required under a

121 state-adopted building code applicable to the construction work, but no certificate of occupancy
122 is required;

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

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

131 ~~[(17)]~~ (18) "First preliminary notice filing" means ~~[the filing of]~~ a preliminary notice
132 that ~~[is]~~:

133 (a) is the earliest preliminary notice filed on the construction project for which the
134 preliminary notice is filed;

135 (b) is filed on a construction project that, at the time the preliminary notice is filed, has
136 not reached final completion; and

137 ~~[(a) the earliest preliminary notice filed on a construction project;]~~

138 ~~[(b) filed on or after August 1, 2011;]~~

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

141 ~~[(d) not canceled under Section 38-1a-307; and]~~

142 ~~[(e) not withdrawn under Subsection 38-1a-501(5).]~~

143 (c) is not cancelled under Section 38-1a-307.

144 ~~[(18)]~~ (19) "Government project-identifying information" has the same meaning as
145 defined in Section 38-1b-102.

146 ~~[(19)]~~ (20) "Improvement" means:

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

149 (b) a repair, modification, or alteration of a building, infrastructure, utility, or object
150 referred to in Subsection (19)(a).

151 ~~[(20)]~~ (21) "Interested person" means a person that may be affected by a construction

152 project.

153 ~~[(21)]~~ (22) "Notice of commencement" means a notice required under Section
154 [38-1b-201](#) for a government project, as defined in Section [38-1b-102](#).

155 ~~[(22)]~~ (23) "Original contract":

156 (a) means a contract between an owner and an original contractor for preconstruction
157 service or construction work; and

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

159 ~~[(23)]~~ (24) "Original contractor" means a person, including an owner-builder, that
160 contracts with an owner~~[, other than an owner-builder,]~~ to provide preconstruction service or
161 construction work.

162 ~~[(24)]~~ (25) "Owner" means the person that owns the project property.

163 ~~[(25)]~~ (26) "Owner-builder" means an owner, including an owner who is also an
164 original contractor, who:

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

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

168 (27) "Preconstruction lien" means a lien under this chapter for a preconstruction
169 service.

170 ~~[(26)]~~ (28) "Preconstruction service":

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

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

174 (ii) for compensation separate from any compensation paid or to be paid for
175 construction work for the improvement; and

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

181 ~~[(28)]~~ "Prelender claimant" means a person whose construction lien is made subject to a
182 construction lender's mortgage or trust deed, as provided in Section [38-1a-503](#), by the person's

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

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

185 (30) "Project property" means the real property on or for which preconstruction service
186 or construction work is or will be provided.

187 [~~(31)~~] "Refiled preliminary notice" means a preliminary notice that a preponder claimant
188 files with the registry on a construction project after withdrawing a preliminary notice that the
189 claimant previously filed for the same project.]

190 [~~(32)~~] (31) "Registry" means the State Construction Registry under Part 2, State
191 Construction Registry.

192 [~~(33)~~] (32) "Required notice" means:

193 (a) a notice of preconstruction service under Section 38-1a-401;

194 (b) a preliminary notice under Section 38-1a-501 or Section 38-1b-202;

195 (c) a notice of commencement;

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

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

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

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

200 [~~(34)~~] (33) "Subcontractor" means a person that contracts to provide preconstruction
201 service or construction work to:

202 (a) a person other than the owner; or

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

204 [~~(35)~~] (34) "Substantial work" does not include repair work or warranty work.

205 [~~(36)~~] (35) "Supervisory subcontractor" means a person that:

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

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

211 Section 4. Section 38-1a-501 is amended to read:

212 **38-1a-501. Preliminary notice.**

213 (1) (a) [(+)] A person who desires to claim a construction lien on real property shall file

214 a preliminary notice with the registry no later than 20 days after the day on which the person
215 commences providing construction work on the real property.

216 ~~[(ii) A pre-lender claimant who provides construction work to a construction project~~
217 ~~after the recording of a construction lender's mortgage or trust deed on the project property and~~
218 ~~who desires to claim a construction lien for that construction work shall file a preliminary~~
219 ~~notice with the registry no later than 20 days after the recording of the mortgage or trust deed.]~~

220 (b) Subject to Subsection (1)(c), a preliminary notice is effective as to all construction
221 work that the person filing the notice provides to the construction project under a single
222 original contract, including construction work that the person provides to more than one
223 supervisory subcontractor under that original contract.

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

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

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

234 (e) A person who fails to file a preliminary notice as required in this section may not
235 claim a construction lien.

236 (f) ~~[(i) Except as provided in Subsection (1)(f)(ii), a]~~ A preliminary notice that is filed
237 with the registry as provided in this section is considered to be filed at the time of the first
238 preliminary notice filing.

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

243 (g) If a preliminary notice filed with the registry includes the tax parcel identification
244 number of a parcel not previously associated in the registry with a construction project, the

245 designated agent shall promptly notify the person who filed the preliminary notice that:

246 (i) the preliminary notice includes a tax parcel identification number of a parcel not
247 previously associated in the registry with a construction project; and

248 (ii) the likely explanation is that:

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

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

251 (h) A preliminary notice shall include:

252 (i) the name, address, telephone number, and email address of the person providing the
253 construction work for which the preliminary notice is filed;

254 (ii) the name and address of the person who contracted with the claimant for the
255 construction work;

256 (iii) the name of the record or reputed owner;

257 (iv) the name of the original contractor for construction work under which the claimant
258 is providing or will provide construction work;

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

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

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

263 (B) the entry number of a previously filed notice of construction loan under Section
264 [38-1a-601](#) on the same project;

265 (C) the entry number of a previously filed preliminary notice on the same project that
266 includes the tax parcel identification number of each parcel included in the project property; or

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

268 (i) A preliminary notice may include:

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

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

273 (2) (a) ~~[The]~~ Except as provided in Subsection (2)(b), the burden is upon the person
274 filing the preliminary notice to prove that the person has substantially complied with the
275 requirements of this section.

276 (b) A person has substantially complied with the requirements of this section if the
277 person files a preliminary notice that links, within the registry, to a preliminary notice filed by
278 an original contractor for the same construction project, using the entry number assigned to the
279 original contractor's preliminary notice.

280 ~~[(b)]~~ (c) Substantial compliance with the requirements of Subsections (1)(h)(iii)
281 through (vii) may be established by a person's reasonable reliance on information in the registry
282 provided by a previously filed:

283 (i) notice of construction loan under Section 38-1a-601;

284 (ii) preliminary notice; or

285 (iii) building permit.

286 (3) (a) Subject to Subsection (3)(b), a person required by this section to give
287 preliminary notice is required to give only one notice for each construction project.

288 (b) If the construction work is provided pursuant to contracts under more than one
289 original contract for construction work, the notice requirements shall be met with respect to the
290 construction work provided under each original contract.

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

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

297 ~~[(b) A notice of withdrawal shall include:]~~

298 ~~[(i) the information required for a preliminary notice under Subsection (1)(g); and]~~

299 ~~[(ii) the entry number of the preliminary notice being withdrawn.]~~

300 ~~[(6)]~~ (5) A person who files a preliminary notice that contains inaccurate or incomplete
301 information may not be held liable for damages suffered by any other person who relies on the
302 inaccurate or incomplete information in filing a preliminary notice.

303 Section 5. Section 38-1a-503 is amended to read:

304 **38-1a-503. Relation back and priority of liens.**

305 (1) A construction lien relates back to, and takes effect as of, the time of the first
306 preliminary notice filing.

307 (2) (a) Subject to Subsection (2)(b), a construction lien has priority over:
 308 (i) any lien, mortgage, or other encumbrance that attaches after the first preliminary
 309 notice filing; and
 310 (ii) any lien, mortgage, or other encumbrance of which the claimant had no notice and
 311 which was unrecorded at the time of the first preliminary notice filing.
 312 ~~[(b) A recorded mortgage or trust deed of a construction lender has priority over a~~
 313 ~~construction lien of a claimant who files a preliminary notice in accordance with Section~~
 314 ~~38-1a-501 before the mortgage or trust deed is recorded if the claimant:]~~
 315 ~~[(i) accepts payment in full for construction work that the claimant provides to the~~
 316 ~~construction project before the mortgage or trust deed is recorded; and]~~
 317 ~~[(ii) withdraws the claimant's preliminary notice by filing a notice of withdrawal under~~
 318 ~~Subsection 38-1a-501(5).]~~
 319 (b) A recorded mortgage or trust deed that secures a construction loan attaches
 320 immediately before the first preliminary notice filing for the construction project if each
 321 claimant that has a preliminary notice on file on the construction project before the mortgage or
 322 trust deed was recorded receives full payment for all construction work the claimant performed
 323 before the mortgage or trust deed was recorded, regardless of whether the claimant receives full
 324 payment before or after the day on which the mortgage or trust deed is recorded.

Legislative Review Note
 as of 12-30-13 1:13 PM

Office of Legislative Research and General Counsel