

1 **CONSTRUCTION LIENS AMENDMENTS**

2 2014 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: R. Curt Webb**

5 Senate Sponsor: Scott K. Jenkins

7 **LONG TITLE**

8 **General Description:**

9 This bill amends provisions relating to preconstruction and construction liens.

10 **Highlighted Provisions:**

11 This bill:

12 ▶ clarifies the claims available under Title 14, Chapter 1, Public Contracts, and Title
13 14, Chapter 2, Private Contracts;

14 ▶ defines and modifies terms in Title 38, Chapter 1a, Preconstruction and
15 Construction Liens;

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

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

21 ▶ makes technical and conforming changes.

22 **Money Appropriated in this Bill:**

23 None

24 **Other Special Clauses:**

25 None

26 **Utah Code Sections Affected:**

27 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 a consumer loan secured by the equity in
91 the consumer's home.

92 ~~[(9)]~~ (10) "Construction project" means ~~[construction work provided under]~~ an
93 improvement that is constructed pursuant to an original contract.

94 ~~[(10)]~~ (11) "Construction work":

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

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

100 ~~[(11)]~~ (12) "Contestable notice" means a notice of preconstruction service under
101 Section [38-1a-401](#), a preliminary notice under Section [38-1a-501](#), or a notice of completion
102 under Section [38-1a-506](#).

103 ~~[(12)]~~ (13) "Contesting person" means an owner, original contractor, subcontractor, or
104 other interested person.

105 ~~[(13)]~~ (14) "Designated agent" means the third party the division contracts with as
106 provided in Section [38-1a-202](#) to create and maintain the registry.

107 ~~[(14)]~~ (15) "Division" means the Division of Occupational and Professional Licensing
108 created in Section [58-1-103](#).

109 ~~[(15)]~~ (16) "Entry number" means the reference number that:

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

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

113 ~~[(16)]~~ (17) "Final completion" means:

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

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

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

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

129 ~~[(17)]~~ (18) "First preliminary notice filing" means ~~[the filing of]~~ a preliminary notice
130 that ~~[is]~~:

131 (a) is the earliest preliminary notice filed on the construction project for which the
132 preliminary notice is filed;

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

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

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

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

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

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

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

142 [(18)] (19) "Government project-identifying information" has the same meaning as
143 defined in Section 38-1b-102.

144 [(19)] (20) "Improvement" means:

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

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

149 [(20)] (21) "Interested person" means a person that may be affected by a construction
150 project.

151 [(21)] (22) "Notice of commencement" means a notice required under Section
152 38-1b-201 for a government project, as defined in Section 38-1b-102.

153 [(22)] (23) "Original contract":

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

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

157 [(23)] (24) "Original contractor" means a person, including an owner-builder, that
158 contracts with an owner~~[, other than an owner-builder,]~~ to provide preconstruction service or
159 construction work.

160 [(24)] (25) "Owner" means the person that owns the project property.

161 [(25)] (26) "Owner-builder" means an owner, including an owner who is also an
162 original contractor, who:

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

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

166 (27) "Preconstruction lien" means a lien under this chapter for a preconstruction
167 service.

168 [(26)] (28) "Preconstruction service":

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

170 a proposed improvement:

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

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

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

179 ~~[(28) "Prelender claimant" means a person whose construction lien is made subject to a~~
180 ~~construction lender's mortgage or trust deed, as provided in Section 38-1a-503, by the person's~~
181 ~~acceptance of payment in full and the person's withdrawal of the person's preliminary notice.]~~

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

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

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

188 ~~[(32)]~~ (31) "Registry" means the State Construction Registry under Part 2, State
189 Construction Registry.

190 ~~[(33)]~~ (32) "Required notice" means:

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

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

193 (c) a notice of commencement;

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

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

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

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

198 [(34)] (33) "Subcontractor" means a person that contracts to provide preconstruction
199 service or construction work to:

- 200 (a) a person other than the owner; or
- 201 (b) the owner, if the owner is an owner-builder.

202 [(35)] (34) "Substantial work" does not include repair work or warranty work.

203 [(36)] (35) "Supervisory subcontractor" means a person that:

- 204 (a) is a subcontractor under contract to provide preconstruction service or construction
205 work; and
- 206 (b) contracts with one or more other subcontractors for the other subcontractor or
207 subcontractors to provide preconstruction service or construction work that the person is under
208 contract to provide.

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

210 **38-1a-501. Preliminary notice.**

211 (1) (a) [(+)] A person who desires to claim a construction lien on real property shall file
212 a preliminary notice with the registry no later than 20 days after the day on which the person
213 commences providing construction work on the real property.

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

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

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

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

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

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

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

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

241 (g) If a preliminary notice filed with the registry includes the tax parcel identification
242 number of a parcel not previously associated in the registry with a construction project, the
243 designated agent shall promptly notify the person who filed the preliminary notice that:

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

246 (ii) the likely explanation is that:

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

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

249 (h) A preliminary notice shall include:

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

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

- 254 (iii) the name of the record or reputed owner;
- 255 (iv) the name of the original contractor for construction work under which the claimant
- 256 is providing or will provide construction work;
- 257 (v) the address of the project property or a description of the location of the project;
- 258 (vi) the name of the county in which the project property is located; and
- 259 (vii) (A) the tax parcel identification number of each parcel included in the project
- 260 property;
- 261 (B) the entry number of a previously filed notice of construction loan under Section
- 262 38-1a-601 on the same project;
- 263 (C) the entry number of a previously filed preliminary notice on the same project that
- 264 includes the tax parcel identification number of each parcel included in the project property; or
- 265 (D) the entry number of the building permit issued for the project.
- 266 (i) A preliminary notice may include:
- 267 (i) the subdivision, development, or other project name applicable to the construction
- 268 project for which the preliminary notice is filed; and
- 269 (ii) the lot or parcel number of each lot or parcel that is included in the project
- 270 property.
- 271 (2) (a) ~~[The]~~ Except as provided in Subsection (2)(b), the burden is upon the person
- 272 filing the preliminary notice to prove that the person has substantially complied with the
- 273 requirements of this section.
- 274 (b) A person has substantially complied with the requirements of this section if the
- 275 person files a preliminary notice that links, within the registry, to a preliminary notice filed by
- 276 an original contractor for the same construction project, using the entry number assigned to the
- 277 original contractor's preliminary notice.
- 278 ~~[(b)]~~ (c) Substantial compliance with the requirements of Subsections (1)(h)(iii)
- 279 through (vii) may be established by a person's reasonable reliance on information in the registry
- 280 provided by a previously filed:
- 281 (i) notice of construction loan under Section 38-1a-601;

282 (ii) preliminary notice; or

283 (iii) building permit.

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

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

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

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

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

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

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

298 ~~[(6)]~~ (5) A person who files a preliminary notice that contains inaccurate or incomplete
299 information may not be held liable for damages suffered by any other person who relies on the
300 inaccurate or incomplete information in filing a preliminary notice.

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

302 **38-1a-503. Relation back and priority of liens.**

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

305 (2) (a) Subject to Subsection (2)(b), a construction lien has priority over:

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

308 (ii) any lien, mortgage, or other encumbrance of which the claimant had no notice and
309 which was unrecorded at the time of the first preliminary notice filing.

310 ~~[(b) A recorded mortgage or trust deed of a construction lender has priority over a~~
311 ~~construction lien of a claimant who files a preliminary notice in accordance with Section~~
312 ~~38-1a-501 before the mortgage or trust deed is recorded if the claimant:]~~

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

315 ~~[(ii) withdraws the claimant's preliminary notice by filing a notice of withdrawal under~~
316 ~~Subsection 38-1a-501(5).]~~

317 (b) A recorded mortgage or trust deed that secures a construction loan attaches
318 immediately before the first preliminary notice filing for the construction project if each
319 claimant that has a preliminary notice on file on the construction project before the mortgage or
320 trust deed was recorded receives full payment for all construction work the claimant performed
321 before the mortgage or trust deed was recorded, regardless of whether the claimant receives full
322 payment before or after the day on which the mortgage or trust deed is recorded.