

Representative Mike K. McKell proposes the following substitute bill:

MECHANICS LIEN REVISIONS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Mike K. McKell

Senate Sponsor: Stephen H. Urquhart

LONG TITLE

General Description:

This bill amends provisions relating to unauthorized and excessive claims of preconstruction and construction liens.

Highlighted Provisions:

This bill:

- ▶ creates procedures to initiate, conduct, and appeal an arbitration proceeding to resolve a claim for an excessive notice of preconstruction lien or an excessive notice of construction lien;
- ▶ establishes an expedited procedure to nullify a preconstruction lien or a construction lien that is invalid because the lien claimant did not file a notice of preconstruction service or a preliminary service; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



26 **38-1a-308**, as renumbered and amended by Laws of Utah 2012, Chapter 278

27 ENACTS:

28 **38-1a-805**, Utah Code Annotated 1953

29

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

31 Section 1. Section **38-1a-308** is amended to read:

32 **38-1a-308. Intentional submission of excessive lien notice -- Criminal and civil**
33 **liability.**

34 (1) As used in this section, "residential project" means a project on real property:

35 (a) for which preconstruction service or construction work is provided; and

36 (b) that consists of:

37 (i) one single-family residence; or

38 (ii) one multi-family residence that contains no more than four units.

39 ~~[(1)]~~ (2) A person is guilty of a class B misdemeanor if:

40 (a) the person intentionally submits for recording a notice of preconstruction lien or
41 notice of construction lien against any property containing a greater demand than the sum due;
42 and

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

44 (i) to cloud the title;

45 (ii) to exact from the owner or person liable by means of the excessive notice of
46 preconstruction or construction lien more than is due; or

47 (iii) to procure any unjustified advantage or benefit.

48 ~~[(2)]~~ (3) (a) As used in this Subsection ~~[(2)]~~ (3), "third party" means an owner, original
49 contractor, or subcontractor.

50 (b) In addition to any criminal penalty under Subsection ~~[(1)]~~ (2), a person who
51 submits a notice of preconstruction lien or notice of construction lien as described in
52 Subsection ~~[(1)]~~ (2) is liable to a third party who is affected by the ~~[lien]~~ notice of
53 preconstruction lien or the notice of construction lien for twice the amount by which the
54 ~~[excessive]~~ lien notice exceeds the amount actually due or the actual damages incurred by the
55 owner, original contractor, or subcontractor, whichever is greater.

56 (4) The parties to a claim described in Subsection (3)(b) who agree to arbitrate the

57 claim shall arbitrate in accordance with Subsections (5) through (15) if the notice of
58 preconstruction lien, or the notice of construction lien, that is the subject of the claim is:

59 (a) for a residential project; and

60 (b) for \$50,000 or less.

61 (5) (a) Unless otherwise agreed to by the parties, a claim that is submitted to arbitration
62 under this section shall be resolved by a single arbitrator.

63 (b) All parties shall agree on the single arbitrator described in Subsection (5)(a) within
64 60 days after the day on which an answer is filed.

65 (c) If the parties are unable to agree on a single arbitrator as required under Subsection
66 (5)(b), the parties shall select a panel of three arbitrators.

67 (d) If the parties select a panel of three arbitrators under Subsection (5)(c):

68 (i) each side shall select one arbitrator; and

69 (ii) the arbitrators selected under Subsection (5)(d)(i) shall select one additional
70 arbitrator to be included in the panel.

71 (6) Unless otherwise agreed to in writing:

72 (a) each party shall pay an equal share of the fees and costs of the arbitrator selected
73 under Subsection (5)(b); or

74 (b) if an arbitration panel is selected under Subsection (5)(d):

75 (i) each party shall pay the fees and costs of that party's selected arbitrator; and

76 (ii) each party shall pay an equal share of the fees and costs of the arbitrator selected
77 under Subsection (5)(d)(ii).

78 (7) Except as otherwise provided in this section or otherwise agreed to by the parties,
79 an arbitration proceeding conducted under this section shall be governed by Title 78B, Chapter
80 11, Utah Uniform Arbitration Act.

81 (8) (a) Subject to the provisions of this section, the Utah Rules of Civil Procedure and
82 the Utah Rules of Evidence shall apply to an arbitration proceeding under this section.

83 (b) The Utah Rules of Civil Procedure and the Utah Rules of Evidence shall be applied
84 liberally with the intent of resolving the claim in a timely and cost-efficient manner.

85 (c) Subject to the provisions of this section, discovery shall be conducted in accordance
86 with Rules 26 through 37 of the Utah Rules of Civil Procedure and shall be subject to the
87 jurisdiction of the district court in which the claim is filed.

88 (d) Unless otherwise agreed to by the parties or ordered by the court, discovery in an
89 arbitration proceeding under this section shall be limited to the discovery available in a tier 1
90 case under Rule 26 of the Utah Rules of Civil Procedure.

91 (9) A written decision by a single arbitrator or by a majority of the arbitration panel
92 shall constitute a final decision.

93 (10) An arbitration award issued under this section:

94 (a) shall be the final resolution of all excessive notice claims described in Subsection
95 (3)(b) that are:

96 (i) between the parties;

97 (ii) for a residential project; and

98 (iii) for \$50,000 or less; and

99 (b) may be reduced to judgment by the court upon motion and notice, unless:

100 (i) any party, within 20 days after the day on which the arbitration award is served, files
101 a notice requesting a trial de novo in district court; or

102 (ii) the arbitration award has been satisfied.

103 (11) (a) Upon filing a notice requesting a trial de novo under Subsection (10):

104 (i) unless otherwise stipulated to by the parties or ordered by the court, the parties are
105 allowed an additional 60 days for discovery; and

106 (ii) the claim shall proceed through litigation pursuant to the Utah Rules of Civil
107 Procedure and the Utah Rules of Evidence in the district court.

108 (b) The additional discovery time described in Subsection (11)(a)(i) shall run from the
109 day on which the notice requesting a trial de novo is filed.

110 (12) If the plaintiff, as the moving party in a trial de novo requested under Subsection
111 (10), does not obtain a verdict that is at least 10% greater than the arbitration award, the
112 plaintiff is responsible for all of the nonmoving party's costs, including expert witness fees.

113 (13) If a defendant, as the moving party in a trial de novo requested under Subsection
114 (10), does not obtain a verdict that is at least 10% less than the arbitration award, the defendant
115 is responsible for all of the nonmoving party's costs, including expert witness fees.

116 (14) If a district court determines, upon a motion of the nonmoving party, that the
117 moving party's use of the trial de novo process was filed in bad faith, as defined in Section
118 [78B-5-825](#), the district court may award reasonable attorney fees to the nonmoving party.

119 (15) All arbitration awards issued under this section shall bear postjudgment interest
120 pursuant to Section 15-1-4.

121 Section 2. Section **38-1a-805** is enacted to read:

122 **38-1a-805. Failure to file notice -- Petition to nullify preconstruction or**
123 **construction lien -- Expedited proceeding.**

124 (1) An owner of an interest in a project property that is subject to a recorded
125 preconstruction lien or a recorded construction lien may petition the district court in the county
126 in which the project property is located for summary relief to nullify the preconstruction lien or
127 the construction lien if:

128 (a) the owner claims that the preconstruction lien or the construction lien is invalid
129 because:

130 (i) the lien claimant did not timely file a notice of preconstruction service under
131 Section 38-1a-401; or

132 (ii) the lien claimant did not timely file a preliminary notice under Section 38-1a-501;

133 (b) the owner sent the lien claimant a written request to withdraw in accordance with
134 Subsection (2); and

135 (c) the lien claimant did not withdraw the preconstruction lien or the construction lien
136 within 10 business days after the day on which the owner sent the written request to withdraw.

137 (2) A written request to withdraw described in Subsection (1) shall:

138 (a) be delivered by certified mail to the lien claimant at the lien claimant's address
139 provided in the recorded preconstruction lien or the recorded construction lien;

140 (b) state the owner's name, address, and telephone number;

141 (c) contain:

142 (i) (A) the name of the county in which the property that is subject to the
143 preconstruction lien or the construction lien is located; and

144 (B) the tax parcel identification number of each parcel that is subject to the
145 preconstruction lien or the construction lien; or

146 (ii) a legal description of the property that is subject to the preconstruction lien or the
147 construction lien;

148 (d) state that the lien claimant has failed to timely file:

149 (i) a notice of preconstruction service under Section 38-1a-401; or

- 150 (ii) a preliminary notice under Section 38-1a-501;
151 (e) request that the lien claimant withdraw the lien claimant's preconstruction lien or
152 construction lien within 10 business days after the day on which the written request to
153 withdraw is sent; and
154 (f) state that if the lien claimant does not withdraw the preconstruction lien or the
155 construction lien within 10 business days after the day on which the written request to
156 withdraw is sent, the owner may petition a court to nullify the lien in an expedited proceeding
157 under this section.
- 158 (3) A petition under Subsection (1) shall:
159 (a) state with specificity that:
160 (i) the lien claimant's preconstruction lien or the lien claimant's construction lien is
161 invalid because the lien claimant did not file a notice of preconstruction service or a
162 preliminary notice, as applicable;
163 (ii) the petitioner sent the lien claimant a written request to withdraw in accordance
164 with Subsection (2); and
165 (iii) the lien claimant did not withdraw the preconstruction lien or the construction lien
166 within 10 business days after the day on which the owner sent the written request to withdraw;
167 (b) be supported by a sworn affidavit of the petitioner; and
168 (c) be served on the lien claimant, in accordance with the Rules of Civil Procedure,
169 within three business days after the day on which the petitioner files the petition in the district
170 court.
- 171 (4) (a) If the court finds that a petition does not meet the requirements described in
172 Subsection (3), the court may dismiss the petition without a hearing.
173 (b) If the court finds that a petition meets the requirements described in Subsection (3),
174 the court shall schedule an expedited hearing to determine whether the preconstruction lien or
175 the construction lien is invalid because the lien claimant failed to file a notice of
176 preconstruction service or a preliminary notice, as applicable.
- 177 (5) (a) If the court grants a hearing, within three business days after the day on which
178 the court schedules the hearing and at least seven business days before the day on which the
179 hearing is scheduled, the petitioner shall serve on the lien claimant, in accordance with the
180 Rules of Civil Procedure, a copy of the petition, notice of the hearing, and a copy of the court's

181 order granting the expedited hearing.

182 (b) The lien claimant may attend the hearing and contest the petition.

183 (6) An expedited proceeding under this section may only determine:

184 (a) whether the lien claimant filed a notice of preconstruction service or a preliminary
185 notice; and

186 (b) if the lien claimant failed to file a notice of preconstruction service or a preliminary
187 notice, whether the lien claimant's preconstruction lien or construction lien is valid.

188 (7) (a) If, following a hearing, the court determines that the preconstruction lien or the
189 construction lien is invalid, the court shall issue an order that:

190 (i) contains a legal description of the property;

191 (ii) declares the preconstruction lien or the construction lien void ab initio;

192 (iii) releases the property from the lien; and

193 (iv) awards costs and reasonable attorney fees to the petitioner.

194 (b) The petitioner may submit a copy of an order issued under Subsection (7)(a) to the
195 county recorder for recording.

196 (8) (a) If, following a hearing, the court determines that the preconstruction lien or the
197 construction lien is valid, the court shall:

198 (i) dismiss the petition; and

199 (ii) award costs and reasonable attorney fees to the lien claimant.

200 (b) The dismissal order shall contain a legal description of the property.

201 (c) The lien claimant may submit a copy of the dismissal order to the county recorder
202 for recording.

203 (9) If a petition under this section contains a claim for damages, the proceedings related
204 to the claim for damages may not be expedited under this section.