

1 **STATE CONSTRUCTION REGISTRY AMENDMENTS**

2 2019 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Marc K. Roberts**

5 Senate Sponsor: Daniel McCay

7 **LONG TITLE**

8 **General Description:**

9 This bill amends and enacts provisions related to notices filed with the State
10 Construction Registry.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ amends definitions;
- 14 ▶ creates a new filing with the registry for a notice of intent to finance;
- 15 ▶ creates a new registry filing of a final lien waiver for a subcontractor to respond to a
16 notice of intent to finance; and
- 17 ▶ makes technical changes.

18 **Money Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 This bill provides a special effective date.

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **38-1a-102**, as last amended by Laws of Utah 2015, Chapter 258

25 ENACTS:

26 **38-1a-603**, Utah Code Annotated 1953

27 **38-1a-604**, Utah Code Annotated 1953

28
29 *Be it enacted by the Legislature of the state of Utah:*

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

31 **38-1a-102. Definitions.**

32 As used in this chapter:

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

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

36 (a) for which preconstruction service is performed; and

37 (b) that is anticipated to follow the performing of preconstruction service.

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

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

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

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

47 (a) time and expense, lump sum, stipulated sum, percentage of cost, cost plus fixed or
48 percentage fee, or commission; or

49 (b) a combination of the bases listed in Subsection (6)(a).

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

51 (8) "Construction lien" means a lien under this chapter for construction work.

52 (9) "Construction loan" does not include a consumer loan secured by the equity in the
53 consumer's home.

54 (10) "Construction project" means an improvement that is constructed pursuant to an
55 original contract.

56 (11) "Construction work":

57 (a) means labor, service, material, or equipment provided for the purpose and during

58 the process of constructing, altering, or repairing an improvement; and

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

62 (12) "Contestable notice" means a notice of preconstruction service under Section
63 38-1a-401, a preliminary notice under Section 38-1a-501, or a notice of completion under
64 Section 38-1a-506.

65 (13) "Contesting person" means an owner, original contractor, subcontractor, or other
66 interested person.

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

69 (15) "Division" means the Division of Occupational and Professional Licensing created
70 in Section 58-1-103.

71 (16) "Entry number" means the reference number that:

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

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

75 (17) "Final completion" means:

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

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

83 (c) unless the owner is holding payment to ensure completion of construction work, the
84 date on which there remains no substantial work to be completed to finish the construction
85 work under the original contract, if a certificate of occupancy is not required and a final

86 inspection is not required under an applicable state-adopted building code; or

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

91 (18) "Final lien waiver" means a form that complies with Subsection [38-1a-802\(4\)\(c\)](#).

92 [~~18~~] (19) "First preliminary notice filing" means a preliminary notice that:

93 (a) is the earliest preliminary notice filed on the construction project for which the
94 preliminary notice is filed;

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

97 (c) is not cancelled under Section [38-1a-307](#).

98 [~~19~~] (20) "Government project-identifying information" has the same meaning as
99 defined in Section [38-1b-102](#).

100 [~~20~~] (21) "Improvement" means:

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

103 (b) a repair, modification, or alteration of a building, infrastructure, utility, or object
104 referred to in Subsection [~~20~~] (21)(a).

105 [~~21~~] (22) "Interested person" means a person that may be affected by a construction
106 project.

107 [~~22~~] (23) "Notice of commencement" means a notice required under Section
108 [38-1b-201](#) for a government project, as defined in Section [38-1b-102](#).

109 [~~23~~] (24) "Original contract":

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

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

113 [~~24~~] (25) "Original contractor" means a person, including an owner-builder, that

114 contracts with an owner to provide preconstruction service or construction work.

115 ~~[(25)]~~ (26) "Owner" means the person that owns the project property.

116 ~~[(26)]~~ (27) "Owner-builder" means an owner, including an owner who is also an
117 original contractor, who:

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

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

121 ~~[(27)]~~ (28) "Preconstruction lien" means a lien under this chapter for a preconstruction
122 service.

123 ~~[(28)]~~ (29) "Preconstruction service":

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

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

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

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

134 ~~[(29)]~~ (30) "Private project" means a construction project that is not a government
135 project.

136 ~~[(30)]~~ (31) "Project property" means the real property on or for which preconstruction
137 service or construction work is or will be provided.

138 ~~[(31)]~~ (32) "Registry" means the State Construction Registry under Part 2, State
139 Construction Registry.

140 ~~[(32)]~~ (33) "Required notice" means:

141 (a) a notice of preconstruction service under Section [38-1a-401](#);

- 142 (b) a preliminary notice under Section 38-1a-501 or Section 38-1b-202;
- 143 (c) a notice of commencement;
- 144 (d) a notice of construction loan under Section 38-1a-601;
- 145 (e) a notice under Section 38-1a-602 concerning a construction loan default;
- 146 (f) a notice of intent to obtain final completion under Section 38-1a-506; or
- 147 (g) a notice of completion under Section 38-1a-507.

148 [~~33~~] (34) "Subcontractor" means a person that contracts to provide preconstruction
 149 service or construction work to:

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

152 [~~34~~] (35) "Substantial work" does not include repair work or warranty work.

153 [~~35~~] (36) "Supervisory subcontractor" means a person that:

- 154 (a) is a subcontractor under contract to provide preconstruction service or construction
 155 work; and
- 156 (b) contracts with one or more other subcontractors for the other subcontractor or
 157 subcontractors to provide preconstruction service or construction work that the person is under
 158 contract to provide.

159 Section 2. Section 38-1a-603 is enacted to read:

160 **38-1a-603. Notice of intent to finance.**

- 161 (1) An owner may file with the registry a notice of intent to finance.
- 162 (2) A notice of intent to finance under Subsection (1) shall state:
 - 163 (a) the anticipated date on which financing will occur;
 - 164 (b) the anticipated lender's name, address, and telephone number;
 - 165 (c) the name of the trustor on the trust deed securing the anticipated loan;
 - 166 (d) the tax parcel identification number of each parcel included in the project property;
 - 167 and
 - 168 (e) the name of the county in which the project property is located.
- 169 (3) If an owner chooses to file a notice of intent to finance, the owner shall file the

170 notice of intent to finance no less than 14 days before the date on which the financing is
171 anticipated to occur.

172 (4) If the financing does not occur within 30 days after the anticipated date specified in
173 the notice of intent to finance, the notice of intent to finance shall automatically have no effect
174 and shall be removed from the registry.

175 Section 3. Section **38-1a-604** is enacted to read:

176 **38-1a-604. Notice of final lien waiver.**

177 (1) After a notice of intent to finance is filed under Section [38-1a-603](#) on a project
178 property, each subcontractor that has filed a preliminary notice pertaining to the project
179 property may file with the registry a final lien waiver.

180 (2) The final lien waiver described in Subsection (1) may be filed on the registry even
181 if no notice of intent to finance was filed on the registry.

182 Section 4. **Effective date.**

183 This bill takes effect on January 1, 2020.