

LIEN AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael K. McKell

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill amends provisions related to a notice of release of lien.

Highlighted Provisions:

This bill:

- ▶ extends the number of days a person has to dispute the correctness of a preconstruction or construction lien.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

38-1a-804, as renumbered and amended by Laws of Utah 2012, Chapter 278

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

Section 1. Section **38-1a-804** is amended to read:

38-1a-804. Notice of release of lien and substitution of alternate security.

(1) The owner of any interest in a project property that is subject to a recorded preconstruction or construction lien, or any original contractor or subcontractor affected by the lien, who disputes the correctness or validity of the lien may submit for recording a notice of release of lien and substitution of alternate security:

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

30 (b) in the office of each applicable county recorder where the lien was recorded; and

31 (c) at any time before the date that is [~~90~~] 180 days after the first summons is served in
32 an action to foreclose the preconstruction or construction lien for which the notice under this
33 section is submitted for recording.

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

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

38 (b) reference the preconstruction or construction lien sought to be released, including
39 the applicable entry number, book number, and page number; and

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

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

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

46 (ii) is in an amount equal to:

47 (A) 150% of the amount claimed by the claimant under the preconstruction or
48 construction lien or as determined under Subsection (7), if the lien claim is for \$25,000 or
49 more;

50 (B) 175% of the amount claimed by the claimant under the preconstruction or
51 construction lien or as determined under Subsection (7), if the lien claim is for at least \$15,000
52 but less than \$25,000; or

53 (C) 200% of the amount claimed by the claimant under the preconstruction or
54 construction lien or as determined under Subsection (7), if the lien claim is for less than
55 \$15,000;

56 (iii) is made payable to the claimant;

57 (iv) is conditioned for the payment of:

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

60 (B) any costs and attorney fees awarded by the court; and

61 (v) has as principal:

62 (A) the owner of the interest in the project property; or

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

64 (3) (a) Upon the recording of the notice of release of lien and substitution of alternate
65 security under Subsection (1), the real property described in the notice shall be released from
66 the preconstruction lien or construction lien to which the notice applies.

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

70 (4) (a) Upon the recording of a notice of release of lien and substitution of alternate
71 security under Subsection (1), the person recording the notice shall serve a copy of the notice,
72 together with any attachments, within 30 days upon the claimant.

73 (b) If a suit is pending to foreclose the preconstruction or construction lien at the time
74 the notice is served upon the claimant under Subsection (4)(a), the claimant shall, within 90
75 days after the receipt of the notice, institute proceedings to add the alternate security as a party
76 to the lien foreclosure suit.

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

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

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

83 (c) the dismissal with prejudice of the lien foreclosure suit or suit against the alternate
84 security as to the claimant; or

85 (d) the entry of judgment against the claimant in:

- 86 (i) a lien foreclosure suit; or
- 87 (ii) suit against the alternate security.

88 (6) If a copy of the notice of release of lien and substitution of alternate security is not
89 served upon the claimant as provided in Subsection (4)(a), the claimant has six months after
90 the discovery of the notice to commence an action against the alternate security, except that no
91 action may be commenced against the alternate security after two years from the date the notice
92 was recorded.

93 (7) (a) The owner of any interest in a project property that is subject to a recorded
94 preconstruction or construction lien, or an original contractor or subcontractor affected by the
95 lien, who disputes the amount claimed under a preconstruction or construction lien may
96 petition the district court in the county in which the notice of lien is recorded for a summary
97 determination of the correct amount owing under the lien for the sole purpose of providing
98 alternate security.

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

100 (i) state with specificity the factual and legal bases for disputing the amount claimed
101 under the preconstruction or construction lien; and

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

103 (c) A petitioner under Subsection (7)(a) shall, as provided in Utah Rules of Civil
104 Procedure, Rule 4, serve on the claimant:

105 (i) a copy of the petition; and

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

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

109 (e) If a court finds a petition under Subsection (7)(a) sufficient, the court shall schedule
110 a hearing within 10 days to determine the correct amount claimed under the preconstruction or
111 construction lien for the sole purpose of providing alternate security.

112 (f) A claimant may:

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

114 (ii) contest the petition.

115 (g) A determination under this section is limited to a determination of the amount
116 claimed under a preconstruction or construction lien for the sole purpose of providing alternate
117 security and does not conclusively establish:

118 (i) the amount to which the claimant is entitled;

119 (ii) the validity of the claim; or

120 (iii) any person's right to any other legal remedy.

121 (h) If a court, in a proceeding under this Subsection (7), determines that the amount
122 claimed under a preconstruction or construction lien is excessive, the court shall set the amount
123 for the sole purpose of providing alternate security.

124 (i) In an order under Subsection (7)(h), the court shall include a legal description of the
125 project property.

126 (j) A petitioner under this Subsection (7) may record a certified copy of any order
127 issued under this Subsection (7) in the county in which the lien is recorded.

128 (k) A court may not award attorney fees for a proceeding under this Subsection (7), but
129 shall consider those attorney fees in any award of attorney fees under any other provision of
130 this chapter.