

HB0422S01 compared with HB0422

~~{deleted text}~~ shows text that was in HB0422 but was deleted in HB0422S01.

inserted text shows text that was not in HB0422 but was inserted into HB0422S01.

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Representative Marc K. Roberts proposes the following substitute bill:

PRECONSTRUCTION AND CONSTRUCTION LIENS

AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Marc K. Roberts

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions of Preconstruction and Construction Liens.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ~~{~~ amends provisions related to the relation back and priority of liens;
- ~~}~~ ▶ removes the requirement that an owner file a notice of intent to obtain final completion;
- ▶ amends provisions regarding a notice of intent to finance and enacts provisions regarding a notice of intent to finance construction or advance construction funds;

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- ▶ enacts provisions related to a notice of progress and a notice of final lien;
- ▶ amends provisions regarding a failure to provide notice; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

~~{ None }~~ This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

38-1a-102, as last amended by Laws of Utah 2019, Chapter 250

~~{ **38-1a-503**, as last amended by Laws of Utah 2014, Chapter 293 }~~

~~{ **38-1a-506**, as renumbered and amended by Laws of Utah 2012, Chapter 278 }~~

38-1a-603, as enacted by Laws of Utah 2019, Chapter 250

38-1a-604, as enacted by Laws of Utah 2019, Chapter 250

38-1a-802, as last amended by Laws of Utah 2012, Chapter 347 and renumbered and amended by Laws of Utah 2012, Chapter 278

38-1a-805, as enacted by Laws of Utah 2015, Chapter 303

ENACTS:

38-1a-605, Utah Code Annotated 1953

38-1a-606, Utah Code Annotated 1953

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

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

38-1a-102. Definitions.

As used in this chapter:

- (1) "Alternate means" means a method of filing a legible and complete notice or other document with the registry other than electronically, as established by the division by rule.
- (2) "Anticipated improvement" means the improvement:
 - (a) for which preconstruction service is performed; and
 - (b) that is anticipated to follow the performing of preconstruction service.
- (3) "Applicable county recorder" means the office of the recorder of each county in

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which any part of the property on which a claimant claims or intends to claim a preconstruction or construction lien is located.

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

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

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

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

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

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

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

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

~~{ (10) "Construction modification" means a modification or amendment to a mortgage or trust deed that secures a construction loan that:~~

~~— (a) (i) extends the maturity date of the construction loan;~~

~~— (ii) revises the interest rate of the construction loan;~~

~~— (iii) advances additional funds to the construction loan;~~

~~— (iv) increases a reserve amount of the construction loan;~~

~~— (v) adds or removes collateral of the construction loan;~~

~~— (vi) adds or removes borrowers of the construction loan; or~~

~~— (vii) is similar to a modification or amendment described in Subsections (10)(a)(i) through (vi) and changes the terms of the construction loan; and~~

~~— (b) is a modification or amendment to secure funds for the purpose of preconstruction services or construction work.~~

~~‡ (10)-(11) "Construction project" means an improvement that is constructed pursuant to an original contract.~~

~~(11)-(12) "Construction work":~~

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

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

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

~~(12)~~~~(13)~~ "Contestable notice" means a notice of preconstruction service under Section 38-1a-401, a preliminary notice under Section 38-1a-501, or a notice of completion under Section 38-1a-506.

~~(13)~~~~(14)~~ "Contesting person" means an owner, original contractor, subcontractor, or other interested person.

~~(14)~~~~(15)~~ "Designated agent" means the third party the division contracts with as provided in Section 38-1a-202 to create and maintain the registry.

~~(15)~~~~(16)~~ "Division" means the Division of Occupational and Professional Licensing created in Section 58-1-103.

~~(16)~~~~(17)~~ "Entry number" means the reference number that:

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

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

~~(17)~~~~(18)~~ "Final completion" means:

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

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

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

(d) the last date on which substantial work was performed under the original contract, if, because the original contract is terminated before completion of the construction work

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defined by the original contract, the local government entity having jurisdiction over the construction project does not issue a certificate of occupancy or perform a final inspection.

~~(18)~~~~(19)~~ "Final lien waiver" means a form that complies with Subsection 38-1a-802(4)(c).

~~(19)~~~~(20)~~ "First preliminary notice filing" means a preliminary notice that:

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

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

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

~~(20)~~~~(21)~~ "Government project-identifying information" has the same meaning as defined in Section 38-1b-102.

~~(21)~~~~(22)~~ "Improvement" means:

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

(b) a repair, modification, or alteration of a building, infrastructure, utility, or object referred to in Subsection ~~(21)~~~~(22)~~(a).

~~(22)~~~~(23)~~ "Interested person" means a person that may be affected by a construction project.

~~(23)~~~~(24)~~ "Notice of commencement" means a notice required under Section 38-1b-201 for a government project, as defined in Section 38-1b-102.

~~(24)~~~~(25)~~ "Original contract":

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

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

~~(25)~~~~(26)~~ "Original contractor" means a person, including an owner-builder, that contracts with an owner to provide preconstruction service or construction work.

~~(26)~~~~(27)~~ "Owner" means the person that owns the project property.

~~(27)~~~~(28)~~ "Owner-builder" means an owner, including an owner who is also an original contractor, who:

(a) contracts with one or more other persons for preconstruction service or construction

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work for an improvement on the owner's real property; and

(b) obtains a building permit for the improvement.

~~(28)~~~~(29)~~ "Preconstruction lien" means a lien under this chapter for a preconstruction service.

~~(29)~~~~(30)~~ "Preconstruction service":

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

(i) before construction of the improvement commences; and

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

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

~~(30)~~~~(31)~~ "Private project" means a construction project that is not a government project.

~~(32)~~~~31~~ "Progress waiver" means a form that complies with Subsection 38-1a-802(4)(b).

~~(31)~~ ~~(33)~~~~32~~ "Project property" means the real property on or for which preconstruction service or construction work is or will be provided.

~~(32)~~ ~~(34)~~~~33~~ "Registry" means the State Construction Registry under Part 2, State Construction Registry.

~~(33)~~ ~~(35)~~~~34~~ "Required notice" means:

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

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

(c) a notice of commencement;

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

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

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

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

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[(34)] (~~(36)~~35) "Subcontractor" means a person that contracts to provide preconstruction service or construction work to:

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

[(35)] (~~(37)~~36) "Substantial work" does not include repair work or warranty work.

[(36)] (~~(38)~~37) "Supervisory subcontractor" means a person that:

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

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

Section 2. Section ~~{38-1a-503}~~38-1a-506 is amended to read:

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

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

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

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

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

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

~~—— Section 3. Section 38-1a-506 is amended to read:~~

~~‡~~ **38-1a-506. Notice of intent to obtain final completion.**

(1) An owner, as defined in Section 14-2-1, of a nonresidential construction project

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that is registered with the registry, or an original contractor of a commercial nonresidential construction project that is registered with the registry under Section 38-1a-501, ~~shall~~ may file with the registry a notice of intent to obtain final completion as provided in this section if:

- (a) the completion of performance time under the original contract for construction work is greater than 120 days;
- (b) the total original construction contract price exceeds \$500,000; and
- (c) the original contractor or owner has not obtained a payment bond in accordance with Section 14-2-1.

(2) ~~The~~ If filed, the notice of intent described in Subsection (1) shall be filed at least 45 days before the day on which the owner or original contractor of a commercial nonresidential construction project files or could have filed a notice of completion under Section 38-1a-507.

(3) A person who provides construction work to an owner or original contractor who files a notice of intent in accordance with Subsection (1) shall file an amendment to the person's preliminary notice previously filed by the person as required in Section 38-1a-501:

- (a) that includes:
 - (i) a good faith estimate of the total amount remaining due to complete the contract, purchase order, or agreement relating to the person's approved construction work;
 - (ii) the identification of each original contractor or subcontractor with whom the person has a contract or contracts for providing construction work; and
 - (iii) a separate statement of all known amounts or categories of work in dispute; and
- (b) no later than 20 days after the day on which the owner or contractor files a notice of intent.

(4) (a) A person described in Subsection (3) may demand a statement of adequate assurance from the owner, contractor, or subcontractor with whom the person has privity of contract no later than 10 days after the day on which the person files a balance statement in accordance with Subsection (3) from an owner, contractor, or subcontractor who is in privity of contract with the person.

(b) A demand for adequate assurance as described in Subsection (4)(a) may include a request for a statement from the owner, contractor, or subcontractor that the owner, contractor, or subcontractor has sufficient funds dedicated and available to pay for all sums due to the

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person filing for the adequate assurances or that will become due in order to complete a construction project.

(c) A person who demands adequate assurance under Subsection (4)(a) shall deliver copies of the demand to the owner and contractor:

- (i) by hand delivery with a responsible party's acknowledgment of receipt;
- (ii) by certified mail with a return receipt; or
- (iii) as provided under Rule 4, Utah Rules of Civil Procedure.

(5) (a) A person described in Subsection (3) may bring a legal action against a party with whom the person is in privity of contract, including a request for injunctive or declaratory relief, to determine the adequacy of the funds of the owner, contractor, or subcontractor with whom the demanding person contracted if, after the person demands adequate assurance in accordance with the requirements of this section:

(i) the owner, contractor, or subcontractor fails to provide adequate assurance that the owner, contractor, or subcontractor has sufficient available funds, or access to financing or other sufficient available funds, to pay for the completion of the demanding person's approved work on the construction project; or

(ii) the parties disagree, in good faith, as to whether there are adequate funds, or access to financing or other sufficient available funds, to pay for the completion of the demanding person's approved work on the construction project.

(b) If a court finds that an owner, contractor, or subcontractor has failed to provide adequate assurance in accordance with Subsection (4)(a), the court may require the owner, contractor, or subcontractor to post adequate security with the court sufficient to assure timely payment of the remaining contract balance for the approved work of the person seeking adequate assurance, including:

- (i) cash;
- (ii) a bond;
- (iii) an irrevocable letter of credit;
- (iv) property;
- (v) financing; or
- (vi) another form of security approved by the court.

(6) (a) A person is subject to the civil penalty described in Subsection (6)(b), if the

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person files a balance statement described in Subsection (3) that misrepresents the amount due under the contract with the intent to:

- (i) charge an owner, contractor, or subcontractor more than the actual amount due; or
- (ii) procure any other unfair advantage or benefit on the person's behalf.

(b) The civil penalty described in Subsection (6)(a) is the greater of:

(i) twice the amount by which the balance statement filed under Subsection (3) exceeds the amount actually remaining due under the contract for completion of construction; and

(ii) the actual damages incurred by the owner, contractor, or subcontractor.

(7) A court shall award reasonable attorney fees to a prevailing party for an action brought under this section.

(8) Failure to comply with the requirements established in this section does not affect any other requirement or right under this chapter.

(9) A person who has not filed a preliminary notice as required under Section 38-1a-501 is not entitled to a right or a remedy provided in this section.

(10) This section does not create a cause of action against a person with whom the demanding party is not in privity of contract.

Section ~~4~~3. Section **38-1a-603** is amended to read:

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

(1) An owner or an owner's agent may file with the registry a notice of intent to finance.

(2) A notice of intent to finance under Subsection (1) shall state:

- (a) the anticipated date on which financing will occur;
- (b) the anticipated lender's name, address, and telephone number;
- (c) the name of the trustor on the trust deed securing the [~~anticipated loan~~] financing;
- (d) the tax parcel identification number of each parcel included in the project property;

and

(e) the name of the county in which the project property is located.

(3) If an owner chooses to file a notice of intent to finance, the owner or owner's agent shall file the notice of intent to finance no less than 14 days before the date on which the financing is anticipated to occur.

(4) If the financing does not occur within 30 days after the anticipated date specified in

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the notice of intent to finance~~[-];~~:

(a) the notice of intent to finance shall automatically have no effect and shall be removed from the registry~~[-]~~.

~~Section 5}~~~~[-]; and~~

(b) a final lien waiver or progress waiver filed in connection with the notice of intent to finance shall automatically have no effect.

Section 4. Section **38-1a-604** is amended to read:

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

(1) ~~[After a notice of intent to finance is filed under Section 38-1a-603 {or a notice of intent to finance construction is filed under Section 38-1a-605 } on a project property, each] A~~ subcontractor that has filed a preliminary notice pertaining to ~~[the] a~~ project property may file with the registry a final lien waiver~~[-]~~.

~~}~~~~[-];~~

(a) within five days after the day on which the project property's owner or owner's agent files:

(i) a notice of intent to finance under Section 38-1a-603; or

(ii) a notice of intent to finance construction or advance construction funds under Section 38-1a-605; or

(b) at any time before the project property's owner or owner's agent files a notice described in Subsection (1)(a).

(2) The final lien waiver described in Subsection (1)~~[-]~~.

~~(a) }~~ may ~~[be filed on the registry even if no notice of intent to finance was filed on the registry {[-]}] ~~[-] and~~~~

~~(b) may }~~ state that no amount is owed.

Section ~~{6}~~5. Section **38-1a-605** is enacted to read:

38-1a-605. Notice of intent to finance construction or advance construction funds.

(1) An owner or an owner's agent may file with the registry a notice of intent to finance construction or advance construction funds.

(2) A notice of intent to finance construction or advance construction funds under Subsection (1) shall state:

(a) the anticipated date on which construction financing or an advance under a

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construction loan will occur;

- (b) the anticipated lender's or lender's name, address, and telephone number;
- (c) the name of the trustor on the trust deed securing the construction financing;
- (d) the tax parcel identification number of each parcel included in the project property;

and

- (e) the name of the county in which the project property is located.

(3) If an owner or owner's agent files the notice described in Subsection (2) and financing or advancement of construction funds does not occur within 30 days after the date specified in the filed notice under Subsection (2)(a):

- (a) the notice shall automatically have no effect and shall be removed from the registry;

and

(b) a final lien waiver or progress waiver filed in connection with the notice shall automatically have no effect.

Section ~~{7}~~6. Section **38-1a-606** is enacted to read:

38-1a-606. Notice of progress waiver.

~~{(1) After a notice of intent to finance construction is filed under Section 38-1a-605 or a notice of intent to finance is filed under Section 38-1a-603 on a project property, a}~~A subcontractor that files a preliminary notice pertaining to ~~{the}~~a project property may file with the registry a progress waiver~~{,}~~:

(1) within five days after the day on which the project property's owner or owner's agent files:

- (a) a notice of intent to finance under Section 38-1a-603 on the project property; or

- (b) a notice of intent to finance construction or advance construction funds under

Section 38-1a-605 on the project property; and

(2) if the subcontractor:

- (a) is owed money under the original contract; or

- (b) anticipates performing additional services under the original contract.

~~{(2) A progress waiver described in Subsection (1) may state that no amount is currently owed.}~~Section 7. Section **38-1a-802** is amended to read:

38-1a-802. Waiver or limitation of a lien right -- Forms -- Scope.

- (1) As used in this section:

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(a) "Check" means a payment instrument on a depository institution including:

- (i) a check;
- (ii) a draft;
- (iii) an order; or
- (iv) other instrument.

(b) "Depository institution" is as defined in Section 7-1-103.

(c) "Receives payment" means, in the case of a restrictive endorsement, a payee has endorsed a check and the check is presented to and paid by the depository institution on which it the check is drawn.

(2) Notwithstanding Section 38-1a-105, a claimant's written consent that waives or limits the claimant's lien rights is enforceable only if the claimant:

(a) (i) executes a waiver and release that is signed by the claimant or the claimant's authorized agent; or

(ii) for a restrictive endorsement on a check, includes a restrictive endorsement on a check that is:

(A) signed by the claimant or the claimant's authorized agent; and

(B) in substantially the same form set forth in Subsection (4)(d); and

(b) receives payment of the amount identified in the waiver and release or check that includes the restrictive endorsement:

(i) including payment by a joint payee check; and

(ii) for a progress payment, only to the extent of the payment.

(3) (a) Notwithstanding the language of a waiver and release described in Subsection (2), Subsection (3)(b) applies if:

(i) the payment given in exchange for any waiver and release of lien is made by check; and

(ii) the check fails to clear the depository institution on which it is drawn for any reason.

(b) If the conditions of Subsection (3)(a) are met:

(i) the waiver and release described in Subsection (3)(a) is void; and

(ii) the following will not be affected by the claimant's execution of the waiver and release:

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- (A) any lien;
- (B) any lien right;
- (C) any bond right;
- (D) any contract right; or
- (E) any other right to recover payment afforded to the claimant in law or equity.

(4) (a) A waiver and release given by a claimant meets the requirements of this section if it is in substantially the form provided in this Subsection (4) for the circumstance provided in this Subsection (4).

(b) A waiver and release may be in substantially the following form if the claimant is required to execute a waiver and release in exchange for or to induce the payment of a progress billing and shall be in the following form if the waiver is a progress waiver filed under Section 38-1a-606:

"UTAH CONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT

Property Name: _____

Property Location: _____

Undersigned's Customer: _____

Invoice/Payment Application Number: _____

Payment Amount: _____

Payment Period: _____

To the extent provided below, this document becomes effective to release and the undersigned is considered to waive any notice of lien or right under Utah Code Ann., Title 38, Chapter 1a, Preconstruction and Construction Liens, or any bond right under Utah Code Ann., Title 14, Contractors' Bonds, or Section 63G-6a-1103 related to payment rights the undersigned has on the above described Property once:

- (1) the undersigned endorses a check in the above referenced Payment Amount payable to the undersigned; and
- (2) the check is paid by the depository institution on which it is drawn.

This waiver and release applies to a progress payment for the work, materials, equipment, or a combination of work, materials, and equipment furnished by the undersigned to the Property or to the Undersigned's Customer which are the subject of the Invoice or Payment Application, but only to the extent of the Payment Amount. This waiver and release

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does not apply to any retention withheld; any items, modifications, or changes pending approval; disputed items and claims; or items furnished or invoiced after the Payment Period.

The undersigned warrants that the undersigned either has already paid or will use the money the undersigned receives from this progress payment promptly to pay in full all the undersigned's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or combination of work, materials, and equipment that are the subject of this waiver and release.

Dated: _____

_____ (Company Name)

By: _____

Its: _____ "

(c) A waiver and release may be in substantially the following form if the lien claimant is required to execute a waiver and release in exchange for or to induce the payment of a final billing and shall be in the following form if the waiver is a final lien waiver filed under Section 38-1a-604:

"UTAH WAIVER AND RELEASE UPON FINAL PAYMENT

Property Name: _____

Property Location: _____

Undersigned's Customer: _____

Invoice/Payment Application Number: _____

Payment Amount: _____

To the extent provided below, this document becomes effective to release and the undersigned is considered to waive any notice of lien or right under Utah Code Ann., Title 38, Chapter 1a, Preconstruction and Construction Liens, or any bond right under Utah Code Ann., Title 14, Contractors' Bonds, or Section 63G-6a-1103 related to payment rights the undersigned has on the above described Property once:

(1) the undersigned endorses a check in the above referenced Payment Amount payable to the undersigned; and

(2) the check is paid by the depository institution on which it is drawn.

This waiver and release applies to the final payment for the work, materials, equipment, or combination of work, materials, and equipment furnished by the undersigned to the Property

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or to the Undersigned's Customer.

The undersigned warrants that the undersigned either has already paid or will use the money the undersigned receives from the final payment promptly to pay in full all the undersigned's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or combination of work, materials, and equipment that are the subject of this waiver and release.

Dated: _____

_____ (Company Name)

_____ By: _____

_____ Its: _____ "

(d) A restrictive endorsement placed on a check to effectuate a waiver and release described in this Subsection (4) meets the requirements of this section if it is in substantially the following form:

"This check is a progress/ final payment for property described on this check sufficient for identification. Endorsement of this check is an acknowledgment by the endorser that the waiver and release to which the payment applies is effective to the extent provided in Utah Code Ann. Subsection 38-1a-802(4)(b) or (c) respectively."

(e) (i) If using a restrictive endorsement under Subsection (4)(d), the person preparing the check shall indicate whether the check is for a progress payment or a final payment by circling the word "progress" if the check is for a progress payment, or the word "final" if the check is for a final payment.

(ii) If a restrictive endorsement does not indicate whether the check is for a progress payment or a final payment, it is considered to be for a progress payment.

(5) (a) If the conditions of Subsection (5)(b) are met, this section does not affect the enforcement of:

- (i) an accord and satisfaction regarding a bona fide dispute; or
- (ii) an agreement made in settlement of an action pending in any court or arbitration.

(b) Pursuant to Subsection (5)(a), this section does not affect enforcement of an accord and satisfaction or settlement described in Subsection (5)(a) if the accord and satisfaction or settlement:

- (i) is in a writing signed by the claimant; and

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(ii) specifically references the lien rights waived or impaired.

Section 8. Section **38-1a-805** is amended to read:

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

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

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

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

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

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

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

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

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

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

(c) contain:

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

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

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

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

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

(ii) a preliminary notice under Section 38-1a-501;

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(e) request that the lien claimant withdraw the lien claimant's preconstruction lien or construction lien within 10 business days after the day on which the written request to withdraw is sent; and

(f) state that if the lien claimant does not withdraw the preconstruction lien or the construction lien within 10 business days after the day on which the written request to withdraw is sent, the owner may petition a court to nullify the lien in an expedited proceeding under this section.

(3) A petition under Subsection (1) shall:

(a) state with specificity that:

(i) the lien claimant's preconstruction lien or the lien claimant's construction lien is invalid because the lien claimant did not file a notice of preconstruction service or a preliminary notice, as applicable;

(ii) the petitioner sent the lien claimant a written request to withdraw in accordance with Subsection (2); and

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

(b) be supported by a sworn affidavit of the petitioner; and

(c) be served on the lien claimant, in accordance with the Rules of Civil Procedure, within three business days after the day on which the petitioner files the petition in the district court.

(4) (a) If the court finds that a petition does not meet the requirements described in Subsection (3), the court may dismiss the petition without a hearing.

(b) If the court finds that a petition meets the requirements described in Subsection (3), the court shall schedule an expedited hearing to determine whether the preconstruction lien or the construction lien is invalid because [~~the lien claimant failed to file a notice of preconstruction service or a preliminary notice;~~] the notice of preconstruction service or preliminary notice is not filed within the time period described in Subsection 38-1a-401(1) or 38-1a-501(1), as applicable.

(5) (a) If the court grants a hearing, within three business days after the day on which the court schedules the hearing and at least seven business days before the day on which the hearing is scheduled, the petitioner shall serve on the lien claimant, in accordance with the

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Rules of Civil Procedure, a copy of the petition, notice of the hearing, and a copy of the court's order granting the expedited hearing.

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

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

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

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

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

(i) contains a legal description of the property;

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

(iii) releases the property from the lien; and

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

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

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

(i) dismiss the petition; and

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

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

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

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

Section 9. Effective date.

This bill takes effect on January 1, 2021.