

LIEN RESTRICTION AND RECOVERY FUND AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Carol Spackman Moss

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends the Residence Lien Restriction and Lien Recovery Fund Act.

Highlighted Provisions:

This bill:

▶ adds "condominium unit" to the definition of "residence" for purposes of the Residence Lien Restriction and Lien Recovery Fund Act and Title 38, Chapter 1a, Part 7, Enforcement of Preconstruction and Construction Liens; and

▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

38-11-102, as last amended by Laws of Utah 2020, Chapters 154 and 339

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

Section 1. Section **38-11-102** is amended to read:

38-11-102. Definitions.

(1) "Certificate of compliance" means an order issued by the director to the owner



28 finding that the owner is in compliance with the requirements of Subsections 38-11-204(4)(a)
29 and (4)(b) and is entitled to protection under Section 38-11-107.

30 (2) "Construction on an owner-occupied residence" means designing, engineering,
31 constructing, altering, remodeling, improving, repairing, or maintaining a new or existing
32 residence.

33 (3) "Department" means the Department of Commerce.

34 (4) "Director" means the director of the Division of Occupational and Professional
35 Licensing or the director's designee.

36 (5) "Division" means the Division of Occupational and Professional Licensing.

37 (6) "Duplex" means a single building having two separate living units.

38 (7) "Encumbered fund balance" means the aggregate amount of outstanding claims
39 against the fund. The remainder of the money in the fund is unencumbered funds.

40 (8) "Executive director" means the executive director of the Department of Commerce.

41 (9) "Factory built housing" means the same as that term is [~~as~~] defined in Section
42 15A-1-302.

43 (10) "Factory built housing retailer" means a person that sells factory built housing to
44 consumers.

45 (11) "Fund" means the Residence Lien Recovery Fund established under Section
46 38-11-201.

47 (12) "Laborer" means a person who provides services at the site of the construction on
48 an owner-occupied residence as an employee of an original contractor or other qualified
49 beneficiary performing qualified services on the residence.

50 (13) "Licensee" means any holder of a license issued under:

51 (a) Title 58, Chapter 3a, Architects Licensing Act;

52 (b) Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors
53 Licensing Act;

54 (c) Title 58, Chapter 53, Landscape Architects Licensing Act; [~~and~~] or

55 (d) Title 58, Chapter 55, Utah Construction Trades Licensing Act.

56 (14) "Nonpaying party" means the original contractor, subcontractor, or real estate
57 developer who has failed to pay the qualified beneficiary making a claim against the fund.

58 (15) "Original contractor" means a person who contracts with the owner of real

59 property or the owner's agent to provide services, labor, or material for the construction of an
60 owner-occupied residence.

61 (16) "Owner" means a person who:

62 (a) contracts with a person who is licensed as a contractor or is exempt from licensure
63 under Title 58, Chapter 55, Utah Construction Trades Licensing Act, for the construction on an
64 owner-occupied residence upon real property that the person:

65 (i) owns; or

66 (ii) purchases after the person enters into a contract described in this Subsection (16)(a)
67 and before completion of the owner-occupied residence;

68 (b) contracts with a real estate developer to buy a residence upon completion of the
69 construction on the owner-occupied residence; or

70 (c) purchases a residence from a real estate developer after completion of the
71 construction on the owner-occupied residence.

72 (17) "Owner-occupied residence" means a residence that is, or after completion of the
73 construction on the residence will be, occupied by the owner or the owner's tenant or lessee as a
74 primary or secondary residence within 180 days after the day on which the construction on the
75 residence is complete.

76 (18) "Qualified beneficiary" means a person who:

77 (a) provides qualified services;

78 (b) pays necessary fees required under this chapter; and

79 (c) registers with the division:

80 (i) as a licensed contractor under Subsection 38-11-301(1) or (2), if that person seeks
81 recovery from the fund as a licensed contractor; or

82 (ii) as a person providing qualified services other than as a licensed contractor under
83 Subsection 38-11-301(3) if the person seeks recovery from the fund in a capacity other than as
84 a licensed contractor.

85 (19) (a) "Qualified services" means the following performed in construction on an
86 owner-occupied residence:

87 (i) contractor services provided by a contractor licensed or exempt from licensure
88 under Title 58, Chapter 55, Utah Construction Trades Licensing Act;

89 (ii) architectural services provided by an architect licensed under Title 58, Chapter 3a,

90 Architects Licensing Act;

91 (iii) engineering and land surveying services provided by a professional engineer or
92 land surveyor licensed or exempt from licensure under Title 58, Chapter 22, Professional
93 Engineers and Professional Land Surveyors Licensing Act;

94 (iv) landscape architectural services by a landscape architect licensed or exempt from
95 licensure under Title 58, Chapter 53, Landscape Architects Licensing Act;

96 (v) design and specification services of mechanical or other systems;

97 (vi) other services related to the design, drawing, surveying, specification, cost
98 estimation, or other like professional services;

99 (vii) providing materials, supplies, components, or similar products;

100 (viii) renting equipment or materials;

101 (ix) labor at the site of the construction on the owner-occupied residence; and

102 (x) site preparation, set up, and installation of factory built housing.

103 (b) "Qualified services" does not include the construction of factory built housing in
104 the factory.

105 (20) "Real estate developer" means a person having an ownership interest in real
106 property who:

107 (a) contracts with a person who is licensed as a contractor or is exempt from licensure
108 under Title 58, Chapter 55, Utah Construction Trades Licensing Act, for the construction of a
109 residence that is offered for sale to the public; or

110 (b) is a licensed contractor under Title 58, Chapter 55, Utah Construction Trades
111 Licensing Act, who engages in the construction of a residence that is offered for sale to the
112 public.

113 (21) (a) "Residence" means an improvement to real property used or occupied, to be
114 used or occupied as, or in conjunction with:

115 (i) a primary or secondary detached single-family dwelling; ~~or~~

116 (ii) a multifamily dwelling up to and including duplexes~~[-];~~ or

117 (iii) a condominium unit, as defined in Section [57-8-3](#).

118 (b) "Residence" includes factory built housing.

119 (22) "Subsequent owner" means a person who purchases a residence from an owner
120 within 180 days after the day on which the construction on the residence is completed.