

**TITLE 38, CHAPTER 1a
PRECONSTRUCTION AND CONSTRUCTION LIENS**

Part 1 - General Provisions

38-1a-101. Title.

This chapter is known as "Preconstruction and Construction Liens."

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 division 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 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 lien" means a lien under this chapter for construction work.
- (8) "Construction loan" does not include a consumer loan secured by the equity in the consumer's home.
- (9) "Construction project" means construction work provided under an original contract.
- (10) "Construction work":
 - (a) means labor, service, material, or equipment provided for the purpose and during 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.
- (11) "Contestable notice" means a notice of retention under Section 38-1a-401, a preliminary notice under Section 38-1a-501, or a notice of completion under Section 38-1a-506.
- (12) "Contesting person" means an owner, original contractor, subcontractor, or other interested person.
- (13) "Designated agent" means the third party the division contracts with as provided in Section 38-1a-202 to create and maintain the registry.

- (14) "Division" means the Division of Occupational and Professional Licensing created in Section 58-1-103.
- (15) "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.
- (16) "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 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.
- (17) "First preliminary notice filing" means the filing of a preliminary notice that is:
- (a) the earliest preliminary notice filed on a construction project;
 - (b) filed on or after August 1, 2011;
 - (c) not filed on a project that, according to the law in effect before August 1, 2011, commenced before August 1, 2011;
 - (d) not canceled under Section 38-1a-307; and
 - (e) not withdrawn under Subsection 38-1a-501(5).
- (18) "Government project-identifying information" has the same meaning as defined in Section 38-1b-102.
- (19) "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 (19)(a).
- (20) "Interested person" means a person who may be affected by a construction project.
- (21) "Notice of commencement" means a notice required under Section 38-1b-201 for a government project, as defined in Section 38-1b-102.
- (22) "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.

- (23) "Original contractor" means a person who contracts with an owner, other than an owner-builder, to provide preconstruction service or construction work.
- (24) "Owner" means the person who owns the project property.
- (25) "Owner-builder" means an owner who:
- (a) contracts with one or more other persons for preconstruction service or construction work for an improvement on the owner's real property; and
 - (b) obtains a building permit for the improvement.
- (26) "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.
- (27) "Preconstruction lien" means a lien under this chapter for a preconstruction service.
- (28) "Prelender claimant" means a person whose construction lien is made subject to a construction lender's mortgage or trust deed, as provided in Section 38-1a-503, by the person's acceptance of payment in full and the person's withdrawal of the person's preliminary notice.
- (29) "Private project" means a construction project that is not a government project.
- (30) "Project property" means the real property on or for which preconstruction service or construction work is or will be provided.
- (31) "Refiled preliminary notice" means a preliminary notice that a prelender claimant files with the registry on a construction project after withdrawing a preliminary notice that the claimant previously filed for the same project.
- (32) "Registry" means the State Construction Registry under Part 2, State Construction Registry.
- (33) "Required notice" means:
- (a) a notice of retention 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.
- (34) "Subcontractor" means a person who 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) "Substantial work" does not include repair work or warranty work.
- (36) "Supervisory subcontractor" means a person who:

(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.

38-1a-103. Government projects not subject to chapter - Exception.

Except as provided in Section 38-1a-102, Part 2, State Construction Registry, and Chapter 1b, Government Construction Projects, this chapter does not apply to a government project, as defined in Section 38-1b-102.

38-1a-104. Owner-builder original contract - Owner-builder as original contractor.

For purposes of this chapter:

- (1) an original contract is considered to exist between an owner-builder as owner and the owner-builder as original contractor; and
- (2) in addition to being an owner, an owner-builder is considered to be an original contractor.

38-1a-105. No waiver of rights -- Exception.

- (1) (a) A right or privilege under this chapter may not be waived or limited by contract.
(b) A provision of a contract purporting to waive or limit a right or privilege under this chapter is void.
- (2) Notwithstanding Subsection (1), a claimant may waive or limit, in whole or in part, a lien right under this chapter in consideration of payment as provided in Section **38-1a-802**.

Part 2 - State Construction Registry

38-1a-201. Establishment of State Construction Registry - Filing index.

- (1) Subject to receiving adequate funding through a legislative appropriation and contracting with an approved third party vendor as provided in Section 38-1a-202, the division shall establish and maintain the State Construction Registry to:
 - (a) (i) assist in protecting public health, safety, and welfare; and
(ii) promote a fair working environment;
 - (b) be overseen by the division with the assistance of the designated agent;
 - (c) provide a central repository for all required notices;
 - (d) make accessible, by way of an Internet website:
 - (i) the filing and review of required notices; and
 - (ii) the transmitting of building permit information under Subsection **38-1a-205**(1) and the reviewing of that information;
 - (e) accommodate:
 - (i) electronic filing of required notices and electronic transmitting of building permit information described in Subsection (1)(d)(ii); and
 - (ii) the filing of the required notices by alternate means, including United States mail, telefax, or any other method as the division provides by rule;

- (f) (i) provide electronic notification for up to three email addresses for each interested person who requests to receive notification under Section 38-1a-204 from the designated agent; and
- (ii) provide alternate means of providing notification to a person who makes a filing by alternate means, including United States mail, telefax, or any other method as the division prescribes by rule; and
- (g) provide hard-copy printing of electronic receipts for an individual filing evidencing the date and time of the individual filing and the content of the individual filing
- (2) The designated agent shall index filings in the registry by:
 - (a) the name of the owner;
 - (b) the name of the original contractor;
 - (c) subdivision, development, or other project name, if any;
 - (d) lot or parcel number;
 - (e) the address of the project property;
 - (f) entry number;
 - (g) the name of the county in which the project property is located;
 - (h) for construction projects that are not government projects:
 - (i) the tax parcel identification number of each parcel included in the project property; and
 - (ii) the building permit number;
 - (i) for government projects, the government project-identifying information; and
 - (j) any other identifier that the division considers reasonably appropriate in collaboration with the designated agent.

38-1a-202. Contract to establish and maintain registry - Designated agent - Rules - Duties of designated agent - Limit of liability.

- (1) (a) The division shall contract in accordance with Title 63G, Chapter 6, Utah Procurement Code, with a third party to establish and maintain the registry for the purposes established under this part.
- (b) The designated agent is not an agency, instrumentality, or political subdivision of the state.
- (2) (a) The third party under contract under this section is the division's designated agent, and shall develop and maintain a registry from the information provided by:
 - (i) local government entities issuing building permits;
 - (ii) original contractors;
 - (iii) subcontractors;
 - (iv) construction lenders; and
 - (v) other interested persons.
- (b) The registry shall accommodate filings by third parties on behalf of clients.
- (3)(a) The division shall make rules and develop procedures for:
 - (i) the division to oversee and enforce this chapter and Chapter 1b, Government Construction Projects;
 - (ii) the designated agent to administer this chapter and Chapter 1b, Government Construction Projects; and

(iii) the form of submission of a filing by an alternate means, which may include procedures for rejecting an illegible or incomplete filing.

(b) If this chapter directs or authorizes the division to make a rule or adopt a procedure to implement the provisions of this chapter or Chapter 1b, Government Construction Projects, the division shall make the rule or adopt the procedure in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(4) (a) The designated agent shall archive computer data files at least semiannually for auditing purposes.

(b) The division shall make rules to allow the designated agent to periodically archive projects from the registry.

(c) The designated agent may not archive a project earlier than:

(i) one year after the day on which a notice of completion is filed for a construction project;

(ii) if no notice of completion is filed, two years after the last filing activity for a project; or

(iii) one year after the day on which a contestable notice is cancelled under Section 38-1a-307.

(d) The division may audit the designated agent's administration of the registry as often as the division considers necessary.

(5) The designated agent shall carry errors and omissions insurance in the amounts that the division establishes by rule.

(6) (a) The designated agent shall make reasonable efforts to assure the accurate entry into the registry of information provided by alternate means.

(b) The designated agent shall meet or exceed standards established by the division for the accuracy of data entry for information on documents filed by alternate means.

(7) The designated agent is not liable for the correctness of the information contained in a document filed by alternate means which the registered agent enters into the database.

38-1a-203. Filings with the registry.

(1) The division and the designated agent need not determine the timeliness of any notice before filing the notice in the registry.

(2) A notice filed by a third party on behalf of another is considered to be filed by the person on whose behalf the notice is filed.

(3) A person filing a notice of commencement, preliminary notice, or notice of completion is responsible for verifying the accuracy of information entered into the registry, whether the person files electronically, by alternate means, or through a third party.

(4) Each notice or other document submitted for inclusion in the registry and for which this chapter does not specify information required to be included in the notice or other document shall contain:

(a) the name of the county in which the project property to which the notice or other document applies is located;

(b) for a private project:

(i) the tax parcel identification number for each parcel included on the project property; or

(ii) the number of the building permit for the construction project on the project property; and

(c) for a government project, the government project-identifying information.

38-1a-204. Notification of filings with the registry.

- (1) The designated agent shall provide notification of the filing of a required notice relating to an anticipated improvement or construction project to:
- (a) the person filing the required notice, unless the person indicates to the division or designated agent that the person does not want to receive notification; and
 - (b) each person who requests notification of the filing of a required notice for that anticipated improvement or construction project.
- (2)(a) A person may request the designated agent to provide the person notification of the filing of a required notice for any anticipated improvement or construction project.
- (b) A person requesting notification under Subsection (2)(a) is responsible:
- (i) to provide an email address, mailing address, or telefax number to which notification may be sent; and
 - (ii) for the accuracy of the email address, mailing address, or telefax number.
- (c) A person is considered to have requested notification under Subsection (2)(a) if the person files, with respect to the same anticipated improvement or construction project that relates to the required notice that is the subject of the notification;
- (i) a notice of retention;
 - (ii) a notice of commencement;
 - (iii) a preliminary notice;
 - (iv) a notice of construction loan; or
 - (v) a notice of completion.
- (3) The designated agent fulfills the notification requirement under Subsection (1) by sending the notification to the email address, mailing address, or telefax number that the person provides to the designated agent, whether or not the person actually receives the notification.

38-1a-205. Building permit -- Transmission to registry -- Posting at project site.

- (1) (a) A county, city, or town issuing a building permit for a private project:
- (i) shall, no later than 15 days after issuing the permit, input the building permit application and transmit the building permit information to the registry electronically by way of the Internet or computer modem or by any other means; and
 - (ii) may collect a building permit fee related to the issuance of the building permit, but may not spend or otherwise use the building permit fee until the county, city, or town complies with Subsection (1)(a)(i) with respect to the building permit for which the fee is charged.
- (b) The person to whom a building permit, filed under Subsection (1)(a), is issued is responsible for the accuracy of the information in the building permit.
- (c) For the purposes of classifying a record under Title 63G, Chapter 2, Government Records Access and Management Act, the division shall classify in the registry building permit information transmitted from a county, city, or town to the registry notwithstanding the classification of the building permit information by the county, city, or town.
- (2) At the time a building permit is obtained, each original contractor for construction service shall conspicuously post at the project site a copy of the building permit obtained for the project

38-1a-206. Registry fees.

(1) In accordance with the process required by Section 63J-1-504, the division shall establish the fees for:

- (a) required notices, whether filed electronically or by alternate means;
 - (b) a request for notification under Section 38-1a-204;
 - (c) providing notification of a required notice, whether electronically or by alternate means;
 - (d) a duplicate receipt of a filing; and
 - (e) account setup for a person who wishes to be billed periodically for filings with the registry.
- (2) The fees allowed under Subsection (1) may not in the aggregate exceed the amount reasonably necessary to create and maintain the registry.
- (3) The fees established by the division may vary by method of filing if one form or means of filing is more costly to process than another form or means of filing.
- (4) The division may provide by contract that the designated agent may retain all fees collected by the designated agent, except that the designated agency shall remit to the division the cost of the division's oversight.
- (5)(a) A person who is delinquent on the payment of a fee established under this section may not file a notice with the registry.
- (b) The division shall make a determination whether a person is delinquent on the payment of a fee for filing established under this section in accordance with Title 63G, Chapter 4, Administrative Procedures Act.
- (c) Any order that the division issues in a proceeding described in Subsection (5)(b) may prescribe the method of that person's payment of fees for filing notices with the registry after issuance of the order.

38-1a-207. Registry classification.

- (1) The registry is classified as a public record under Title 63G, Chapter 2, Government Records Access and Management Act, unless the division classifies it otherwise.
- (2) A request for information submitted to the designated agent is not subject to Title 63G, Chapter 2, Government Records Access and Management Act.
- (3) A person desiring information contained in a public record in the registry shall request the information from the designated agent.
- (4) The designated agent may charge a commercially reasonable fee allowed by the designated agent's contract with the division for providing information under Subsection (3).
- (5) Notwithstanding Title 63G, Chapter 2, Government Records Access and Management Act, if information is available in a public record contained in the registry, a person may not request the information from the division.
- (6)(a) A person may request information that is not a public record contained in the registry from the division in accordance with Title 63G, Chapter 2, Government Records Access and Management Act.
- (b) The division shall inform the designated agent of how to direct an inquiry made to the designated agent for information that is not a public record contained in the registry.

38-1a-208. Actions that are not adjudicative proceedings.

None of the following is an adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act:

- (1) the filing of a notice permitted or required by this chapter;
- (2) the rejection of a filing permitted or required by this chapter; or
- (3) other action by the designated agent in connection with the filing of any notice permitted or required by this chapter.

38-1a-209. Abuse of registry -- Penalty.

- (1) As used in this section, "third party" means an owner, an original contractor, a subcontractor, or any interested party.
- (2) A person abuses the registry if that person files a notice in the registry:
 - (a) without a good faith basis for doing so;
 - (b) with the intent to exact more than is due from the owner or any other interested party; or
 - (c) to procure an unjustified advantage or benefit.
- (3) A person who abuses the registry as described in Subsection (2) is liable to a third party who is affected by the notice for twice the amount of the actual damages incurred by the third party or \$2,000, whichever is greater.

38-1a-210. Limitation of liability.

- (1) The state and the state's agencies, instrumentalities, political subdivisions, and an employee of a governmental entity are immune from suit for any injury resulting from the registry.
- (2) The designated agent and its principals, agents, and employees are not liable to any person for the accuracy, coherence, suitability, completeness, or legal effectiveness of information filed or searched in the registry if the designated agent:
 - (a) develops and maintains the registry in compliance with reliability, availability, and security standards established by the division; and
 - (b) meets data entry accuracy standards established by the division under Subsection 38-1a-202(6)(b).
- (3) The designated agent and its principals, agents, and employees are not liable for their inability to perform obligations under this chapter to the extent performance of those obligations is prevented by:
 - (a) a storm, earthquake, or other act of God;
 - (b) a fire;
 - (c) an accident;
 - (d) governmental interference; or
 - (e) any other event or cause beyond the designated agent's control.

38-1a-211. Limit on notice effect of document filing in the registry.

The filing of a document in the registry is not intended to give notice to all persons of the content of the document within the meaning of Section 57-3-102 and does not constitute constructive notice of matters relating to real property to purchasers for value and without knowledge.

Part 3 - Provisions Applicable to Preconstruction Liens and Construction Liens

38-1a-301. Those entitled to lien -- What may be attached.

- (1) Except as provided in Section 38-11-107, a person who provides preconstruction service or construction work on or for a project property has a lien on the project property for the reasonable value of the preconstruction service or construction work, respectively, as provided in this chapter.
- (2) A person may claim a preconstruction lien and a separate construction lien on the same project property.
- (3) (a) A construction lien may include an amount claimed for a preconstruction service.
(b) A preconstruction lien may not include an amount claimed for construction service.
- (4) A preconstruction or construction lien attaches only to the interest that the owner has in the project property that is the subject of the lien.

38-1a-302. Land covered by lien -- Multiple lots occupied by improvement -- What a lien attaches to.

- (1) A preconstruction or construction lien extends to and covers as much of the land on which the improvement is made as necessary for the convenient use and occupation of the land.
- (2) If an improvement occupies two or more lots or other subdivisions of land, the lots or subdivisions are considered as one for the purposes of this chapter.
- (3) A preconstruction or construction lien attaches to all franchises, privileges, appurtenances, machinery, and fixtures pertaining to or used in connection with the improvement.

38-1a-303. Limits on attachment, garnishment, and execution levy - Subcontractor lien not affected by payments, debts, offsets, and counterclaims involving other parties.

- (1) An assignment, attachment, or garnishment of or encumbrance or execution levy on money that an owner owes to an original contractor is not valid as against a subcontractor's preconstruction or construction lien.
- (2) An assignment, attachment, or garnishment of or encumbrance or execution levy on money that an original contractor owes to a subcontractor is not valid as against a lien of a laborer employed by the day or piece.
- (3) The preconstruction or construction lien of a subcontractor may not be diminished, impaired, or otherwise affected by:
 - (a) a payment, whether in cash or in-kind, to the original contractor or another subcontractor;
 - (b) a debt owed by the original contractor to the owner;
 - (c) a debt owed by another subcontractor to the original contractor or to a third subcontractor; or
 - (d) an offset or counterclaim in favor of the owner against the original contractor, or in favor of the original contractor against another subcontractor, or in favor of another subcontractor against a third subcontractor.

38-1a-304. Liens on multiple properties in one claim.

- (1) A claimant may claim a preconstruction or construction lien against two or more

improvements owned by the same person .

(2) If a claimant claims a preconstruction or construction lien against two or more improvements owned by the same person, the claimant shall designate the amount claimed to be due on each of the improvements.

38-1a-305. Payments applied first to preconstruction lien.

Unless an agreement waiving or limiting a right under a preconstruction or construction lien expressly provides that a payment is required to be applied to a specific lien, mortgage, or encumbrance, a payment to a person claiming both a preconstruction lien and a construction lien shall be applied first to the preconstruction lien until paid in full.

38-1a-306. Substantial compliance.

(1) Substantial compliance with the requirements of this chapter is sufficient to claim, as applicable, a preconstruction lien or a construction lien.

(2) Subsection (1) may not be construed to excuse compliance with or affect the requirement to file:

(a) a notice of retention as provided in Section 38-1a-401 in order to claim a preconstruction lien; or

(b) a preliminary notice as provided in Section 38-1a-501 in order to claim a construction lien.

38-1a-307. Contesting certain notices.

(1) A contesting person who believes that a contestable notice lacks proper basis and is therefore invalid may request from the person who filed the notice evidence establishing the validity of the notice.

(2) Within 10 days after receiving a request under Subsection (1), the person who filed the contestable notice shall provide the requesting person evidence that the notice is valid.

(3) If the person who filed the notice does not provide timely evidence of the validity of the contestable notice, the person who filed the notice shall immediately cancel the notice from the registry in the manner prescribed by the division by rule.

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

(1) A person is guilty of a class B misdemeanor if:

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

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

(i) to cloud the title;

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

(iii) to procure any unjustified advantage or benefit.

(2)(a) As used in this Subsection (2), "third party" means an owner, original contractor, or subcontractor.

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

Part 4 - Preconstruction Lien Provisions

38-1a-401. Notice of retention.

(1) (a) A person who desires to claim a preconstruction lien on real property shall file a notice of retention with the registry no later than 20 days after the person commences providing preconstruction service for the anticipated improvement on the real property.

(b) A person who fails to file a timely notice of retention as required in this section may not claim a valid preconstruction lien.

(c) A timely filed notice of retention is effective as to each preconstruction service that the person filing the notice provides for the anticipated improvement under a single original contract, including preconstruction service that the person provides to more than one supervising subcontractor under that original contract.

(d) A notice of retention filed for preconstruction service performed or to be provided under an original contract for an anticipated improvement on real property is not valid for preconstruction service provided or to be provided under a separate original contract for an anticipated improvement on the same real property.

(e) A notice of retention that is timely filed with the database with respect to an anticipated improvement is considered to have been filed at the same time as the earliest timely filed notice of retention for that anticipated improvement.

(f) A notice of retention shall include:

(i) the name, address, telephone number, and email address of the person providing the preconstruction service;

(ii) the name, address, telephone number, and email address of the person who employed the person providing the preconstruction service;

(iii) a general description of the preconstruction service the person provided or will provide;

(iv) the name of the record or reputed owner;

(v) the name of the county in which the property on which the anticipated improvement will occur is located;

(vi) (A) the tax parcel identification number of each parcel included in that property; or

(B) the entry number of a previously filed notice of retention that includes the tax parcel identification number of each parcel included in that property; and

(vii) a statement that the person filing the notice intends to claim a preconstruction lien if the person is not paid for the preconstruction service the person provides

(g) (i) A claimant who is an original contractor or supervisory subcontractor may include in a notice of retention the name, address, and telephone number of each subcontractor who is under contract with the claimant to provide preconstruction service that the claimant is under contract

to provide.

(ii) The inclusion of a subcontractor in a notice of retention filed by another claimant is not a substitute for the subcontractor's own submission of a notice of retention.

(2) The burden is on the person filing the notice of retention to prove that the person has substantially complied with the requirements of this section.

(3) (a) Subject to Subsection (3)(b), a person required by this section to file a notice of retention is required to give only one notice for each anticipated improvement.

(b) A person who provides preconstruction service under more than one original contract for the same anticipated improvement and desires to claim a preconstruction lien for preconstruction service provided under each original contract shall file a separate notice of retention for preconstruction service provided under each original contract.

(4) A person filing a notice of retention by alternate means is responsible for verifying and changing any incorrect information in the notice of retention before the expiration of the period during which the notice is required to be filed.

38-1a-402. Notice of preconstruction lien - Requirements.

(1) Within 90 days after completing a preconstruction service for which a claimant is not paid in full, a claimant who desires to claim a preconstruction lien shall submit for recording with each applicable county recorder a notice of preconstruction lien.

(2) A claimant who fails to submit a notice of preconstruction lien as provided in Subsection (1) may not claim a preconstruction lien.

(3)(a) A notice of preconstruction service lien shall include:

(i) the claimant's name, mailing address, and telephone number;

(ii) a statement that the claimant claims a preconstruction service lien;

(iii) the date the claimant's notice of retention was filed;

(iv) the name of the person who employed the claimant;

(v) a general description of the preconstruction service provided by the claimant;

(vi) the date that the claimant last provided preconstruction service;

(vii) the name, if known, of the reputed owner or, if not known, the name of the record owner of the property;

(viii) a description of the project property sufficient for identification;

(ix) the principal amount, excluding interest, costs, and attorney fees, claimed by the claimant;

(x) the claimant's signature or the signature of the claimant's authorized agent;

(xi) an acknowledgment or certificate as required under Title 57, Chapter 3, Recording of Documents; and

(xii) if the lien is against an owner-occupied residence, as defined in Section 38-11-102, a statement meeting the requirements that the division has established by rule, describing the steps the owner of the owner-occupied residence may take to require a claimant to remove the lien as provided in Section 38-11-107.

(b)(i) A claimant who is an original contractor or a supervising subcontractor may include in a notice of preconstruction lien the name, address, and telephone number of each subcontractor who is under contract with the claimant to provide preconstruction service that the claimant is under contract to provide.

(ii) The inclusion of a subcontractor in a notice of preconstruction lien filed by another claimant is not a substitute for the subcontractor's own submission of a notice of preconstruction lien.

(4)(a) A county recorder:

(i) shall record each notice of preconstruction lien in an index maintained for that purpose; and

(ii) need not verify that a valid notice of retention is filed with respect to the claimed preconstruction lien.

(b) All persons are considered to have notice of a notice of preconstruction lien from the time it is recorded.

(5)(a) Within 30 days after a claimant's notice of preconstruction lien is recorded, the claimant shall send by certified mail a copy of the notice to the reputed or record owner.

(b) If the record owner's address is not readily available to the claimant, the claimant may mail a copy of the notice to the owner's last-known address as it appears on the last completed assessment roll of the county in which the property is located.

(c) A claimant's failure to mail a copy of the notice as required in this Subsection (5) precludes the claimant from being awarded costs and attorney fees against the reputed or record owner in an action to enforce the lien.

(6) Nothing in this section may be construed to prohibit a claimant from recording a notice of preconstruction lien before completing the preconstruction service the claimant contracted to provide.

38-1a-403. Effective time and priority of preconstruction lien - Subordination to bona fide loan.

(1) Except as otherwise provided in this chapter, a preconstruction lien:

(a) relates back to and takes effect as of the time of filing of the earliest timely filed notice of retention under Section 38-1a-401 for the anticipated improvement for which the preconstruction lien is claimed; and

(b) has priority over:

(i) any lien, mortgage, or other encumbrance that attaches after the earliest timely filed notice of retention is filed; and

(ii) any lien, mortgage, or other encumbrance of which the claimant had no notice and that was unrecorded at the time the earliest timely filed notice of retention is filed.

(2) A preconstruction lien is subordinate to an interest securing a bona fide loan if and to the extent that the lien covers preconstruction service provided after the interest securing a bona fide loan is recorded.

38-1a-404. When preconstruction service considered complete.

Preconstruction service is considered complete for any project, project phase, or bid package as of the date that construction work for that project, project phase, or bid package, respectively commences.

Part 5 - Construction Lien Provisions

38-1a-501. Preliminary notice.

(1) (a) (i) A person who desires to claim a construction lien on real property shall file a preliminary notice with the registry no later than 20 days after the person commences providing construction work on the real property.

(ii) A pre-lender claimant who provides construction work to a construction project after the recording of a construction lender's mortgage or trust deed on the project property and who desires to claim a construction lien for that construction work shall file a preliminary notice with the registry no later than 20 days after the recording of the mortgage or trust deed.

(b) Subject to Subsection (1)(c), a preliminary notice is effective as to all construction work that the person filing the notice provides to the construction project under a single original contract, including construction work that the person provides to more than one supervisory subcontractor under that original contract.

(c)(i) A person who desires to claim a construction lien on real property but fails to file a timely preliminary notice within the period specified in Subsection (1)(a) may, subject to Subsection (1)(d), file a preliminary notice with the registry after the period specified in Subsection (1)(a).

(ii) A person who files a preliminary notice under Subsection (1)(c)(i) may not claim a construction lien for construction work the person provides to the construction project before the date that is five days after the preliminary notice is filed.

(d) Notwithstanding Subsections (1)(a) and (c), a preliminary notice has no effect if it is filed more than 10 days after the filing of a notice of completion under Section 38-1a-507 for the construction project for which the preliminary notice is filed.

(e) A person who fails to file a preliminary notice as required in this section may not claim a construction lien.

(f) (i) Except as provided in Subsection (1)(f)(ii), a preliminary notice that is filed with the registry as provided in this section is considered to be filed at the time of the first preliminary notice filing.

(ii) A timely filed preliminary notice that is a refiled preliminary notice is considered to be filed immediately after the recording of a mortgage or trust deed of the construction lender that paid the pre-lender claimant in full for construction work the claimant provided before the recording of the mortgage or trust deed.

(g) If a preliminary notice filed with the registry includes the tax parcel identification number of a parcel not previously associated in the registry with a construction project, the designated agent shall promptly notify the person who filed the preliminary notice that:

(i) the preliminary notice includes a tax parcel identification number of a parcel not previously associated in the registry with a construction project; and

(ii) the likely explanation is that: (A) the preliminary notice is the first filing for the project; or (B) the tax parcel identification number is incorrectly stated in the preliminary notice.

(h) A preliminary notice shall include:

(i) the name, address, telephone number, and email address of the person providing the construction work for which the preliminary notice is filed;

- (ii) the name and address of the person who contracted with the claimant for the construction work;
 - (iii) the name of the record or reputed owner;
 - (iv) the name of the original contractor for construction work under which the claimant is providing or will provide construction work;
 - (v) the address of the project property or a description of the location of the project;
 - (vi) the name of the county in which the project property is located; and
 - (vii) (A) the tax parcel identification number of each parcel included in the project property;
 - (B) the entry number of a previously filed notice of construction loan under Section **38-1a-601** on the same project;
 - (C) the entry number of a previously filed preliminary notice on the same project that includes the tax parcel identification number of each parcel included in the project property; or
 - (D) the entry number of the building permit issued for the project.
- (i) A preliminary notice may include:
- (i) the subdivision, development, or other project name applicable to the construction project for which the preliminary notice is filed; and
 - (ii) the lot or parcel number of each lot or parcel that is included in the project property.
- (2) (a) The burden is upon the person filing the preliminary notice to prove that the person has substantially complied with the requirements of this section.
- (b) Substantial compliance with the requirements of Subsections (1)(h)(iii) through (vii) may be established by a person's reasonable reliance on information in the registry provided by a previously filed:
- (i) notice of construction loan under Section **38-1a-601**;
 - (ii) preliminary notice; or
 - (iii) building permit.
- (3) (a) Subject to Subsection (3)(b), a person required by this section to give preliminary notice is required to give only one notice for each construction project.
- (b) If the construction work is provided pursuant to contracts under more than one original contract for construction work, the notice requirements shall be met with respect to the construction work provided under each original contract.
- (4) A person filing a preliminary notice by alternate means is responsible for verifying and changing any incorrect information in the preliminary notice before the expiration of the time period during which the notice is required to be filed.
- (5) (a) A person who files a preliminary notice before the recording of a construction lender's mortgage or trust deed may withdraw the preliminary notice by filing with the registry a notice of withdrawal as provided in Subsection (5)(b).
- (b) A notice of withdrawal shall include:
- (i) the information required for a preliminary notice under Subsection (1)(g); and
 - (ii) the entry number of the preliminary notice being withdrawn.
- (6) A person who files a preliminary notice that contains inaccurate or incomplete information may not be held liable for damages suffered by any other person who relies on the inaccurate or incomplete information in filing a preliminary notice.

38-1a-502. Notice of construction lien -- Contents -- Recording -- Service on owner.

(1) (a) A person who desires to claim a construction lien shall submit for recording in the office of each applicable county recorder a notice of construction lien no later than, except as provided in Subsection (1)(b):

(i) 180 days after the date on which final completion of the original contract occurs, if no notice of completion is filed under Section **38-1a-507**; or

(ii) 90 days after the date on which a notice of completion is filed under Section **38-1a-507** but not later than 180 days after the date on which final completion of the original contract occurs.

(b) A subcontractor who provides substantial work after a certificate of occupancy is issued or a required final inspection is completed and desires to claim a construction lien shall submit for recording in the office of each applicable county recorder a notice of construction lien no later than 180 days after final completion of that subcontractor's work.

(2) A notice of construction lien shall contain:

(a) the name of the reputed owner if known or, if not known, the name of the record owner;

(b) the name of the person by whom the claimant was employed or to whom the claimant provided construction work;

(c) the time when the claimant first and last provided construction work;

(d) a description of the project property, sufficient for identification;

(e) the name, current address, and current phone number of the claimant;

(f) the amount claimed under the construction lien;

(g) the signature of the claimant or the claimant's authorized agent;

(h) an acknowledgment or certificate as required under Title 57, Chapter 3, Recording of Documents; and

(i) if the construction lien is on an owner-occupied residence, as defined in Section **38-11-102**, a statement describing what steps an owner, as defined in Section **38-11-102**, may take to require a lien claimant to remove the lien in accordance with Section **38-11-107**.

(3)(a) A county recorder:

(i) shall record each notice of construction lien in an index maintained for that purpose; and

(ii) need not verify that a valid preliminary notice is filed with respect to the claimed construction lien.

(b) All persons are considered to have notice of a notice of construction lien from the time it is recorded.

(4) (a) Within 30 days after filing a notice of construction lien, the claimant shall deliver or mail by certified mail a copy of the notice to the reputed owner or the record owner.

(b) If the record owner's current address is not readily available to the claimant, the claimant may mail a copy of the notice to the last known address of the record owner, using the names and addresses appearing on the last completed real property assessment rolls of the county where the project property is located.

(c) Failure to deliver or mail the notice of lien to the reputed owner or record owner precludes the claimant from an award of costs and attorney fees against the reputed owner or record owner in an action to enforce the construction lien.

(5) The division shall make rules governing the form of the statement required under Subsection (2)(i).

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 of a construction lender has priority over a construction lien of a claimant who files a preliminary notice in accordance with Section **38-1a-501** before the mortgage or trust deed is recorded if the claimant:

(i) accepts payment in full for construction work that the claimant provides to the construction project before the mortgage or trust deed is recorded; and

(ii) withdraws the claimant's preliminary notice by filing a notice of withdrawal under Subsection **38-1a-501(5)**.

38-1a-504. Construction liens on equal footing.

(1) Construction liens on a project property are on an equal footing with one another, regardless of when the notices of construction lien relating to the construction liens are submitted for recording and regardless of when construction work for which the liens are claimed is provided.

(2) Subsection (1) relates to the relationship between claimants' construction liens and does not affect the priority of a construction lender's mortgage or trust deed, as established under this chapter.

38-1a-505. Materials for a construction project not subject to process - Exception.

(1) Materials provided for use in a construction project are not subject to attachment, execution, or other legal process to enforce a debt owed by the purchaser of the materials, if the materials are in good faith about to be applied to the construction, alteration, or repair of an improvement that is the subject of the construction project.

(2) Subsection (1) does not apply to an attachment, execution, or other legal process to enforce a debt incurred to purchase the materials described in Subsection (1).

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 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 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 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 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 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.

38-1a-507. Notice of completion.

(1) (a) Upon final completion of a construction project, a notice of completion may be filed with the registry by:

- (i) an owner;
- (ii) an original contractor for construction work;
- (iii) a lender that has provided financing for the construction project;
- (iv) a surety that has provided bonding for the construction project; or
- (v) a title company issuing a title insurance policy on the construction project.

(b) A notice of completion shall include:

- (i) the name, address, telephone number, and email address of the person filing the notice of completion;
- (ii) the name of the county in which the project property is located;
- (iii) for a private project:

- (A) the tax parcel identification number of each parcel included in the project property;
 - (B) the entry number of a preliminary notice on the same project that includes the tax parcel identification number of each parcel included in the project property; or
 - (C) the entry number of the building permit issued for the project;
 - (iv) for a government project, the government project-identifying information;
 - (v) the date on which final completion is alleged to have occurred; and
 - (vi) the method used to determine final completion.
- (2) A person filing a notice of completion by alternate means is responsible for verifying and changing any incorrect information in the notice of completion before the expiration of the time period during which the notice is required to be filed.

Part 6 - Construction Loans

38-1a-601. Notice of construction loan.

- (1) After recording a mortgage or trust deed securing a construction loan on a private project, the construction lender on the loan shall promptly, in conjunction with the closing of the construction loan, file with the registry a notice of construction loan.
- (2) A notice under Subsection (1) shall accurately state:
- (a) the lender's name, address, and telephone number;
 - (b) the name of the trustor on the trust deed securing the loan;
 - (c) the tax parcel identification number of each parcel included or to be included in the construction project for which the loan was given;
 - (d) the address of the project property; and
 - (e) the name of the county in which the project property is located.
- (3) A construction lender that files a notice of construction loan containing incomplete or inaccurate information may not be held liable for damages suffered by any other person who relies on the inaccurate or incomplete information in filing a preliminary notice.

38-1a-602. Notice concerning construction loan default.

- (1) Within five business days after a notice of default is filed for recording under Section **57-1-24** with respect to a trust deed on the project property securing a construction loan, the construction lender under the loan shall file a notice with the registry.
- (2) A notice under Subsection (1) shall:
- (a) include:
 - (i) the information required to be included in a notice of construction loan under Subsections **38-a1-601(2)**; and
 - (ii) the entry number of the notice of construction loan;
 - (b) state that a notice of default with respect to the construction loan has been recorded; and
 - (c) state the date that the notice of default was recorded.

Part 7 - Enforcement of Preconstruction and Construction Liens

38-1a-701. Action to enforce lien - Time for filing action - Notice of pendency of action - Action involving a residence.

(1) As used in this section:

(a) "Owner" has the same meaning as defined in Section **38-11-102**.

(b) "Residence" has the same meaning as defined in Section **38-11-102**.

(2) In order to enforce a preconstruction lien or construction lien, a claimant shall file an action to enforce the lien:

(a) except as provided in Subsection (2)(b), within 180 days after the day on which the claimant files:

(i) a notice of preconstruction lien under Section **38-1a-402**, for a preconstruction lien; or

(ii) a notice of construction lien under Section **38-1a-502**, for a construction lien; or

(b) if an owner files for protection under the bankruptcy laws of the United States before the expiration of the 180-day period under Subsection (2)(a), within 90 days after the automatic stay under the bankruptcy proceeding is lifted or expires.

(3) (a) (i) Within the time period provided in Subsection (2) for filing an action, a claimant shall file for record with each applicable county recorder a notice of the pendency of the action, in the manner provided for actions affecting the title or right to possession of real property.

(ii) If a claimant fails to file for record a notice of the pendency of the action, as required in Subsection (3)(a)(i), the preconstruction lien or construction lien, as applicable, is void, except as to persons who have been made parties to the action and persons having actual knowledge of the commencement of the action.

(b) The burden of proof is upon the claimant and those claiming under the claimant to show actual knowledge under Subsection (3)(a)(ii).

(4) (a) A preconstruction lien or construction lien is automatically and immediately void if an action to enforce the lien is not filed within the time required by this section.

(b) Notwithstanding Section **78B-2-111**, a court has no subject matter jurisdiction to adjudicate a preconstruction or construction lien that becomes void under Subsection (4)(a).

(5) This section may not be interpreted to impair or affect the right of any person to whom a debt may be due for any preconstruction service or construction work to maintain a personal action to recover the debt.

(6) (a) If a claimant files an action to enforce a preconstruction or construction lien involving a residence, the claimant shall include with the service of the complaint on the owner of the residence:

(i) instructions to the owner of the residence relating to the owner's rights under Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act; and

(ii) a form to enable the owner of the residence to specify the grounds upon which the owner may exercise available rights under Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act.

(b) The instructions and form required by Subsection (6)(a) shall meet the requirements established by the division by rule.

(c) If a claimant fails to provide to the owner of the residence the instructions and form required by Subsection (6)(a), the claimant is barred from maintaining or enforcing the preconstruction or construction lien upon the residence.

(d) A court shall stay an action to determine the rights and liabilities of an owner of a residence under this chapter, Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act, and Title 14, Chapter 2, Private Contracts, until after the owner is given a reasonable period of time to:

(i) establish compliance with Subsections **38-11-204**(4)(a) and (4)(b) through an informal proceeding, as set forth in Title 63G, Chapter 4, Administrative Procedures Act, commenced at the division within 30 days after the owner is served with summons in the foreclosure action; and

(ii) obtain a certificate of compliance or denial of certificate of compliance, as defined in Section **38-11-102**.

(e) An owner applying for a certificate of compliance under Subsection (6)(d) shall send by certified mail to all claimants:

(i) a copy of the application for a certificate of compliance; and

(ii) all materials filed in connection with the application.

(f) The division shall notify all claimants listed in an owner's application for a certificate of compliance under Subsection (6)(d) of the issuance or denial of a certificate of compliance.

38-1a-702. Parties - Consolidation of separate actions.

(1) In an action under this part, subject to the time restrictions under Subsection 38-1a-701(2);

(a) a claimant who is not contesting the claim of another claimant may join as a plaintiff;

(b) a claimant who fails to refuse to become a plaintiff may be made a defendant; and

(c) a claimant who is not made a party may intervene at any time before the final hearing.

(2) If separate actions are commenced under this part to enforce preconstruction or construction liens on the same property, the court may consolidate the actions and make all claimants parties to the consolidated action.

38-1a-703. Order of satisfaction if multiple liens on same property.

If liens are claimed against the same property the decree shall provide for their satisfaction in the following order:

(1) subcontractors who are laborers or mechanics working by the day or piece, but who have not furnished materials;

(2) all other subcontractors and all materialmen; and

(3) original contractors.

38-1a-704. Sale of property -- Redemption -- Disposition of proceeds.

(1) The court shall cause the property to be sold in satisfaction of the liens and costs as in the case of foreclosure of a mortgage, subject to the same right of redemption.

(2) If the proceeds of sale after the payment of costs are not sufficient to satisfy the whole amount of liens included in the decree, then such proceeds shall be paid in the order designated in Section 38-1a-703, and pro rata to the persons claiming in each class if the sum realized is insufficient to pay the persons of the class in full.

(3) Any excess sale proceeds remaining after the payment of all liens and costs shall be paid to the owner.

38-1a-705. Deficiency judgment.

A claimant whose preconstruction or construction lien is not paid in full through an enforcement action as provided in this part may:

- (1) have judgment for the unpaid balance entered against the person liable; and
- (2) execute on the judgment in the same manner as execution on judgments generally.

38-1a-706. Apportionment of costs - Costs and attorney fees to subcontractor.

- (1) Except as provided in Section 38-11-107, the court shall apportion costs between the owner and original contractor according to the right of the case.
- (2) The court shall award a subcontractor with a valid preconstruction or construction lien:
 - (a) all of the subcontractor's costs, including the costs of preparing and recording the notice of preconstruction or construction lien; and
 - (b) the subcontractor's reasonable attorney fees incurred in preparing and recording the notice of preconstruction or construction lien.

38-1a-707. Attorney fees -- Offer of judgment.

- (1) Except as provided in Section 38-11-107 and in Subsection (2), in any action brought to enforce any lien under this chapter the successful party shall be entitled to recover reasonable attorney fees, to be fixed by the court, which shall be taxed as costs in the action.
- (2) A person who files a wrongful lien as provided in Section 38-1a-308 may not recover attorney fees under Subsection (1).
- (3)(a) A person against whom an action is brought to enforce a preconstruction or construction lien may make an offer of judgment pursuant to Rule 68 of the Utah Rules of Civil Procedure.
- (b) If the offer is not accepted and the judgment finally obtained by the offeree is not more favorable than the offer, the offeree shall pay the costs and attorney fees incurred by the offeror after the offer was made.

Part 8- Actions Affecting Preconstruction and Construction Liens

38-1a-801. Preconstruction and construction liens assignable - Action by assignee to enforce lien.

- (1) A preconstruction lien or construction lien is assignable as any other chose in action.
- (2) An assignee of a preconstruction lien or construction lien may, in the assignee's own name, commence and prosecute an action on the lien as provided in Part 7, Enforcement of Preconstruction and Construction Liens.

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

(1) As used in this section:

(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 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:

(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 lien 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:

"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-6-505 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 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:

"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-6-505 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;

(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 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

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

38-1a-803. Cancellation of preconstruction or construction lien - Penalty for failure to cancel timely.

(1) After the full amount owing under a preconstruction or construction lien, including costs and cancellation fees, has been paid, a person interested in the property that is the subject of the lien may request the claimant to submit for recording with the office of each applicable county recorder a cancellation of the lien.

(2) Within 10 days after receiving a request under Subsection (1), the claimant shall submit to the office of each applicable county recorder a cancellation of the preconstruction or construction lien, as applicable.

(3) A claimant who fails to submit a cancellation within the time prescribed in Subsection (2) is liable to the person who requested the cancellation for \$100 for each day after the time prescribed in Subsection (2) that the cancellation is not submitted, or the person's actual damages, whichever is greater.

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);
- (b) in the office of each applicable county recorder where the lien was recorded; and
- (c) at any time before the date that is 90 days after the first summons is served in an action to foreclose the preconstruction or construction lien for which the notice under this section is submitted for recording.

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

- (a) meet the requirements for the recording of documents in Title 57, Chapter 3, Recording of Documents;
- (b) reference the preconstruction or construction lien sought to be released, including the applicable entry number, book number, and page number; and
- (c) have as an attachment a surety bond or evidence of a cash deposit that:
 - (i) (A) if a surety bond, is executed by a surety company that is treasury listed, A-rated by AM Best Company, and authorized to issue surety bonds in this state; or
 - (B) if evidence of a cash deposit, meets the requirements established by rule by the Department of Commerce in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
 - (ii) is in an amount equal to:
 - (A) 150% of the amount claimed by the claimant under the preconstruction or construction lien or as determined under Subsection (7), if the lien claim is for \$25,000 or more;
 - (B) 175% of the amount claimed by the claimant under the preconstruction or construction lien or as determined under Subsection (7), if the lien claim is for at least \$15,000 but less than \$25,000; or
 - (C) 200% of the amount claimed by the claimant under the preconstruction or construction lien or as determined under Subsection (7), if the lien claim is for less than \$15,000;
 - (iii) is made payable to the claimant;
 - (iv) is conditioned for the payment of:
 - (A) the judgment that would have been rendered, or has been rendered against the project property in the action to enforce the lien; and
 - (B) any costs and attorney fees awarded by the court; and
 - (v) has as principal:

- (A) the owner of the interest in the project property; or
 - (B) the original contractor or subcontractor affected by the lien.
- (3) (a) Upon the recording of the notice of release of lien and substitution of alternate security under Subsection (1), the real property described in the notice shall be released from the preconstruction lien or construction lien to which the notice applies.
- (b) A recorded notice of release of lien and substitution of alternate security is effective as to any amendment to the preconstruction or construction lien being released if the bond amount remains enough to satisfy the requirements of Subsection (2)(c)(ii).
- (4) (a) Upon the recording of a notice of release of lien and substitution of alternate security under Subsection (1), the person recording the notice shall serve a copy of the notice, together with any attachments, within 30 days upon the claimant.
- (b) If a suit is pending to foreclose the preconstruction or construction lien at the time the notice is served upon the claimant under Subsection (4)(a), the claimant shall, within 90 days after the receipt of the notice, institute proceedings to add the alternate security as a party to the lien foreclosure suit.
- (5) The alternate security attached to a notice of release of lien shall be discharged and released upon:
- (a) the failure of the claimant to commence a suit against the alternate security within the same time as an action to enforce the lien under Section 38-1a-701;
 - (b) the failure of the lien claimant to institute proceedings to add the alternate security as a party to a lien foreclosure suit within the time required by Subsection (4)(b);
 - (c) the dismissal with prejudice of the lien foreclosure suit or suit against the alternate security as to the claimant; or
 - (d) the entry of judgment against the claimant in:
 - (i) a lien foreclosure suit; or
 - (ii) suit against the alternate security.
- (6) If a copy of the notice of release of lien and substitution of alternate security is not served upon the claimant as provided in Subsection (4)(a), the claimant has six months after the discovery of the notice to commence an action against the alternate security, except that no action may be commenced against the alternate security after two years from the date the notice was recorded.
- (7) (a) The owner of any interest in a project property that is subject to a recorded preconstruction or construction lien, or an original contractor or subcontractor affected by a the lien, who disputes the amount claimed under a preconstruction or construction lien may petition the district court in the county in which the notice of lien is recorded for a summary determination of the correct amount owing under the lien for the sole purpose of providing alternate security.
- (b) A petition under this Subsection (7) shall:
- (i) state with specificity the factual and legal bases for disputing the amount claimed under the preconstruction or construction lien; and
 - (ii) be supported by a sworn affidavit and any other evidence supporting the petition.
- (c) A petitioner under Subsection (7)(a) shall, as provided in Utah Rules of Civil Procedure, Rule 4, serve on the claimant:

- (i) a copy of the petition; and
- (ii) a notice of hearing if a hearing is scheduled.
- (d) If a court finds a petition under Subsection (7)(a) insufficient, the court may dismiss the petition without a hearing.
- (e) If a court finds a petition under Subsection (7)(a) sufficient, the court shall schedule a hearing within ten days to determine the correct amount claimed under the preconstruction or construction lien for the sole purpose of providing alternate security.
- (f) A claimant may:
 - (i) attend a hearing held under this Subsection (7); and
 - (ii) contest the petition.
- (g) A determination under this section is limited to a determination of the amount claimed under a preconstruction or construction lien for the sole purpose of providing alternate security and does not conclusively establish:
 - (i) the amount to which the claimant is entitled;
 - (ii) the validity of the claim; or
 - (iii) any person's right to any other legal remedy.
- (h) If a court, in a proceeding under this Subsection (7), determines that the amount claimed under a preconstruction or construction lien is excessive, the court shall set the amount for the sole purpose of providing alternate security.
- (i) In an order under Subsection (7)(h), the court shall include a legal description of the project property.
- (j) A petitioner under this Subsection (7) may record a certified copy of any order issued under this Subsection (7) in the county in which the lien is recorded.
- (k) A court may not award attorney fees for a proceeding under this Subsection (7), but shall consider those attorney fees in any award of attorney fees under any other provision of this chapter.

PRECONSTRUCTION AND CONSTRUCTION LIENS

**Title 38, Chapter 1a
Utah Code Annotated 1953
As Amended by
Session Laws of Utah 2012
Issued May 8, 2012**

Disclaimer: The statute/rule above is an unofficial version provided for convenience only and may not be identical to the official versions on the Utah State Legislature (www.le.utah.gov) and the Utah Division of Administrative Rules (www.rules.utah.gov) websites.