

# Frequently Asked Questions

## Utah Residence Lien Recovery Fund

*Updated December 3, 2015*

**Please note that this information is not intended to be specific legal advice or a substitute for advice from competent legal counsel. This is a general overview of the law for informational purposes only. You should consider obtaining competent legal counsel to assist you in making any major decisions about your rights and responsibilities under the Act and to represent you in any actions that you may take as a result of the Act.**

### 1. What is the Residence Lien Restriction and Lien Recovery Fund Act?

In 1994, the Utah Legislature recognized a problem within the residential construction industry. A few contractors were taking money for construction but not paying subcontractors and suppliers. Therefore, homeowners had to pay the subcontractors and suppliers directly to prevent loss of the home due to lien foreclosure. In effect, the homeowner had to pay twice for the same product or service. To correct this inequity, the legislature passed the Utah Residence Lien Restriction and Lien Recovery Fund Act (“the Act”).

The Act addresses the problem in two ways. First, the Act prohibits anyone who provides services or materials for residential housing construction from either maintaining a mechanics’ lien against a residence or obtaining a civil judgment against a homeowner for construction expenses—provided the homeowner complies with the following requirements:

1. The homeowner must enter into a **written contract** with a **licensed contractor**, a **contractor exempt from licensure**, a **factory built housing retailer** or a **real estate developer** for construction on or the purchase of a single family or duplex residence.
2. The homeowner must **pay** the original contractor, factory built housing retailer, or real estate developer **in full according to the terms of the written contract** and any amendments to the contract.
3. The homeowner must occupy the residence as a primary or secondary residence within **180 days of the completion of construction**. Alternatively, the homeowner’s tenant or lessee must occupy the residence within 180 days of the completion of construction.

Second, the Act creates the Residence Lien Recovery Fund (“the Fund”).

## **2. What is the purpose of the Lien Recovery Fund?**

The Utah Residence Lien Recovery Fund serves as an alternate payment source for contractors, laborers, or suppliers whose liens are voided because the homeowner is protected under the Act.

## **3. Doesn't the Act enable homeowners to avoid paying their construction costs?**

No. The Act only provides protection from mechanics' liens to homeowners who **pay in full the written contract**. If the homeowner does not pay the original contractor in full, any otherwise qualified person may recover from the homeowner or the property through the mechanics' lien process or other civil remedies.

## **4. Doesn't the Fund's existence encourage irresponsible credit practices by suppliers and subcontractors?**

No. The Fund acts as a surrogate to the Utah Mechanics' Lien Law. Rather than subcontractors and suppliers collecting through the mechanics' lien they collect from the Fund. Prior to the Fund, the lien claimant would have collected through the lien process. Under either scenario the subcontractor or supplier is afforded an opportunity to collect from an entity other than the one with which it contracted. The Fund's existence neither increases nor decreases the collection risk to the claimant—it merely shifts the burden of payment off of the homeowner.

## **5. Does the Act apply only to residential construction?**

Yes. The Act provides homeowner protection and fund availability limited to construction performed on single-family and duplex homes that are occupied by the homeowner or his tenant as a primary or secondary residence within 180 days of the completion of construction. Neither the lien restriction provisions of the Act nor fund availability apply to larger residential projects, "spec" homes that remain unoccupied for more than 180 days, condominiums with more than two units per building, or commercial projects.

## **6. Who must register with the Fund?**

All licensed contractors except those exempt from registration (see question No. 10), are required to join the Fund. In addition, any other person or company who provides qualified services on residential construction may join the Fund. Membership in the Fund by any entity other than a contractor is voluntary. However, a homeowner's protection from mechanics' liens and judgments is independent of whether the lien claimant is registered with the Fund. Further, any entity not registered with the Fund prior to providing the qualified services is barred from collecting from the Fund. Therefore, entities that regularly provide goods and services for residential construction without registering with the Fund do so at the risk of being unable to collect payment for the goods and services from any source.

## **7. Are employees of contractors required to join the Fund?**

No. Laborer claimants are not required to join the Fund prior to providing qualified services. The Act allows that employees of contractors may claim as laborers and the registration with the Fund occurs concurrent with the processing of the claim.

## **8. What are the consequences of failing to register with the Fund?**

Utah Code Ann. § 58-55-501(18) provides:

Unlawful conduct includes . . . engaging in the construction trade or as a contractor for the construction of residences of up to two units when not currently registered or exempt from registration as a qualified beneficiary under Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act

Therefore, contractors who are required to register with the Fund and fail to do so face disciplinary action by the Division in the form of license revocation or denial of license renewal. Additionally, new license applicants will not receive their licenses until they register with the Fund. If an applicant is applying for a license in one of the classifications that is exempt from registration (see question No. 10), the license cannot be issued until the applicant either registers with the Fund or certifies to exemption from registration.

Further, anyone not registered with the Fund who would otherwise be able to maintain a mechanics' lien, but is precluded from doing so because the homeowner is protected under the Act, may not collect from the Fund.

## **9. How do I register with the Fund?**

Registration with the Fund is incorporated into the application for licensure as a contractor. Therefore, any entity applying for a contractor license only needs to complete the contractor license application and pay the registration fee to become a Fund registrant. All other entities wishing to join the Fund must complete and submit an application for registration. An application for registration can be obtained by calling (801) 530-6396 or visiting the Fund's website at <http://www.dopl.utah.gov/programs/rlrf/index.html>.

## **10. What contractor classifications are exempt from registering with the Fund?**

Licensed contractors and applicants for contractor licenses in classifications that regularly engage in providing services for residential construction must join the Fund, irrespective of whether the individual licensee actually provides or plans to provide such services. All contractor license classifications are designated by rule to be regularly engaged in providing services for residential construction **except** for the following:

- E100 General Engineering Contractor
- S211 Boiler Installation Contractor
- S213 Industrial Piping Contractor
- S262 Granite and Pressure Grouting Contractor
- S320 Steel Erection Contractor
- S321 Steel Reinforcing Contractor
- S322 Metal Building Erection Contractor
- S323 Structural Stud Erection Contractor
- S340 Sheet Metal Contractor
- S360 Refrigeration Contractor
- S440 Sign Installation Contractor
- S441 Non Electrical Outdoor Advertising Sign Contractor
- S450 Mechanical Insulation Contractor
- S470 Petroleum System Contractor
- S480 Piers and Foundations Contractor
- I101 General Engineering Trades Instructor
- I102 General Building Trades Instructor
- I103 General Electrical Trades Instructor
- I104 General Plumbing Trades Instructor
- I105 General Mechanical Trades Instructor

However, **contractors and applicants for licenses in the above listed classifications who provide or plan to provide services for residential construction must register with the Fund.** Additionally, those in the above listed classifications who provide or plan to provide services for commercial construction only must certify that they are exempt from registration with the Fund.

**11. I have a relatively small construction operation, yet I am required to pay the same amount as the larger general contractors. Why?**

The Act contemplates that fees for the Fund (both the registration fee and renewal fees) are part of the cost of engaging in the construction business in the state of Utah and that this cost should be shared equally by all participants.

**12. I am a general contractor engaged solely in commercial construction. Why am I required to contribute to the Fund?**

The Act requires all contractors licensed in classifications that regularly engage in providing goods and services for residential construction to register with the Fund, regardless of whether an individual contractor within that classification actually provides such goods and services. The reasons for this requirement include the following:

1. The Utah Construction Trades Licensing Act does not distinguish between residential and commercial contractors.
2. Contractors licensed in classifications that regularly engage in residential construction may perform residential construction at any time.

3. The legislature has determined that the burden of funding the Fund should be spread over as large a segment of the construction industry as possible to lessen the burden on the individual registrant.
4. General contractors cause the vast majority of the problems the Act addresses. Accordingly, the legislature determined that this classification of contractor should be included with those responsible for funding the solution to the problem.

### **13. What period of time does a Fund registration cover?**

A Fund registration becomes active on the date the Division receives the registration fee. That registration remains effective indefinitely unless the registrant allows its contractor license to expire, if applicable, or the registrant fails to pay a special assessment renewal fee.

A registration only covers those qualified services **provided on or after the date of registration**. Therefore, any services provided by a registrant prior to the date that registrant became registered with the Fund cannot be paid by the Fund even if all other requirements for payment are met.

### **14. How often will I be required to contribute to the Fund?**

The Act requires funding is to come from the initial assessment (registration fee) and subsequent special (renewal) assessments, registration of new licensees, interest on the Fund's balance, reimbursements obtained from nonpaying parties, and civil penalties obtained from the same parties. The Act requires that, once funded, the Fund balance should remain between approximately \$1.5 and \$2.5 million. When claim payments cause the Fund's balance to drop below \$1.5 million on December 31 of any given year, a special assessment in the amount necessary to replenish the balance to approximately \$2.5 million will be triggered. Accordingly, the frequency and amount of special assessments depends substantially upon the Fund's claim payment activity.

### **15. What notice must contractors give to homeowners regarding their rights under the Act?**

Every contractor who enters into a written contract with a homeowner is required to provide in the text of the contract notice to the homeowner of the rights and responsibilities afforded under the Act. Division rules provide the language of the required notice is:

PROTECTION AGAINST LIENS AND CIVIL ACTION. Notice is hereby provided in accordance with Section 38-11-108 of the Utah Code that under Utah law an "owner" may be protected against liens being maintained against an "owner-occupied residence" and from other civil action being maintained to recover monies owed for "qualified services" performed or provided by suppliers and subcontractors as a part of this contract, if and only if the following conditions are satisfied:

- (1) the owner entered into a written contract an original contractor, a factory built housing retailer, or a real estate developer;
- (2) the original contractor was properly licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act at the time the contract was executed; and

(3) the owner paid in full the original contractor, factory built housing retailer, or real estate developer or their successors or assigns in accordance with the written contract and any written or oral amendments to the contract.

(4) An owner who has satisfied all of these conditions may perfect his protection from liens by applying for a Certificate of Compliance with the Division of Occupational and Professional Licensing by calling (801) 530-6628 or toll free in Utah only (866) 275-3675 and requesting to speak to the Lien Recovery Fund. (*Utah Administrative Code R156-38a-108*)

**Failure to include this language in the contract constitutes unlawful conduct and is punishable by citation and fine.**

**16. What notice must a lien claimant provide in the lien filing to notify the homeowner of the lien protection provisions of the Act?**

Every entity claiming mechanics' lien on a residence is required to include notice to the homeowner of that homeowner's rights and obligations under the Act. The notification must be included on the face of the Notice of Intent to Hold and Claim Lien. Division rules provide that the language of the required notice is:

PROTECTION AGAINST LIENS AND CIVIL ACTION. Notice is hereby provided in accordance with Section 38-11-108 of the Utah Code that under Utah law an "owner" may be protected against liens being maintained against an "owner-occupied residence" and from other civil action being maintained to recover monies owed for "qualified services" performed or provided by suppliers and subcontractors as a part of this contract, if and only if the following conditions are satisfied:

(1) the owner entered into a written contract an original contractor, a factory built housing retailer, or a real estate developer;

(2) the original contractor was properly licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act at the time the contract was executed; and

(3) the owner paid in full the original contractor, factory built housing retailer, or real estate developer or their successors or assigns in accordance with the written contract and any written or oral amendments to the contract.

(4) An owner who has satisfied all of these conditions may perfect his protection from liens by applying for a Certificate of Compliance with the Division of Occupational and Professional Licensing by calling (801) 530-6628 or toll free in Utah only (866) 275-3675 and requesting to speak to the Lien Recovery Fund. (*Utah Administrative Code R156-38a-108*)

**Failure to include this language on the Notice of Lien may result in lien foreclosure being denied.**

**17. What notice must a lien claimant provide to a homeowner upon filing a lien foreclosure action or similar lawsuit?**

Every entity that files action to collect on a mechanics' lien or similar action against a homeowner (i.e. failure to obtain bond, unjust enrichment, etc.) for qualified services is required to provide to the homeowner instruction on how to gain protection from the lien under the Act.

The claimant is also required to provide the homeowner with an application for a Certificate of Compliance the homeowner can use to have the Division adjudicate whether all the requirements of the Act have been met. The instructions and application can be obtained by calling (801) 530-6104 or visiting the Fund's website at <http://dopl.utah.gov/programs/rlrf/index.html>

### **18. Who can make a claim with the Lien Recovery Fund?**

Registrants with the Lien Recovery Fund, known as qualified beneficiaries, may seek payment from the Fund for qualified services provided for single-family and duplex residences. Laborers, who provide services on residential construction as an employee of a contractor, may also seek payment from the Fund for such services.

### **19. I am a qualified beneficiary. How do I file a claim with the Lien Recovery Fund?**

Filing a claim with the Fund follows basically same process as filing a lien foreclosure action against the property. The following steps are usually required:

1. File a civil action against the nonpaying party (required) and the homeowner (optional). The Division recommends qualified beneficiaries consult with competent legal counsel prior to filing this action. **The lawsuit must be filed within the earlier of: (1) 180 days from the date the qualified beneficiary filed a lien; or (2) 270 days from the completion of the original contract.**
2. Provide the homeowner with the required the application for a Certificate of Compliance (see question No. 17).
3. Obtain judgment against the nonpaying party.
4. Attempt to collect on the judgment. The Act requires that, at a minimum, the claimant must issue a Motion and Order in Supplemental Proceedings and attempt to serve that Motion. If the Motion is served, the claimant must provide evidence that no assets were located as a result of the Supplemental Proceeding.
5. Complete and submit the claim application. The application instructions list all documents that must be included with the application. If any documents are missing, processing of the claim will be delayed and the claim may be denied. Therefore, the Division recommends claimant's carefully read through the entire application and assemble all documents before submitting the claim. Claim forms can be obtained by calling (801) 530-6104 or visiting the Fund's website <http://dopl.utah.gov/programs/rlrf/index.html>

#### **Important Notes:**

1. If the nonpaying party has filed for bankruptcy, the claimant may not be able to complete some or all of these steps. In that case, claimants are advised to call (801) 530-6104 for information on how to proceed.
2. The Division must **receive** the claim application **not more than one year** from the date judgment is entered against the nonpaying party or the date the nonpaying party files for bankruptcy—if that bankruptcy prevents the claimant from completing one

or more of the required steps. **Failure to meet this deadline will result in the claim being denied.**

## **20. I am a laborer. How do I file a claim with the Lien Recovery Fund?**

An employee of a contractor who provides services for wages on residential construction can apply for payment from the Fund by:

1. Filing an administrative or civil action to determine that you are owed wages. You must file either a wage claim assignment with the Employment Standards Bureau of the Antidiscrimination & Labor Division of the Labor Commission of Utah or a civil action in a court of competent jurisdiction against your employer to recover wages owed.
2. Obtaining a final determination that wages are owed. You must obtain either (1) a final administrative order from the Labor Commission containing findings that you are an employee and that your employer failed to pay you for wages for your work performed on the site of an owner-occupied residence; or (2) a civil judgment against your employer finding that the employer failed to pay you for wages due for your work performed on the site of an owner-occupied residence.
3. Completing and submitting the claim application. The application instructions list all documents that must be included with the application. If any documents are missing processing of the claim will be delayed and the claim may be denied. Therefore, the Division recommends claimant's carefully read through the entire application and assemble all documents before submitting the claim. Claim forms can be obtained by calling (801) 530-6104 or visiting the Fund's website at <http://dopl.utah.gov/programs/rlrf/index.html>

Important Notes:

1. If the nonpaying party has filed for bankruptcy, the claimant may not be able to complete some or all of these steps. In that case, claimants are advised to call (801) 530-6104 for information on how to proceed.
2. The Division must **receive** the claim application **not more than one year** from the date you last provided services on the residence at issue in the claim. **Failure to meet this deadline will result in the claim being denied.**

## **21. I performed services as part of a contract between a homeowner and myself and have not been paid. Can I claim with the Fund?**

No. Any entity that contracts directly with a homeowner is an original contractor. The Act requires that a homeowner must pay all original contractors in full to receive protection from mechanics' liens and other collection tools. Therefore, your right to lien the property is not affected by the Act and you must collect from the homeowners.

## **22. What happens if the nonpaying party declares bankruptcy?**



If the nonpaying party declares bankruptcy, it may be impossible for a qualified beneficiary or laborer claimant to file a civil action or Labor Commission wage assignment, or to obtain or collect on a civil judgment or a Labor Commission order. In such cases, the claimant must file a claim with the Division within one year of the nonpaying party's bankruptcy filing. The laborer claimant must file a claim with the Division within one year of the last day he or she provided qualified services. The Division will determine the claimant's entitlement to payment through a formal proceeding.

### **23. Can I recover court costs, attorney fees, and interest from the Fund?**

You may recover court costs, attorney fees (up to 15% of qualified services awarded), and/or interest from the Fund if the following conditions are met:

1. You entered into a contract to provide qualified services to the nonpaying party, which contract contains provisions allowing you to collect (a) court costs and attorney fees incurred in enforcing the contract; and (b) interest on the amount owed under the contract.
2. You obtained a civil judgment containing an order for the recovery of costs, a sum-certain amount of attorney fees, and interest.

If your judgment does not contain such orders, the Fund cannot pay your costs and attorney fees but will still pay interest. If you are precluded from obtaining a judgment by the nonpaying party's bankruptcy filing, the Division may be able to pay a limited amount of substantiated costs and fees.

### **24. What are qualified services?**

Qualified services include the following: Contractor services; architectural services; engineering services; land surveying services; landscape architectural services; design and specification services of mechanical and other systems; other services relating to the design, drawing, surveying, specification, cost estimation, or other professional services; providing materials, supplies, components or similar products; renting equipment or materials; or providing labor at the site of construction.

### **25. What penalties are imposed on contractors who cause payments from the Fund?**

The Act provides substantial penalties for contractors who try to avoid paying their suppliers and subcontractors. Once the Fund pays a claim on behalf of a nonpaying party, the party must reimburse the Fund within 20 days unless protected under federal bankruptcy laws. If the nonpaying party does not reimburse the Fund when required to do so, the Act allows the Division to:

1. Obtain reimbursement for the claim payment from the nonpaying party through the courts;

2. Obtain reimbursement from the nonpaying party for court costs and attorney fees incurred in the subrogation action;
3. Impose up to a \$5,000 per-residence fine upon the nonpaying party.

Additionally, once the Division pays a claim, **the nonpaying party's license is suspended for one year or until the nonpaying party is approved for reinstatement**, whichever is later.

26. I still have questions about filing a claim with the Fund. What can I do?

If you still have questions after reading these materials, the Division will gladly answer them. You may contact the Program Specialist at (801) 530-6396 or [lrf@utah.gov](mailto:lrf@utah.gov) who will either answer your questions or direct you a Fund employee who can assist you. If you need specific legal advice, you must seek competent legal representation because the Division cannot provide legal services.

### **27. Who can I speak with to get help filing a lien?**

The legislature has not authorized any state agency to assist contractors with filing, enforcing, collecting, etc. on any type of lien. All lien-related activities are handled through the civil court. Therefore, no one in state government can provide advice on how to file or enforce a lien. Persons needing such assistance are encouraged to obtain a copy of the laws related to mechanics' liens and/or contact the Utah Bar Association's Lawyer Referral Service or a lien filing service. Information on the Utah's various lien laws can be obtained at [www.le.state.ut.us/~code/TITLE38/TITLE38.htm](http://www.le.state.ut.us/~code/TITLE38/TITLE38.htm)

### **28. Where can I get a standard mechanics' lien form?**

Utah does not require a specific form for filing a mechanics' lien. Therefore, no form has been authorized by any state agency and **an approved "fill in the blank" form does NOT exist**. Persons needing assistance should contact competent legal counsel or a lien filing service.