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## H.B. 115 Enrolled

1

### MECHANICS' LIENS AMENDMENTS

2

2011 GENERAL SESSION

3

STATE OF UTAH

4

**Chief Sponsor: Michael T. Morley**

5

Senate Sponsor: J. Stuart Adams

6

#### 7 **LONG TITLE**

#### 8 **General Description:**

9     This bill modifies provisions relating to mechanics' liens.

#### 10 **Highlighted Provisions:**

11     This bill:

12     . clarifies the applicability of mechanics' liens provisions;

13     . modifies definitions;

14     . provides for liens for preconstruction service, establishes a procedure for

perfecting

15     and enforcing the liens, and provides for the priority of the liens;

16     . modifies a provision relating to the waiver or limitation of lien rights;

17     . provides that a person who knowingly falsifies information for the purpose of

18     obtaining priority of a preconstruction service lien is guilty of a misdemeanor; and

19     . makes technical and conforming changes.

#### 20 **Money Appropriated in this Bill:**

21     None

#### 22 **Other Special Clauses:**

23     None

#### 24 **Utah Code Sections Affected:**

25     AMENDS:

- 26 **38-1-1**, Utah Code Annotated 1953  
 27 **38-1-4**, as last amended by Laws of Utah 1987, Chapter 170  
 28 **38-1-5**, Utah Code Annotated 1953  
 29 **38-1-7**, as last amended by Laws of Utah 2009, Chapter 50

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- 30 **38-1-9**, as last amended by Laws of Utah 1987, Chapter 50  
 31 **38-1-11**, as last amended by Laws of Utah 2010, Chapter 31  
 32 **38-1-19**, Utah Code Annotated 1953  
 33 **38-1-27**, as last amended by Laws of Utah 2009, Chapters 183 and 239  
 34 **38-1-31**, as last amended by Laws of Utah 2009, Chapter 50  
 35 **38-1-32**, as last amended by Laws of Utah 2009, Chapter 50  
 36 **38-1-33**, as last amended by Laws of Utah 2010, Chapter 76  
 37 **38-1-40**, as last amended by Laws of Utah 2010, Chapter 31

38 ENACTS:

- 39 **38-1-2.1**, Utah Code Annotated 1953  
 40 **38-1-4.7**, Utah Code Annotated 1953  
 41 **38-1-6.7**, Utah Code Annotated 1953  
 42 **38-1-30.5**, Utah Code Annotated 1953  
 43 **76-6-524**, Utah Code Annotated 1953

44 REPEALS AND REENACTS:

- 45 **38-1-2**, as last amended by Laws of Utah 2006, Chapter 297  
 46 **38-1-3**, as last amended by Laws of Utah 1994, Chapter 308  
 47 **38-1-29**, as enacted by Laws of Utah 2001, Chapter 229

48

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

50 Section 1. Section **38-1-1** is amended to read:

51 **38-1-1. Public improvements not subject to chapter -- Exception.**

52 [~~The provisions of this~~]

53 *Except as provided in Sections 38-1-27 , 38-1-30 through 38-1-37 , and 38-1-40*

*relating*

54 *to the State Construction Registry, this* chapter [~~shall~~] *does* not apply to any public

[~~building,~~

55 ~~structure or~~] improvement.

56 Section 2. Section **38-1-2** is repealed and reenacted to read:

57 **38-1-2. Definitions.**

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58 *As used in this chapter:*

59 *(1) "Anticipated improvement" means the improvement:*

60 *(a) for which a preconstruction service is performed; and*

61 *(b) that is anticipated to follow the performing of the preconstruction service.*

62 *(2) "Applicable county recorder" means the office of the recorder of each county in*

63 *which any part of the property on which a claimant claims or intends to claim a lien*

*under this*

64 *chapter is located.*

65 *(3) "Bona fide loan" means a loan to an owner or owner-builder by a lender in which*

66 the owner or owner-builder has no financial or beneficial interest greater than 5% of  
the voting  
67 shares or other ownership interest.  
68 (4) "Claimant" means a person entitled to claim a lien under this chapter.  
69 (5) "Compensation" means the payment of money for a service rendered or an  
expense  
70 incurred, whether based on:  
71 (a) time and expense, lump sum, stipulated sum, percentage of cost, cost plus fixed or  
72 percentage fee, or commission; or  
73 (b) a combination of the bases listed in Subsection (5)(a).  
74 (6) "Construction service":  
75 (a) means to provide labor, material, or equipment for the purpose and during the  
76 process of constructing, altering, or repairing an improvement; and  
77 (b) includes the scheduling, estimating, staking, supervising, managing, materials  
78 testing, inspection, observation, and quality control or assurance involved in  
constructing,  
79 altering, or repairing an improvement.  
80 (7) "Construction service lien" means a lien under this chapter for construction  
service.  
81 (8) "General preconstruction contractor" means a claimant, other than an original  
82 contractor, who contracts with one or more subcontractors for the subcontractor or  
83 subcontractors to provide preconstruction service that the claimant is under contract to  
provide.  
84 (9) "Improvement" means:  
85 (a) a building, infrastructure, utility, or other human-made structure or object  


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86 constructed on or for and affixed to real property; or  
87 (b) a repair, modification, or alteration of a building, infrastructure, utility, or object  
88 referred to in Subsection (9)(a).  
89 (10) "Original contract":  
90 (a) means a contract between an owner of real property and an original contractor  
for  
91 preconstruction service or construction service; and  
92 (b) does not include a contract between an owner-builder and another person.  
93 (11) "Original contractor" means a person who contracts with an owner of real  
property  
94 to provide preconstruction service or construction service.  
95 (12) "Owner-builder" means an owner of real property who:  
96 (a) contracts with one or more other persons for preconstruction service or  
construction  
97 service for an improvement on the owner's real property; and  
98 (b) obtains a building permit for the improvement.  
99 (13) "Preconstruction service":  
100 (a) means to plan or design, or to assist in the planning or design of, an  
improvement or

101 a proposed improvement:  
 102 (i) before construction of the improvement commences; and  
 103 (ii) for compensation separate from any compensation paid or to be paid for  
 104 construction service for the improvement; and  
 105 (b) includes consulting, conducting a site investigation or assessment,  
programming,  
 106 preconstruction cost or quantity estimating, preconstruction scheduling, performing a  
 107 preconstruction construction feasibility review, procuring construction services, and  
preparing  
 108 a study, report, rendering, model, boundary or topographic survey, plat, map, design,  
plan,  
 109 drawing, specification, or contract document.  
 110 (14) "Preconstruction service lien" means a lien under this chapter for a  
 111 preconstruction service.  
 112 (15) "Subcontractor" means a person who contracts to provide preconstruction  
service  
 113 or construction service to a person other than the owner of the real property for which  
the

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114 preconstruction service or construction service is provided.  
 115 Section 3. Section **38-1-2.1** is enacted to read:  
 116 **38-1-2.1. Owner-builder original contract.**  
 117 For purposes of this chapter, an original contract is considered to exist between an  
 118 owner-builder as owner and the owner-builder as original contractor.  
 119 Section 4. Section **38-1-3** is repealed and reenacted to read:  
 120 **38-1-3. Those entitled to lien -- What may be attached.**  
 121 (1) Subject to the provisions of this chapter, a person who performs preconstruction  
 122 service or construction service on or for real property has a lien on the real property  
for the  
 123 reasonable value of the preconstruction service or construction service, respectively,  
except as  
 124 provided in Section 38-11-107 .  
 125 (2) A person may claim a preconstruction service lien and a separate construction  
 126 service lien on the same real property.  
 127 (3) (a) A construction service lien may include an amount claimed for a  
 128 preconstruction service.  
 129 (b) A preconstruction service lien may not include an amount claimed for  
construction  
 130 service.  
 131 (4) A lien under this chapter attaches only to the interest that the owner or  
 132 owner-builder has in the real property that is the subject of the lien.  
 133 Section 5. Section **38-1-4** is amended to read:  
 134 **38-1-4. Land covered by lien -- Multiple lots occupied by improvement --**  
**What a**  
 135 **lien attaches to.**

136 ~~[The liens granted by]~~  
 137 (1) A lien under this chapter ~~[shall extend]~~ extends to and ~~[cover so]~~ covers as much  
 of  
 138 the land ~~[whereon such building, structure, or]~~ on which the improvement ~~[shall be]~~ is  
 made as  
 139 ~~[may be]~~ necessary for the convenient use and occupation of the land. ~~[In case any~~  
 such  
 140 ~~building shall occupy]~~  
 141 (2) If an improvement occupies two or more lots or other subdivisions of land,  
 [such]

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142 the lots or subdivisions ~~[shall be]~~ are considered as one for the purposes of this  
 chapter. ~~[The~~  
 143 ~~liens provided for in]~~  
 144 (3) A lien under this chapter ~~[shall attach]~~ attaches to all franchises, privileges,  
 145 appurtenances, ~~[and to all]~~ machinery, and fixtures~~[,]~~ pertaining to or used in  
 connection with  
 146 ~~[any such lands, buildings, structures, or improvements]~~ the improvement.  
 147 Section 6. Section **38-1-4.7** is enacted to read:  
 148 **38-1-4.7. Preconstruction service lien -- Priority.**  
 149 (1) Except as otherwise provided in this chapter, a preconstruction service lien:  
 150 (a) relates back to and takes effect as of the time a notice of retention under Section  
 151 38-1-30.5 is filed; and  
 152 (b) has priority over:  
 153 (i) any lien, mortgage, or other encumbrance that attaches after the notice of  
retention  
 154 is filed; and  
 155 (ii) any lien, mortgage, or other encumbrance of which the claimant had no notice  
and  
 156 that was unrecorded at the time the notice of retention is filed.  
 157 (2) A preconstruction service lien is subordinate to an interest securing a bona fide  
loan  
 158 if and to the extent that the lien covers preconstruction service provided after the  
interest  
 159 securing a bona fide loan is recorded.  
 160 (3) Preconstruction service is considered complete for any project, project phase, or  
bid  
 161 package as of the date that construction service for that project, project phase, or bid  
package,  
 162 respectively, commences.  
 163 Section 7. Section **38-1-5** is amended to read:  
 164 **38-1-5. Construction service lien -- Priority.**  
 165 ~~[The liens herein provided for shall relate]~~  
 166 A construction service lien:  
 167 (1) relates back to, and ~~[take]~~ takes effect as of, the time of the commencement ~~[to~~

do

168 ~~work or furnish materials] of construction service~~ on the ground for the ~~[structure or]~~  
 169 ~~improvement[;]; and [shall have]~~

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170 ~~(2) has~~ priority over;  
 171 ~~(a) any lien, mortgage, or other encumbrance [which may have attached~~  
 subsequently  
 172 ~~to the time when the building, improvement or structure was commenced, work~~  
 begun, or first  
 173 ~~material furnished] that attaches after the construction service for the improvement~~  
commences  
 174 on the ground; ~~[also over]~~ and  
 175 ~~(b) any lien, mortgage, or other encumbrance of which the [lien holder]~~ claimant  
 had  
 176 no notice and ~~[which]~~ that was unrecorded at the time the ~~[building, structure or]~~  
construction  
 177 service for the improvement ~~[was commenced, work begun, or first material~~  
 furnished]  
 178 commences on the ground.  
 179 Section 8. Section **38-1-6.7** is enacted to read:  
 180 **38-1-6.7. Notice of preconstruction service lien -- Requirements.**  
 181 (1) Within 90 days after completing a preconstruction service for which a claimant  
 is  
 182 not paid in full, the claimant shall submit for recording with the applicable county  
recorder a  
 183 notice of preconstruction service lien.  
 184 (2) A claimant who fails to submit a notice of preconstruction service lien as  
provided  
 185 in Subsection (1) may not claim a preconstruction service lien.  
 186 (3) (a) A notice of preconstruction service lien shall include:  
 187 (i) the claimant's name, mailing address, and telephone number;  
 188 (ii) a statement that the claimant claims a preconstruction service lien;  
 189 (iii) the date the claimant's notice of retention was filed;  
 190 (iv) the name of the person who employed the claimant;  
 191 (v) a general description of the preconstruction service provided by the claimant;  
 192 (vi) the date that the claimant last provided preconstruction service;  
 193 (vii) the name, if known, of the reputed owner of the property on which the  
 194 preconstruction service lien is claimed or, if not known, the name of the record owner  
of the  
 195 property;  
 196 (viii) a description of the property sufficient for identification;  
 197 (ix) the principal amount, excluding interest, costs, and attorney fees, claimed by  
the  
 198 claimant;

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199 (x) the claimant's signature or the signature of the claimant's authorized agent;  
 200 (xi) an acknowledgment or certificate as required under Title 57, Chapter 3,  
Recording  
 201 of Documents; and  
 202 (xii) if the lien is against an owner-occupied residence, as defined in Section  
 203 38-11-102 , a statement meeting the requirements that the Division of Occupational  
and  
 204 Professional Licensing has established in accordance with Title 63G, Chapter 3, Utah  
 205 Administrative Rulemaking Act, describing the steps an owner may take to require a  
claimant  
 206 to remove the lien as provided in Section 38-11-107 .  
 207 (b) (i) A claimant who is a general preconstruction contractor may include in a  
notice  
 208 of preconstruction service lien the name, address, and telephone number of each  
subcontractor  
 209 who is under contract with the claimant to provide preconstruction service that the  
claimant is  
 210 under contract to provide.  
 211 (ii) The inclusion of a subcontractor in a notice of preconstruction service lien filed  
by  
 212 another claimant is not a substitute for the subcontractor's own submission of a notice  
of  
 213 preconstruction service lien.  
 214 (4) (a) Within 30 days after a claimant's notice of preconstruction service lien is  
 215 recorded, the claimant shall send by certified mail a copy of the notice to the reputed  
or record  
 216 owner of the real property.  
 217 (b) If the record owner's address is not readily available to the claimant, the  
claimant  
 218 may mail a copy of the notice to the owner's last-known address as it appears on the  
last  
 219 completed assessment roll of the county in which the property is located.  
 220 (c) A claimant's failure to mail a copy of the notice as required in this Subsection  
(4)  
 221 precludes the claimant from being awarded costs and attorney fees against the reputed  
or record  
 222 owner in an action to enforce the lien.  
 223 (5) Nothing in this section may be construed to prohibit a claimant from recording a  
 224 notice of preconstruction service lien before completing the preconstruction service  
the  
 225 claimant contracted to provide.

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226 Section 9. Section **38-1-7** is amended to read:

227 **38-1-7. Notice of claim for construction service lien -- Contents -- Recording --**  
 228 **Service on owner of property.**

229 (1) (a) (i) Except as modified in Section 38-1-27 , a person claiming [~~benefits under~~  
 this  
 230 ~~chapter~~] a construction service lien shall file for record with the applicable county  
 recorder [~~of~~  
 231 ~~the county in which the property, or some part of the property, is situated,~~] a written  
 notice to  
 232 hold and claim a lien no later than:  
 233 (A) 180 days after the day on which occurs final completion of the original contract  
 if  
 234 no notice of completion is filed under Section 38-1-33 ; or  
 235 (B) 90 days after the day on which a notice of completion is filed under Section  
 236 38-1-33 but not later than the time frame established in Subsection (1)(a)(i)(A).  
 237 (ii) For purposes of this Subsection (1), final completion of the original contract,  
 and  
 238 for purposes of Section 38-1-33 , final completion of the project, means:  
 239 (A) if as a result of work performed under the original contract a permanent  
 certificate  
 240 of occupancy is required for the work, the date of issuance of a permanent certificate  
 of  
 241 occupancy by the local government entity having jurisdiction over the construction  
 project;  
 242 (B) if no certificate of occupancy is required by the local government entity having  
 243 jurisdiction over the construction project, but as a result of the work performed under  
 the  
 244 original contract an inspection is required as per state-adopted building codes for the  
 work, the  
 245 date of the final inspection for the work by the local government entity having  
 jurisdiction over  
 246 the construction project;  
 247 (C) if with regard to work performed under the original contract no certificate of  
 248 occupancy and no final inspection are required as per state-adopted building codes by  
 the local  
 249 government entity having jurisdiction over the construction project, the date on which  
 there  
 250 remains no substantial work to be completed to finish the work on the original  
 contract; or  
 251 (D) if as a result of termination of the original contract prior to the completion of  
 the  
 252 work defined by the original contract, the compliance agency does not issue a  
 certificate of  
 253 occupancy or final inspection, the last date on which substantial work was performed  
 under the  


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 254 original contract.  
 255 (b) Notwithstanding Section 38-1-2 , [~~where~~] if a subcontractor performs substantial



256 work after the applicable dates established by Subsections (1)(a)(ii)(A) and (B), that  
 257 subcontractor's subcontract shall be considered an original contract for the sole  
 purpose of  
 258 determining:  
 259 (i) the subcontractor's time frame to file a notice of intent to hold and claim a lien  
 260 under this Subsection (1); and  
 261 (ii) the original contractor's time frame to file a notice of intent to hold and claim a  
 lien  
 262 under this Subsection (1) for that subcontractor's work.  
 263 (c) For purposes of this chapter, the term "substantial work" does not include:  
 264 (i) repair work; or  
 265 (ii) warranty work.  
 266 (d) Notwithstanding Subsection (1)(a)(ii)(C), final completion of the original  
 contract  
 267 does not occur if work remains to be completed for which the owner is holding  
 payment to  
 268 ensure completion of that work.  
 269 (2) (a) The notice required by Subsection (1) shall contain a statement setting forth:  
 270 (i) the name of the reputed owner if known or, if not known, the name of the record  
 271 owner;  
 272 (ii) the name of the person:  
 273 (A) by whom the ~~[lien]~~ claimant was employed; or  
 274 (B) to whom the ~~[lien]~~ claimant furnished the equipment or material;  
 275 (iii) the time when:  
 276 (A) the first and last labor or service was performed; or  
 277 (B) the first and last equipment or material was furnished;  
 278 (iv) a description of the property, sufficient for identification;  
 279 (v) the name, current address, and current phone number of the ~~[lien]~~ claimant;  
 280 (vi) the amount of the lien claim;  
 281 (vii) the signature of the ~~[lien]~~ claimant or the ~~[lien]~~ claimant's authorized agent;

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282 (viii) an acknowledgment or certificate as required under Title 57, Chapter 3,  
 283 Recording of Documents; and  
 284 (ix) if the lien is on an owner-occupied residence, as defined in Section 38-11-102 ,  
 a  
 285 statement describing what steps an owner, as defined in Section 38-11-102 , may take  
 to require  
 286 a lien claimant to remove the lien in accordance with Section 38-11-107 .  
 287 (b) Substantial compliance with the requirements of this chapter is sufficient to hold  
 288 and claim a lien.  
 289 (3) (a) Within 30 days after filing the notice of lien, the ~~[lien]~~ claimant shall deliver  
 or  
 290 mail by certified mail a copy of the notice of lien to:  
 291 (i) the reputed owner of the real property; or  
 292 (ii) the record owner of the real property.

293 (b) If the record owner's current address is not readily available to the [lien]  
 claimant,  
 294 the copy of the claim may be mailed to the last-known address of the record owner,  
 using the  
 295 names and addresses appearing on the last completed real property assessment rolls of  
 the  
 296 county where the affected property is located.  
 297 (c) Failure to deliver or mail the notice of lien to the reputed owner or record owner  
 298 precludes the [lien] claimant from an award of costs and [attorneys'] attorney fees  
 against the  
 299 reputed owner or record owner in an action to enforce the lien.  
 300 (4) The Division of Occupational and Professional Licensing shall make rules  
 301 governing the form of the statement required under Subsection (2)(a)(ix).  
 302 Section 10. Section **38-1-9** is amended to read:  
 303 **38-1-9. Notice imparted by record.**  
 304 (1) The recorder [must] shall record [~~the claim~~] each notice of preconstruction  
service  
 305 lien under Section 38-1-6.7 and notice to hold and claim a construction service lien  
under  
 306 Section 38-1-7 in an index maintained for that purpose.  
 307 (2) From the time [~~the claim~~] a notice described in Subsection (1) is filed for record,  
 all  
 308 persons are considered to have notice of [~~the claim~~] it.  
 309 Section 11. Section **38-1-11** is amended to read:

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310 **38-1-11. Enforcement -- Time for -- Lis pendens -- Action for debt not affected**  
 --  
 311 **Instructions and form affidavit and motion.**  
 312 (1) As used in this section:  
 313 (a) "Owner" is as defined in Section 38-11-102 .  
 314 (b) "Residence" is as defined in Section 38-11-102 .  
 315 (2) A [lien] claimant shall file an action to enforce the lien filed under this chapter:  
 316 (a) except as provided in Subsection (2)(b), within 180 days after the day on which  
 the  
 317 [lien] claimant [~~filed~~] files:  
 318 (i) a notice of preconstruction service lien under Section 38-1-6.7 , for a  
preconstruction  
 319 service lien; or  
 320 (ii) a notice of claim under Section 38-1-7 , for a construction service lien; or  
 321 (b) if an owner files for protection under the bankruptcy laws of the United States  
 322 before the expiration of the 180-day period under Subsection (2)(a), within 90 days  
 after the  
 323 automatic stay under the bankruptcy proceeding is lifted or expires.  
 324 (3) (a) Within the time period provided for filing in Subsection (2) the [lien]  
 claimant

325 shall file for record with the county recorder of each county in which the lien is  
 recorded a  
 326 notice of the pendency of the action, in the manner provided in actions affecting the  
 title or  
 327 right to possession of real property, or the lien shall be void, except as to persons who  
 have  
 328 been made parties to the action and persons having actual knowledge of the  
 commencement of  
 329 the action.

330 (b) The burden of proof is upon the [~~lien~~] claimant and those claiming under the  
 [~~lien~~]  
 331 claimant to show actual knowledge under Subsection (3)(a).

332 (4) (a) A lien filed under this chapter is automatically and immediately void if an  
 action  
 333 to enforce the lien is not filed within the time required by this section.

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

336 (5) This section may not be interpreted to impair or affect the right of any person to  
 337 whom a debt may be due for any work done or materials furnished to maintain a  
 personal

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338 action to recover the debt.

339 (6) (a) If a [~~lien~~] claimant files an action to enforce a lien filed under this chapter  
 340 involving a residence, the lien claimant shall include with the service of the complaint  
 on the

341 owner of the residence:

342 (i) instructions to the owner of the residence relating to the owner's rights under  
 Title  
 343 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act; and

344 (ii) a form to enable the owner of the residence to specify the grounds upon which  
 the

345 owner may exercise available rights under Title 38, Chapter 11, Residence Lien  
 Restriction and  
 346 Lien Recovery Fund Act.

347 (b) The instructions and form required by Subsection (6)(a) shall meet the  
 requirements

348 established by rule by the Division of Occupational and Professional Licensing in  
 accordance

349 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

350 (c) If a [~~lien~~] claimant fails to provide to the owner of the residence the instructions  
 351 and form required by Subsection (6)(a), the [~~lien~~] claimant [~~shall be~~] is barred from  
 352 maintaining or enforcing the lien upon the residence.

353 (d) Judicial determination of the rights and liabilities of the owner of the residence  
 354 under this chapter and Title 38, Chapter 11, Residence Lien Restriction and Lien

## Recovery

355 Fund Act, and Title 14, Chapter 2, Private Contracts, shall be stayed until after the  
owner is  
356 given a reasonable period of time to establish compliance with Subsections 38-11-204  
(4)(a)

357 and (4)(b) through an informal proceeding, as set forth in Title 63G, Chapter 4,

## Administrative

358 Procedures Act, commenced within 30 days of the owner being served summons in  
the

359 foreclosure action, at the Division of Occupational and Professional Licensing and  
obtain a

360 certificate of compliance or denial of certificate of compliance, as defined in Section  
361 38-11-102 .

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

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

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

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366 (f) The Division of Occupational and Professional Licensing shall notify all [~~lien~~]  
367 claimants listed in an owner's application for a certificate of compliance under

## Subsection

368 (6)(d) of the issuance or denial of a certificate of compliance.

369 (7) The written notice requirement applies to liens filed on or after July 1, 2004.

370 Section 12. Section **38-1-19** is amended to read:

371 **38-1-19. Payment by owner to contractor -- Subcontractor's lien not affected.**

372 [~~When any~~] (1) If a subcontractor [~~shall have~~] has actually begun to furnish [~~labor~~

~~or~~

373 ~~materials~~] preconstruction service or construction service for which [~~he~~] the  
subcontractor is

374 entitled to a lien [~~no~~], a payment to the original contractor [~~shall~~] may not impair or  
defeat

375 [~~such~~] the lien[~~; and no~~].

376 (2) An alteration of [~~any~~] a contract [~~shall~~] may not affect [~~any~~] a lien acquired

under

377 [~~the provisions of~~] this chapter.

378 Section 13. Section **38-1-27** is amended to read:

379 **38-1-27. State Construction Registry -- Applicable definitions -- Filings with**  
380 **database.**

381 (1) As used in this section, Sections 38-1-30 through 38-1-37 , and Section 38-1-40

:

382 (a) "Alternate filing" means a legible and complete filing made in a manner  
established

383 by the division under Subsection (2)(e) other than an electronic filing.

384 (b) "Cancel" means to indicate that a filing is no longer given effect.

385 (c) "Construction project[;]" or "project[;]" [~~or "improvement"~~] means all labor,

386 equipment, and materials provided:  
 387 (i) under an original contract; or  
 388 (ii) by, or under contracts with, an owner-builder.  
 389 (d) "Database" means the State Construction Registry created in this section.  
 390 (e) (i) "Designated agent" means the third party the Division of Occupational and  
 391 Professional Licensing contracts with to create and maintain the State Construction  
 Registry.  
 392 (ii) The designated agent is not an agency, instrumentality, or a political subdivision  
 of  
 393 the state.

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394 (f) "Division" means the Division of Occupational and Professional Licensing.  
 395 (g) "Entry number" means the reference number that:  
 396 (i) the designated agent assigns to each notice or other document filed with the  
 397 database; and  
 398 (ii) is unique for each notice or other document.  
 399 [~~(g)~~] (h) "Interested person" means a person who may be affected by a construction  
 400 project.  
 401 [~~(h)~~] (i) "Program" means the State Construction Registry Program created in this  
 402 section.  
 403 (2) Subject to receiving adequate funding through a legislative appropriation and  
 404 contracting with an approved third party vendor who meets the requirements of  
 Sections  
 405 38-1-30 through 38-1-37 , there is created the State Construction Registry Program  
 that shall:  
 406 (a) (i) assist in protecting public health, safety, and welfare; and  
 407 (ii) promote a fair working environment;  
 408 (b) be overseen by the division with the assistance of the designated agent;  
 409 (c) provide a central repository for notices of commencement, preliminary notices,  
 and  
 410 notices of completion filed in connection with all privately owned construction  
 projects as well  
 411 as all state and local government owned construction projects throughout Utah;  
 412 (d) [~~be~~] make accessible [~~for filing and review~~], by way of the program Internet  
 413 website, the filing and review of:  
 414 (i) notices of retention;  
 415 [~~(i)~~] (ii) notices of commencement;  
 416 [~~(ii)~~] (iii) preliminary notices;  
 417 [~~(iii)~~] (iv) a notice of intent to file notice of final completion;  
 418 [~~(iv)~~] (v) a notice for remaining amounts due to complete the contract; and  
 419 [~~(v)~~] (vi) notices of completion;  
 420 (e) accommodate:  
 421 (i) electronic filing of the notices described in Subsection (2)(d); and

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422 (ii) alternate filing of the notices described in Subsection (2)(d) by U.S. mail,

telefax,  
 423 or any other alternate method as provided by rule made by the division in accordance  
 with Title  
 424 63G, Chapter 3, Utah Administrative Rulemaking Act;  
 425 (f) (i) provide electronic notification for up to three email addresses for each  
 interested  
 426 person or company who requests notice from the construction notice registry; and  
 427 (ii) provide alternate means of notification for a person who makes an alternate  
 filing,  
 428 including U.S. mail, telefax, or any other method as prescribed by rule made by the  
 division in  
 429 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and  
 430 (g) provide hard-copy printing of electronic receipts for an individual filing  
 evidencing  
 431 the date and time of the individual filing and the content of the individual filing.  
 432 (3) (a) The designated agent shall provide notice of all other filings for a project to  
 any  
 433 person who files a notice of commencement, preliminary notice, or notice of  
 completion for  
 434 that project, unless the person:  
 435 (i) requests that the person not receive notice of other filings; or  
 436 (ii) does not provide the designated agent with the person's contact information in a  
 437 manner that adequately informs the designated agent.  
 438 (b) An interested person may request notice of filings related to a project.  
 439 (c) The database shall be indexed by:  
 440 (i) owner name;  
 441 (ii) original contractor name;  
 442 (iii) subdivision, development, or other project name, if any;  
 443 (iv) project address;  
 444 (v) lot or parcel number;  
 445 (vi) unique project number assigned by the designated agent; and  
 446 (vii) any other identifier that the division considers reasonably appropriate in  
 447 collaboration with the designated agent.  
 448 (4) (a) In accordance with the process required by Section 63J-1-504 , the division  
 shall  
 449 establish the fees for:

---

450 (i) a notice of retention;  
 451 [~~(i)~~] (ii) a notice of commencement;  
 452 [~~(ii)~~] (iii) a preliminary notice;  
 453 [~~(iii)~~] (iv) a notice of intent to file notice of final completion;  
 454 [~~(iv)~~] (v) a notice for remaining amounts due to complete the contract;  
 455 [~~(v)~~] (vi) a notice of completion;  
 456 [~~(vi)~~] (vii) a request for notice;  
 457 [~~(vii)~~] (viii) providing a required notice by an alternate method of delivery;

458 [~~(viii)~~] (ix) a duplicate receipt of a filing; and  
 459 [~~(ix)~~] (x) account setup for a person who wishes to be billed periodically for filings  
 460 with the database.

461 (b) The fees allowed under Subsection (4)(a) may not exceed the amount reasonably  
 462 necessary to create and maintain the database.

463 (c) The fees established by the division may vary by method of filing if one form of  
 464 filing is more costly to process than another form of filing.

465 (d) The division may provide by contract that the designated agent may retain all  
 fees  
 466 collected by the designated agent except that the designated agent shall remit to the  
 division the  
 467 cost of the division's oversight under Subsection (2)(b).

468 (5) (a) The database is classified as a public record under Title 63G, Chapter 2,  
 469 Government Records Access and Management Act, unless otherwise classified by the  
 division.

470 (b) A request for information submitted to the designated agent is not subject to  
 Title  
 471 63G, Chapter 2, Government Records Access and Management Act.

472 (c) Information contained in a public record contained in the database shall be  
 473 requested from the designated agent.

474 (d) The designated agent may charge a commercially reasonable fee allowed by the  
 475 designated agent's contract with the division for providing information under  
 Subsection (5)(c).

476 (e) Notwithstanding Title 63G, Chapter 2, Government Records Access and  
 477 Management Act, if information is available in a public record contained in the  
 database, a

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478 person may not request the information from the division.

479 (f) (i) A person may request information that is not a public record contained in the  
 480 database from the division in accordance with Title 63G, Chapter 2, Government  
 Records

481 Access and Management Act.

482 (ii) The division shall inform the designated agent of how to direct inquiries made  
 to  
 483 the designated agent for information that is not a public record contained in the  
 database.

484 (6) The following are not an adjudicative proceeding under Title 63G, Chapter 4,  
 485 Administrative Procedures Act:

486 (a) the filing of a notice permitted by this chapter;

487 (b) the rejection of a filing permitted by this chapter; or

488 (c) other action by the designated agent in connection with a filing of any notice  
 489 permitted by this chapter.

490 (7) The division and the designated agent need not determine the timeliness of any  
 491 notice before filing the notice in the database.

492 (8) (a) A person who is delinquent on the payment of a fee established under

493 Subsection (4) may not file a notice with the database.  
 494 (b) A determination that a person is delinquent on the payment of a fee for filing  
 495 established under Subsection (4) shall be made in accordance with Title 63G, Chapter  
 4, Administrative Procedures Act.  
 496  
 497 (c) Any order issued in a proceeding described in Subsection (8)(b) may prescribe  
 the method of that person's payment of fees for filing notices with the database after  
 498 issuance of the  
 499 order.  
 500 (9) If a notice is filed by a third party on behalf of another, the notice is considered  
 to be filed by the person on whose behalf the notice is filed.  
 501  
 502 (10) A person filing a notice of commencement, preliminary notice, or notice of  
 503 completion is responsible for verifying the accuracy of information entered into the  
 database,  
 504 whether the person files electronically or by alternate or third party filing.  
 505 Section 14. Section **38-1-29** is repealed and reenacted to read:

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506 **38-1-29. No waiver of rights -- Exception -- Payment applied first to**  
 507 **preconstruction service lien.**  
 508 (1) (a) A right or privilege under this chapter may not be waived or limited by  
contract.  
 509 (b) A provision of a contract purporting to waive or limit a right or privilege under  
this  
 510 chapter is void.  
 511 (2) Notwithstanding Subsection (1), a claimant may waive or limit, in whole or in  
part,  
 512 a lien right under this chapter in consideration of payment as provided in Section  
38-1-39.  
 513 (3) Unless an agreement waiving or limiting a lien right expressly provides that a  
 514 payment is required to be applied to a specific lien, mortgage, or encumbrance, a  
payment to a  
 515 person claiming or included within a preconstruction service lien and a construction  
service  
 516 lien shall be applied first to the preconstruction service lien until paid in full.  
 517 Section 15. Section **38-1-30.5** is enacted to read:  
 518 **38-1-30.5. Notice of retention.**  
 519 (1) (a) A person who, under Section 38-1-3 , is entitled to a preconstruction service  
lien  
 520 on real property under this chapter shall file a notice of retention with the database no  
later than  
 521 20 days after the person commences performing preconstruction service for the  
anticipated  
 522 improvement on the real property.



523 (b) A person who fails to file a timely notice of retention as required in this section  
 524 may not hold a valid preconstruction service lien under this chapter.  
 525 (c) A timely filed notice of retention is effective as to each preconstruction service  
that  
 526 the person filing the notice performs for the anticipated improvement under an  
original  
 527 contract, including preconstruction service that the person performs for more than one  
general  
 528 preconstruction contractor under the same original contract.  
 529 (d) A notice of retention filed for preconstruction service performed or to be  
performed  
 530 under an original contract for an anticipated improvement on real property is not  
valid for  
 531 preconstruction service performed or to be performed under a separate original  
contract for an  
 532 anticipated improvement on the same real property.  
 533 (e) A notice of retention that is timely filed with the database with respect to an  


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 534 anticipated improvement is considered to have been filed at the same time as the  
earliest timely  
 535 filed preliminary notice for that anticipated improvement.  
 536 (f) A notice of retention shall include:  
 537 (i) the name, address, telephone number, and email address of the person  
performing  
 538 the preconstruction service;  
 539 (ii) the name, address, telephone number, and email address of the person who  
 540 employed the person performing the preconstruction service;  
 541 (iii) a general description of the preconstruction service the person provided or will  
 542 provide;  
 543 (iv) the name of the record or reputed owner of the property for which the  
 544 preconstruction service is or will be provided;  
 545 (v) the name of the county in which the property on which the anticipated  
improvement  
 546 will occur is located;  
 547 (vi) (A) the tax parcel identification number of each parcel included in that  
property; or  
 548 (B) the entry number of a previously filed notice of retention that includes the tax  
 549 parcel identification number of each parcel included in that property; and  
 550 (vii) a statement that the person filing the notice intends to hold and claim a  
 551 preconstruction service lien if the person is not paid for the preconstruction service  
the person  
 552 performs.  
 553 (g) (i) A claimant who is a general preconstruction contractor may include in a  
notice  
 554 of retention the name, address, and telephone number of each subcontractor who is

under

555 contract with the claimant to provide preconstruction service that the claimant is

under contract

556 to provide.

557 (ii) The inclusion of a subcontractor in a notice of retention filed by another

claimant is

558 not a substitute for the subcontractor's own submission of a notice of retention.

559 (2) (a) Unless a person indicates to the division or designated agent that the person

560 does not wish to receive a notice under this section, the designated agent shall provide

561 electronic notification of the filing of a notice of retention or alternate filing to:

562 (i) the person filing the notice of retention; and

563 (ii) each person who has requested a notice concerning the anticipated

improvement.

564 (b) A person to whom notice is required to be provided under Subsection (2)(a) is

565 responsible to provide an email address, mailing address, or telefax number to which

notice

566 may be sent and for the accuracy of the email address, mailing address, or telefax

number.

567 (c) The designated agent fulfills the notice requirement of Subsection (2)(a) by

sending

568 the notice to the email address, mailing address, or telefax number provided to the

designated

569 agent, whether or not the notice is actually received.

570 (3) The burden is on the person filing the notice of retention to prove that the person

571 has substantially complied with the requirements of this section.

572 (4) (a) Subject to Subsection (4)(b), a person required by this section to file a notice

of

573 retention is required to give only one notice for each anticipated improvement.

574 (b) If a person performs preconstruction service under more than one original

contract,

575 the person shall file a notice of retention for preconstruction service performed under

each

576 original contract.

577 (5) (a) An owner of property that is the subject of an anticipated improvement, an

578 original contractor, a subcontractor, or another interested person who believes that a

notice of

579 retention has been erroneously filed may request from the person who filed the notice

evidence

580 establishing the validity of the notice of retention.

581 (b) Within 10 days after a request under Subsection (5)(a), the person who filed the

582 notice of retention shall provide the requesting person proof that the notice of

retention is valid.

583 (c) If the person who filed the notice of retention does not provide timely proof of

the

584 validity of the notice of retention, that person shall immediately cancel the notice of  
retention  
 585 from the database in the manner prescribed by the division by rule.  
 586 (6) A person filing a notice of retention by alternate filing is responsible for  
verifying  
 587 and changing any incorrect information in the notice of retention before the expiration  
of the  
 588 period during which the notice is required to be filed.  
 589 Section 16. Section **38-1-31** is amended to read:

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590 **38-1-31. Building permit -- Notice of commencement of work.**  
 591 (1) (a) (i) (A) For a construction project where a building permit is issued to an  
 original  
 592 contractor or owner-builder, no later than 15 days after the issuance of the building  
 permit:  
 593 (I) the local government entity issuing that building permit shall input the building  
 594 permit application and transmit the building permit information to the database  
 electronically  
 595 by way of the Internet or computer modem or by any other means; or  
 596 (II) the original contractor for construction service, owner, or owner-builder may  
 file a  
 597 notice of commencement with the database whether or not a building permit is issued  
 or a  
 598 notice of commencement is filed under Subsection (1)(a)(i)(A)(I).  
 599 (B) The information submitted under Subsection (1)(a)(i)(A) forms the basis of a  
 600 notice of commencement.  
 601 (ii) The person to whom a building permit, filed under Subsection (1)(a)(i), is issued  
 is  
 602 responsible for the accuracy of the information in the building permit.  
 603 (iii) For the purposes of classifying a record under Title 63G, Chapter 2,  
 Government  
 604 Records Access and Management Act, building permit information transmitted from a  
 local  
 605 governmental entity to the database shall be classified in the database by the division  
 606 notwithstanding the local governmental entity's classification of the building permit  
 607 information.  
 608 (b) No later than 15 days after commencement of physical construction work at the  
 609 project site, the original contractor for construction service, owner, or owner-builder  
 may file a  
 610 notice of commencement with the database whether or not a building permit is issued  
 or a  
 611 notice of commencement is filed under Subsection (1)(a).  
 612 (c) An original contractor for construction service, owner, or owner-builder may file  
 a  
 613 notice of commencement with the designated agent prior to the time frames

established in

614 Subsections (1)(a) and (b).

615 (d) An owner of construction or an original contractor *for construction service* may  
file

616 a notice of commencement with the designated agent within the time prescribed by  
Subsections

617 (1)(a) and (b).

618 (e) (i) If duplicate notices of commencement are filed, they shall be combined into  
one

619 notice for each project and any notices filed relate back to the date of the earliest-filed  
notice of

620 commencement for the project.

621 (ii) A duplicate notice of commencement that is untimely filed relates back under  
622 Subsection (1)(e)(i) if the earlier filed notice of commencement is timely filed.

623 (iii) Duplicate notices of commencement shall be automatically linked by the  
624 designated agent.

625 (f) The designated agent shall assign each construction project a unique project  
number

626 that:

627 (i) identifies each construction project; and

628 (ii) can be associated with all notices of commencement, preliminary notices, and  
629 notices of completion.

630 (g) A notice of commencement is effective only as to any labor, service, equipment,  
631 and material furnished to the construction project that is furnished subsequent to the  
filing of

632 the notice of commencement.

633 (2) (a) A notice of commencement shall include the following:

634 (i) the name and address of the owner of the project;

635 (ii) the name and address of the:

636 (A) original contractor *for construction service*; and

637 (B) surety providing any payment bond for the project, or if none exists, a statement  
638 that a payment bond was not required for the work being performed; and

639 (iii) (A) the project address if the project can be reasonably identified by an address;

or

640 (B) the name and general description of the location of the project if the project  
cannot

641 be reasonably identified by an address.

642 (b) A notice of commencement may include:

643 (i) a general description of the project; or

644 (ii) the lot or parcel number, and any subdivision, development, or other project

name,

645 of the real property upon which the project is to be constructed if the project is subject  
to

646 mechanics' liens.  
 647 (c) A notice of commencement need not include all of the items listed in Subsection  
 648 (2)(a) if:  
 649 (i) a building permit is issued for the project; and  
 650 (ii) all items listed in Subsection (2)(a) that are available on the building permit are  
 651 included in the notice of commencement.  
 652 (3) If a notice of commencement for a construction project is not filed within the  
 time  
 653 set forth in Subsections(1)(a) and (b), the following do not apply:  
 654 (a) Section 38-1-32 ; and  
 655 (b) Section 38-1-33 .  
 656 (4) (a) Unless a person indicates to the division or designated agent that the person  
 657 does not wish to receive a notice under this section, electronic notice of the filing of a  
 notice of  
 658 commencement or alternate notice as prescribed in Subsection (1), shall be provided  
 to:  
 659 (i) all persons who have filed notices of commencement for the project; and  
 660 (ii) all interested persons who have requested notices concerning the project.  
 661 (b) (i) A person to whom notice is required under Subsection (4)(a) is responsible  
 for:  
 662 (A) providing an email address, mailing address, or telefax number to which a  
 notice  
 663 required by Subsection (4)(a) is to be sent; and  
 664 (B) the accuracy of any email address, mailing address, or telefax number to which  
 665 notice is to be sent.  
 666 (ii) The designated agent fulfills the notice requirement of Subsection (4)(a) when it  
 667 sends the notice to the email address, mailing address, or telefax number provided to  
 the  
 668 designated agent whether or not the notice is actually received.  
 669 (5) (a) The burden is upon any person seeking to enforce a notice of commencement  
 to  
 670 verify the accuracy of information in the notice of commencement and prove that the  
 notice of  
 671 commencement is filed timely and meets all of the requirements in this section.  
 672 (b) A substantial inaccuracy in a notice of commencement renders the notice of  
 673 commencement unenforceable.

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674 (c) A person filing a notice of commencement by alternate filing is responsible for  
 675 verifying and changing any incorrect information in the notice of commencement  
 before the  
 676 expiration of the time period during which the notice is required to be filed.  
 677 (6) At the time a building permit is obtained, each original contractor for  
construction  
 678 service shall conspicuously post at the project site a copy of the building permit  
 obtained for

679 the project.  
 680 Section 17. Section **38-1-32** is amended to read:  
 681 **38-1-32. Preliminary notice by subcontractor.**  
 682 (1) (a) (i) Except for a person who has a contract with an owner or an owner-builder  
 or  
 683 a laborer compensated with wages, a subcontractor *for construction service* shall file a  
 684 preliminary notice with the database by the later of:  
 685 (A) 20 days after commencement of its own work or the commencement of  
 furnishing  
 686 labor, service, equipment, and material to a construction project; or  
 687 (B) 20 days after the filing of a notice of commencement if the subcontractor's work  
 688 commences before the filing of the first notice of commencement.  
 689 (ii) A preliminary notice filed within the period described in Subsection (1)(a)(i) is  
 690 effective as to all labor, service, equipment, and material furnished to the construction  
 project,  
 691 including labor, service, equipment, and material provided to more than one contractor  
 or  
 692 subcontractor.  
 693 (iii) (A) If more than one notice of commencement is filed for a project, a person  
 may  
 694 attach a preliminary notice to any notice of commencement filed for the project by a  
 party  
 695 authorized in Section 38-1-31 .  
 696 (B) A preliminary notice attached to an untimely notice of commencement is valid  
 if  
 697 there is also a valid and timely notice of commencement for the project filed by a party  
 698 authorized in Section 38-1-31 .  
 699 (b) If a person files a preliminary notice after the period prescribed by Subsection  
 700 (1)(a), the preliminary notice becomes effective five days after the day on which the  
 701 preliminary notice is filed.

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702 (c) Except as provided in Subsection (1)(e), failure to file a preliminary notice  
 within  
 703 the period required by Subsection (1)(a) precludes a person from maintaining any  
 claim for  
 704 compensation earned for performance of labor or service or supply of materials or  
 equipment  
 705 furnished to the construction project before the expiration of five days after the late  
 filing of a  
 706 preliminary notice, except as against the person with whom the person contracted.  
 707 (d) (i) (A) If a person who is required to file a preliminary notice under this chapter  
 708 fails to file the preliminary notice, that person may not hold a valid lien under this  
 chapter.  
 709 (B) A county recorder need not verify that a valid preliminary notice is filed when a  
 710 person files a notice to hold and claim a lien under Section 38-1-7 .

711 (ii) The content of a preliminary notice shall include:  
712 (A) the building permit number for the project, or the number assigned to the  
project  
713 by the designated agent;  
714 (B) the name, address, and telephone number of the person furnishing the labor,  
715 service, equipment, or material;  
716 (C) the name and address of the person who contracted with the claimant for the  
717 furnishing of the labor, service, equipment, or material;  
718 (D) the name of the record or reputed owner of the project;  
719 (E) the name of the original contractor *for construction service* under which the  
720 claimant is performing or will perform its work; and  
721 (F) the address of the project or a description of the location of the project.  
722 (iii) Upon request by person identified in Subsection (1)(a)(i), an original contractor  
*for*  
723 *construction service* shall provide the person with the building permit number for the  
project,  
724 or the number assigned to the project by the designated agent.  
725 (e) If a person provides labor, service, equipment, or material before the filing of a  
726 notice of commencement and the notice of commencement is filed more than 15 days  
after the  
727 day on which the person providing labor, service, equipment, or material begins work  
on the  
728 project, the person providing labor, service, equipment, or material need not file a  
preliminary  
729 notice to maintain the person's right to hold a lien under this chapter or any other right,  


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730 including a right referenced under Subsection (1)(c).  
731 (2) (a) (i) Unless a person indicates to the division or designated agent that the  
person  
732 does not wish to receive a notice under this section, electronic notification of the filing  
of a  
733 preliminary notice or alternate notice as prescribed in Subsection (1), shall be  
provided to:  
734 (A) the person filing the preliminary notice;  
735 (B) each person that filed a notice of commencement for the project; and  
736 (C) all interested persons who have requested notices concerning the project.  
737 (ii) A person to whom notice is required under Subsection (2)(a)(i) is responsible  
for:  
738 (A) providing an email address, mailing address, or telefax number to which a  
notice  
739 required by Subsection (2)(a) is to be sent; and  
740 (B) the accuracy of any email address, mailing address, or telefax number to which  
741 notice is to be sent.  
742 (iii) The designated agent fulfills the notice requirement of Subsection (2)(a)(i)  
when it

743 sends the notice to the email address, mailing address, or telefax number provided to  
the  
744 designated agent whether or not the notice is actually received.  
745 (b) The burden is upon the person filing the preliminary notice to prove that the  
person  
746 has substantially complied with the requirements of this section.  
747 (c) Subject to Subsection (2)(d), a person required by this section to give  
preliminary  
748 notice is only required to give one notice for each project.  
749 (d) If the labor, service, equipment, or material is furnished pursuant to contracts  
under  
750 more than one original contract *for construction service*, the notice requirements must  
be met  
751 with respect to the labor, service, equipment, or material furnished under each original  
contract.  
752 (3) (a) If a construction project owner, original contractor, *or* subcontractor *for*  
753 *construction service*, or other interested person believes that a preliminary notice has  
been filed  
754 erroneously, that owner, original contractor, subcontractor, or other interested person  
can  
755 request from the person who filed the preliminary notice evidence establishing the  
validity of  
756 the preliminary notice.  
757 (b) Within 10 days after the request described in Subsection (3)(a), the person or  
entity

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758 that filed the preliminary notice shall provide the requesting person or entity proof that  
the  
759 preliminary notice is valid.  
760 (c) If the person or entity that filed the preliminary notice does not provide proof of  
the  
761 validity of the preliminary notice, that person or entity shall immediately cancel the  
preliminary  
762 notice from the database in any manner prescribed by the division pursuant to rule.  
763 (4) A person filing a preliminary notice by alternate filing is responsible for  
verifying  
764 and changing any incorrect information in the preliminary notice before the expiration  
of the  
765 time period during which the notice is required to be filed.  
766 (5) Until June 1, 2008, nothing in this section affects a person's rights under Title  
38,  
767 Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act.  
768 Section 18. Section **38-1-33** is amended to read:  
769 **38-1-33. Notice of completion.**  
770 (1) (a) Upon final completion of a construction project, and in accordance with



## Section

771 38-1-40 , the following with a construction project registered with the database may  
file a notice  
772 of completion with the database:  
773 (i) an owner of the construction project;  
774 (ii) an original contractor ~~[of the]~~ for construction ~~[project]~~ service;  
775 (iii) a lender that has provided financing for the construction project;  
776 (iv) a surety that has provided bonding for the construction project; or  
777 (v) a title company issuing a title insurance policy on the construction project.  
778 (b) Notwithstanding Section 38-1-2 , if a subcontractor for construction service  
779 performs substantial work after the applicable dates established by Subsection (1)(a),  
that  
780 subcontractor's subcontract is considered an original contract for construction service  
for the  
781 sole purpose of determining:  
782 (i) the subcontractor's time frame to file a notice to hold and claim a lien under  
783 Subsection 38-1-7 (1); and  
784 (ii) the original contractor's time frame to file a notice to hold and claim a lien under  
785 Subsection 38-1-7 (1) for that subcontractor's work.

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786 (c) A notice of completion shall include:  
787 (i) the building permit number for the project, or the number assigned to the project  
by  
788 the designated agent;  
789 (ii) the name, address, and telephone number of the person filing the notice of  
790 completion;  
791 (iii) the name of the original contractor for ~~[the project]~~ construction service;  
792 (iv) the address of the project or a description of the location of the project;  
793 (v) the date on which final completion is alleged to have occurred; and  
794 (vi) the method used to determine final completion.  
795 (d) For purposes of this section, final completion of the original contract does not  
occur  
796 if work remains to be completed for which the owner is holding payment to ensure  
completion  
797 of the work.  
798 (e) (i) Unless a person indicates to the division or designated agent that the person  
does  
799 not wish to receive a notice under this section, electronic notification of the filing of a  
notice of  
800 completion or alternate notice as prescribed in Subsection (1)(a), shall be provided to:  
801 (A) each person that filed a notice of commencement for the project;  
802 (B) each person that filed preliminary notice for the project; and  
803 (C) all interested persons who have requested notices concerning the project.  
804 (ii) A person to whom notice is required under this Subsection (1)(e) is responsible  
for:

805 (A) providing an email address, mailing address, or telefax number to which a  
notice  
806 required by this Subsection (1)(e) is to be sent; and  
807 (B) the accuracy of any email address, mailing address, or telefax number to which  
808 notice is to be sent.  
809 (iii) The designated agent fulfills the notice requirement of Subsection (1)(e)(i)  
when it  
810 sends the notice to the email address, mailing address, or telefax number provided to  
the  
811 designated agent, whether or not the notice is actually received.  
812 (iv) Upon the filing of a notice of completion, the time periods for filing preliminary  
813 notices stated in Section 38-1-27 are modified such that all preliminary notices shall  
be filed

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814 subsequent to the notice of completion and within 10 days from the day on which the  
notice of  
815 completion is filed.  
816 (f) A subcontract that is considered an original contract *for construction service* for  
817 purposes of this section does not create a requirement for an additional preliminary  
notice if a  
818 preliminary notice has already been given for the labor, service, equipment, and  
material  
819 furnished to the subcontractor who performs substantial work.  
820 (2) (a) If a construction project owner, original contractor, *or* subcontractor *for*  
821 *construction service*, or other interested person believes that a notice of completion  
has been  
822 filed erroneously, that owner, original contractor, subcontractor, or other interested  
person can  
823 request from the person who filed the notice of completion evidence establishing the  
validity of  
824 the notice of completion.  
825 (b) Within 10 days after the request described in Subsection (2)(a), the person who  
826 filed the notice of completion shall provide the requesting person proof that the notice  
of  
827 completion is valid.  
828 (c) If the person that filed the notice of completion does not provide proof of the  
829 validity of the notice of completion, that person shall immediately cancel the notice of  
830 completion from the database in any manner prescribed by the division pursuant to  
rule.  
831 (3) A person filing a notice of completion by alternate filing is responsible for  
verifying  
832 and changing any incorrect information in the notice of completion before the  
expiration of the  
833 time period during which the notice is required to be filed.  
834 Section 19. Section **38-1-40** is amended to read:

835 **38-1-40. Notice of intent to obtain final completion.**

836 (1) An owner, as defined in Section 14-2-1 , of a nonresidential construction project  
 837 that is registered with the database, or a contractor of a commercial nonresidential  
 construction  
 838 project that is registered with the database under Section 38-1-33 , shall file with the  
 database a  
 839 notice of intent to obtain final completion as provided in this section if:  
 840 (a) the completion of performance time under the original contract *for construction*  
 841 *service* is greater than 120 days;

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842 (b) the total original construction contract price exceeds \$500,000; and  
 843 (c) the contractor or owner has not obtained a payment bond in accordance with  
 844 Section 14-2-1 .  
 845 (2) The notice of intent described in Subsection (1) shall be filed at least 45 days  
 before  
 846 the day on which the owner or contractor of a commercial nonresidential construction  
 project  
 847 files or could have filed a notice of completion under Section 38-1-33 .  
 848 (3) A person supplying labor, materials, or services to an owner, a contractor, or  
 849 subcontractor who files a notice of intent in accordance with Subsection (1) shall file  
 an  
 850 amendment to the person's preliminary notice previously filed by the person as  
 required in  
 851 Section 38-1-32 :  
 852 (a) that includes:  
 853 (i) a good faith estimate of the total amount remaining due to complete the contract,  
 854 purchase order, or agreement relating to the person's approved labor, approved  
 materials, and  
 855 approved services;  
 856 (ii) the identification of each contractor or subcontractor with whom the person has  
 a  
 857 contract or contracts for supplying project labor, materials, or services; and  
 858 (iii) a separate statement of all known amounts or categories of work in dispute; and  
 859 (b) no later than 20 days after the day on which the owner or contractor files a  
 notice of  
 860 intent.  
 861 (4) (a) A person identified in accordance with Subsection (3)(a)(i) who has  
 complied  
 862 with, or is exempt from, the provisions of Section 38-1-22 , may demand a statement  
 of  
 863 adequate assurance from the owner, contractor, or subcontractor with whom the person  
 has  
 864 privity of contract no later than 10 days after the day on which the person files a  
 balance  
 865 statement in accordance with Subsection (3) from an owner, contractor, or

subcontractor who is

866 in privity of contract with the person.

867 (b) A demand for adequate assurance as described in Subsection (4)(a) may include

a

868 request for a statement from the owner, contractor, or subcontractor that the owner,

contractor,

869 or subcontractor has sufficient funds dedicated and available to pay for all sums due to

the

870 person filing for the adequate assurances or that will become due in order to complete

a

871 construction project.

872 (c) A person who demands adequate assurance under Subsection (4)(a) shall deliver

873 copies of the demand to the owner and contractor:

874 (i) by hand delivery with a responsible party's acknowledgment of receipt;

875 (ii) by certified mail with a return receipt; or

876 (iii) as provided under Rule 4, Utah Rules of Civil Procedure.

877 (5) (a) A person identified in accordance with Subsection (3)(a)(i) who has

complied

878 with, or is exempt from, the provisions of Section 38-1-32 may bring a legal action

against a

879 party with whom the person is in privity of contract, including a request for injunctive

or

880 declaratory relief, to determine the adequacy of an owner's, with whom the demanding

person

881 contracted, contractor's, with whom the demanding person contracted, or

subcontractor's, with

882 whom the demanding person contracted, funds if, after the person demands adequate

assurance

883 in accordance with the requirements of this section:

884 (i) the owner, contractor, or subcontractor fails to provide adequate assurance that

the

885 owner, contractor, or subcontractor has sufficient available funds, or access to

financing or

886 other sufficient available funds, to pay for the completion of the demanding person's

approved

887 work on the construction project; or

888 (ii) the parties disagree, in good faith, as to whether there are adequate funds, or

access

889 to financing or other sufficient available funds, to pay for the completion of the

demanding

890 person's approved work on the construction project.

891 (b) If a court finds that an owner, contractor, or subcontractor has failed to provide

892 adequate assurance in accordance with Subsection (4)(a), the court may require the

owner,

893 contractor, or subcontractor to post adequate security with the court sufficient to assure  
 timely  
 894 payment of the remaining contract balance for the approved work of the person  
 seeking  
 895 adequate assurance, including:  
 896 (i) cash;  
 897 (ii) a bond;

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898 (iii) an irrevocable letter of credit;  
 899 (iv) property;  
 900 (v) financing; or  
 901 (vi) another form of security approved by the court.  
 902 (6) (a) A person is subject to the civil penalty described in Subsection (6)(b), if the  
 903 person files a balance statement described in Subsection (3):  
 904 (i) that misrepresents the amount due under the contract; and  
 905 (ii) with the intent to:  
 906 (A) charge an owner, contractor, or subcontractor more than the actual amount due;  
 or  
 907 (B) procure any other unfair advantage or benefit on the person's behalf.  
 908 (b) The civil penalty described in Subsection (6)(a) is the greater of:  
 909 (i) twice the amount by which the balance statement filed under Subsection (3)  
 exceeds  
 910 the amount actually remaining due under the contract for completion of construction;  
 or  
 911 (ii) the actual damages incurred by the owner, contractor, or subcontractor.  
 912 (7) A court shall award reasonable attorney fees to a prevailing party for an action  
 913 brought under this section.  
 914 (8) Failure to comply with the requirements established in this section does not  
 affect  
 915 any other requirement or right under this chapter.  
 916 (9) A person who has not complied with, or is not exempt from, the provisions of  
 917 Section 38-1-32 may not be entitled to a right or a remedy provided in this section.  
 918 (10) This section does not create a cause of action against a person with whom the  
 919 demanding party is not in privity of contract.  
 920 Section 20. Section **76-6-524** is enacted to read:  
 921 **76-6-524. Falsifying information for preconstruction service lien purposes.**  
 922 *A person who knowingly falsifies information for the purpose of obtaining priority*  
*of a*  
 923 *preconstruction service lien under Title 38, Chapter 1, Mechanics' Liens, is guilty of a*  
*class B*  
 924 *misdemeanor.*

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