

MECHANIC'S LIENS IN UTAH

Purpose of a Mechanic's Lien

1. Purpose of the mechanic's lien statutes are to prevent landowners from taking the benefits of improvements to the landowner's property without paying for the materials and labor that caused the improvement. *King Bros., Inc. v. Utah Dry Kiln Co.*, 374 P.2d 254, 255 (Utah 1962).

Who Can File & What Type of Work is Covered: U.C.A. § 38-1-3.

1. Who Can File:
 - a. Contractors
 - b. Subcontractors
 - c. Any Person or entity furnishing labor or materials for improvement or construction on an owner's property.
2. What Kind of Work is Covered:
 - a. Any construction project:
 - i. Services, furnishing or renting materials or equipment.
 - ii. Construction, Alteration, or Improvement to any premises in any manner.
 - iii. Only permanent, physical improvements (fixtures). *King Bros.*, 374 P.2d at 256.

Amount of a Mechanic's Lien

1. Lien Amount: Claim is limited to the value of the labor, service, materials or equipment furnished. §38-1-3.
 - a. Reasonableness
 - b. No minimum dollar value
2. Attorney's Fees: The successful party in an action to enforce a lien is entitled to reasonable attorney's fees. § 38-1-18.
3. Costs: preparing, filing, perfecting, and enforcing the lien. § 38-1-17.
4. Abusive Lien: Intentionally filing amount greater than what is owed.
 - a. Liability: twice the amount of discrepancy or actual damages to owner.

Preliminary Notice:

1. Before Preliminary Notice - Notice of commencement:
 - a. Filed by government entity, owner, or general contractor.
 - b. Included in Notice of Commencement:
 - i. Name and address of owner
 - ii. Name and address of general contractor
 - iii. Name and address of any surety or statement that there is no bond.
 - iv. Project address/name and description of project OR building permit and information.
 - v. NOTE: This information will help locate the project on the State Construction Registry.
 - c. Deadlines for filing Notice of Commencement:
 - i. Building Permit: 15 days after issuance

- ii. No Building Permit: 15 days after physical work starts
 - d. Effect of timely filing of notice of commencement
 - i. If timely, the preliminary notice clock starts ticking
 - ii. If not timely, no preliminary notice required.
 - e. If work commenced more than 16 days before Notice of Commencement is filed, no preliminary notice is required.
 - f. Suggestions on Notice of Commencement:
 - i. Be aware when work has commenced but Building Permit is late: check the database once a week.
- 2. Rules for Preliminary Notice
 - a. On commercial projects where a Notice of commencement was filed after May 1, 2005.
 - b. On residential projects where a Notice of Commencement was filed after November 1, 2005.
 - c. All subcontractors and suppliers are required to file a Preliminary Notice regardless of tier.
 - d. Covers all work before and after filing
- 3. Deadlines for filing Preliminary Notice:
 - a. Within 20 days after your first work starts.
 - b. Within 20 days after notice of commencement is filed
 - c. Effect of failure to timely file
 - i. You may file more than 20 days after first labor or material, but you can only lien for labor and material furnished more than five days after the notice.
 - ii. Minimum loss of 25 days' work.
- 4. Preliminary Notice Must include:
 - a. Building permit number or State Construction Registry (SCR) number (GC must furnish this information upon request).
 - b. Name, address, and telephone of claimant.
 - c. Name and address of person contracted with.
 - d. Name of record or reputed owner of the project.
 - e. Name of the original contractor
 - f. Project address or description of the project.

How to Perfect a Mechanic's Lien

- 1. Deadlines for Filing the Mechanic's Lien
 - g. 90 days after a Notice of Completion is filed
 - h. 180 days after final completion if no notice is filed.
- 2. Lien Preparation
 - a. Valid form
 - b. Contents of the Mechanic's Lien
 - i. Name, address, and phone number of claimant
 - ii. Owner's name
 - iii. Debtor's name
 - iv. Amount claimed
 - v. Property description

- vi. First and last dates of work or service
- vii. Lien recovery fund information acknowledgment
- 3. Other Perfection Issues:
 - a. Substantial Compliance required.
 - b. Lien should be filed with the county recorder where the property is located.
 - c. Liens can be amended within the original time frame for filing the lien.
- 4. Notice to Owner: within 30 days after recording the lien a copy of the lien must be sent to the owner by certified mail.
- 5. Effect of a Perfected Lien § 38-1-5:
 - a. Relates back, and takes effect as of, the time of commencement to do work or furnish materials on the ground for the structure or improvement.
 - b. Shall have priority over any lien, mortgage or other encumbrance.

Enforcing a Mechanic's Lien

- 1. Actions to Enforce Mechanic's Liens
 - a. Pleadings
 - b. Works like a mortgage foreclosure
 - c. Accomplished through a court
- 2. Lawsuit: must be filed within 180 days from the date the mechanic's lien was filed.
 - a. Suit must be filed in the county where the property is located.
 - b. Successful suit: court orders the lien property sold to pay the debt
- 3. Lis Pendens: must be filed with the county where the property is located within the time limits for filing a foreclosure action.
- 4. Lien Recovery Fund Information: If the property is residential (up to and including duplexes), the lien claimant must serve the owner with the instructions and a form affidavit or "the lien claimant shall be barred from maintaining or enforcing the lien upon the residence."
 - a. Filing application must be submitted within one year of:
 - i. Date of judgment
 - ii. Date nonpaying party filed bankruptcy.
 - b. Owner must furnish:
 - i. Written contract with licensed contractor/developer.
 - ii. Proof of payment in full.
 - c. Claimant must:
 - i. File action within 180 days from filing lien or 270 days from the completion of the project.
 - ii. Obtain a judgment
 - iii. Supplemental Order

Notice of Completion

- 1. Final completion means:
 - a. Certificate of occupancy;
 - b. Date of final inspection; or
 - c. No substantial work left on the project.

2. Who may file:
 - a. Owner, general contractor, lender, surety, or title company.
3. Importance of filing: requirement to file a foreclosure action

STATE CONSTRUCTION REGISTRY

Overview of State Construction Registry (SCR)(§ 38-1-27)

1. Summary: on online system for filing and managing notices of commencement, preliminary notices, and notices of completion.
2. Key features:
 - Internet access
 - Password protection
 - Standardized process
 - Automatic-notification system: sends automatically generated emails to interested parties.
3. Screen Shots
4. Hypothetical Timeline for SCR:
 - Day 0: Building Permit Issued
 - Day 7: Work commences
 - Day 15: Deadline for Filing Notice of Commencement for issuing Agency (Day 15)
 - Day 22 (15 days after commencement of construction): Deadline for Filing Notice of Commencement for General Contractor and Owner.
 - Day 40: Claimant performs work
 - Day 60 (20 days after claimant's first work): Claimant's deadline to file preliminary notice.
 - Day 180: Final Completion of Project – General Contractor, Owner, Lender, Surety, or Title Company can file Notice of Completion after final completion of project.
 - Day 280 (90 days after filing Notice of Completion OR Day 360 if no Notice of Completion is Filed – 180 days after Final Completion): Deadline to file Notice of Lien.
 - Day 450 (180 days after filing Notice of Lien): Deadline to file Foreclosure Action.
5. Help with SCR
 - <http://www.utah.gov/cnr>: SCR login information
 - Utah Interactive provides free training classes
 - Free tutorials on the web site