

# UTAH'S LIEN LAWS – WHAT YOU NEED TO KNOW

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# What is the Purpose of a Mechanic's Lien?

To provide a party who supplies design or construction services or materials for construction, alteration or improvement of real property to secure payment of the value of those services or materials with a lien on the property (which is an encumbrance on the property, similar to a deed or mortgage).

This webinar addresses privately-owned projects only. Different rules apply for public-owned projects. You cannot lien public-owned property, BUT you can lien leasehold interests related to that property.

# Who May File a Lien?

Any person who provides preconstruction service or construction work on or for a project at the request of the owner, including providers of materials, services, equipment or labor, may file a mechanic's lien for the reasonable value of the preconstruction service or construction work.

- Design Professionals (Architects, Engineers)
- General Contractors
- Subcontractors
- Suppliers

# Preconstruction Service Lien

This lien is available to:

- design professionals, consultants, design-build contractors, etc. who:
- for separate compensation (*i.e.*, distinct from compensation paid for construction work)
- provide design or similar project services before actual construction begins.

The significance of the lien cannot be overstated:

- If claimants follow the statutory procedures
- They greatly enhance the prospect of getting paid for their services.

WHAT?	WHEN?	WHERE?	WHY?
<b>File 'Notice of Preconstruction Services'</b>	Within 20 days of when you first provided preconstruction services	State Construction Registry (SCR) <a href="http://www.dopl.utah.gov/licensing/forms/SCR_letter.pdf">http://www.dopl.utah.gov/licensing/forms/SCR_letter.pdf</a> (with links)  If project is not registered with SCR, request landowner to register project or register it yourself.	Failure to timely file = loss of preconstruction lien rights (you cannot record/file a Notice of Preconstruction Lien of claim a preconstruction lien).
<b>Record 'Notice of Preconstruction Lien'</b>	<u>Within 90 days of the earlier of</u> Completing your preconstruction services  OR  start of construction.	With county recorder(s) for county/counties where property is located.  The amount claimed in Notice cannot exceed the reasonable value of the services provided and cannot include collection costs, interest or attorneys' fees.	Failure to timely file/record = loss of preconstruction lien rights
<b>Mail copy of 'Notice of Preconstruction Lien' to Landowner</b>	Within 30 days of recording 'Notice of Preconstruction Lien'	Via Certified Mail	Failure to timely mail = loss of right to recover attorney fees in lien foreclosure lawsuit
<b>File Lawsuit to Enforce Preconstruction Lien</b>	Within 180 days of recording 'Notice of Preconstruction Lien'	District court for county where property is located.	Failure to timely file lawsuit = loss of preconstruction lien rights.
<b>Record 'Cancellation of Preconstruction Lien'</b>	If you have been paid in full, you must record a 'Cancellation of Preconstruction Lien' within 10 days of receiving a request from any person with an interest in the property.	With county recorder(s) for county/counties where property is located.	Failure to timely file/record = you may be required to pay owner actual damages or \$100 per day, whichever is greater.

# Content of the Preconstruction Notice

- The design consultant's name, address, telephone number and email address,
- The name, address, telephone number and email address of the customer,
- A description of the preconstruction services,
- The owner's name,
- The county where the project is located,
- The tax parcel identification number or the entry number of a previously filed preconstruction notice
- A statement that the consultant intends to claim a preconstruction lien.

# Content of the Preconstruction Lien

- The consultant's name, mailing address and telephone number,
- A statement that the consultant claims a lien,
- The date the notice of preconstruction service was filed,
- The name of the consultant's customer,
- A general description of what services were provided,
- The date services were last provided,
- The owner's name,
- A description of the project property (legal description),
- The principal amount owed.

# Types of Liens – Construction Service Lien

The second lien created by the 2011 amendments, which applies to work placed under contract after August 1, 2011, is a '**Construction Service Lien.**' Among other changes to the mechanics lien statute, this amendment requires the filing of a Preliminary Notice in order to hold a valid construction service lien. One of the biggest changes to the mechanics lien statute relates to the priority of liens. Priority of mechanics liens is no longer tied to the first physical work performed on the project, but rather to the first valid preliminary notice that is filed and not released. Again, in order to enforce a construction service lien one must comply with several filing, recording or other requirements and failure to do so may result in a loss of lien or related rights. Preserving your mechanics lien rights requires specific performance on your part.

WHAT?	WHEN?	WHERE?	WHY?
<b>File 'Preliminary Notice'</b>	Within 20 days of when you first provided construction services. (See "Why?" for consequences filing more than 20 days after first services.)	State Construction Registry (SCR) <a href="http://www.dopl.utah.gov/licensing/forms/SCR_letter.pdf">http://www.dopl.utah.gov/licensing/forms/SCR_letter.pdf</a> (with links)  If project is not registered with SCR, request landowner to register project or register it yourself.	Failure to timely file = loss of construction lien rights as to all construction services provided six (6) or more days after you file 'Preliminary Notice.'
<b>Record 'Notice of Construction Lien'</b>	<b>**Whichever is earlier:**</b>  180 days of completing your construction services  OR  90 days of when land owner files a 'Notice of Completion' of project with the SCR.	With county recorder(s) for county/counties where property is located.  A 'Notice of Construction Lien' can encompass monies due for <u>pre</u> construction services and related amounts due.  The amount claimed in Notice cannot exceed the reasonable value of the services provided and cannot include collection costs, interest or attorneys' fees.	Failure to timely file/record = loss of Construction lien rights.
<b>Mail copy of 'Notice of Construction Lien' to Landowner</b>	Within 30 days of recording 'Notice of Construction Lien.'	Via Certified Mail	Failure to timely mail = loss of right to recover attorney fees in lien foreclosure lawsuit.
<b>File Lawsuit to Enforce Construction Lien</b>	Within 180 days of recording 'Notice of Construction Lien.'	District court for county where property is located.	Failure to timely file lawsuit = loss of construction lien rights.
<b>Record 'Cancellation of Construction Lien'</b>	If you have been paid in full, you must record a 'Cancellation of Construction Lien' within 10 days of receiving a request from any person with an interest in the property.	With county recorder(s) for county/counties where property is located.	Failure to timely file/record = you may be required to pay owner actual damages or \$100 per day, whichever is greater.

# Filing a Preliminary Notice – Nuts and Bolts

## **\*\*KEY INFORMATION\*\***

Utah State Construction Registry (SCR – for short!)

<https://secure.utah.gov/account/log-in.html>

# How Does the SCR Affect a Mechanic's Lien?

Preliminary Notice. A lien claimant must file a Preliminary Notice (commonly called a “pre-lien”) with the SCR within 20 days of when the contractor began work.

**Failure to file a preliminary notice may preclude you from claiming a valid Preconstruction or Construction Lien. UCA § 38-1a-401 and -501.**

# {Screen Recording Walkthrough}

# Enforcing a Mechanic's Lien

Lien claimants then have 180 days from the date they record a Notice of Lien Claim to file an action to enforce the mechanic's lien. Since business entities may not represent themselves in legal proceedings, this generally requires a lien claimant to retain legal counsel.

# Why Does this Matter?

In a word – “**PRIORITY.**” What is Priority?

A properly filed mechanic’s lien has priority dating back to the date physical work began on the project. That means that a lien filed by the last contractor on a jobsite has priority dating back to the first physical work done by any contractor, so long as it is on the same project. In residential construction, the painter would have priority dating back to the date when the excavator starting digging the foundation.

# Priority, cont.

The priority of the mechanic's lien controls the contractor's ability to effectively collect against the property. If the lien is in first priority, the right to foreclosure allows the lien claimant to take the property free and clear of other liens. If the lien is in a lower priority (i.e. junior to a trust deed from a lender) the lien claimant will take the property subject to the higher priority liens and encumbrances.

# Bonding Around a Lien

Notice of Release of Lien and Substitution of Alternate Security.

The Notice must:

- (1) Be in a recordable form;
- (2) Identify the Preconstruction or Construction Lien to be released;
- (3) Attach an approved surety bond in an amount based on the amount of the claimed lien (150% if greater than \$25,000; 175% if \$15,000-25,000; 200% if less than \$15,000) payable to the lien claimant conditioned for payment of judgment, plus costs and fees.**

# Bonding Around a Lien, cont.

Upon recording of an approved Notice of Release, the real property shall be released from the Preconstruction or Construction Lien, if the Notice of Release is properly served. The alternate security is released if the lien claimant does not commence an enforcement action or if the lien foreclosure action is dismissed.

If the amount of the lien is disputed, there are provisions allowing an owner to petition the court for a determination of the proper amount in order to determine the required bond amount.

# Impact of Bonding Around a Lien

After the Notice of Release is recorded:

- The Project property is released from the Preconstruction or Construction Lien, clearing title,
- The bond serves as security for the lien, rather than the Project property,
- The lien claimant must be served a copy of the Notice of Release within 30 days after the Notice of Release is recorded,
- The lien claimant must file suit on the bond within 90 days thereafter, or
- The alternate security is released if the lien claimant does not commence an enforcement action or if the lien foreclosure action is dismissed.

# Pitfalls – Beware!!

- A Preconstruction Services Lien claimant who fails to submit a notice of preconstruction lien **may not** claim a preconstruction lien.
- A Construction Services Lien claimant who fails to file a preliminary notice **may not** claim a construction lien.
- Intentional submission of a lien containing a greater demand than the sum due is a class B misdemeanor.
- Any person submitting a lien containing a greater demand than the sum due is liable to a third party affected by the notice for an amount twice the amount by which the lien exceeds the amount actually due or actual damages.

An architectural rendering of a building's interior structure, showing a complex grid of columns and beams. A large section of the structure is highlighted in a vibrant green color. The rendering is overlaid on a background of architectural blueprints and technical drawings, which are rendered in a light, semi-transparent style. The overall composition is a 3D perspective view of the building's framework.

# Questions?

# THANK YOU!



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