

EXTREME MAKEOVER: UTAH'S NEW MECHANIC'S LIEN LAW



UTAH STATE LEGISLATURE 2011



WHO CAN FILE A LIEN?

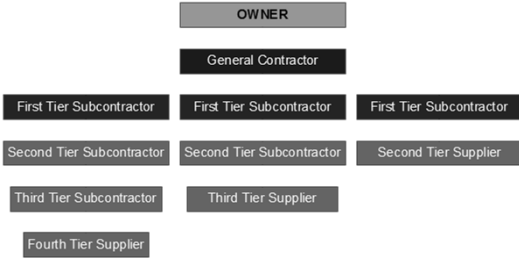
- Any person who performs preconstruction or construction services for the improvement of real property. UTAH CODE ANN. § 38-1-3



WHERE AM I ON THIS PROJECT?



WHERE AM I ON THIS PROJECT?



STATE CONSTRUCTION NOTICE PROGRAM (SCR.UTAH.GOV)



STATE CONSTRUCTION NOTICE PROGRAM (SCR.UTAH.GOV)

- Applies to all projects
 - Public and private
 - Commercial and residential



**STATE CONSTRUCTION NOTICE PROGRAM
(SCR.UTAH.GOV)**

- Internet program to host:
 - Notices of Commencement
 - Preliminary Notices
 - Notices of Retention
 - Notices of Construction Loan
 - Notices of Construction Loan Default
 - Notices of Completion





**PRECONSTRUCTION
SERVICES LIEN**

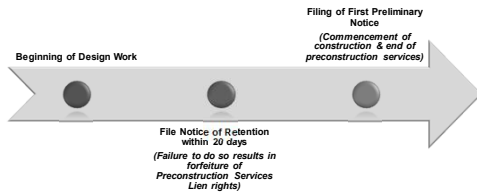


PRECONSTRUCTION SERVICES DEFINED

- Preconstruction services include plan or design services (1) before construction commences and (2) for compensation separate from any compensation paid for construction services
- Preconstruction services are deemed completed when construction commences



PRECONSTRUCTION SERVICES TIMELINE – NOTICE OF RETENTION



NOTICE OF RETENTION - CONTENTS

- Claimant's name, address, telephone number and email address
- Name, address, telephone number and email address of person employing claimant
- General description of services
- Owner's name
- County in which the project is located



NOTICE OF RETENTION – CONTENTS (CONT'D)

- Statement that claimant intends to hold and claim a preconstruction lien
- One of the following:
 - Tax parcel identification number of each parcel included in the property
 - Entry number of a previously filed notice of retention that includes all applicable tax identification numbers



**PRECONSTRUCTION SERVICES LIEN -
PRIORITY**



**PRECONSTRUCTION SERVICES LIEN -
PRIORITY**

- All preconstruction service liens relate back to the first filed notice of retention
- Exception
 - A preconstruction service lien is subordinate to a loan to the extent preconstruction services are provided after the loan is recorded.



**PRECONSTRUCTION SERVICES LIEN -
FILING DEADLINE**

- 90 days after completion of claimant's preconstruction services
- Must be filed with applicable county recorder



**PRECONSTRUCTION SERVICES LIEN -
CONTENTS**

- Claimant's name, mailing address and phone number
- Statement that claimant claims a preconstruction service lien
- Date claimant's notice of retention was filed
- Person who employed claimant
- Description of services provided



**PRECONSTRUCTION SERVICES LIEN -
CONTENTS (CONT'D)**

- Owner's name
- Date of claimant's last preconstruction services
- A description of the property sufficient for identification
- Amount of claim
- Claimant's signature and acknowledgment

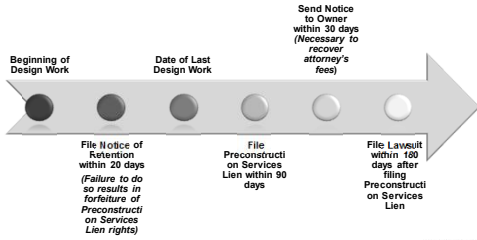


NOTICE TO OWNER

- Within 30 days after recording the lien a copy of the lien must be sent to owner by certified mail
- Necessary to recover attorney fees



PRECONSTRUCTION SERVICES LIEN FILING TIMELINE





CONSTRUCTION SERVICE LIENS



CONSTRUCTION SERVICES DEFINED

- Construction service means to provide labor, materials or equipment for the purpose and during the process of constructing, altering or repairing an improvement, including scheduling, quality control and overall management





**SCR REQUIREMENTS FOR
PRIVATE PROJECTS
COMMENCING BEFORE JULY 31,
2011 AND GOVERNMENT
PROJECTS**



NOTICE OF COMMENCEMENT



NOTICE OF COMMENCEMENT

- Projects where permit is required
 - Notice of Commencement in the SCR system within 15 days after the permit is issued
 - Governmental entity is required to submit information
 - Only Owner or Original Contractor may file Notice of Commencement



NOTICE OF COMMENCEMENT (CONT'D)

- Projects without a permit or where Notice of Commencement is not filed within 15 days of the issuance of the permit
 - Notice of Commencement in the system within 15 days after first work on the property
 - Original Contractor, Owner, or Owner-Builder may file Notice of Commencement
- After July 31, 2011, original contractor or owner required to file notice of commencement within 15 days after commencement of physical work on government projects.



NOTICE OF COMMENCEMENT (CONT'D)

- Effect of failure to timely file
 - Removes requirement for subcontractors/suppliers to file Preliminary Notice
- If duplicate Notices of Commencement are filed, they all relate back to the earliest filing
- All duplicate Notices of Commencement will automatically link by July 1, 2009

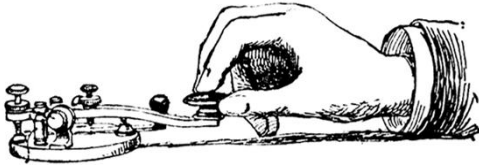


NOTICE OF COMMENCEMENT - CONTENTS

- Owner's name and address
- Original contractor's name and address
- Payment bond surety's name and address or a statement that a payment bond was not required
- Project's address, if it reasonably identifies the project, or the name and general description of the location of the project if the address does not reasonably identify the project
- General description of the project
- Lot or parcel number and any subdivision, development, or other project name of the property if the property is subject to mechanic's liens



PRELIMINARY NOTICE (CONT'D)



PRELIMINARY NOTICE

- Owner-Builder projects
 - Owner of property who obtains building permit and enters into more than one contract for work on the property
 - Not required to file preliminary notice if contract is with an Owner-Builder
- Deadline
 - Within 20 days after your first work
 - Effect of failure to timely file
 - 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



PRELIMINARY NOTICE (CONT'D)

- May file Preliminary Notice to any Notice of Commencement
- Exceptions to Preliminary Notice requirement:
 - Persons working for wages
 - Those who provided labor, services, materials, equipment, etc. more than 15 days prior to the filing of a Notice of Commencement.



PRELIMINARY NOTICE - CONTENTS

- Building permit number or project number
- Claimant's name, address, and telephone number
- Name and address of the person who contracted for the labor, equipment, service, equipment, or materials
- Name of the record or reputed owner of the project
- Name of the original contract under which the work is performed
- Project address or a description of the location of the project.



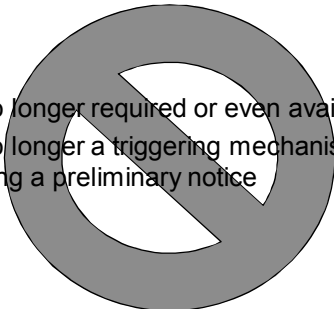


**SCR REQUIREMENTS FOR
PRIVATE PROJECTS AFTER JULY
31, 2011**



NOTICE OF COMMENCEMENT

- No longer required or even available
- No longer a triggering mechanism for filing a preliminary notice



PRELIMINARY NOTICE

- Everyone required to file!!
- Filed on the SCR
- Deadline
 - Within 20 days after your first work
 - Effect of failure to timely file
 - 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



PRELIMINARY NOTICE - CONTENTS

- Claimant's name, address, email address and telephone number
- Name and address of the person who contracted with claimant
- Name of the record or reputed owner of the project
- Name of the original contractor under which the work is performed
- Project address or a description of the location of the project



PRELIMINARY NOTICE – CONTENTS (CONT'D)

- The name of the county where project is located
- One of the following:
 - The tax parcel identification number of each parcel included in the project
 - The entry number of a previously filed notice of construction loan
 - The entry number of a previously filed preliminary notice on the same project
 - The entry number of the building permit issued for the project



**THINGS TO LOOK FOR WHEN FILING
PRELIMINARY NOTICE**



**THINGS TO LOOK FOR WHEN FILING
PRELIMINARY NOTICE**

- Notice of Construction Loan
 - After recording trust deed lender shall promptly, in conjunction with the closing of the construction loan, file a notice of construction loan
- Other Preliminary Notices
 - Make sure the information is correct
- Building Permit
 - City, county or town shall file within 15 days of issuance.
 - Building permits issued after August 1, 2011 must have
 - Name and Address of owner of each parcel of property on which the project will occur
 - The name and address of the contractor for the project
 - The county in which the property on which the project is built is located
 - The tax parcel identification number of each parcel of the property
- Notice of Retention



**NOTICE OF CONSTRUCTION
LOAN DEFAULT**

- Lender required to file on SCR within 5 business days after a notice of default is filed for recording
- No penalty if lender fails to file

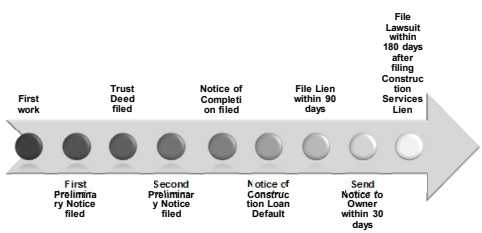




**CONSTRUCTION SERVICES LIEN
PRIORITY**

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TIMELINE OF EVENTS



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**PRIVATE PROJECTS COMMENCED BY
JULY 31, 2011**

- All mechanics' liens on the same footing and have the same priority
 - "Relation back" doctrine (UCA Sec. 38-1-5)
- Sale proceeds are paid in the following order:
 - Laborers;
 - Subcontractors and Suppliers; and
 - Original Contractor

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THERE'S A NEW SHERIFF IN TOWN



**PRIVATE PROJECTS COMMENCING AFTER
JULY 31, 2011**

- Timing of "Relation Back" doctrine changed
 - Liens relate back to the time of the first preliminary notice filing
 - Liens have priority over encumbrances that subsequently attach



**PRIVATE PROJECTS COMMENCING AFTER
JULY 31, 2011**

- First Preliminary Notice Filing
 - The earliest preliminary notice filed on a private project
 - Filed on projects commenced on or after August 1, 2011
 - Not filed on a project that commenced before August 1, 2011



**PRIVATE PROJECTS COMMENCING AFTER
JULY 31, 2011**

- Buy Out Option
 - Lender can acquire first priority position if lien claimant (1) accepts payment in full for work performed before lender's trust deed was recorded and (2) withdraws his preliminary notice
 - If bought out must file a new preliminary notice with 20 days after lender's trust deed is recorded.
 - Only applies to Construction Loans





NOTICE OF COMPLETION



NOTICE OF COMPLETION

- Deadline
 - After final completion
- Who may file
 - Original contractor, owner, lender, surety, or title company
- Effect of Notice
 - Shortens time for Preliminary Notice to 10 days from the date the Notice of Completion is filed
 - Shortens time for filing mechanic's lien



FINAL COMPLETION OCCURS AT:

- The issuance of a permanent certificate of occupancy, if required
- The date of final inspection by the local government entity, if a permanent certificate of occupancy is not required
- If neither a permanent certificate of occupancy nor final inspection are required, the date on which there remains no substantial work to be completed to finish work on the original contract
- If original contract is terminated before project completed, the last day on which substantial work was performed under the original contract



NOTICE OF COMPLETION - ADDITIONAL REQUIREMENTS AFTER JULY 31, 2011

- Private projects must include one of the following:
 - Tax parcel identification number of each parcel included in the project
 - Entry number of a preliminary notice on the same project that includes the tax parcel identification number
 - The entry number of the building permit issued for the project



NOTICE OF COMPLETION - ADDITIONAL REQUIREMENTS AFTER JULY 31, 2011

- Government project must include:
 - Government project-identifying information (lot or parcel number of each lot included in the project and the unique project number assigned by the SCR)





FILING AND PERFECTING CONSTRUCTION SERVICES LIEN



LIEN FILING DEADLINES

- 90 days after a Notice of Completion filed
- Notice to owner 30 days after filing of Lien
- 180 days from Final Completion if no Notice of Completion is filed



LIEN PREPARATION

- Valid Form
- Contents
 - Name, address, and phone number of claimant
 - Owner's name
 - Debtor's name
 - Amount claimed
 - Property description
 - First and last dates of work or service
 - Lien Recovery Fund information acknowledgement



MISCELLANEOUS LIEN FILING ISSUES

- Effect of inaccuracies in lien
 - “Substantial compliance”
- Where to file lien
 - File with county recorder where property is located
- Amendments to lien
 - Amended within original time frame for filing lien





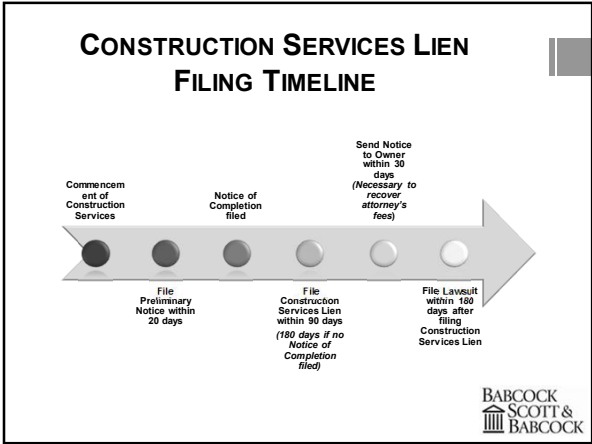
ENFORCEMENT OF LIENS



ACTION TO ENFORCE LIENS (LAWSUIT)

- Lawsuit: Must be filed within **180** days from the date the mechanic's lien was filed
 - Must be filed in the county where the property is located
- Lis Pendens: Must be filed with the county where the property is located within the time limits for filing a foreclosure action





ALTERNATIVE SECURITY

- Must file Notice of Release of Lien (and provide alternate security) within 90 days of being served with foreclosure lawsuit
- Alternate Security amount:
 - 150% if lien is \$25,000 or more
 - 175% if lien is between \$15,000 and \$25,000
 - 200% if lien is less than \$15,000

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ALTERNATE SECURITY (CONT'D)

- Serve copy of Notice of Release of Lien upon lien claimant within 30 days of filing
- Lien claimant must amend lawsuit to include Alternate Security within 90 days of service
- If Notice of Release of Lien is not served, the lien claimant must amend the lawsuit within 6 months of discovering the Notice of Release of Lien, but, at the latest, must amend within two years from date Notice of Release of Lien was recorded

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AVOIDING CIVIL AND CRIMINAL PENALTIES

- "Abuse of lien"
 - UCA § 38-1-25
 - Overstated claim
 - Damages: twice the amount by which the lien exceeds the amount actually due or the actual damages incurred by the owner of the property, whichever is greater
- Release of liens
 - Release within 15 days of receipt of Certificate of Compliance
 - Release within 10 days of payment



DID I ORDER THAT?

