

30 ENACTS:

31 38-1-39, Utah Code Annotated 1953

32

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

34 Section 1. Section 38-1-39 is enacted to read:

35 38-1-39. Waiver or impairment of a lien right -- Forms -- Scope.

36 (1) As used in this section:

37 (a) "Check" means a payment instrument on a depository institution including:

38 (i) a check;

39 (ii) a draft;

40 (iii) an order; or

41 (iv) other instrument.

42 (b) "Depository institution" is as defined in Section 7-1-103.

43 (c) "Lien claimant" means a person that claims a lien under this chapter.

44 (2) Notwithstanding Section 38-1-29, a written consent given by a lien claimant that

45 waives or limits the lien claimant's lien rights is enforceable if the lien claimant:

46 (a) (i) executes a waiver and release that is:

47 (A) signed by the lien claimant or the lien claimant's authorized agent; and

48 (B) substantially in the form set forth in Subsection (4); or

49 (ii) includes a restrictive endorsement on a check that is:

50 (A) signed by the lien claimant or the lien claimant's authorized agent; and

51 (B) in substantially the same form set forth in Subsection (4); and

52 (b) receives payment of the amount identified in the waiver and release or check that

53 includes the restrictive endorsement:

54 (A) including payment by a joint payee check; and

55 (B) only to the extent of the payment.

56 (3) (a) Notwithstanding the language of a waiver and release described in Subsection

57 (2), Subsection (3)(b) applies if:

58 (i) the payment given in exchange for any waiver and release of lien is made by check;

59 and

60 (ii) the check fails to clear the depository institution on which it is drawn for any

61 reason.

62 (b) If the conditions of Subsection (3)(a) are met:

63 (i) the waiver and release described in Subsection (3)(a) is null, void, and of no legal

64 effect; and

65 (ii) the following will not be affected by the lien claimant's execution of the waiver and

66 release:

67 (A) any lien;

68 (B) any lien right;

69 (C) any bond right;

70 (D) any contract right; or

71 (E) any other right to recover payment afforded to the lien claimant in law or equity.

72 (4) A waiver and release given by a lien claimant meets the requirements of this section

73 if it is in substantially the form provided in this Subsection (4) for the circumstance provided in

74 this Subsection (4).

75 (a) (i) A waiver and release may be in substantially the following form if the lien

76 claimant is required to execute a waiver and release in exchange for or to induce the payment

77 of a progress billing:

78 "UTAH CONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT

79 Property Name: _____

80 Property Location: _____

81 Undersigned's Customer: _____

82 Invoice/Payment Application Number: _____

83 Payment Amount: _____

84 Payment Period: _____

85 To the extent provided below, this document becomes effective to release and the

86 undersigned is considered to waive any notice of lien or right under Utah Code Ann., Title 38,
87 Chapter 1, Mechanics' Liens, or any bond right under Utah Code Ann., Title 14, Contractors'
88 Bonds, or Section 63-56-504 related to payment rights the undersigned has on the above
89 described Property once:

90 (1) the undersigned receives a check in the above referenced Payment Amount payable
91 to the undersigned;

92 (2) the check is properly endorsed; and

93 (3) the check is paid by the depository institution on which it is drawn.

94 This waiver and release applies to a progress payment for the work, materials,
95 equipment, or a combination of work, materials, and equipment furnished by the undersigned
96 to the Property or to the Undersigned's Customer which are the subject of the Invoice or
97 Payment Application, but only to the extent of the Payment Amount. This waiver and release
98 does not apply to any retention withheld; any items, modifications, or changes pending
99 approval; disputed items and claims; or items furnished or invoiced after the Payment Period.

100 The undersigned warrants that the undersigned either has already paid or will use the
101 money the undersigned receives from this progress payment promptly to pay in full all the
102 undersigned's laborers, subcontractors, materialmen, and suppliers for all work, materials,
103 equipment, or combination of work, materials, and equipment that are the subject of this
104 waiver and release.

105 Dated: _____

106 _____ (Company Name)

107 _____ By: _____

108 _____ Its: _____ "

109 (ii) A restrictive endorsement placed on a check to effectuate a waiver and release
110 described in this Subsection (4)(a) meets the requirements of this section if it is in substantially
111 the following form:

112 "This check is a progress payment for (property description sufficient for
113 identification). Endorsement of this check is an acknowledgment by the endorser that the

114 waiver and release to which the payment applies is effective to the extent provided in Utah
115 Code Ann. Subsection 38-1-39(4)(a)."

116 (b) (i) A waiver and release may be in substantially the following form if the lien
117 claimant is required to execute a waiver and release in exchange for or to induce the payment
118 of a final billing:

119 "UTAH CONDITIONAL WAIVER AND RELEASE UPON FINAL PAYMENT

120 Property Name: _____

121 Property Location: _____

122 Undersigned's Customer: _____

123 Invoice/Payment Application Number: _____

124 Payment Amount: _____

125 Amount of Disputed Claims: _____

126 To the extent provided below, this document becomes effective to release and the
127 undersigned is considered to waive any notice of lien or right under Utah Code Ann., Title 38,
128 Chapter 1, Mechanics' Liens, or any bond right under Utah Code Ann., Title 14, Contractors'
129 Bonds, or Section 63-56-504 related to payment rights the undersigned has on the above
130 described Property once:

131 (1) the undersigned receives a check in the above referenced Payment Amount payable
132 to the undersigned;

133 (2) the check is properly endorsed; and

134 (3) the check is paid by the depository institution on which it is drawn.

135 This waiver and release applies to the final payment for the work, materials, equipment,
136 or combination of work, materials, and equipment furnished by the undersigned to the Property
137 or to the Undersigned's Customer. This waiver and release does not apply to payment of
138 Disputed Claims, if any.

139 The undersigned warrants that the undersigned either has already paid or will use the
140 money the undersigned receives from the final payment promptly to pay in full all the
141 undersigned's laborers, subcontractors, materialmen, and suppliers for all work, materials,

142 equipment, or combination of work, materials, and equipment that are the subject of this
143 waiver and release.

144 Dated: _____

145 _____ (Company Name)

146 _____ By: _____

147 _____ Its: _____ "

148 (ii) A restrictive endorsement placed on a check to effectuate a waiver and release
149 described in this Subsection (4)(b) meets the requirements of this section if it is in substantially
150 the following form:

151 "This check is a final payment for (property description sufficient for identification).
152 Endorsement of this check is an acknowledgment by the endorser that the waiver and release to
153 which the payment applies is effective to the extent provided in Utah Code Ann. Subsection
154 38-1-39(4)(b)."

155 (5) (a) If the conditions of Subsection (5)(b) are met, this section does not affect the
156 enforcement of:

157 (i) an accord and satisfaction regarding a bona fide dispute; or

158 (ii) an agreement made in settlement of an action pending in any court or arbitration.

159 (b) Pursuant to Subsection (5)(a), this section does not affect enforcement of an accord
160 and satisfaction or settlement described in Subsection (5)(a) if the accord and satisfaction or
161 settlement:

162 (i) is in a writing signed by the lien claimant; and

163 (ii) specifically references the lien rights waived or impaired.

164 (6) A lien waiver or lien release that is not substantially similar to the forms set forth in
165 Subsection (4) is not enforceable under Section 38-1-29.

166 **Section 2. Effective date.**

167 This bill takes effect on January 1, 2007 and applies to a waiver and release or
168 restrictive endorsement signed on or after January 1, 2007.