

**Representative Marc K. Roberts** proposes the following substitute bill:

**PRECONSTRUCTION AND CONSTRUCTION LIENS**

**AMENDMENTS**

2020 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Marc K. Roberts**

Senate Sponsor: \_\_\_\_\_

**LONG TITLE**

**General Description:**

This bill amends provisions of Preconstruction and Construction Liens.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ removes the requirement that an owner file a notice of intent to obtain final completion;
- ▶ amends provisions regarding a notice of intent to finance and enacts provisions regarding a notice of intent to finance construction or advance construction funds;
- ▶ enacts provisions related to a notice of progress and a notice of final lien;
- ▶ amends provisions regarding a failure to provide notice; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides a special effective date.

**Utah Code Sections Affected:**



26 AMENDS:

27 **38-1a-102**, as last amended by Laws of Utah 2019, Chapter 250

28 **38-1a-506**, as renumbered and amended by Laws of Utah 2012, Chapter 278

29 **38-1a-603**, as enacted by Laws of Utah 2019, Chapter 250

30 **38-1a-604**, as enacted by Laws of Utah 2019, Chapter 250

31 **38-1a-802**, as last amended by Laws of Utah 2012, Chapter 347 and renumbered and  
32 amended by Laws of Utah 2012, Chapter 278

33 **38-1a-805**, as enacted by Laws of Utah 2015, Chapter 303

34 ENACTS:

35 **38-1a-605**, Utah Code Annotated 1953

36 **38-1a-606**, Utah Code Annotated 1953

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

39 Section 1. Section **38-1a-102** is amended to read:

40 **38-1a-102. Definitions.**

41 As used in this chapter:

42 (1) "Alternate means" means a method of filing a legible and complete notice or other  
43 document with the registry other than electronically, as established by the division by rule.

44 (2) "Anticipated improvement" means the improvement:

45 (a) for which preconstruction service is performed; and

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

47 (3) "Applicable county recorder" means the office of the recorder of each county in  
48 which any part of the property on which a claimant claims or intends to claim a preconstruction  
49 or construction lien is located.

50 (4) "Bona fide loan" means a loan to an owner or owner-builder by a lender in which  
51 the owner or owner-builder has no financial or beneficial interest greater than 5% of the voting  
52 shares or other ownership interest.

53 (5) "Claimant" means a person entitled to claim a preconstruction or construction lien.

54 (6) "Compensation" means the payment of money for a service rendered or an expense  
55 incurred, whether based on:

56 (a) time and expense, lump sum, stipulated sum, percentage of cost, cost plus fixed or

57 percentage fee, or commission; or

58 (b) a combination of the bases listed in Subsection (6)(a).

59 (7) "Construction lender" means a person who makes a construction loan.

60 (8) "Construction lien" means a lien under this chapter for construction work.

61 (9) "Construction loan" does not include a consumer loan secured by the equity in the  
62 consumer's home.

63 (10) "Construction project" means an improvement that is constructed pursuant to an  
64 original contract.

65 (11) "Construction work":

66 (a) means labor, service, material, or equipment provided for the purpose and during  
67 the process of constructing, altering, or repairing an improvement; and

68 (b) includes scheduling, estimating, staking, supervising, managing, materials testing,  
69 inspection, observation, and quality control or assurance involved in constructing, altering, or  
70 repairing an improvement.

71 (12) "Contestable notice" means a notice of preconstruction service under Section  
72 38-1a-401, a preliminary notice under Section 38-1a-501, or a notice of completion under  
73 Section 38-1a-506.

74 (13) "Contesting person" means an owner, original contractor, subcontractor, or other  
75 interested person.

76 (14) "Designated agent" means the third party the division contracts with as provided  
77 in Section 38-1a-202 to create and maintain the registry.

78 (15) "Division" means the Division of Occupational and Professional Licensing created  
79 in Section 58-1-103.

80 (16) "Entry number" means the reference number that:

81 (a) the designated agent assigns to each notice or other document filed with the  
82 registry; and

83 (b) is unique for each notice or other document.

84 (17) "Final completion" means:

85 (a) the date of issuance of a permanent certificate of occupancy by the local  
86 government entity having jurisdiction over the construction project, if a permanent certificate  
87 of occupancy is required;

88 (b) the date of the final inspection of the construction work by the local government  
89 entity having jurisdiction over the construction project, if an inspection is required under a  
90 state-adopted building code applicable to the construction work, but no certificate of occupancy  
91 is required;

92 (c) unless the owner is holding payment to ensure completion of construction work, the  
93 date on which there remains no substantial work to be completed to finish the construction  
94 work under the original contract, if a certificate of occupancy is not required and a final  
95 inspection is not required under an applicable state-adopted building code; or

96 (d) the last date on which substantial work was performed under the original contract,  
97 if, because the original contract is terminated before completion of the construction work  
98 defined by the original contract, the local government entity having jurisdiction over the  
99 construction project does not issue a certificate of occupancy or perform a final inspection.

100 (18) "Final lien waiver" means a form that complies with Subsection 38-1a-802(4)(c).

101 (19) "First preliminary notice filing" means a preliminary notice that:

102 (a) is the earliest preliminary notice filed on the construction project for which the  
103 preliminary notice is filed;

104 (b) is filed on a construction project that, at the time the preliminary notice is filed, has  
105 not reached final completion; and

106 (c) is not cancelled under Section 38-1a-307.

107 (20) "Government project-identifying information" has the same meaning as defined in  
108 Section 38-1b-102.

109 (21) "Improvement" means:

110 (a) a building, infrastructure, utility, or other human-made structure or object  
111 constructed on or for and affixed to real property; or

112 (b) a repair, modification, or alteration of a building, infrastructure, utility, or object  
113 referred to in Subsection (21)(a).

114 (22) "Interested person" means a person that may be affected by a construction project.

115 (23) "Notice of commencement" means a notice required under Section 38-1b-201 for  
116 a government project, as defined in Section 38-1b-102.

117 (24) "Original contract":

118 (a) means a contract between an owner and an original contractor for preconstruction

119 service or construction work; and

120 (b) does not include a contract between an owner-builder and another person.

121 (25) "Original contractor" means a person, including an owner-builder, that contracts  
122 with an owner to provide preconstruction service or construction work.

123 (26) "Owner" means the person that owns the project property.

124 (27) "Owner-builder" means an owner, including an owner who is also an original  
125 contractor, who:

126 (a) contracts with one or more other persons for preconstruction service or construction  
127 work for an improvement on the owner's real property; and

128 (b) obtains a building permit for the improvement.

129 (28) "Preconstruction lien" means a lien under this chapter for a preconstruction  
130 service.

131 (29) "Preconstruction service":

132 (a) means to plan or design, or to assist in the planning or design of, an improvement or  
133 a proposed improvement:

134 (i) before construction of the improvement commences; and

135 (ii) for compensation separate from any compensation paid or to be paid for  
136 construction work for the improvement; and

137 (b) includes consulting, conducting a site investigation or assessment, programming,  
138 preconstruction cost or quantity estimating, preconstruction scheduling, performing a  
139 preconstruction construction feasibility review, procuring construction services, and preparing  
140 a study, report, rendering, model, boundary or topographic survey, plat, map, design, plan,  
141 drawing, specification, or contract document.

142 (30) "Private project" means a construction project that is not a government project.

143 (31) "Progress waiver" means a form that complies with Subsection [38-1a-802\(4\)\(b\)](#).

144 [~~31~~] (32) "Project property" means the real property on or for which preconstruction  
145 service or construction work is or will be provided.

146 [~~32~~] (33) "Registry" means the State Construction Registry under Part 2, State  
147 Construction Registry.

148 [~~33~~] (34) "Required notice" means:

149 (a) a notice of preconstruction service under Section [38-1a-401](#);

- 150 (b) a preliminary notice under Section 38-1a-501 or Section 38-1b-202;
- 151 (c) a notice of commencement;
- 152 (d) a notice of construction loan under Section 38-1a-601;
- 153 (e) a notice under Section 38-1a-602 concerning a construction loan default;
- 154 (f) a notice of intent to obtain final completion under Section 38-1a-506; or
- 155 (g) a notice of completion under Section 38-1a-507.

156 [~~34~~] (35) "Subcontractor" means a person that contracts to provide preconstruction  
157 service or construction work to:

- 158 (a) a person other than the owner; or
- 159 (b) the owner, if the owner is an owner-builder.

160 [~~35~~] (36) "Substantial work" does not include repair work or warranty work.

161 [~~36~~] (37) "Supervisory subcontractor" means a person that:

162 (a) is a subcontractor under contract to provide preconstruction service or construction  
163 work; and

164 (b) contracts with one or more other subcontractors for the other subcontractor or  
165 subcontractors to provide preconstruction service or construction work that the person is under  
166 contract to provide.

167 Section 2. Section 38-1a-506 is amended to read:

168 **38-1a-506. Notice of intent to obtain final completion.**

169 (1) An owner, as defined in Section 14-2-1, of a nonresidential construction project  
170 that is registered with the registry, or an original contractor of a commercial nonresidential  
171 construction project that is registered with the registry under Section 38-1a-501, [~~shall~~] may  
172 file with the registry a notice of intent to obtain final completion as provided in this section if:

- 173 (a) the completion of performance time under the original contract for construction  
174 work is greater than 120 days;
- 175 (b) the total original construction contract price exceeds \$500,000; and
- 176 (c) the original contractor or owner has not obtained a payment bond in accordance  
177 with Section 14-2-1.

178 (2) [~~The~~] If filed, the notice of intent described in Subsection (1) shall be filed at least  
179 45 days before the day on which the owner or original contractor of a commercial  
180 nonresidential construction project files or could have filed a notice of completion under

181 Section 38-1a-507.

182 (3) A person who provides construction work to an owner or original contractor who  
183 files a notice of intent in accordance with Subsection (1) shall file an amendment to the  
184 person's preliminary notice previously filed by the person as required in Section 38-1a-501:

185 (a) that includes:

186 (i) a good faith estimate of the total amount remaining due to complete the contract,  
187 purchase order, or agreement relating to the person's approved construction work;

188 (ii) the identification of each original contractor or subcontractor with whom the  
189 person has a contract or contracts for providing construction work; and

190 (iii) a separate statement of all known amounts or categories of work in dispute; and

191 (b) no later than 20 days after the day on which the owner or contractor files a notice of  
192 intent.

193 (4) (a) A person described in Subsection (3) may demand a statement of adequate  
194 assurance from the owner, contractor, or subcontractor with whom the person has privity of  
195 contract no later than 10 days after the day on which the person files a balance statement in  
196 accordance with Subsection (3) from an owner, contractor, or subcontractor who is in privity of  
197 contract with the person.

198 (b) A demand for adequate assurance as described in Subsection (4)(a) may include a  
199 request for a statement from the owner, contractor, or subcontractor that the owner, contractor,  
200 or subcontractor has sufficient funds dedicated and available to pay for all sums due to the  
201 person filing for the adequate assurances or that will become due in order to complete a  
202 construction project.

203 (c) A person who demands adequate assurance under Subsection (4)(a) shall deliver  
204 copies of the demand to the owner and contractor:

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

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

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

208 (5) (a) A person described in Subsection (3) may bring a legal action against a party  
209 with whom the person is in privity of contract, including a request for injunctive or declaratory  
210 relief, to determine the adequacy of the funds of the owner, contractor, or subcontractor with  
211 whom the demanding person contracted if, after the person demands adequate assurance in

212 accordance with the requirements of this section:

213 (i) the owner, contractor, or subcontractor fails to provide adequate assurance that the  
214 owner, contractor, or subcontractor has sufficient available funds, or access to financing or  
215 other sufficient available funds, to pay for the completion of the demanding person's approved  
216 work on the construction project; or

217 (ii) the parties disagree, in good faith, as to whether there are adequate funds, or access  
218 to financing or other sufficient available funds, to pay for the completion of the demanding  
219 person's approved work on the construction project.

220 (b) If a court finds that an owner, contractor, or subcontractor has failed to provide  
221 adequate assurance in accordance with Subsection (4)(a), the court may require the owner,  
222 contractor, or subcontractor to post adequate security with the court sufficient to assure timely  
223 payment of the remaining contract balance for the approved work of the person seeking  
224 adequate assurance, including:

225 (i) cash;

226 (ii) a bond;

227 (iii) an irrevocable letter of credit;

228 (iv) property;

229 (v) financing; or

230 (vi) another form of security approved by the court.

231 (6) (a) A person is subject to the civil penalty described in Subsection (6)(b), if the  
232 person files a balance statement described in Subsection (3) that misrepresents the amount due  
233 under the contract with the intent to:

234 (i) charge an owner, contractor, or subcontractor more than the actual amount due; or

235 (ii) procure any other unfair advantage or benefit on the person's behalf.

236 (b) The civil penalty described in Subsection (6)(a) is the greater of:

237 (i) twice the amount by which the balance statement filed under Subsection (3) exceeds  
238 the amount actually remaining due under the contract for completion of construction; and

239 (ii) the actual damages incurred by the owner, contractor, or subcontractor.

240 (7) A court shall award reasonable attorney fees to a prevailing party for an action  
241 brought under this section.

242 (8) Failure to comply with the requirements established in this section does not affect



243 any other requirement or right under this chapter.

244 (9) A person who has not filed a preliminary notice as required under Section  
245 38-1a-501 is not entitled to a right or a remedy provided in this section.

246 (10) This section does not create a cause of action against a person with whom the  
247 demanding party is not in privity of contract.

248 Section 3. Section 38-1a-603 is amended to read:

249 **38-1a-603. Notice of intent to finance.**

250 (1) An owner or an owner's agent may file with the registry a notice of intent to  
251 finance.

252 (2) A notice of intent to finance under Subsection (1) shall state:

253 (a) the anticipated date on which financing will occur;

254 (b) the anticipated lender's name, address, and telephone number;

255 (c) the name of the trustor on the trust deed securing the ~~[anticipated loan]~~ financing;

256 (d) the tax parcel identification number of each parcel included in the project property;

257 and

258 (e) the name of the county in which the project property is located.

259 (3) If an owner chooses to file a notice of intent to finance, the owner or owner's agent  
260 shall file the notice of intent to finance no less than 14 days before the date on which the  
261 financing is anticipated to occur.

262 (4) If the financing does not occur within 30 days after the anticipated date specified in  
263 the notice of intent to finance[-];

264 (a) the notice of intent to finance shall automatically have no effect and shall be  
265 removed from the registry[-]; and

266 (b) a final lien waiver or progress waiver filed in connection with the notice of intent to  
267 finance shall automatically have no effect.

268 Section 4. Section 38-1a-604 is amended to read:

269 **38-1a-604. Notice of final lien waiver.**

270 (1) ~~[After a notice of intent to finance is filed under Section 38-1a-603 on a project~~  
271 ~~property, each] A~~ subcontractor that has filed a preliminary notice pertaining to ~~[the]~~ a project  
272 property may file with the registry a final lien waiver[-];

273 (a) within five days after the day on which the project property's owner or owner's

274 agent files:

275 (i) a notice of intent to finance under Section 38-1a-603; or

276 (ii) a notice of intent to finance construction or advance construction funds under

277 Section 38-1a-605; or

278 (b) at any time before the project property's owner or owner's agent files a notice  
279 described in Subsection (1)(a).

280 (2) The final lien waiver described in Subsection (1) may ~~[be filed on the registry even~~  
281 ~~if no notice of intent to finance was filed on the registry]~~ state that no amount is owed.

282 Section 5. Section **38-1a-605** is enacted to read:

283 **38-1a-605. Notice of intent to finance construction or advance construction funds.**

284 (1) An owner or an owner's agent may file with the registry a notice of intent to finance  
285 construction or advance construction funds.

286 (2) A notice of intent to finance construction or advance construction funds under  
287 Subsection (1) shall state:

288 (a) the anticipated date on which construction financing or an advance under a  
289 construction loan will occur;

290 (b) the anticipated lender's or lender's name, address, and telephone number;

291 (c) the name of the trustor on the trust deed securing the construction financing;

292 (d) the tax parcel identification number of each parcel included in the project property;

293 and

294 (e) the name of the county in which the project property is located.

295 (3) If an owner or owner's agent files the notice described in Subsection (2) and  
296 financing or advancement of construction funds does not occur within 30 days after the date  
297 specified in the filed notice under Subsection (2)(a):

298 (a) the notice shall automatically have no effect and shall be removed from the registry;  
299 and

300 (b) a final lien waiver or progress waiver filed in connection with the notice shall  
301 automatically have no effect.

302 Section 6. Section **38-1a-606** is enacted to read:

303 **38-1a-606. Notice of progress waiver.**

304 A subcontractor that files a preliminary notice pertaining to a project property may file

305 with the registry a progress waiver:

306 (1) within five days after the day on which the project property's owner or owner's  
307 agent files:

308 (a) a notice of intent to finance under Section 38-1a-603 on the project property; or

309 (b) a notice of intent to finance construction or advance construction funds under  
310 Section 38-1a-605 on the project property; and

311 (2) if the subcontractor:

312 (a) is owed money under the original contract; or

313 (b) anticipates performing additional services under the original contract.

314 Section 7. Section **38-1a-802** is amended to read:

315 **38-1a-802. Waiver or limitation of a lien right -- Forms -- Scope.**

316 (1) As used in this section:

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

318 (i) a check;

319 (ii) a draft;

320 (iii) an order; or

321 (iv) other instrument.

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

323 (c) "Receives payment" means, in the case of a restrictive endorsement, a payee has  
324 endorsed a check and the check is presented to and paid by the depository institution on which  
325 [it] the check is drawn.

326 (2) Notwithstanding Section 38-1a-105, a claimant's written consent that waives or  
327 limits the claimant's lien rights is enforceable only if the claimant:

328 (a) (i) executes a waiver and release that is signed by the claimant or the claimant's  
329 authorized agent; or

330 (ii) for a restrictive endorsement on a check, includes a restrictive endorsement on a  
331 check that is:

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

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

334 (b) receives payment of the amount identified in the waiver and release or check that  
335 includes the restrictive endorsement:

336 (i) including payment by a joint payee check; and  
337 (ii) for a progress payment, only to the extent of the payment.

338 (3) (a) Notwithstanding the language of a waiver and release described in Subsection  
339 (2), Subsection (3)(b) applies if:

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

342 (ii) the check fails to clear the depository institution on which it is drawn for any  
343 reason.

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

345 (i) the waiver and release described in Subsection (3)(a) is void; and

346 (ii) the following will not be affected by the claimant's execution of the waiver and  
347 release:

348 (A) any lien;

349 (B) any lien right;

350 (C) any bond right;

351 (D) any contract right; or

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

353 (4) (a) A waiver and release given by a claimant meets the requirements of this section  
354 if it is in substantially the form provided in this Subsection (4) for the circumstance provided in  
355 this Subsection (4).

356 (b) A waiver and release may be in substantially the following form if the claimant is  
357 required to execute a waiver and release in exchange for or to induce the payment of a progress  
358 billing and shall be in the following form if the waiver is a progress waiver filed under Section  
359 38-1a-606:

360 "UTAH CONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT

361 Property Name: \_\_\_\_\_

362 Property Location: \_\_\_\_\_

363 Undersigned's Customer: \_\_\_\_\_

364 Invoice/Payment Application Number: \_\_\_\_\_

365 Payment Amount: \_\_\_\_\_

366 Payment Period: \_\_\_\_\_

367 To the extent provided below, this document becomes effective to release and the  
368 undersigned is considered to waive any notice of lien or right under Utah Code Ann., Title 38,  
369 Chapter 1a, Preconstruction and Construction Liens, or any bond right under Utah Code Ann.,  
370 Title 14, Contractors' Bonds, or Section [63G-6a-1103](#) related to payment rights the undersigned  
371 has on the above described Property once:

372 (1) the undersigned endorses a check in the above referenced Payment Amount payable  
373 to the undersigned; and

374 (2) the check is paid by the depository institution on which it is drawn.

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

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

386 Dated: \_\_\_\_\_

387 \_\_\_\_\_ (Company Name)

388 \_\_\_\_\_ By: \_\_\_\_\_

389 \_\_\_\_\_ Its: \_\_\_\_\_ "

390 (c) A waiver and release may be in substantially the following form if the lien claimant  
391 is required to execute a waiver and release in exchange for or to induce the payment of a final  
392 billing and shall be in the following form if the waiver is a final lien waiver filed under Section  
393 [38-1a-604](#):

394 "UTAH WAIVER AND RELEASE UPON FINAL PAYMENT

395 Property Name: \_\_\_\_\_

396 Property Location: \_\_\_\_\_

397 Undersigned's Customer: \_\_\_\_\_

398 Invoice/Payment Application Number: \_\_\_\_\_

399 Payment Amount: \_\_\_\_\_

400 To the extent provided below, this document becomes effective to release and the  
401 undersigned is considered to waive any notice of lien or right under Utah Code Ann., Title 38,  
402 Chapter 1a, Preconstruction and Construction Liens, or any bond right under Utah Code Ann.,  
403 Title 14, Contractors' Bonds, or Section 63G-6a-1103 related to payment rights the undersigned  
404 has on the above described Property once:

405 (1) the undersigned endorses a check in the above referenced Payment Amount payable  
406 to the undersigned; and

407 (2) the check is paid by the depository institution on which it is drawn.

408 This waiver and release applies to the final payment for the work, materials, equipment,  
409 or combination of work, materials, and equipment furnished by the undersigned to the Property  
410 or to the Undersigned's Customer.

411 The undersigned warrants that the undersigned either has already paid or will use the  
412 money the undersigned receives from the final payment promptly to pay in full all the  
413 undersigned's laborers, subcontractors, materialmen, and suppliers for all work, materials,  
414 equipment, or combination of work, materials, and equipment that are the subject of this  
415 waiver and release.

416 Dated: \_\_\_\_\_

417 \_\_\_\_\_ (Company Name)

418 \_\_\_\_\_ By: \_\_\_\_\_

419 \_\_\_\_\_ Its: \_\_\_\_\_ "

420 (d) A restrictive endorsement placed on a check to effectuate a waiver and release  
421 described in this Subsection (4) meets the requirements of this section if it is in substantially  
422 the following form:

423 "This check is a progress/ final payment for property described on this check sufficient  
424 for identification. Endorsement of this check is an acknowledgment by the endorser that the  
425 waiver and release to which the payment applies is effective to the extent provided in Utah  
426 Code Ann. Subsection 38-1a-802(4)(b) or (c) respectively."

427 (e) (i) If using a restrictive endorsement under Subsection (4)(d), the person preparing  
428 the check shall indicate whether the check is for a progress payment or a final payment by

429 circling the word "progress" if the check is for a progress payment, or the word "final" if the  
430 check is for a final payment.

431 (ii) If a restrictive endorsement does not indicate whether the check is for a progress  
432 payment or a final payment, it is considered to be for a progress payment.

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

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

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

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

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

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

442 Section 8. Section **38-1a-805** is amended to read:

443 **38-1a-805. Failure to file notice -- Petition to nullify preconstruction or**  
444 **construction lien -- Expedited proceeding.**

445 (1) An owner of an interest in a project property that is subject to a recorded  
446 preconstruction lien or a recorded construction lien may petition the district court in the county  
447 in which the project property is located for summary relief to nullify the preconstruction lien or  
448 the construction lien if:

449 (a) the owner claims that the preconstruction lien or the construction lien is invalid  
450 because:

451 (i) the lien claimant did not timely file a notice of preconstruction service under  
452 Section [38-1a-401](#); or

453 (ii) the lien claimant did not timely file a preliminary notice under Section [38-1a-501](#);

454 (b) the owner sent the lien claimant a written request to withdraw in accordance with  
455 Subsection (2); and

456 (c) the lien claimant did not withdraw the preconstruction lien or the construction lien  
457 within 10 business days after the day on which the owner sent the written request to withdraw.

458 (2) A written request to withdraw described in Subsection (1) shall:

459 (a) be delivered by certified mail to the lien claimant at the lien claimant's address

460 provided in the recorded preconstruction lien or the recorded construction lien;

461 (b) state the owner's name, address, and telephone number;

462 (c) contain:

463 (i) (A) the name of the county in which the property that is subject to the

464 preconstruction lien or the construction lien is located; and

465 (B) the tax parcel identification number of each parcel that is subject to the

466 preconstruction lien or the construction lien; or

467 (ii) a legal description of the property that is subject to the preconstruction lien or the

468 construction lien;

469 (d) state that the lien claimant has failed to timely file:

470 (i) a notice of preconstruction service under Section 38-1a-401; or

471 (ii) a preliminary notice under Section 38-1a-501;

472 (e) request that the lien claimant withdraw the lien claimant's preconstruction lien or

473 construction lien within 10 business days after the day on which the written request to

474 withdraw is sent; and

475 (f) state that if the lien claimant does not withdraw the preconstruction lien or the

476 construction lien within 10 business days after the day on which the written request to

477 withdraw is sent, the owner may petition a court to nullify the lien in an expedited proceeding

478 under this section.

479 (3) A petition under Subsection (1) shall:

480 (a) state with specificity that:

481 (i) the lien claimant's preconstruction lien or the lien claimant's construction lien is

482 invalid because the lien claimant did not file a notice of preconstruction service or a

483 preliminary notice, as applicable;

484 (ii) the petitioner sent the lien claimant a written request to withdraw in accordance

485 with Subsection (2); and

486 (iii) the lien claimant did not withdraw the preconstruction lien or the construction lien

487 within 10 business days after the day on which the owner sent the written request to withdraw;

488 (b) be supported by a sworn affidavit of the petitioner; and

489 (c) be served on the lien claimant, in accordance with the Rules of Civil Procedure,

490 within three business days after the day on which the petitioner files the petition in the district



491 court.

492 (4) (a) If the court finds that a petition does not meet the requirements described in  
493 Subsection (3), the court may dismiss the petition without a hearing.

494 (b) If the court finds that a petition meets the requirements described in Subsection (3),  
495 the court shall schedule an expedited hearing to determine whether the preconstruction lien or  
496 the construction lien is invalid because [~~the lien claimant failed to file a notice of~~  
497 ~~preconstruction service or a preliminary notice;~~ the notice of preconstruction service or  
498 preliminary notice is not filed within the time period described in Subsection [38-1a-401\(1\)](#) or  
499 [38-1a-501\(1\)](#), as applicable.

500 (5) (a) If the court grants a hearing, within three business days after the day on which  
501 the court schedules the hearing and at least seven business days before the day on which the  
502 hearing is scheduled, the petitioner shall serve on the lien claimant, in accordance with the  
503 Rules of Civil Procedure, a copy of the petition, notice of the hearing, and a copy of the court's  
504 order granting the expedited hearing.

505 (b) The lien claimant may attend the hearing and contest the petition.

506 (6) An expedited proceeding under this section may only determine:

507 (a) whether the lien claimant filed a notice of preconstruction service or a preliminary  
508 notice; and

509 (b) if the lien claimant failed to file a notice of preconstruction service or a preliminary  
510 notice, whether the lien claimant's preconstruction lien or construction lien is valid.

511 (7) (a) If, following a hearing, the court determines that the preconstruction lien or the  
512 construction lien is invalid, the court shall issue an order that:

513 (i) contains a legal description of the property;

514 (ii) declares the preconstruction lien or the construction lien void ab initio;

515 (iii) releases the property from the lien; and

516 (iv) awards costs and reasonable attorney fees to the petitioner.

517 (b) The petitioner may submit a copy of an order issued under Subsection (7)(a) to the  
518 county recorder for recording.

519 (8) (a) If, following a hearing, the court determines that the preconstruction lien or the  
520 construction lien is valid, the court shall:

521 (i) dismiss the petition; and

522 (ii) award costs and reasonable attorney fees to the lien claimant.

523 (b) The dismissal order shall contain a legal description of the property.

524 (c) The lien claimant may submit a copy of the dismissal order to the county recorder  
525 for recording.

526 (9) If a petition under this section contains a claim for damages, the proceedings related  
527 to the claim for damages may not be expedited under this section.

528 Section 9. **Effective date.**

529 This bill takes effect on January 1, 2021.