

State Construction Registry – Key Points

Requirements for filing Preconstruction & Construction Service Lien (NEW-CAR-SMELL!)

- Must be a provider of preconstruction service or construction work for the anticipated improvement or improvement of real property including **NEW** construction, infrastructure repair or remodel.
- Work may include **Constructing**, **Altering** or **Repairing** an improvement.
- Construction worker must provide **Service**, **Material**, **Equipment** or **Labor**. Service can include scheduling, estimating, staking, supervising, managing, materials testing, inspection, observation, and quality control or assurance involved in constructing, altering, or repairing an improvement

SCR Benefits for all parties

General Contractor/Builder: Maintains a comprehensive list of all parties with lien rights.

Subcontractor/Supplier: Establishes lien rights with Preliminary Notice filing, Sends notifications of loan default, as well as intent to finance or completion.

Owner: Maintains a list of parties with lien rights, Allows for limitation of lien rights by filing a notice of completion.

Bank/Lender/Title Company: Maintains a list of parties with lien rights, Allows for the Notice of Construction Loan to establish lien rights, Presents options to remedy broken priority, Permits filing a Notice of Completion, limiting new preliminary notice, and decreasing construction service lien filing times.

Architect/Preconstruction: Allows for the filing of preconstruction service liens.

Problems addressed by the State Construction Registry

Preconstruction service provider rights? - Right to file service notice & Record Preconstruction Service Lien

Date for establishing lien rights? - First filed notice of preconstruction service, or first preliminary notice

Construction stakeholders & potential lien filers? - Contractors & suppliers must file a preliminary notice to have construction service lien rights

Construction Loan Default? - Email sent to all preliminary notice filers

Broken priority? – Owner/Lender/Title can establish priority by paying early filers

Uncertainty about end of preconstruction/construction lien rights? - Beginning of Construction/Filing of notice of completion

Date for termination of contractor lien rights? - 90 days after notice of completion filing

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Notice & Priority Venues The State Construction Registry:

“Connecting owners and their money with the people working on their projects. Providing a comprehensive list of who is working on each construction project in Utah.” (<https://secure.utah.gov/scr/>)

The County Recorder: 38-1a-502 (2) & (4)

(2) A notice of construction lien shall contain:

(a) the **name of the reputed owner** if known or, if not known, the name of the record owner; (b) the **name of the person by whom the claimant was employed** or to whom the claimant provided construction work; (c) the time when the claimant **first and last** provided construction work; (d) a **description** of the project property, sufficient for identification; (e) the **name**, current **address**, and current **phone number** of the claimant; (f) the **amount claimed** under the construction lien; (g) the **signature** of the claimant or the claimant's authorized agent; (h) an **acknowledgment** or certificate as required under Title 57, Chapter 3, Recording of Documents; and (i) if the construction lien is on an owner-occupied residence, as defined in Section 38-11-102, a **statement describing what steps an owner**, as defined in Section 38-11-102, **may take to require a lien claimant to remove the lien** in accordance with Section 38-11-107.

(4)(a) **Within 30 days after filing a notice of construction lien**, the claimant shall **deliver** or mail by **certified mail a copy of the notice** to the reputed owner or the record owner. (b) If the record owner's current address is not readily available to the claimant, the claimant may mail a copy of the notice to the last known address of the record owner, using the names and addresses appearing on the last completed real property assessment rolls of the county where the project property is located. (c) **Failure to deliver or mail the notice of lien to the reputed owner or record owner precludes the claimant from an award of costs and attorney fees** against the reputed owner or record owner in an action to enforce the construction lien.

The District Court: 38-1a 701:

(3) (a) (i) Within the time period provided in Subsection (2) for filing an action, a claimant shall file for record with each applicable county recorder a notice of the pendency of the action, in the manner provided for actions affecting the title or right to possession of real property.

Checklist

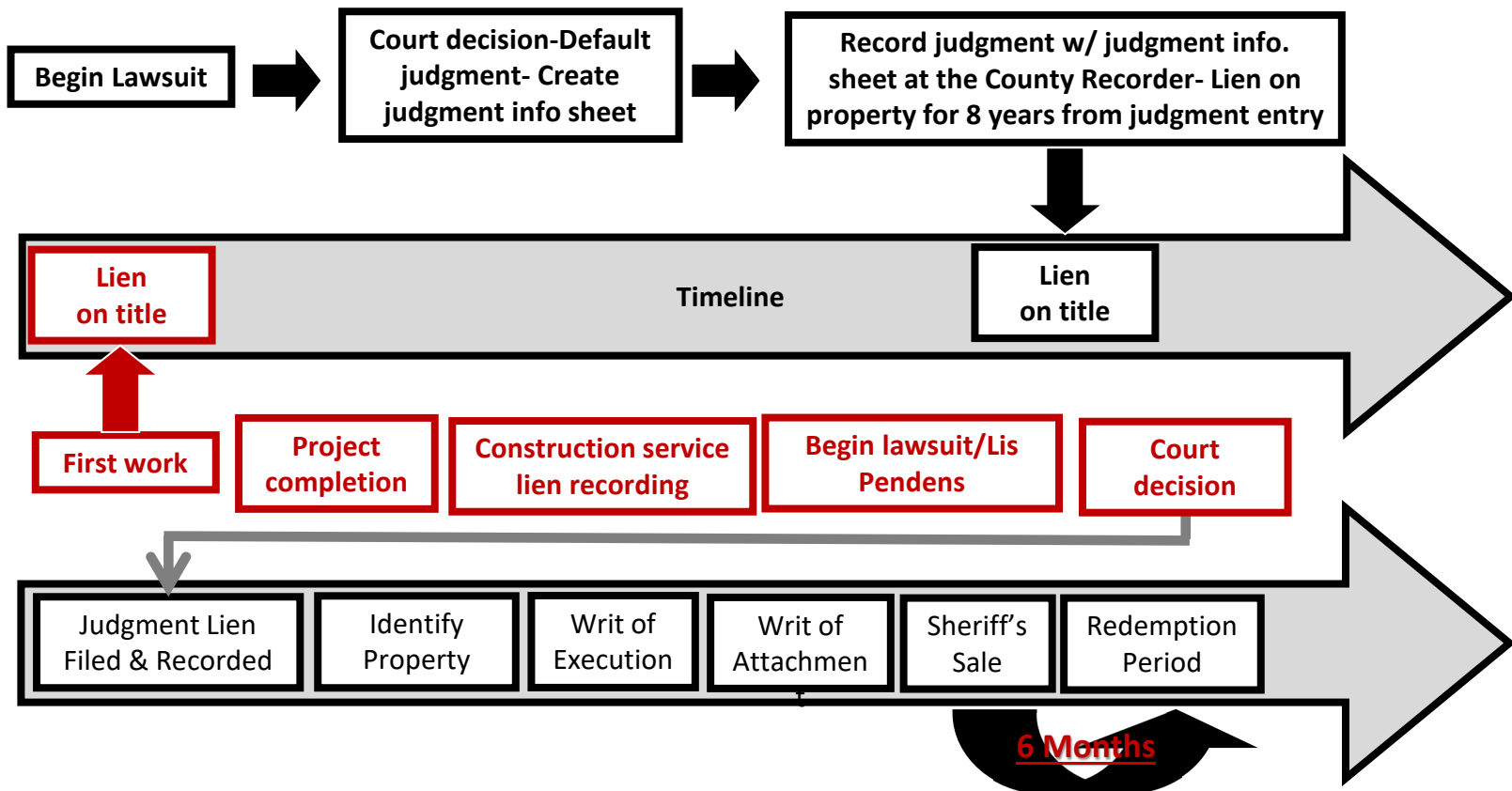
- What is the builder's track record? Is the builder currently licensed?
- Can the property be found on the SCR? <https://scr.utah.gov>
- How is the construction financed?
- When did construction begin?, Has the notice completion been filed?
- Are the instructions on title schedule B1 being followed?
- What type of title insurance policy will be issued? What is the conveyance type? What are the seller covenants/guarantees? What are the instructions to escrow/settlement?
- Estimating the property taxes - (Property value) X (Tax Rate) X (Residential Exception <.65>) = Estimated Property Taxes

Utah purchase contract title policy requirements

1. Standard REPC- Homeowner's policy (if available)
2. Land REPC- basic owner's policy (no construction service lien coverage)
3. New Construction REPC- (no construction service lien coverage)
4. Commercial REPC- basic owner's policy (no construction service lien coverage) or ALTA Extended (construction service lien coverage)
5. CCIM Purchase & Sale Agreement- basic owner's policy (no construction service lien coverage) or ALTA Extended (construction service lien coverage)
6. Builder's REPC- Must review contract to know what coverage is being purchased (if any).

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Judicial Foreclosure & Real Property Lien Priority – Civil judgments vs. Construction service liens



Judicial Foreclosure Quick Facts

- Estimated to be multiples of the cost and take 3 times as long as a non-judicial foreclosure
- Approximate time needed is at least a year (including 6-month redemption period)
- Borrower reinstatement requires that actions must be filed with court
- All parties with interest in property must be served notice/summoned
- Notice is posted in 3 public places 20 days before sale and published for 3 consecutive weeks
- Auction conducted by county sheriff and title conveyed by Sheriff's Deed (no warranty)
- The property may be redeemed by the borrower or junior lienholders within 180 days by paying off the senior lien, plus an additional percentage by Rule.
- Title is unmarketable during the redemption period

Redemption Period
Property may be Redeemed by:
The borrower, junior lien holder, others with recorded subordinate liens



Preliminary Title Report- What is searched?

Property

County Recorder

- Abstract/chain of title- the compilation of documents recorded deeds & liens for a real property that may affect title. Abstracts are sometimes known as a chain of title, or title chain . Electronic versions of abstracts generally begin around 1980. Abstracted documents may or may not affect the property, so the documents are analyzed.
- Grantor/Grantee systems & books; including indexes for judgments & federal tax liens.
- Indexes for liens, leases, & mining claims.
- Property type- Subdivision, STR, Condo/PUD
- Maps, plats & surveys – Including county maps, section maps, city surveys, dedicated plats and aerial maps.

County Treasurer & Assessor

- Property taxes paid or due
- Tax & service districts for essential services

State Construction Registry

State system for contractors, suppliers, property owners, bankers, & title companies providing for the establishment and release of lien rights and notice to interested parties

www.scr.utah.gov

Parties

District Court

- Divorce proceedings
- Private civil judgments including judicial foreclosure, quiet title & lawsuits dealing with unpaid debt
- Criminal judgments, restitution & penalties
- Judgments from state entities including the tax commission and office of recovery services
- Civil proceedings for probate & competency

Federal & Bankruptcy Court

- Bankruptcy proceedings & federal court judgments

Office of Foreign Assets Control

“The Office of Foreign Assets Control (OFAC) is of the US Department of the Treasury administers and enforces economic and trade sanctions based on US foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy or economy of the United States.”

<https://www.treasury.gov/about/organizational-structure/offices/pages/office-of-foreign-assets-control.aspx>

Timeline for property encumbrances

1. Federal judgments: Recorded against an individual's name, they attach in that county for 20 years.
2. Federal tax liens: Recorded against an individual's name, they attach in that county for 10 years and 30 days.
3. Judgments for restitution, from divorce decrees, delinquent child support/alimony: These do not expire.
4. State tax liens and state judgments: Filed in the Utah court system, they attach to the property for 10 years and 30 days.
5. Civil judgments: Recorded against an individual's name, they attach in that county for 8 years.
6. Construction service liens: Expire 180 days after completion (if there is no State Construction Registry filing) or 90 days after notice of completion on the State Construction Registry.
7. Homeowner's association lien: Must be recorded and does not expire.
8. Trust deed: Recorded on real property, it remains a lien until a reconveyance is recorded.
9. Mortgage: Recorded on real property, it remains a lien until satisfaction of the mortgage is recorded.
10. UCC (Uniform Commercial Code): If recorded, it remains a lien on real property until a release is recorded.
11. Bankruptcy: For Chapter 7, it typically lasts until the case is closed plus 14 days, or if the property is abandoned by the trustee. For Chapter 13, it lasts until court approval of refinance or sale, or successful completion of the plan, with closure and discharge if the appeals process has closed.
12. Property taxes: They never expire and are the responsibility of the current property owner.
13. Assessments from tax entities: They never expire and are the responsibility of the current property owner.

The Office of the Property Rights Ombudsman defines the following terms

1. Access Rights
2. Boundary Disputes
3. Easements
4. Just Compensation
5. Prescriptive Easements
6. Adverse Possession
7. Eminent Domain
8. Nonconforming Use & Noncomplying Structures
9. Variances
10. Zoning Estoppel

<https://propertyrights.utah.gov/legal-topics/>

Establish/Release Lien Rights

Notice of Pre-Construction Service

Establish Right for preconstruction service

Preliminary Notice

Establish Rights to lien for non-payment of Contractors & Suppliers

Construction Loan

Establish Rights for Construction Loan

Notice of Completion

Filed to cut off lien rights. No new preliminary notices after 10 days & Lien recording deadline from 180 to 90 days

Final Lien Waiver

Release Lien Rights- Filed by Contractors/Suppliers

Notice of Commencement (Not Common)

Priority Date for Preliminary Notice filings (Government Projects)

Notice of Interested Parties

Loan Default

Notice to all parties of the construction loan is in default

Notice of Intent to Finance

Notice to all parties of a imminent financing (14 days prior to new loan)

Notice of intent to obtain final completion. (NOT COMMON)

Filed at least 45 days prior to completion (COMMERCIAL)

Remaining to Complete (NOT COMMON)

Preliminary Notice holders file estimate of \$\$\$ due to complete the work (COMMERCIAL)



Alpaca

Llama



Construction Service Lien Timelines

On State Construction Registry

Not on State Construction Registry

Preconstruction Service Lien Priority

Earliest filed Notice of Preconstruction Service

Construction Service Lien Priority

Earliest filed Preliminary Notice

When work begins

Recording Time for Lien

90 Days after Notice of Completion

180 days after "final completion"

State Construction Definitions

<u>Feature Name</u>	<u>Who can use?</u>	<u>What does it do?</u>
<u>Notice of Pre-Construction Service</u>	<u>Architect</u>	Filed within 20 days of commencing preconstruction service for anticipated improvement. May record preconstruction lien recorded if not paid within 90 days. Preconstruction is over with first filed Prelim. Notice. All preconstruction share priority date.
<u>Preliminary Notice</u>	<u>Contractor</u> <u>Subcontractor</u> <u>Supplier</u>	20 days from first day on project to preserve rights. If filed after 20 days, 5 day penalty & protection for work moving forward. If contractor does not file a Preliminary Notice, no Construction Services Lien can be filed. All preconstruction share priority date.
<u>Construction Loan</u>	<u>Title Company</u> <u>Bank</u>	After county recording of a construction mortgage or trust deed on a private project, the lender shall file the notice of construction loan.
<u>Loan Default</u>	<u>Title Company</u> <u>Bank</u>	Within five business days after a notice of default is filed for recording, the construction lender shall file a notice with the registry.
<u>Notice of Completion</u>	<u>Title Company</u> <u>Contractor</u> <u>Owner</u>	Filed after the final inspection, occupancy cert. or all substantial work is done. After Notice is filed, all remaining Preliminary Notices must be filed within 10 days and the time to file a lien is reduced from 180 down to 90 days.
<u>Notice of Intent to Finance</u>	<u>Owner</u> <i>(Bank?)</i> <i>(Title Co?)</i>	Filed no less than 14 days before the anticipated financing date. Expires automatically if financing doesn't happen within 30 days of notice.
<u>Final Lien Waiver</u>	<u>Contractor</u> <u>Subcontractor</u>	(1) After a notice of intent to finance is filed each sub. who filed preliminary notice may file a final lien waiver. (2) The final lien waiver may be filed even if no notice of intent to finance was filed
<u>Notice of Commencement</u>	<u>Owner</u> <u>General Contractor</u>	Only Govt. jobs require a Not. of Commencement. Filed w/in 15 days after work begins. Gen. contractors, suppliers & subs must file Prelim. Not. to preserve lien rights.
<u>Notice of intent to obtain final completion. (COMMERCIAL)</u>	<u>Contractor</u> <u>Owner</u>	Original Contractors may file at least 45 days before a project is able to be Completed. After filing, anyone who has filed a Prelim. Not. must file a Remaining to Complete stating if they have not been paid or if they owe others. Only applies to nonresidential and non bonded jobs over \$500,000.
<u>Remaining to Complete (COMMERCIAL)</u>	<u>Contractor</u> <u>Subcontractor</u> <u>Supplier</u>	(COMMERCIAL) When Intent to Comp. is filed by the Contractor anyone with a preliminary notice must file a Remaining to Complete within 20 days estimating \$\$\$ owed. Filing informs everyone sub or supplier hasn't been paid.