



# Construction Service Liens & The SCR (CORE)

Tucker Hodgson- Continuing Education Instructor #6728570-CE10

Class #RC250745



Lien Priority in Utah- Race Notice

# Lien Priority on April 9, 2001?

04-02-2001 Filed: Default and Default Judgment.  
04-02-2001 Filed: Memorandum of Costs and Disbursements.  
04-02-2001 \*\*\*\* PRIVATE \*\*\*\* Filed: Judgment Information  
**04-09-2001** Judgment # 1 Entered 1,542.27

Creditor : BONNEVILLE BILLING  
Debtor :  
Debtor : Debtor Name  
  
1,542.27 Total Judgment  
**1,542.27** Judgment Grand Total

04-09-2001 Filed judgment: Default - Clerk  
Clerk VICKIE SAMARRAE  
Signed April 09, 2001  
04-09-2001 Case Disposition is Judgment  
Disposition Judge is RODNEY S. PAGE

E [REDACTED] REP 353  
SHERYL L. WHITE, DAVIS CNTY RECORDER  
2001 APR 9 12:33 PM FEE 26.00 DEP MT  
REC'D FOR [REDACTED] TITLE COMPANY

WHEN RECORDED MAIL TO:

OLD KENT MORTGAGE COMPANY  
4516 SOUTH 700 EAST, #300  
SALT LAKE CITY, UT 84107

[REDACTED]  
SHERYL L. WHITE, DAVIS CNTY RECORDER  
**2001 APR 9 12:33 PM FEE 26.00 DEP MT**  
REC'D FOR [REDACTED] TITLE COMPANY

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Tax Serial Number: 02-033-001  
State of Utah

AP# M19RODSS152224  
LN# 156222

DEED OF TRUST

FHA Case No.  
521-4777811-703

MIN 1000142-6000005709-3

THIS DEED OF TRUST ("Security Instrument") is made on April 5, 2001  
The Grantor is Debtor Name, husband and wife

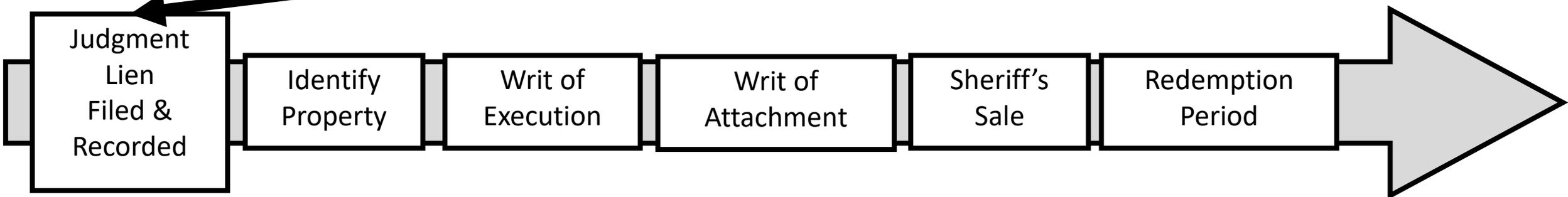
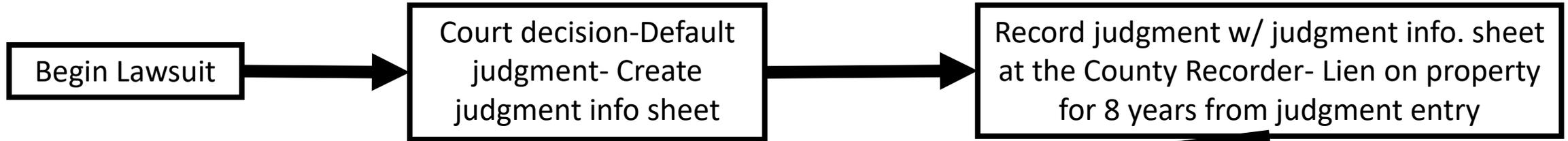
("Borrower"). The trustee is TITLE COMPANY,

2180 SOUTH 1300 EAST, SALT LAKE CITY, UT 84106  
("Trustee"). The beneficiary is Mortgage Electronic Registration Systems, Inc. ("MERS"), (solely as nominee for Lender, as hereinafter defined, and Lender's successors and assigns). MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS. OLD KENT MORTGAGE COMPANY, d/b/a REPUBLIC MORTGAGE

("Lender") is organized and existing under the laws of THE STATE OF MICHIGAN, and has an address of 4516 SOUTH 700 EAST, #300, SALT LAKE CITY, UT 84107

Borrower owes Lender the principal sum of One Hundred Fifty Seven Thousand Two Hundred Thirty Two and no/100 Dollars (U.S. \$ 157,232.00).

# Real Property Lien Rights- civil judgments foreclosure





**RULE**



**EXCEPTION**

### NOTICE OF CONSTRUCTION LIEN

Claimant:	TRADES COMPANY, LLC, P.O. BOX 809, LEHI, UT 84043, 801-360-0756
Reputed Owner:	TAILOR BUILT HOMES LLC
Record Owner:	TAILOR BUILT HOMES LLC
Non-paying Party:	TAILOR BUILT HOMES LLC
Amount owed:	\$ 2,572.46, together with interest, costs, and reasonable attorney fees
First Labor / materials were furnished:	March 22, 2018
Last Labor / materials were furnished:	March 22, 2018
Property subject to this lien:	

ALL OF LOT 216, VIEWS AT EAGLEWOOD VILLAGE PUD PHASE 2, THE. CONT. 0.11200 ACRES. DAVIS COUNTY, STATE OF UTAH. 01-464-0216

PROTECTION AGAINST LIENS AND CIVIL ACTION. Notice is hereby provided in accordance with Section 38-11-108 of the Utah Code that under Utah law an "owner" may be protected against liens being maintained against an "owner-occupied residence" and from other civil action being maintained to recover monies owed for "qualified services" performed or provided by suppliers and subcontractors as a part of this contract, if either section (1) or (2) is met:

- (1)(a) the owner entered into a written contract with an original contractor, a factory built housing retailer, or a real estate developer;
- (b) the original contractor was properly licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act at the time the contract was executed; and
- (c) the owner paid in full the contracting entity in accordance with the written contract and any written or oral amendments to the contract; or

(2) the amount of the general contract between the owner and the original contractor totals no more than \$5,000." PROTECTION AGAINST LIENS AND CIVIL ACTION. Notice is hereby provided in accordance with Section 38-11-108 of the Utah Code that under Utah law an "owner" may be protected against liens being maintained against an "owner-occupied residence" and from other civil action being maintained to recover monies owed for "qualified services" performed or provided by suppliers and subcontractors as a part of this contract, if either section (1) or (2) is met:

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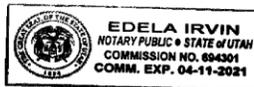
(3) An owner who can establish compliance with either section (1) or (2) may perfect the owner's protection by applying for a Certificate of Compliance with the Division of Occupational and Professional Licensing. The application is available at [www.dopl.utah.gov/rtrf](http://www.dopl.utah.gov/rtrf).

DATED this 18th of July, 2018, Claimant, TRADES COMPANY, LLC

Acting through its duly authorized agent, DJP LienServices, Inc.

### ACKNOWLEDGEMENT

On the 18th day of July, 2018, Tracy Hunsaker, personally appeared before me and stated and swore under oath that she is the authorized agent to sign for the Claimant, that this Notice of Construction Lien was signed on claimant's behalf, that she is authorized by Claimant to sign on its behalf, that this claim of Construction Lien and the information contained herein is true and correct and represents a valid claim to the best of her knowledge.



Edela Irvin, Notary Public

Recorded at request of:  
Silverlake Master Home Owners Association, Inc

After recording, mail to:  
Jenkins Bagley Sperry, PLLC  
Attn: Bruce C. Jenkins  
285 W. Tabernacle St., Suite 301  
St. George, UT 84770

Certified Mail Receipt Article Number(s): 7020 1810 0000 6270 1951

### NOTICE OF DELINQUENT ASSESSMENT AND LIEN CLAIM AND REQUEST FOR NOTICE

The undersigned, for and in behalf of Silverlake Master Home Owners Association, Inc ("Association"), hereby files this Notice of Delinquent Assessment and Lien Claim and Request for Notice ("Lien") pursuant to the Silverlake Community Amended and Restated Declaration ("Declaration"), as may be amended from time to time. This Lien results from nonpayment of assessments, interest and/or charges by **Ivonne Pena and Mario Eduardo Pena, Husband and Wife, as joint tenants ("Owner")**, the reputed Owner of Lot 1563, in the following amounts as of June 1, 2021:

<u>Monthly Assessments &amp; Charges</u>	<u>Amount</u>
Balance as of June 1, 2021	\$1,175.00
Lien Fees <sup>1</sup>	\$ 654.42
Total	\$1,829.42

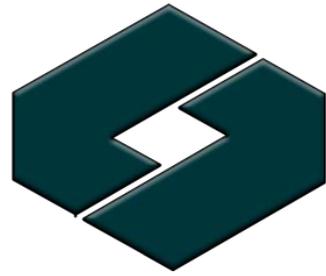
This Lien shall continue until the amounts secured hereby, and all subsequently accruing assessments, interest and/or charges are fully paid or otherwise satisfied. The Association may bring an action to obtain a judgment or foreclose this Lien. The Association is further entitled to recover attorney's fees, court costs, and expenses of collection. **Request is hereby made that a copy of any notice of default and a copy of notice of sale under any trust deed, lien or mortgage instrument and any and all payments made to cure this debt must be made directly to the office of Jenkins Bagley Sperry, PLLC, Attn: Collections Department, in certified funds payable to "Jenkins Bagley Sperry, PLLC, Client Trust Account."**

This Lien affects the following real property with a street address of 7555 North Cottage Lane, Eagle Mountain, Utah 84005, and more particularly described as follows:

Lot 1563, PLAT "15", SILVERLAKE, a Residential Subdivision, according to the official plat thereof on file and of record in the Utah County Recorder's Office.

Together with the appurtenant undivided ownership interest in and to the common areas and facilities as defined and described in said Plat and Declaration.

<sup>1</sup>Lien fees include, but may not be limited to, preparation of lien, lien release, and related documents, recording fees and attorney fees.



Backman Title Services

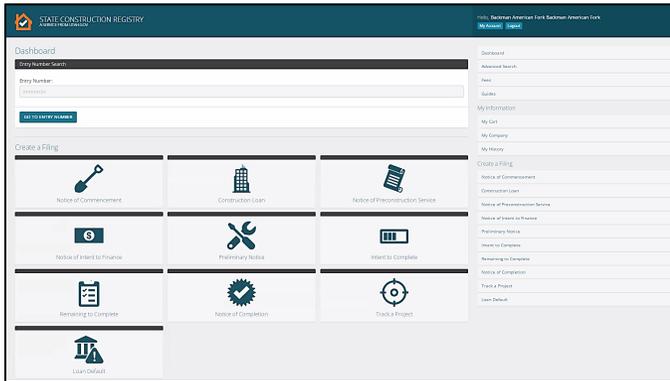
[www.backmantitle.com](http://www.backmantitle.com)

Owner Associations & CC&Rs (CORE)

(Reading the fine print)

Tucker Hodgson-  
Continuing Education Instructor #6728570-CEI0

# Venues for establishing lien priority



- County Recorder
  - By Tnbell89 - Own work, CC BY-SA 4.0, <https://commons.wikimedia.org/w/index.php?curid=82335558>
- District Court
- Bankruptcy Court
- Federal Bankruptcy Court
  - By Ricardo630 - Own work, CC BY-SA 4.0, <https://commons.wikimedia.org/w/index.php?curid=43002918>



Some of the largest losses in title insurance come from Construction Service Liens



# Questions about Construction Service Liens

- What is a construction service lien?
- Who can file a construction service lien?
- How are these liens different than other types of liens?
- What's the State Construction Registry?
- How does it work?
- What can protect my buyers from getting a lien?

**Mechanic's Lien**

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# Who can file a Construction Service Lien? (38-1a-102 Definitions)

A provider of **preconstruction service** or **construction work** for the **anticipated improvement** or **improvement** or of real property

38-1a-102 (11) "Construction work":

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

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

# What is Construction Work?

38-1a-102 (11) "Construction work":

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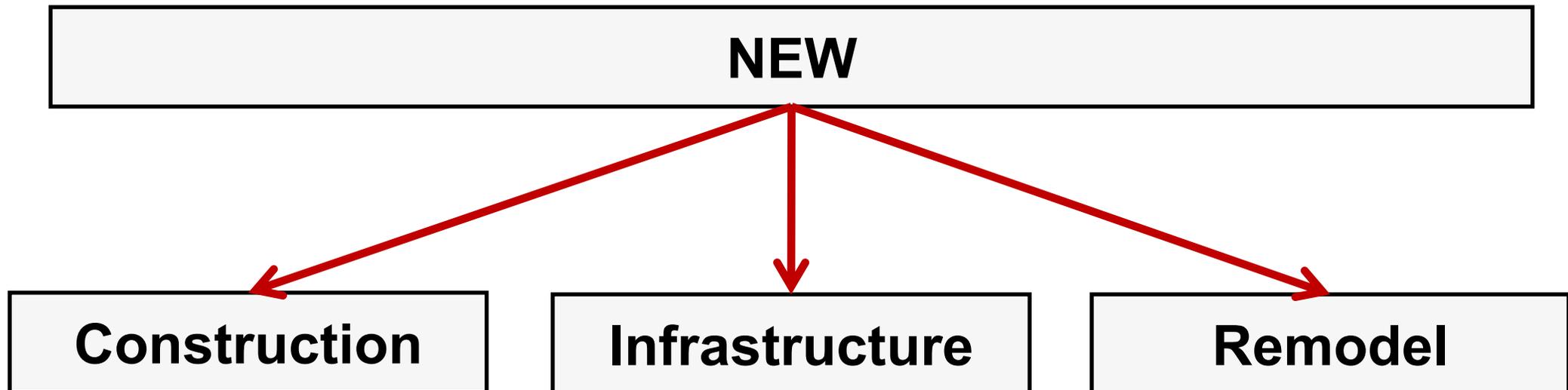
(b) includes scheduling, estimating, staking, supervising, managing, materials testing, inspection, observation, and quality control or assurance involved in **constructing, altering, or repairing** an improvement.



# What does “Improvement” mean

38-18-102 (21) “Improvement” means:

- (a) a building, infrastructure, utility, or other human-made structure or object constructed on or for and affixed to real property; or
- (b) a repair, modification, or alteration of a building, infrastructure, utility, or object referred to in Subsection (21)(a).



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**S.M.E.L.**

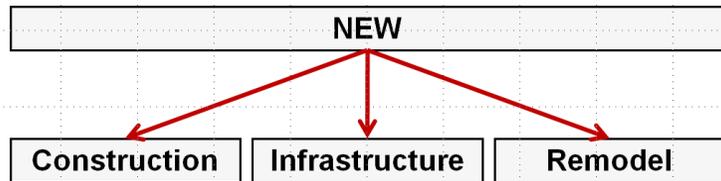
# What is a Construction Service Lien?

An interest in real property title for the benefit of those who provide service, material, equipment, or labor for the permanent construction, repair, or alteration of real property.

## What does "Improvement" mean

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- (a) a building, infrastructure, utility, or other human-made structure or object constructed on or for and affixed to real property; or
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**NEW**: Construction, Infrastructure, Remodel

## What is Construction Work?

38-1a-102 (11) "Construction work":

- (a) means labor, service, material, or equipment provided for the purpose and during the process of **c**onstructing, **a**ltering, or **r**epairing an improvement; and
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**CAR**: Constructing, Altering, Repairing

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**S.M.E.L.**

**S.M.E.L.**: Service, Material, Equipment, Labor

**NEW CAR SMELL!**

# Construction Service Lien Filing Requirements:

## **38-1a-502 (2) Notice of construction lien -- Contents -- Recording -- Service on owner.**

(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.

# Construction Service Liens

## NOTICE OF CONSTRUCTION LIEN

Claimant: TRADES COMPANY, LLC, P.O. BOX 809, LEHI, UT 84043, 801-360-0756  
Reputed Owner: TAILOR BUILT HOMES LLC  
Record Owner: TAILOR BUILT HOMES LLC  
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First Labor / materials were furnished: March 22, 2018  
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01-464-0216

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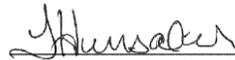
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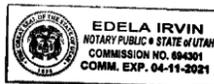
DATED this 18th of July, 2018.  
Claimant, TRADES COMPANY, LLC



Acting through its duly authorized agent, DJP LienServices, Inc.

## ACKNOWLEDGEMENT

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Edela Irvin, Notary Public

## Construction Service Lien Filing Requirements: **38-1a-502 (2) Notice of construction lien -- Contents -- Recording -- Service on owner.**

(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.

# Lien Priority in Utah- Race Notice



Construction Service Liens are an exception.

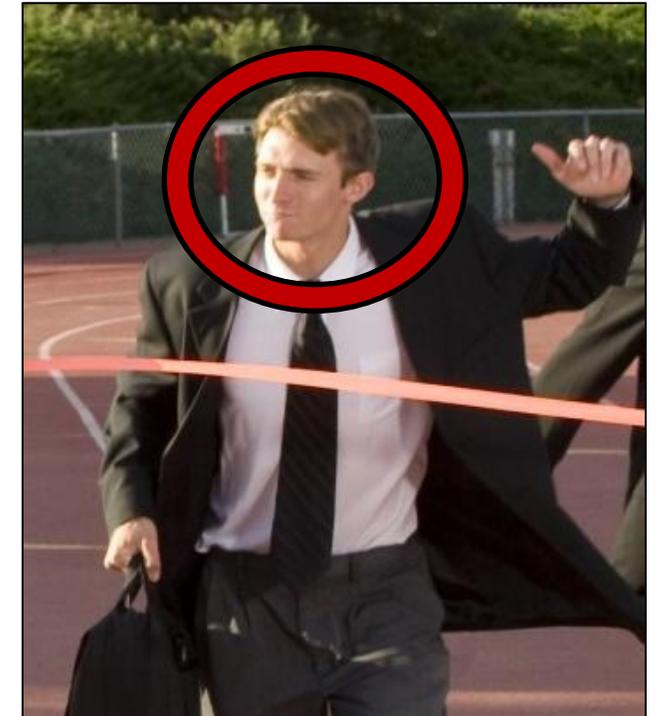
# When does construction service lien priority begin?

When work begins!

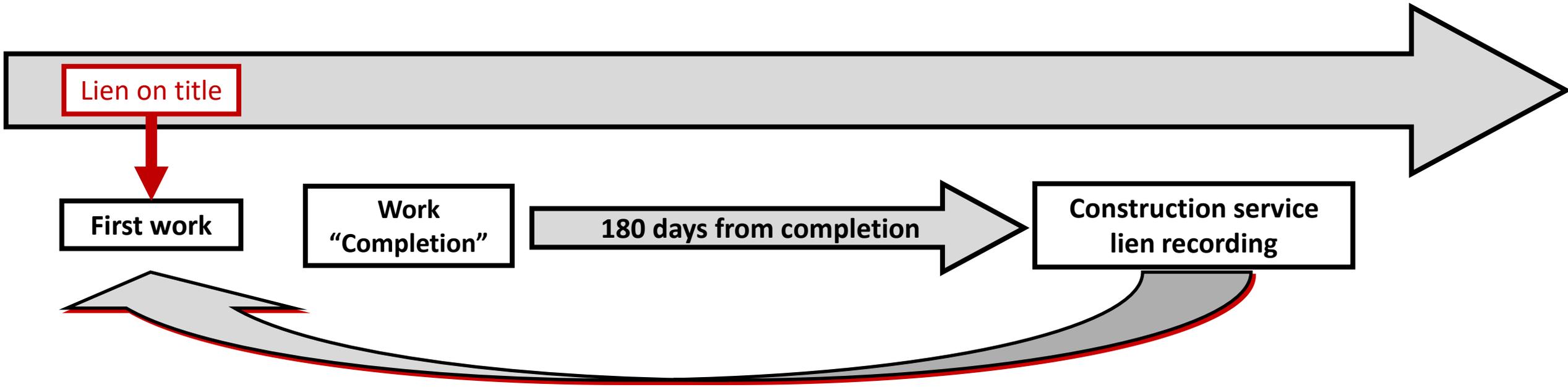
## When do construction service lien rights end?

180 Days after final completion

- Permanent Certificate of occupancy
- Final Inspection without certificate
- Substantial completion if no inspection or certificate is issued

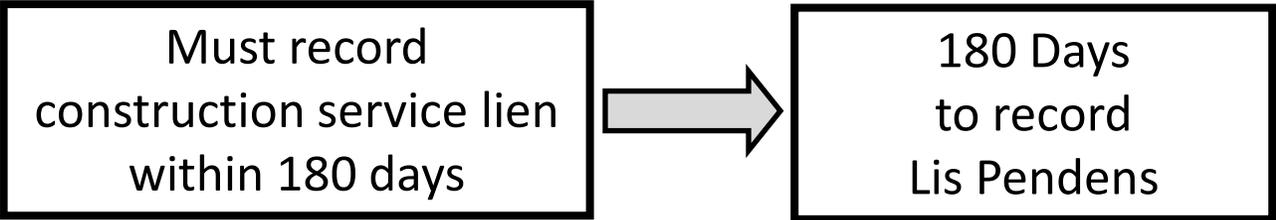
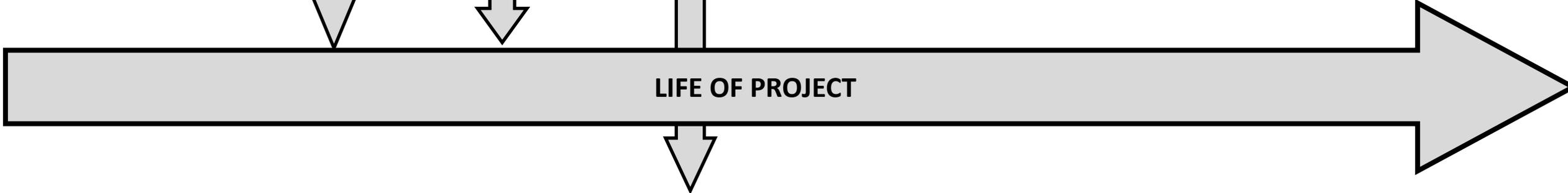
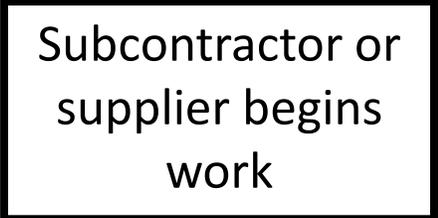
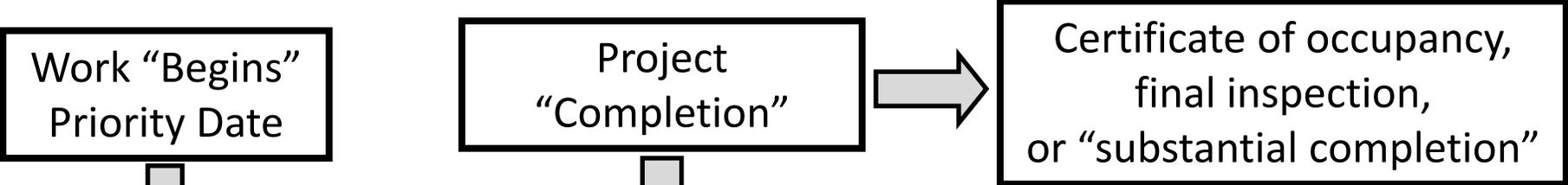


# Construction service lien priority

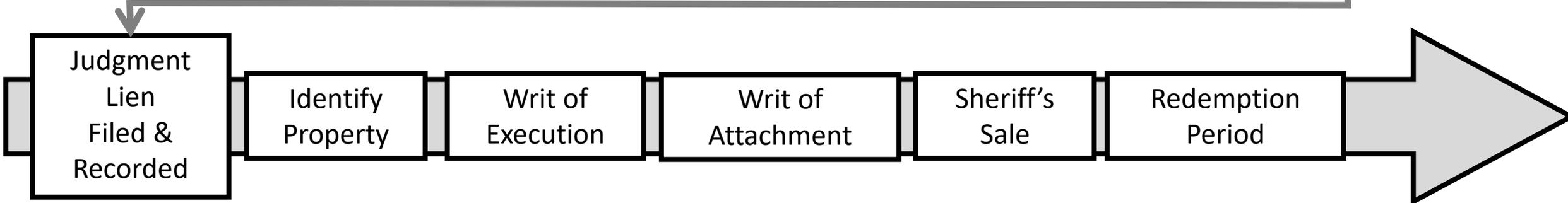
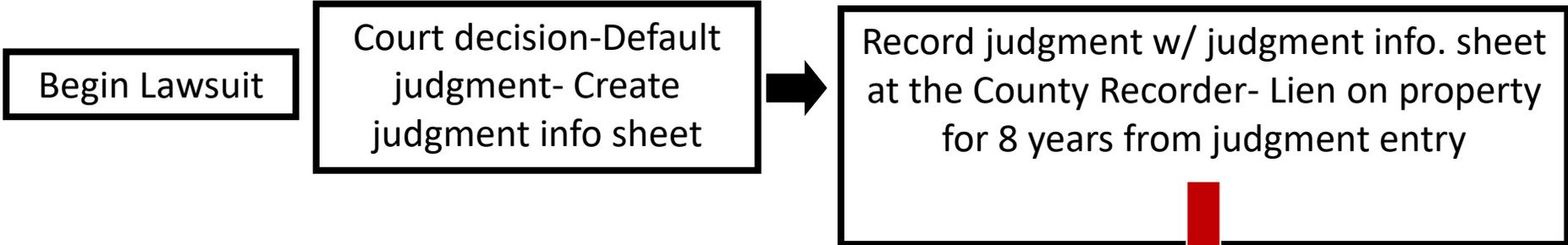


**Construction Service Lien priority relates back "first work"**

# Construction Service Lien Timeline- No SCR



# Real Property Lien Rights- civil judgments vs. construction service liens



# New Construction

What does the contract/REPC say about construction service liens & title insurance?





# REAL ESTATE PURCHASE CONTRACT FOR LAND



This is a legally binding contract. If you desire legal or tax advice, consult your attorney or tax advisor.

## EARNEST MONEY RECEIPT

Buyer \_\_\_\_\_ offers to purchase the Property described below and hereby delivers to the Brokerage, as Earnest Money, the amount of \$\_\_\_\_\_ in the form of \_\_\_\_\_ which, upon Acceptance of this offer by all parties (as defined in Section 23), shall be deposited in accordance with state law.

Received by: \_\_\_\_\_ on \_\_\_\_\_ (Date)  
(Signature of agent/broker acknowledges receipt of Earnest Money)

Brokerage: \_\_\_\_\_ Phone Number: \_\_\_\_\_

## OFFER TO PURCHASE

1. PROPERTY: \_\_\_\_\_

also described as: \_\_\_\_\_

City of \_\_\_\_\_ County of \_\_\_\_\_ State of Utah, ZIP \_\_\_\_\_ (the "Property").

1.1 Included Items. (specify) \_\_\_\_\_

1.2 Water Rights/Water Shares. The following water rights and/or water shares are included in the Purchase Price.  
[ ] \_\_\_\_\_ Shares of Stock in the \_\_\_\_\_ (Name of Water Company)  
[ ] Other (specify) \_\_\_\_\_

## 5. CONFIRMATION OF AGENCY DISCLOSURE.

At the signing of this contract:  
[ ] Seller's Initials [ ] Buyer's Initials

Listing Agent \_\_\_\_\_, represents [ ] Seller [ ] Buyer [ ] both Buyer and Seller as a Limited Agent;

Listing Broker for \_\_\_\_\_, represents [ ] Seller [ ] Buyer [ ] both Buyer and Seller as a Limited Agent;  
(Company Name)

Buyer's Agent \_\_\_\_\_, represents [ ] Seller [ ] Buyer [ ] both Buyer and Seller as a Limited Agent;

Buyer's Broker for \_\_\_\_\_, represents [ ] Seller [ ] Buyer [ ] both Buyer and Seller as a Limited Agent;  
(Company Name)

6. TITLE INSURANCE. At Settlement, Seller agrees to pay for a standard-coverage owner's policy of title insurance insuring Buyer in the amount of the Purchase Price. Any additional title insurance coverage shall be at Buyer's expense.

7. SELLER DISCLOSURES. No later than the Seller Disclosure Deadline referenced in Section 24(a), Seller shall provide to Buyer the following documents which are collectively referred to as the "Seller Disclosures":

- (a) a Seller property condition disclosure for the Property, signed and dated by Seller;
- (b) a commitment for the policy of title insurance;
- (c) a copy of any leases affecting the Property not expiring prior to Closing;
- (d) written notice of any claims and/or conditions known to Seller relating to environmental problems;
- (e) evidence of any water rights and/or water shares referenced in Section 1.2 above; and
- (f) Other (specify) \_\_\_\_\_

8. BUYER'S RIGHT TO CANCEL BASED ON BUYER'S DUE DILIGENCE. Buyer's obligation to purchase under this Contract (check applicable boxes):

(a) [ ] IS [ ] IS NOT conditioned upon Buyer's approval of the content of all the Seller Disclosures referenced in Section 7;

(b) [ ] IS [ ] IS NOT conditioned upon Buyer's approval of a physical condition inspection of the Property;

(c) [ ] IS [ ] IS NOT conditioned upon Buyer's approval of a survey of the Property by a licensed surveyor.

# 6. TITLE INSURANCE. At Settlement, Seller agrees to pay for a standard-coverage owner's policy of title insurance insuring Buyer in the amount of the Purchase Price. Any additional title insurance coverage shall be at Buyer's expense.

If the loan is to include any particular terms, then check below and give details:

[ ] SPECIFIC LOAN TERMS

\$ \_\_\_\_\_ (c) Seller Financing. (see attached Seller Financing Addendum, if applicable)

\$ \_\_\_\_\_ (d) Other (specify) \_\_\_\_\_

\$ \_\_\_\_\_ (e) Balance of Purchase Price in Cash at Settlement.

\$ \_\_\_\_\_ PURCHASE PRICE. Total of lines (a) through (e)

3. SETTLEMENT AND CLOSING. Settlement shall take place on the Settlement Deadline referenced in Section 24(c), or on a date upon which Buyer and Seller agree in writing. "Settlement" shall occur only when all of the following have been completed: (a) Buyer and Seller have signed and delivered to each other or to the escrow/closing office all documents required by this Contract, by the Lender, by written escrow instructions or by applicable law; (b) any monies required to be paid by Buyer under these documents (except for the proceeds of any new loan) have been delivered by Buyer to Seller or to the escrow/closing office in the form of collected or cleared funds; and (c) any monies required to be paid by Seller under these documents have been delivered by Seller to Buyer or to the escrow/closing office in the form of collected or cleared funds. Seller and Buyer shall each pay one-half (1/2) of the fee charged by the escrow/closing office for its services in the settlement/closing process. Taxes and assessments for the current year, rents, and interest on assumed obligations shall be prorated at Settlement as set forth in this Section. Prorations set forth in this Section shall be made as of the Settlement Deadline date referenced in Section 24(c), unless otherwise agreed to in writing by the parties. Such writing could include the settlement statement. The transaction will be considered closed when Settlement has been completed, and when all of the following have been completed: (i) the proceeds of any new loan have been delivered by the Lender to Seller or to the escrow/closing office; and (ii) the applicable Closing documents have been recorded in the office of the county recorder. The actions described in parts (i) and (ii) of the preceding sentence shall be completed within four calendar days of Settlement.

4. POSSESSION. Seller shall deliver physical possession to Buyer within: [ ] Upon Closing [ ] Other (specify) \_\_\_\_\_

If any of items 8(a) through 8(g) are checked in the affirmative, then Sections 8.1, 8.2, 8.3 and 8.4 apply; otherwise, they do not apply. The items checked in the affirmative above are collectively referred to as Buyer's "Due Diligence." Unless otherwise provided in this Contract, Buyer's Due Diligence shall be paid for by Buyer and shall be conducted by individuals or entities of Buyer's choice. Seller agrees to cooperate with Buyer's Due Diligence and with a final pre-closing inspection under Section 11.

8.1 Due Diligence Deadline. No later than the Due Diligence Deadline referenced in Section 24(b) Buyer shall: (a) complete all of Buyer's Due Diligence; and (b) determine if the results of Buyer's Due Diligence are acceptable to Buyer.

8.2 Right to Cancel or Object. If Buyer determines that the results of Buyer's Due Diligence are unacceptable, Buyer may, no later than the Due Diligence Deadline, either: (a) cancel this Contract by providing written notice to Seller, whereupon the Earnest Money Deposit shall be released to Buyer; or (b) provide Seller with written notice of objections.

8.3 Failure to Respond. If by the expiration of the Due Diligence Deadline, Buyer does not: (a) cancel this Contract as provided in Section 8.2; or (b) deliver a written objection to Seller regarding the Buyer's Due Diligence, The Buyer's Due Diligence shall be deemed approved by Buyer; and the contingencies referenced in Sections 8(a) through 8(g), including but not limited to, any financing contingency, shall be deemed waived by Buyer.

8.4 Response by Seller. If Buyer provides written objections to Seller, Buyer and Seller shall have seven calendar days after Seller's receipt of Buyer's objections (the "Response Period") in which to agree in writing upon the manner of resolving Buyer's objections. Except as provided in Section 10.2, Seller may, but shall not be required to, resolve Buyer's objections. If Buyer and Seller have not agreed in writing upon the manner of resolving Buyer's objections, Buyer may cancel this Contract by providing written notice to Seller no later than three calendar days after expiration of the Response Period; whereupon the Earnest Money Deposit shall be released to Buyer. If this Contract is not canceled by Buyer under this Section 8.4, Buyer's objections shall be deemed waived by Buyer. This waiver shall not affect those items warranted in Section 10.

9. **ADDITIONAL TERMS.** There  ARE  ARE NOT addenda to this Contract containing additional terms. If there are, the terms of the following addenda are incorporated into this Contract by this reference:  Addenda No.'s \_\_\_\_\_  
 Seller Financing Addendum  Other (specify) \_\_\_\_\_

**10. SELLER WARRANTIES AND REPRESENTATIONS.**

**10.1 Condition of Title.** Seller represents that Seller has fee title to the Property and will convey good and marketable title to Buyer at Closing by general warranty deed. Buyer agrees, however, to accept title to the Property subject to the following matters of record: easements, deed restrictions, CC&R's (meaning covenants, conditions and restrictions), and rights-of-way; and subject to the contents of the Commitment for Title Insurance as agreed to by Buyer under Section 8.

**10. SELLER WARRANTIES AND REPRESENTATIONS.**

**10.1 Condition of Title.** Seller represents that Seller has fee title to the Property and will convey good and marketable title to Buyer at Closing by general warranty deed. Buyer agrees, however, to accept title to the Property subject to the following matters of record: easements, deed restrictions, CC&R's (meaning covenants, conditions and restrictions), and rights-of-way; and subject to the contents of the Commitment for Title Insurance as agreed to by Buyer under Section 8. Buyer also agrees to take the Property subject to existing leases affecting the Property and not expiring prior to Closing. Buyer agrees to be responsible for taxes, assessments, homeowners association dues, utilities, and other services provided to the Property after Closing. Seller will cause to be paid off by Closing all mortgages, trust deeds, judgments, mechanic's liens, tax liens and warrants. Seller will cause to be paid current by Closing all assessments and homeowners association dues.

**IF ANY PORTION OF THE PROPERTY IS PRESENTLY ASSESSED AS "GREENBELT" (CHECK APPLICABLE BOX):**

SELLER  BUYER SHALL BE RESPONSIBLE FOR PAYMENT OF ANY ROLL-BACK TAXES ASSESSED AGAINST THE PROPERTY.

**10.2 Condition of Property.** Seller warrants that the Property will be in the following condition **ON THE DATE SELLER DELIVERS PHYSICAL POSSESSION TO BUYER:**

- (a) the Property shall be free of debris and personal property;
- (b) the Property will be in the same general condition as it was on the date of Acceptance.

return it and sue Buyer to specifically enforce this Contract or pursue other remedies available at law. If Seller defaults, in addition to return of the Earnest Money Deposit, Buyer may elect either to accept from Seller a sum equal to the Earnest Money Deposit as liquidated damages, or may sue Seller to specifically enforce this Contract or pursue other remedies available at law. If Buyer elects to accept liquidated damages, Seller agrees to pay the liquidated damages to Buyer upon demand.

**17. ATTORNEY FEES AND COSTS.** In the event of litigation or binding arbitration to enforce this Contract, the prevailing party shall be entitled to costs and reasonable attorney fees. However, attorney fees shall not be awarded for participation

**REAL ESTATE PURCHASE CONTRACT  
FOR  
RESIDENTIAL CONSTRUCTION**

This is a legally binding contract. Utah law requires real estate licensees to use this form. Buyer and Seller, however, may agree to alter or delete its provisions or to use a different form. If you desire legal or tax advice, consult your attorney or tax advisor.

**EARNEST MONEY RECEIPT**

Buyer \_\_\_\_\_ offers to purchase the Property described below and hereby delivers to the Brokerage, as Earnest Money, the amount of \$ \_\_\_\_\_ in the form of \_\_\_\_\_ which, upon Acceptance of this offer by all parties (as defined in Section 23) shall be deposited in accordance with state law.

Received by: \_\_\_\_\_ on \_\_\_\_\_ (Date)

Brokerage: \_\_\_\_\_ Phone Number \_\_\_\_\_

**OFFER TO PURCHASE**

**1. PROPERTY:**

**1.1 Location.** The Earnest Money Deposit is given to secure and apply on the purchase of a new Residence (the "Residence") described below to be constructed by Seller on a parcel of real property (the "Lot") located at: \_\_\_\_\_, in the City of \_\_\_\_\_ County of \_\_\_\_\_, State of Utah, more particularly described as Lot No. \_\_\_\_\_ in the \_\_\_\_\_ Subdivision, or alternatively as follows: \_\_\_\_\_ The Purchase Price for the Residence  INCLUDES  DOES NOT INCLUDE, the Lot.

**1.2 Home Design.** Seller shall construct the Residence and related improvements in accordance with the Plans & Specifications checked below and approved by Buyer as provided in Section 8. (check applicable box):

- \_\_\_\_\_ House Plan
- FHA/VA Approved Plan No. \_\_\_\_\_
- Plans and Declaration of Condominium (check one)  AS RECORDED  AS PROPOSED for Unit Number \_\_\_\_\_ of the \_\_\_\_\_ Condominiums
- a Custom Home (specify) \_\_\_\_\_
- Other \_\_\_\_\_

**1.3 Improvements.** Seller represents that the Residence will be connected to the utility service lines and serviced by the additional improvements identified below. (check applicable boxes):

**(a) Utility Services**

- well  public water  private water  natural gas  electricity  telephone
- public sewer  septic tank  other (specify) \_\_\_\_\_

**(b) Additional Improvements**

- dedicated paved road  private paved road  other road (specify) \_\_\_\_\_
- curb & gutter  rolled curb  sidewalk  irrigation water/secondary system - # of shares \_\_\_\_\_
- Name of water company \_\_\_\_\_
- other (specify) \_\_\_\_\_

**1.4 Permit Fees.** Seller agrees to pay for building permit fees, impact fees and all connection fees except the following: \_\_\_\_\_

**1.5 Survey.** (Check applicable boxes): A survey  WILL  WILL NOT be prepared by a licensed surveyor. The Survey Work will be:  Property corners staked  Boundary Survey  Boundary & Improvements survey  Other (specify) \_\_\_\_\_. Responsibility for payment:  Buyer  Seller  Buyer and Seller share equally. Buyer's obligation to purchase under this Contract  IS  IS NOT conditioned upon Buyer's approval of the Survey Work. If yes, the terms of the attached Survey Addendum apply.

**3. SETTLEMENT AND CLOSING.** Seller shall provide Buyer written notice of Substantial Completion of the Residence. Settlement shall take place on the Settlement Deadline referenced in Section 24(g), or on a date upon which Buyer and Seller agree in writing. "Settlement" shall occur only when **all** of the following have been completed: (a) Buyer and Seller have signed and delivered to each other (or to the escrow/closing office), all documents required by this Contract, by the Lender, by written escrow instructions and by applicable law; (b) any monies required to be paid by Buyer under these documents (except for the proceeds of any new loan) have been delivered by Buyer to Seller or to the escrow/closing office, as appropriate, in the form of collected or cleared funds; and (c) any moneys required to be paid by Seller under these documents have been delivered by Seller to Buyer or to the escrow/closing office, as appropriate, in the form of collected or cleared funds. Seller and Buyer shall each pay one-half (1/2) of the fee charged by the escrow/closing office for its services in the settlement/closing process. Taxes and assessments for the current year, and interest on assumed obligations shall be prorated at Settlement as set forth in this Section. Prorations set forth in this Section shall be made as of the Settlement Deadline date referenced in Section 24(g), unless otherwise agreed to in writing by the parties. Such writing could include the settlement statement. The transaction will be considered closed when Settlement has been completed, and when **all** of the following have been completed: (a) the proceeds of any new loan have been delivered by the Lender to Seller (or to the escrow/closing office); and (b) the applicable Closing documents have been recorded in the office of the county recorder. The actions described in parts (a) and (b) of the preceding sentence shall be completed within four calendar days after Settlement.

**3.1 Walk-Through Inspection/Completion Escrow.** Not less than [ ] 7 DAYS [ ] \_\_\_\_\_ DAYS prior to Settlement, Buyer may conduct a "walk-through" inspection of the Residence. If, as of Settlement, minor work remains to be completed, corrected or replaced on the Residence, then Buyer, pending completion of such work, may withhold in escrow at Settlement, a reasonable amount agreed to by Seller and Buyer (or such other amount as is required by the Lender) sufficient to pay for completion of such work. If such work is not completed within [ ] 30 DAYS [ ] \_\_\_\_\_ DAYS after Settlement, the amount so escrowed may, at Buyer's option, be released to Buyer as liquidated and agreed damages for failure to complete. The failure

**6. TITLE INSURANCE.** Unless Buyer owns the Lot on the date of Acceptance Seller agrees to pay at Settlement for a standard-coverage owner's policy of title insurance insuring Buyer in the amount of the Purchase Price. Buyer acknowledges that additional title insurance coverage against mechanic's liens may be available, at Buyer's expense, through an extended coverage or plain language title policy. Buyer is advised to consult with a title insurance company during Buyer's Evaluations & Inspections regarding the availability and cost of such coverage.

The Selling Broker \_\_\_\_\_, represents [ ] Seller [ ] Buyer [ ] both Buyer and Seller  
As a Limited Agent

**6. TITLE INSURANCE.** Unless Buyer owns the Lot on the date of Acceptance Seller agrees to pay at Settlement for a standard-coverage owner's policy of title insurance insuring Buyer in the amount of the Purchase Price. Buyer acknowledges that additional title insurance coverage against mechanic's liens may be available, at Buyer's expense, through an extended coverage or plain language title policy. Buyer is advised to consult with a title insurance company during Buyer's Evaluations & Inspections regarding the availability and cost of such coverage.

**7. SELLER DISCLOSURES.** No later than the Seller Disclosure Deadline referenced in Section 24(d), Seller shall provide to Buyer the following documents which are collectively referred to as the "Seller Disclosures":

- (a) a Seller property condition disclosure for the Property, signed and dated by Seller;
- (b) a commitment for the policy of title insurance (if the Buyer does not own the Lot);
- (c) a copy of the recorded CC&R's and Plat for the Development, if any;
- (d) written notice of any claims and/or conditions known to Seller relating to environmental or other problems;
- (e) Plans & Specifications for the Residence, or reduction copies thereof (with each page initialed by Seller);
- (f) Name of contractor and contractor's license number;
- (g) Builder's Warranty (if different from Section 10.2); and
- (h) Other (specify) \_\_\_\_\_

**8. BUYER'S RIGHT TO CANCEL BASED ON EVALUATIONS AND INSPECTIONS.** Buyer's obligation to purchase under

this Contract (check applicable boxes):

- IS  IS NOT conditioned upon Buyer's approval of the content of each of the Seller Disclosures referenced in Section 7;  
 IS  IS NOT conditioned upon Buyer's approval of the following tests and evaluations of the Lot: (specify)

If any of the above items are checked in the affirmative, then Sections 8.1, 8.2 and 8.3 apply; otherwise, they do not apply. The items checked in the affirmative above are collectively referred to as the "Evaluations & Inspections." Unless otherwise provided in this Contract, the Evaluations & Inspections shall be paid for by Buyer and shall be conducted by individuals or entities of Buyer's choice. Seller agrees to cooperate with the Evaluations & Inspections.

**8.1 Evaluations & Inspections Deadline.** No later than the Evaluations & Inspections Deadline referenced in Section 24(e), Buyer must: (a) provide Seller with written notice of Buyer's approval of the Evaluations & Inspections (including initialing each page of the Plans & Specifications provided by Seller under Section 7); or (b) provide Seller with written objections regarding the Evaluations & Inspections.

**8.2 Obligation to Approve or Object.** If, by the Evaluations & Inspections Deadline, Buyer fails to provide Seller with written notice of approval, or with written objections as required in Section 8.1, this Contract shall automatically be deemed canceled; whereupon the Earnest Money Deposit shall be released to Buyer upon receipt of written request from Buyer.

**8.3 Response to Objections.** If Buyer provides written objections to Seller, Buyer and Seller shall have  7 DAYS  \_\_\_\_\_ DAYS after Seller's receipt of Buyer's objections (the "Response Period") in which to agree in writing upon the

## 10. SELLER WARRANTIES & REPRESENTATIONS.

**10.1 Condition of Title.** Unless the Buyer owns the Lot on the date of Acceptance, Seller represents that Seller has fee title to the Property and will convey good and marketable title to Buyer at Closing by general warranty deed. The Residence will be delivered to Buyer at Closing, free and clear of mechanic's liens and claims for mechanic's liens. Buyer agrees however, to accept title to the Property subject to: easements; deed restrictions; CC&R's (meaning covenants, conditions and restrictions), and rights of way; and subject to the contents of the Commitment for Title Insurance as agreed to by Buyer under Section 8. Buyer agrees to be responsible for taxes, assessments, homeowner's association dues, utilities, and other services provided to the Property after Closing. If Seller owns the Lot, Seller will pay off by Closing, all mortgages, trust deeds, judgments, mechanic's liens, tax liens and warrants. Seller agrees to pay current at Settlement all assessments and homeowners association dues.

systems (including air gas and electric appliances), fixtures, and structural elements of the Residence (including the roof, walls, and foundation) against defects in material and workmanship for a period of one year after the Settlement Deadline. Seller further warrants that as of the date Seller delivers possession of the Residence to Buyer, any private well or septic tank serving the Residence shall have applicable permits and shall be in working order and fit for its intended purpose.

**11. SUBSTANTIAL COMPLETION.** The Residence shall be considered "Substantially Complete" when occupancy of the Residence is allowable under the rules, ordinances and laws of the appropriate civil jurisdiction in which the Residence is located. In the absence of such governmental regulations, Substantial Completion shall be when the Residence is ready for occupancy and only minor work remains to be completed, corrected or replaced. Subject to the exceptions referenced in Section 12, the Substantial Completion Deadline shall be as referenced in Section 24(f). Seller shall provide Buyer written notice of Substantial Completion of the Residence.

**11.1 CONSTRUCTION ACCESS.** Buyer agrees that during the period of construction Seller shall have the unrestricted right to access the Lot for the purpose of construction of the Residence and any necessary subdivision improvements. Buyer shall have the right to reasonable inspection of the Residence. However, Seller reserves the right to limit Buyer's inspection of the Residence in order to not hinder, interfere, or delay the work. Buyer assumes all risks and liability associated with all

# Owner's Policy Types

## 1. Standard or Basic Owner's Policy

1	Someone else owns an interest in your title	X
2	A document is not properly signed	X
3	Forgery, Fraud, Duress	X
4	Defective recording of any document	X
5	There are restrictive covenants	X
6	There is a lien on your title because there is: a) a deed of trust, b) a judgment tax of special assessment, c) a charge by the Homeowners Association	X
7	Title is unmarketable	X

- Available for Commercial & Residential Transactions (underwriter approval necessary in some cases.)
- **Default policy for land, new construction, metes and bounds parcels.**
- Standard Exceptions (1-8) are not deleted (off record risks).
- **Mechanic Lien coverage not included.**



# COMMERCIAL REAL ESTATE PURCHASE CONTRACT



This is a legally binding contract. It has been prepared by the Utah Association of REALTORS® for the use of its members only, in their transactions with clients and customers. Parties to this Commercial Real Estate Contract ("Contract") may agree, in writing, to alter or delete provisions of this Contract. Seek advice from your attorney or tax advisor before entering into a binding contract.

### EARNEST MONEY RECEIPT

On this \_\_\_\_\_ ("Offer Reference Date") \_\_\_\_\_ ("Buyer") offers to purchase from \_\_\_\_\_ ("Seller") the *Property* described below and hereby delivers to the Brokerage or Title/Escrow Company, as *Earnest Money*, the amount of \$ \_\_\_\_\_ in the form of \_\_\_\_\_ which, upon Acceptance of this offer by all parties (as defined in Section 23), shall be deposited in accordance with state law.

Brokerage or Title/Escrow Company \_\_\_\_\_ Address \_\_\_\_\_

Received by: \_\_\_\_\_ on \_\_\_\_\_  
(Signature above acknowledges receipt of Earnest Money) (Date)

### OFFER TO PURCHASE

1. **PROPERTY (General Description):** \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_

County \_\_\_\_\_ State of Utah, ZIP \_\_\_\_\_

County Tax I.D. # \_\_\_\_\_ (the "*Property*")

For a legal description (**Check Applicable Box**):  SEE ADDENDUM # \_\_\_\_\_  COMMITMENT FOR TITLE INSURANCE as provided in Section 7(b).

**1.1 INCLUDED ITEMS:** Unless excluded herein, this sale includes all fixtures presently attached to the *Property*. The following personal property shall also be included in this sale and conveyed under separate *Bill of Sale* with warranties as to title:

**1.2 Excluded Items.** These items are excluded from this sale:

2. **PURCHASE PRICE** The Purchase Price for the *Property* is \$ \_\_\_\_\_

The Purchase Price will be paid as follows:

- \$ \_\_\_\_\_ (a) **Earnest Money Deposit**
  - \$ \_\_\_\_\_ (b) **New Loan.** Buyer will apply for one or more of the following loans:  Conventional  SBA  Other (specify) \_\_\_\_\_ Buyer shall have the right to approve the terms and conditions of the new loan as provided in Section 8(f).
  - \$ \_\_\_\_\_ (c) **Loan Assumption Addendum** (see attached *Assumption Addendum* if applicable)
  - \$ \_\_\_\_\_ (d) **Seller Financing** (see attached *Seller Financing Addendum* if applicable)
  - \$ \_\_\_\_\_ (e) **Other (specify)** \_\_\_\_\_
  - \$ \_\_\_\_\_ (f) **Balance of Purchase Price in Cash at Settlement**
- \$ \_\_\_\_\_ **PURCHASE PRICE. Total of lines (a) through (f)**

3. **SETTLEMENT AND CLOSING.** Settlement shall take place on the Settlement Deadline referenced in Section 24(c), or on a date upon which Buyer and Seller agree in writing. "Settlement" shall occur only when **all** of the following have been completed: (a) Buyer and Seller have signed and delivered to each other or to the escrow/closing office all documents required by this Contract, by the lender, by written escrow instructions or by applicable law; (b) any monies required to be paid by Buyer under these documents (except for the proceeds of any new loan) have been delivered by Buyer to Seller or to the escrow/closing office in the form of collected or cleared funds; and (c) any monies required to be paid by Seller under these documents have been delivered by Seller to Buyer or to the escrow/closing office in the form of collected or cleared funds. Seller and Buyer shall each

pay one-half (1/2) of the fee charged by the escrow/closing office for its services in the settlement/closing process. Taxes and assessments for the current year, rents, and interest on assumed obligations shall be prorated at Settlement as set forth in this Section. Tenant deposits (including, but not limited to, security deposits and prepaid rents) shall be paid or credited by Seller to Buyer at Settlement. Prorations set forth in this Section shall be made as of the Settlement Deadline date referenced in *Section 24(c)*, unless otherwise agreed to in writing by the parties. Such writing could include the settlement statement. For purposes of this Contract, "Closing" means that: (i) Settlement has been completed; (ii) the proceeds of any new loan have been delivered by the lender to Seller or to the escrow/closing office; and (iii) the applicable Closing documents have been recorded in the office of the county recorder.

4. **POSSESSION.** Seller shall deliver physical possession to Buyer within: [ ] \_\_\_\_\_ HOURS AFTER CLOSING; [ ] \_\_\_\_\_ DAYS AFTER CLOSING; [ ] OTHER (SPECIFY) \_\_\_\_\_  
Any rental of the *Property* prior to or after Closing, between Buyer and Seller, shall be by separate written agreement.

5. **CONFIRMATION OF BROKERAGE FEES & AGENCY DISCLOSURE.** Buyer and Seller acknowledge prior receipt of written agency disclosure provided by their respective Buyer's Agent or Seller's Agent that has disclosed the agency relationships that are confirmed below. Buyer and Seller further acknowledge that Brokerage Fees due as a result of this transaction are being paid based upon the terms of a separate written agreement. At the signing of this Contract:

Seller's Agent \_\_\_\_\_ represents [ ] Seller [ ] Buyer [ ] both Buyer and Seller

## 6. TITLE TO PROPERTY & TITLE INSURANCE.

(a) Seller represents that Seller has fee simple title to the *Property* and will convey good and marketable title to Buyer at Closing by: [ ] **GENERAL WARRANTY DEED** [ ] **SPECIAL WARRANTY DEED**, free of financial encumbrances except as provided under *Section 10.1*.

(b) At Settlement, Seller agrees to pay for a standard-coverage owner's policy of title insurance insuring Buyer in the amount of the Purchase Price. The title policy shall conform with Seller's obligations under *Section 10.1* and with the *Commitment for Title Insurance* as agreed to by Buyer under *Section 8*.

(c) [ ] **BUYER ELECTS TO OBTAIN A FULL-COVERAGE EXTENDED ALTA POLICY OF TITLE INSURANCE.** The cost of this coverage (including the ALTA survey), above that of the standard-coverage Owner's policy, shall be paid for at Settlement by: [ ] **BUYER** [ ] **SELLER** [ ] **OTHER** \_\_\_\_\_.

- \_\_\_\_\_ certified by the Seller or by an independent auditor;
- (e) copies in Seller's possession, if any, of any studies and/or reports which have previously been done on the *Property*, including without limitation, environmental reports, soils studies, site plans and surveys;
  - (f) written notice of any claims and/or conditions known to Seller relating to environmental problems and building or zoning code violations; and
  - (g) Other (specify) \_\_\_\_\_

8. **BUYER'S RIGHT TO CANCEL BASED ON BUYER'S DUE DILIGENCE.** Buyer's obligation to purchase under this Contract (check applicable boxes):

- (a) [ ] IS [ ] IS NOT conditioned upon Buyer's approval of the content of all the *Seller Disclosures* referenced in *Section 7*;
- (b) [ ] IS [ ] IS NOT conditioned upon Buyer's approval of a physical condition inspection of the *Property*;
- (c) [ ] IS [ ] IS NOT conditioned upon Buyer's approval of a survey of the *Property* by a licensed surveyor ("Survey");
- (d) [ ] IS [ ] IS NOT conditioned upon Buyer's approval of applicable federal, state and local governmental laws, ordinances and regulations affecting the *Property*; and any applicable deed restrictions and/or CC&R's (covenants, conditions and restrictions) affecting the *Property*;

## 10. SELLER'S WARRANTIES & REPRESENTATIONS.

**10.1 Condition of Title.** Buyer agrees to accept title to the *Property* subject to the contents of the *Commitment for Title Insurance* as agreed to by Buyer under *Section 8*. Buyer also agrees to take the *Property* subject to existing leases affecting the *Property* and not expiring prior to Closing. Buyer agrees to be responsible for taxes, assessments, association fees and dues, utilities, and other services provided to the *Property* after Closing. Except for any loan(s) specifically assumed by Buyer under *Section 2*, Seller will cause to be paid off by Closing all mortgages, trust deeds, judgments, mechanic's liens, tax liens and warrants. Seller will cause all assessments to be paid current by Closing.

**10.2 Condition of Property.** Seller warrants that **ON THE DATE SELLER DELIVERS PHYSICAL POSSESSION TO BUYER**, the *Property* and improvements will be broom-clean and free of debris and personal belongings, and in the same general condition as they were on the date of *Acceptance*.

**10.3 Other Seller Warranties.** Seller further warrants that, to the best of Seller's knowledge, each of the following statements is true: (a) the consummation of the transactions contemplated by this Contract will not constitute a default or result in the breach of any term or provision of any contract or agreement to which Seller is a party so as to adversely affect the consummation of such transactions; (b) there is no action, suit, legal proceeding or other proceeding pending or threatened against Seller and/or the *Property* which may adversely affect the transactions contemplated by this Contract, in any court or before any arbitrator of any kind or before or by any governmental body which may adversely affect the transactions contemplated by this Contract; (c) all work which will be performed in, on or about the *Property* or materials furnished thereto which might in any circumstances give rise to a mechanic's or materialman's lien, will be paid and all necessary waivers of rights to a mechanic's or materialman's lien for such work will be obtained; (d) Seller has not received any written notice indicating that the *Property* is in violation of any Federal, State or local Environmental Law; (e) there are no Hazardous Substances on, under, or about the *Property*, nor has Seller undertaken, permitted, authorized or suffered, and will not undertake, permit, authorize or suffer the presence, use, manufacture, handling, generation, storage, treatment, discharge, release, burial or disposal on, under or about the *Property*, of any Hazardous Substances, or the transportation to or from the *Property*, of any Hazardous Substances. As used herein, "Hazardous Substance" shall mean any substance, material or matter that may give rise to liability under any Federal, State, or local Environmental Laws; and (f) Seller is not a "foreign person" as that term is defined in Section 1445 of the U.S. Internal

# ALTA Extended Owner's Policy

Coverage		ALTA Standard	ALTA Extended Owner's
1	Someone else owns an interest in your title	X	X
2	A document is not properly signed	X	X
3	Forgery, Fraud, Duress	X	X
4	Defective recording of any document	X	X
5	There are restrictive covenants	X	X
6	There is a lien on your title because there is: a) a deed of trust, b) a judgment tax of special assessment, c) a charge by the Homeowners Association	X	X
7	Title is unmarketable	X	X
8	<b>Mechanic's lien protection</b>		<b>X</b>
9	Unrecorded liens by a homeowner's association		X
10	Unrecorded easements		X
11	Rights under unrecorded leases, contracts, or options		X

## Things to remember

1. Underwriters Require an ALTA survey





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utahccimchapter.com

**PURCHASE AND SALE AGREEMENT FOR COMMERCIAL REAL ESTATE**

This is a legally binding contract. This form has been prepared by counsel for the Utah CCIM Chapter. Parties to this Purchase and Sale Agreement for Commercial Real Estate (the "PSA") may agree, in writing, to alter or delete provisions of this PSA. All such changes should be reflected in an Addendum. The body of this PSA should not be modified. Seek advice from your attorney and tax advisor before entering into a binding contract.

**FUNDAMENTAL TERMS OF OFFER TO PURCHASE  
COMMERCIAL OR MULTI-FAMILY PROPERTY**

"REFERENCE DATE": \_\_\_\_\_

"SELLER": \_\_\_\_\_

With Notices to be given at: Street Address \_\_\_\_\_

City, State, Zip Code \_\_\_\_\_

Fax, Email \_\_\_\_\_

"BUYER": \_\_\_\_\_

With Notices to be given at: Street Address \_\_\_\_\_

City, State, Zip Code \_\_\_\_\_

Fax, Email \_\_\_\_\_

"PROPERTY": Name/General Description: \_\_\_\_\_

"DEED":  General Warranty Deed  Special Warranty Deed  Other \_\_\_\_\_

"TITLE POLICY":  Standard Coverage  Extended Coverage

SURVEY (See Survey Addendum, if applicable)

The Property also includes certain rights and interests described in Section 2.

"DEED":  General Warranty Deed  Special Warranty Deed  Other \_\_\_\_\_

"TITLE POLICY":  Standard Coverage  Extended Coverage

"PURCHASE PRICE": \$ \_\_\_\_\_

"EARNEST MONEY DEPOSIT": \$ \_\_\_\_\_ in the form of:  Wire Transfer  Buyer's Check to be deposited with  Buyer's Brokerage  Title Company/Escrow Agent  Other \_\_\_\_\_. Buyer agrees to deliver the Earnest Money Deposit no later than four (4) calendar days after Acceptance (as defined in Section 23). The Brokerage or Other depository shall deposit the Earnest Money into the Real Estate Trust Account no later than four (4) calendar days from receipt.

"SELLER DISCLOSURE DEADLINE": (Date) \_\_\_\_\_

"DUE DILIGENCE DEADLINE": (Date) \_\_\_\_\_

"SETTLEMENT DEADLINE": (Date) \_\_\_\_\_

"SELLER'S AGENT": \_\_\_\_\_

"SELLER'S BROKERAGE": \_\_\_\_\_

"BUYER'S AGENT": \_\_\_\_\_

"BUYER'S BROKERAGE": \_\_\_\_\_

"MEDIATION": Seller and Buyer  DO  DO NOT elect to mediate in accordance with the provisions of Section 15. [check box]

ADDITIONAL TERMS: There  ARE  ARE NOT addenda to this PSA containing additional terms. If there are, the terms of the following (each, an "Addendum" or collectively, the "Addenda") are incorporated into this PSA by this reference: [check box]

Seller Financing  Financing Contingency  ALTA Survey  Assumption of Financing  Other Addendum

further rights, obligations, or liabilities under the PSA except as expressly set forth in the PSA. If Buyer does not timely terminate the PSA, then Buyer shall be deemed to have waived the provisions of this Section.

**10. SELLER REPRESENTATIONS AND WARRANTIES.** Seller represents and warrants that the following statements are true and complete as of the Effective Date and shall be true and complete as of the Settlement and Closing. The following representations and warranties shall survive the date of Closing for one (1) year, and shall terminate and be null and void if or to the extent a legal action has not been filed in a court of competent jurisdiction prior to the expiration of such one (1) year period:

(a) there is no action, suit, administrative proceeding or other proceeding pending in any court or before any arbitrator of any kind or before or by any governmental body or, to Seller's knowledge, threatened against Seller and/or the Property which may adversely affect the transaction contemplated by this PSA;

(b) all work which has been or will be performed in, on or about the Property, or materials furnished to the Property which might in any circumstances give rise to a mechanic's or materialman's lien (other than relating to work performed by Buyer), will be paid and all necessary waivers of rights to a mechanic's or materialman's lien for such work will be obtained;

(c) Seller has not received any written notice or citation indicating that the Property is in material violation of Applicable Law;

(d) Neither Seller nor, to Seller's knowledge, any other Person, has ever caused or permitted any Hazardous Material to be placed, held, located, released or disposed of on, under, or at the Property or any part thereof in violation of Applicable Law and, to Seller's knowledge, no Hazardous Material is located on, under or at the Property in violation of Applicable Law;

(e) To Seller's knowledge, the consummation of the transactions contemplated by this PSA and the compliance by Seller with the terms of this PSA do not and will not conflict with or result in a material breach of any of the terms or provisions of any agreement, arrangement, undertaking, accord, document, or instrument to which Seller is a party or by which Seller or the Property is bound; and

(f) Seller is not a "foreign person" as that term is defined in Code Section 1445 and shall deposit with Escrow Agent at or prior to

(b) all work which has been or will be performed in, on or about the Property, or materials furnished to the Property which might in any circumstances give rise to a mechanic's or materialman's lien (other than relating to work performed by Buyer), will be paid and all necessary waivers of rights to a mechanic's or materialman's lien for such work will be obtained;

the Leases have been completed; (viii) no event has occurred and no condition now exists which, with or without notice or the passage of time, or both, would constitute a material breach or a default by the landlord or, to the Knowledge of Seller, by any tenant; (ix) no money is owed or will become owing to any tenant for improvements or otherwise under the Leases; and (x) there are no leasing commissions or other commissions, fees or compensation presently owed or which will become due and payable under any of the Leases or which could become due and payable in the future upon the exercise of any right or option contained in any of the Leases.

(k) The Operating Statements delivered to Buyer are correct and complete in all material respects and accurately show and fairly present all income and expenses of the Property for the periods indicated in all material respects, subject to customary and consistent year-end adjustments.

(l) To the Knowledge of Seller, there are no material defects or deficiencies in the design, construction, fabrication, manufacture or installation of the improvements to the Property or any part thereof or any system, element or component thereof, and all systems elements and components of the Property (including all machinery, fixtures and equipment, the roof, foundation and structural elements, and the elevator, mechanical, electrical and life safety systems) are in good working order and repair and sound operating condition in all material respects except for normal wear and tear.

**11. NO OTHER REPRESENTATIONS AND WARRANTIES.** Except as expressly set forth in this PSA or in an Addendum or Counteroffer: (a) Buyer is purchasing the Property, and the Property shall be conveyed and transferred to Buyer, "AS IS, WHERE IS, AND WITH ALL FAULTS" and specifically without any warranties, representations or guarantees, either express or implied, of any kind, nature or type whatsoever from or on behalf of Seller; and (b) Seller has not, does not and will not, with respect to the Property, make any warranties or representations, express or implied, or arising by operation of law, including, but in no way limited to, any warranty of condition or merchantability, or with respect to the value, profitability, developability or marketability of the Property.

**12. CHANGES PENDING CLOSING.** Between the Effective Date and the date of Closing, and except as and to the extent otherwise permitted by an Addendum hereto, Seller shall (i) comply with all Applicable Law, and (ii) continue and maintain all current casualty and liability insurance policies on the Property; (ii) manage, operate, maintain and repair the Property in the ordinary course of business in accordance with sound property management practice and in good repair and working order and condition; and (iii) keep in force property

Escrow Instructions

## REAL ESTATE PURCHASE CONTRACT

This is a legally binding Real Estate Purchase Contract ("REPC"). Utah law requires real estate licensees to use this form. Buyer and Seller, however, may agree to alter or delete its provisions or to use a different form. If you desire legal or tax advice, consult your attorney or tax advisor.

### EARNEST MONEY DEPOSIT

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ ("Offer Reference Date") \_\_\_\_\_ ("Buyer") offers to purchase from \_\_\_\_\_ ("Seller") the Property described below and **agrees to deliver no later than four (4) calendar days after Acceptance (as defined in Section 23)**, an Earnest Money Deposit in the amount of \$\_\_\_\_\_ in the form of \_\_\_\_\_. After Acceptance of the REPC by Buyer and Seller, and receipt of the Earnest Money by the Brokerage, the Brokerage shall have four (4) calendar days in which to deposit the Earnest Money into the Brokerage Real Estate Trust Account.

### OFFER TO PURCHASE

1. **PROPERTY:** \_\_\_\_\_

City of \_\_\_\_\_, County of \_\_\_\_\_, State of Utah, Zip \_\_\_\_\_ Tax ID No. \_\_\_\_\_ (the "Property"). Any reference below to the term "Property" shall include the Property described above, together with the Included Items and water rights/water shares, if any, referenced in Sections 1.1, 1.2 and 1.4.

1.1 **Included Items.** Unless excluded herein, this sale includes the following items if presently owned and in place on the Property: plumbing, heating, air conditioning fixtures and equipment; solar panels; ovens, ranges and hoods; cook tops; dishwashers; ceiling fans; water heaters; water softeners; light fixtures and bulbs; bathroom fixtures and bathroom mirrors; all window coverings including curtains, draperies, rods, window blinds and shutters; window and door screens; storm doors and windows; awnings; satellite dishes; all installed TV mounting brackets; all wall and ceiling mounted speakers; affixed carpets; automatic garage door openers and accompanying transmitters; security system; fencing and any landscaping.

1.2 **Other Included Items.** The following items that are presently owned and in place on the Property have been left for the convenience of the parties and are also included in this sale (check applicable box): [  ] washers [  ] dryers [  ] refrigerators [  ] microwave ovens [  ] other (specify) \_\_\_\_\_

The above checked items shall be conveyed to Buyer under separate bill of sale with warranties as to title. In addition to any boxes checked in this Section 1.2 above, there [  ] ARE [  ] ARE NOT additional items of personal property Buyer intends to acquire from Seller at Closing by separate written agreement.

1.3 **Excluded Items.** The following items are excluded from this sale: \_\_\_\_\_

1.4 **Water Service.** The Purchase Price for the Property shall include all water rights/water shares, if any, that are the legal source for Seller's current culinary water service and irrigation water service, if any, to the Property. The water rights/water shares will be conveyed or otherwise transferred to Buyer at Closing by applicable deed or legal instruments. The following water rights/water shares, if applicable, are specifically excluded from this sale: \_\_\_\_\_

### 2. PURCHASE PRICE.

2.1 **Payment of Purchase Price.** The Purchase Price for the Property is \$ \_\_\_\_\_. Except as provided in this Section, the Purchase Price shall be paid as provided in Sections 2.1(a) through 2.1(e) below. Any amounts shown in Sections 2.1(c) and 2.1(e) may be adjusted as deemed necessary by Buyer and the Lender (the "Lender").

\$ \_\_\_\_\_ (a) **Earnest Money Deposit.** Under certain conditions described in the REPC, this deposit may become totally non-refundable.

\$ \_\_\_\_\_ (b) **Additional Earnest Money Deposit** (see Section 8.4 if applicable)

\$ \_\_\_\_\_ (c) **New Loan.** Buyer may apply for mortgage loan financing (the "Loan") on terms acceptable to Buyer. If an FHA/VA loan applies, see attached FHA/VA Loan Addendum.

\$ \_\_\_\_\_ (d) **Seller Financing** (see attached Seller Financing Addendum)

\$ \_\_\_\_\_ (e) **Balance of Purchase Price in Cash at Settlement**

\$ \_\_\_\_\_ **PURCHASE PRICE. Total of lines (a) through (e)**

2.2 **Sale of Buyer's Property.** Buyer's ability to purchase the Property, to obtain the Loan referenced in Section 2.1(c) above, and/or any portion of the cash referenced in Section 2.1(e) above [  ] IS [  ] IS NOT conditioned upon the sale of real estate owned by Buyer. If checked in the affirmative, the terms of the attached subject to sale of Buyer's property addendum apply.

### 3. SETTLEMENT AND CLOSING.

3.1 **Settlement.** Settlement shall take place no later than the Settlement Deadline referenced in Section 24(d), or as otherwise mutually agreed by Buyer and Seller in writing. "Settlement" shall occur only when all of the following have been completed: (a) Buyer and Seller have signed

Page 1 of 6 pages Buyer's Initials \_\_\_\_\_ Date \_\_\_\_\_ Seller's Initials \_\_\_\_\_ Date \_\_\_\_\_

and delivered to each other or to the escrow/closing office all documents required by the REPC, by the Lender, by the title insurance and escrow/closing offices, by written escrow instructions (including any split closing instructions, if applicable), or by applicable law; (b) any monies required to be paid by Buyer or Seller under these documents (except for the proceeds of any Loan) have been delivered by Buyer or Seller to the other party, or to the escrow/closing office, in the form of cash, wire transfer, cashier's check, or other form acceptable to the escrow/closing office.

3.2 Closing. For purposes of the REPC, "Closing" means that: (a) Settlement has been completed; (b) the proceeds of any new Loan have

The provisions of this Section 6.1(a) shall survive Closing.

(b) Short-Term Rental Bookings. Buyer agrees to accept title to the Property subject to any short-term rental bookings (meaning for periods of less than thirty (30) consecutive days) affecting the Property not expiring prior to Closing. The provisions of this Section 6.1(b) shall survive Closing.

6.2 Title Insurance. At Settlement, Seller agrees to pay for and cause to be issued in favor of Buyer, through the title insurance agency

## 6. TITLE & TITLE INSURANCE.

6.1 Title to Property. Seller represents that Seller has fee title to the Property and will convey marketable title to the Property to Buyer at Closing by general warranty deed. Buyer does agree to accept title to the Property subject to the contents of the Commitment for Title Insurance (the "Commitment") provided by Seller under Section 7, and as reviewed and approved by Buyer under Section 8.

(a) Long-Term Lease or Rental Agreements. Buyer agrees to accept title to the Property subject to any long-term tenant lease or rental agreements (meaning for periods of thirty (30) or more consecutive days) affecting the Property not expiring prior to Closing. Buyer also agrees to accept title to the Property subject to any existing rental and property management agreements affecting the Property not expiring prior to Closing.

The provisions of this Section 6.1(a) shall survive Closing.

(b) Short-Term Rental Bookings. Buyer agrees to accept title to the Property subject to any short-term rental bookings (meaning for periods of less than thirty (30) consecutive days) affecting the Property not expiring prior to Closing. The provisions of this Section 6.1(b) shall survive Closing.

6.2 Title Insurance. At Settlement, Seller agrees to pay for and cause to be issued in favor of Buyer, through the title insurance agency that issued the Commitment (the "Issuing Agent") the most current version of the ALTA Homeowner's Policy of Title Insurance (the "Homeowner's Policy"). If the Homeowner's Policy is not available through the Issuing Agent, Buyer and Seller further agree as follows: (a) Seller agrees to pay for the Homeowner's Policy if available through any other title insurance agency selected by Buyer; (b) if the Homeowner's Policy is not available either through the Issuing Agent or any other title insurance agency, then Seller agrees to pay for, and Buyer agrees to accept, the most current available version of an ALTA Owner's Policy of Title Insurance ("Owner's Policy") available through the Issuing Agent.

Closing by general warranty deed. Buyer does agree to accept title to the Property subject to the contents of the Commitment for Title Insurance (the "Commitment") provided by Seller under Section 7, and as reviewed and approved by Buyer under Section 8.

(a) Long-Term Lease or Rental Agreements. Buyer agrees to accept title to the Property subject to any long-term tenant lease or rental agreements (meaning for periods of thirty (30) or more consecutive days) affecting the Property not expiring prior to Closing. Buyer also agrees to accept title to the Property subject to any existing rental and property management agreements affecting the Property not expiring prior to Closing.

Page 2 of 6 pages Buyer's Initials \_\_\_\_\_ Date \_\_\_\_\_ Seller's Initials \_\_\_\_\_ Date \_\_\_\_\_

(b) Short-Term Rental Bookings. Buyer agrees to accept title to the Property subject to any short-term rental bookings (meaning for periods of less than thirty (30) consecutive days) affecting the Property not expiring prior to Closing. The provisions of this Section 6.1(b) shall survive Closing. The provisions of this Section 6.1(b) shall survive Closing. If the REPC is not cancelled as provided in this section 8.2, Buyer shall be deemed to have waived the Appraisal

(b) Failure to Cancel. If the REPC is not cancelled as provided in this section 8.2, Buyer shall be deemed to have waived the Appraisal

Page 3 of 6 pages Buyer's Initials \_\_\_\_\_ Date \_\_\_\_\_ Seller's Initials \_\_\_\_\_ Date \_\_\_\_\_

and delivered to each other or to the escrow/closing office all documents required by the REPC, by the Lender, by the title insurance and escrow/closing offices, by written escrow instructions (including any split closing instructions, if applicable), or by applicable law; (b) any monies required to be paid by Buyer or Seller under these documents (except for the proceeds of any Loan) have been delivered by Buyer or Seller to the other party, or to the escrow/closing office, in the form of cash, wire transfer, cashier's check, or other form acceptable to the escrow/closing office.

**3.2 Closing.** For purposes of the REPC, "Closing" means that: (a) Settlement has been completed; (b) the proceeds of any new Loan have been delivered by the Lender to Seller or to the escrow/closing office; and (c) the applicable Closing documents have been recorded in the office of the county recorder ("Recording"). The actions described in 3.2 (b) and (c) shall be completed no later than four calendar days after Settlement.

**3.3 Possession.** Except as provided in Section 6.1(a) and (b), Seller shall deliver physical possession of the Property to Buyer as follows: [  ] **Upon Recording**; [  ] **\_\_\_\_\_ Hours after Recording**; [  ] **\_\_\_\_\_ Calendar Days after Recording.** Any contracted rental of the Property prior to or after Closing, between Buyer and Seller, shall be by separate written agreement. Seller and Buyer shall each be responsible for any insurance coverage each party deems necessary for the Property including any personal property and belongings. The provisions of this Section 3.3 shall survive Closing.

**4. PRORATIONS / ASSESSMENTS / OTHER PAYMENT OBLIGATIONS.**

**4.1 Prorations.** All prorations, including, but not limited to, homeowner's association dues, property taxes for the current year, rents, and interest on assumed obligations, if any, shall be made as of the Settlement Deadline referenced in Section 24(d), unless otherwise agreed to in writing by the parties. Such writing could include the settlement statement. The provisions of this Section 4.1 shall survive Closing.

**4.2 Special Assessments.** Any assessments for capital improvements as approved by the homeowner's association ("HOA") (pursuant to HOA governing documents) or as assessed by a municipality or special improvement district, prior to the Settlement Deadline shall be paid for by: [  ] **Seller** [  ] **Buyer** [  ] **Split Equally Between Buyer and Seller** [  ] **Other (explain)** \_\_\_\_\_ . The provisions of this Section 4.2 shall survive Closing.

**4.3 Fees/Costs/Payment Obligations.**

**(a) Escrow Fees.** Unless otherwise agreed to in writing, Seller and Buyer shall each pay their respective fees charged by the escrow/closing office for its services in the settlement/closing process. The provisions of this Section 4.3(a) shall survive Closing.

**(b) Rental Deposits/Prepaid Rents.** Rental deposits (including, but not limited to, security deposits, cleaning deposits and prepaid rents) for long term lease or rental agreements, as defined in Section 6.1(a), and short-term rental bookings, as defined in Section 6.1(b), not expiring prior to Closing, shall be paid or credited by Seller to Buyer at Settlement. The provisions of this Section 4.3(b) shall survive Closing.

**(c) HOA/Other Entity Fees Due Upon Change of Ownership.** Some HOA's, special improvement districts and/or other specially planned areas, under their governing documents charge a fee that is due to such entity as a result of the transfer of title to the Property from Seller to Buyer. Such fees are sometimes referred to as transfer fees, community enhancement fees, HOA reinvestment fees, etc. (collectively referred to in this

**(e) Sales Proceeds Withholding.** The escrow/closing office is authorized and directed to withhold from Seller's proceeds at Closing, sufficient funds to pay off on Seller's behalf all **mortgages, trust deeds, judgments, mechanic's liens, tax liens and warrants.** The provisions of this Section 4.3(e) shall survive Closing.

Section 4.3(e) shall survive Closing.

**5. CONFIRMATION OF AGENCY DISCLOSURE.** Buyer and Seller acknowledge prior written receipt of agency disclosure provided by their respective agent that has disclosed the agency relationships confirmed below. At the signing of the REPC:

Seller's Agent(s) \_\_\_\_\_, represent(s) [  ] **Seller** [  ] **both Buyer and Seller as Limited Agent(s)**;

Seller's Agent(s) Utah Real Estate License Number(s): \_\_\_\_\_

Seller's Brokerage \_\_\_\_\_, represents [  ] **Seller** [  ] **both Buyer and Seller as Limited Agent**;

Seller's Brokerage Utah Real Estate License Number: \_\_\_\_\_

Buyer's Agent(s) \_\_\_\_\_, represent(s) [  ] **Buyer** [  ] **both Buyer and Seller as Limited Agent(s)**;

Buyer's Agent(s) Utah Real Estate License Number(s): \_\_\_\_\_

Buyer's Brokerage \_\_\_\_\_, represents [  ] **Buyer** [  ] **both Buyer and Seller as a Limited Agent**.

Buyer's Brokerage Utah Real Estate License Number: \_\_\_\_\_

**6. TITLE & TITLE INSURANCE.**

**6.1 Title to Property.** Seller represents that Seller has fee title to the Property and will convey marketable title to the Property to Buyer at Closing by general warranty deed. Buyer does agree to accept title to the Property subject to the contents of the Commitment for Title Insurance (the "Commitment") provided by Seller under Section 7, and as reviewed and approved by Buyer under Section 8.

**(a) Long-Term Lease or Rental Agreements.** Buyer agrees to accept title to the Property subject to any long-term tenant lease or rental agreements (meaning for periods of thirty (30) or more consecutive days) affecting the Property not expiring prior to Closing. Buyer also agrees to accept title to the Property subject to any existing rental and property management agreements affecting the Property not expiring prior to Closing.

Coverage	ALTA Standard or CLTA	Eagle Policy
1- Someone else owns an interest in your title	X	X
2- A document is not properly signed	X	X
3- Forgery, Fraud, Duress	X	X
4- Defective recording of any document	X	X
5- There are restrictive covenants	X	X
6- There is a lien on your title because there is: a) a deed of trust, b) a judgment tax of special assessment, c) a charge by the Homeowners Association	X	X

**8- Mechanic's lien protection**

X

10- Can't use land for SFD because the use violates a restriction in schedule B or Zoning		X
11. Pays rent for substitute land or facilities		X
12. Unrecorded lien by a homeowner's association		X
13. Unrecorded easements		X
14. Rights under unrecorded leases		X
15. Plain Language		X
16. Building permit violations*		X
17. Compliance with Subdivision Map Act*		X
18. Restrictive covenant violations		X
19. Post Policy forgery		X
20. Post Policy encroachment		X
21. Post Policy damage from mineral/water extraction		X
22. Post Policy living trust coverage		X
23. Enhanced Access- Vehicular & Pedestrian		X
24. Map not consistent with legal description		X
25. Post Policy automatic increase in value up to 150%		X
26. Post Policy adverse possession		X
27. Post Policy cloud on title		X
28. Post Policy prescriptive easement resulting in reversion		X
29. Covenant violation resulting in reversion		X
30. Boundary walls and fence encroachment*		X
31. Enhanced marketability		X
32. Violations of building setbacks		X
33. Discriminatory covenants		X
34. Insurance coverage forever		X

\*Subject to a deductible and a maximum indemnity liability, which may be less than the policy amount

# What about when the builder uses their own contract?

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- Type of Conveyance
- Owner's policy?
- Construction service lien coverage?



# Standard Owner's Policy (no CSL coverage)

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What is fair to a  
buyer/homeowner?

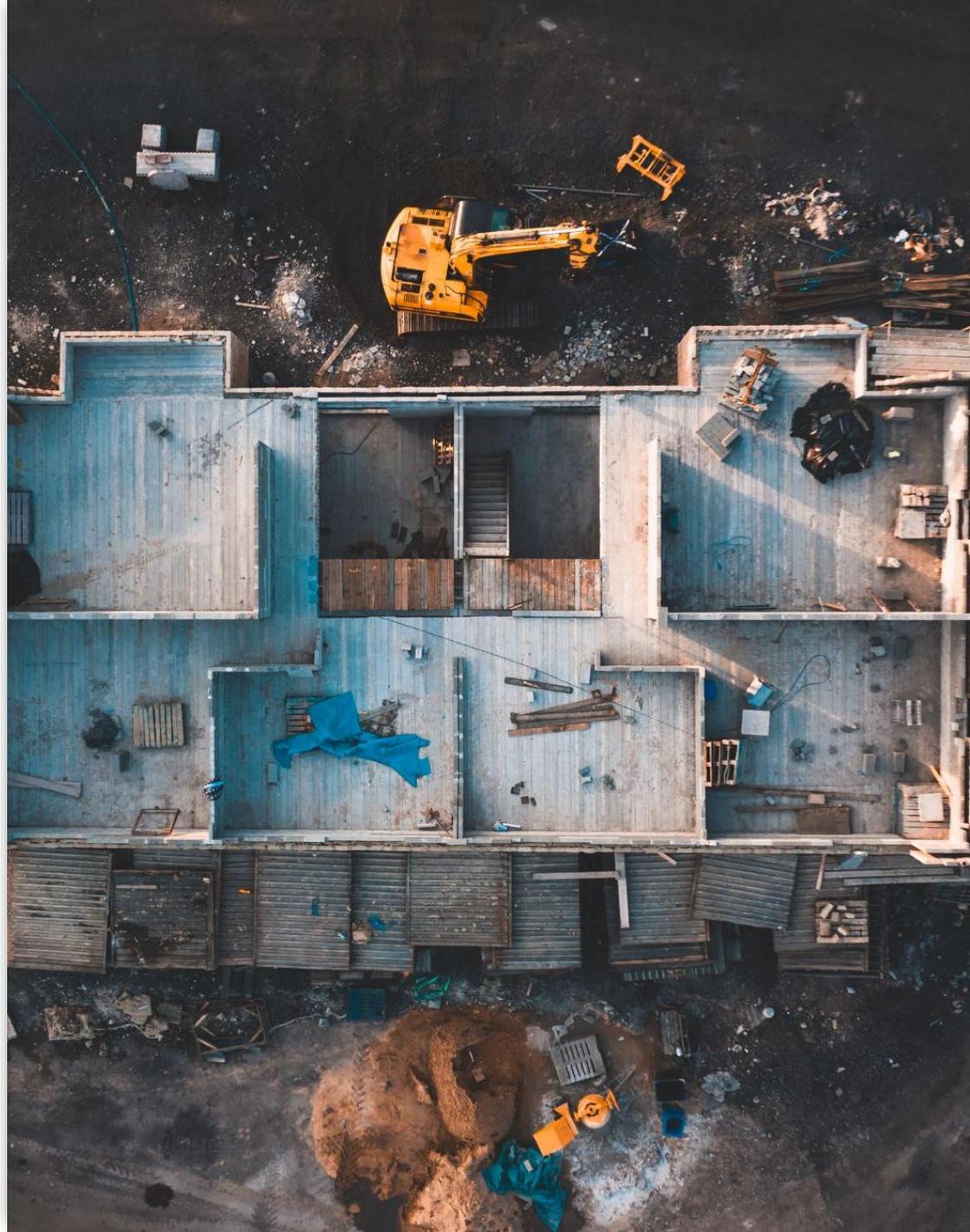
- What if the buyer pays the builder, but the builder doesn't pay the subcontractor?
- What if the builder pays the subcontractor, but the subcontractor doesn't pay the supplier?

**UNFAIR!**

# The Double Payment Problem

In 1994, the Utah Legislature recognized a problem within the residential construction industry. **A few contractors were taking money for construction but not paying subcontractors and suppliers.** Therefore, homeowners had to pay the subcontractors and suppliers directly to prevent loss of the home due to lien foreclosure. **In effect, the homeowner had to pay twice for the same product or service.**

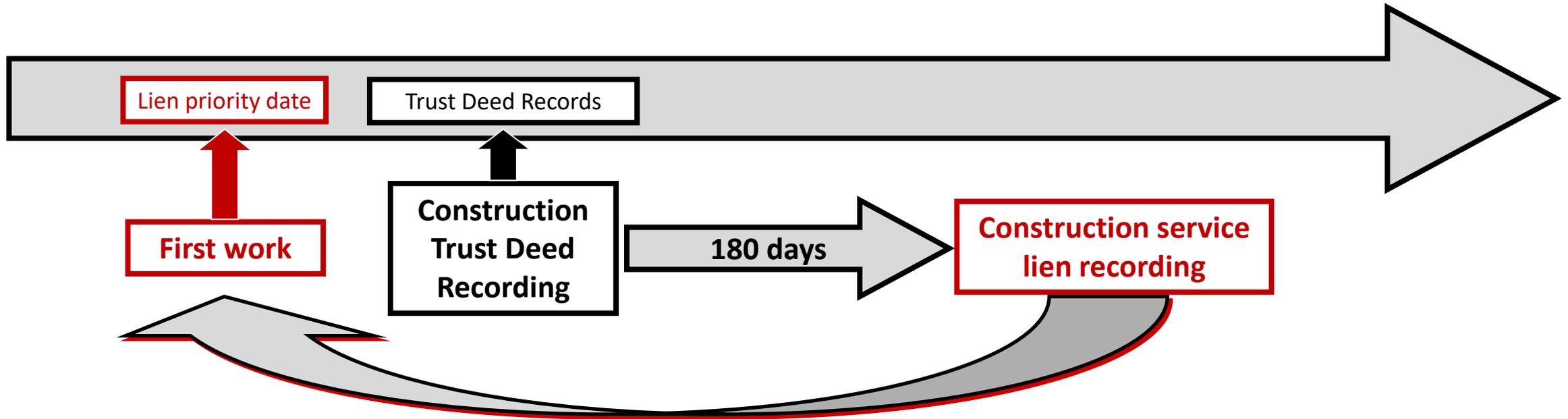
<http://dopl.utah.gov/rlrf/index.html>





How can a homeowner know what subcontractors or suppliers are working on the property?

# The trouble with construction service liens- Broken Priority



**Construction Service Lien priority relates back “first work”**

What happens when work has begun on a property before construction loan is recorded.

# Reviewing the Trouble with Construction Service Liens

- When does work begin?
- When are contractor/supplier lien rights established?
- When does work end?
- When lien rights get cut off?
- Why is it so hard to know who's working on the property?
- What about broken priority?
- What about preconstruction service work?



# Construction Service Lien Problems

## Priority

- When are construction service lien rights established?
- When do construction service liens expire?
- How can a lender establish priority?
- Is there a solution for broken priority?
- What about preconstruction service work?

## Notice

- What parties have the right to lien real property?
- What happens with construction loan default?
- How can I account for remaining bills or remaining work?

The State Construction Registry

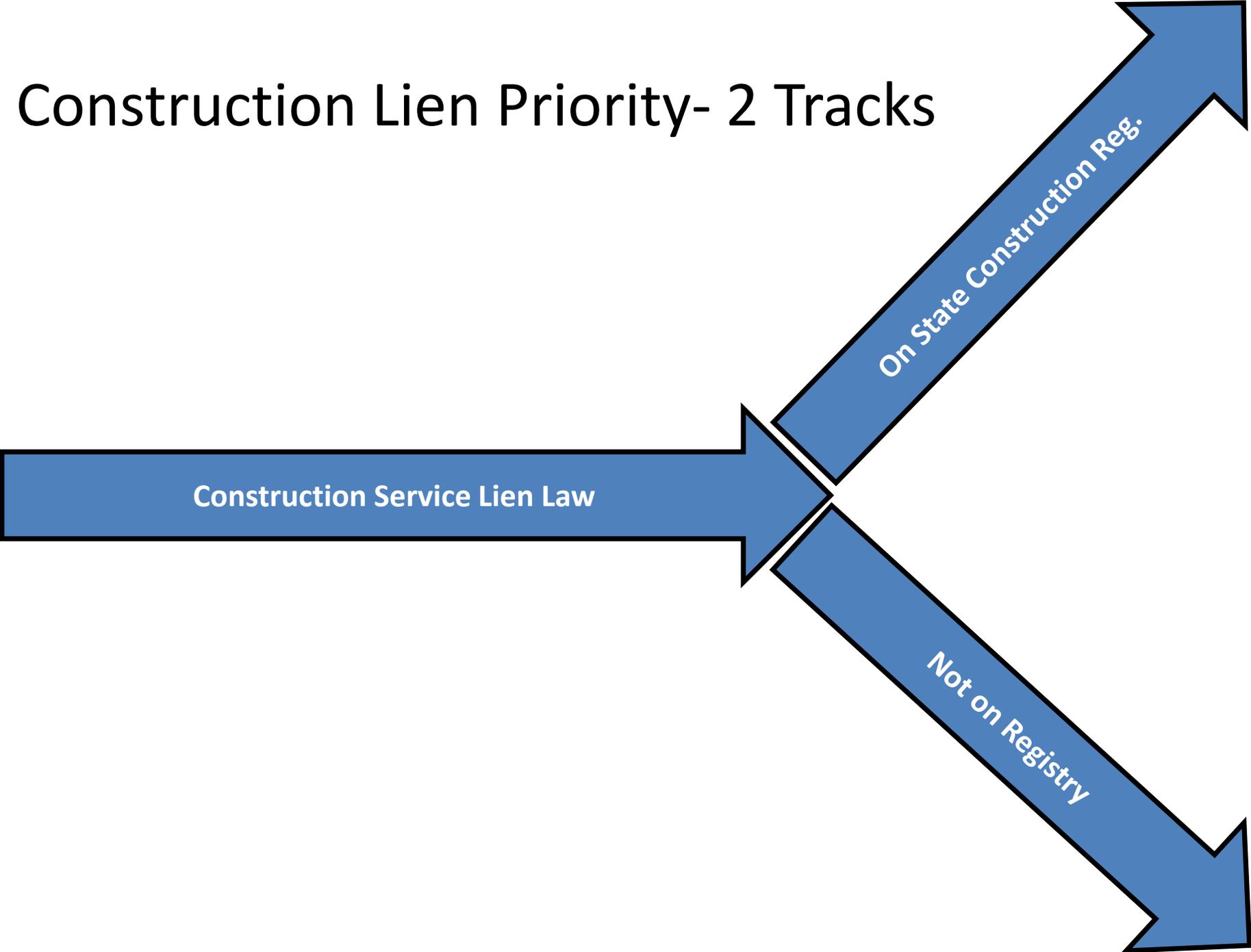
A.K.A.

THE SCR

<https://secure.utah.gov/scr/>

The legislative solution to problems with  
priority and notice.

# Construction Lien Priority- 2 Tracks



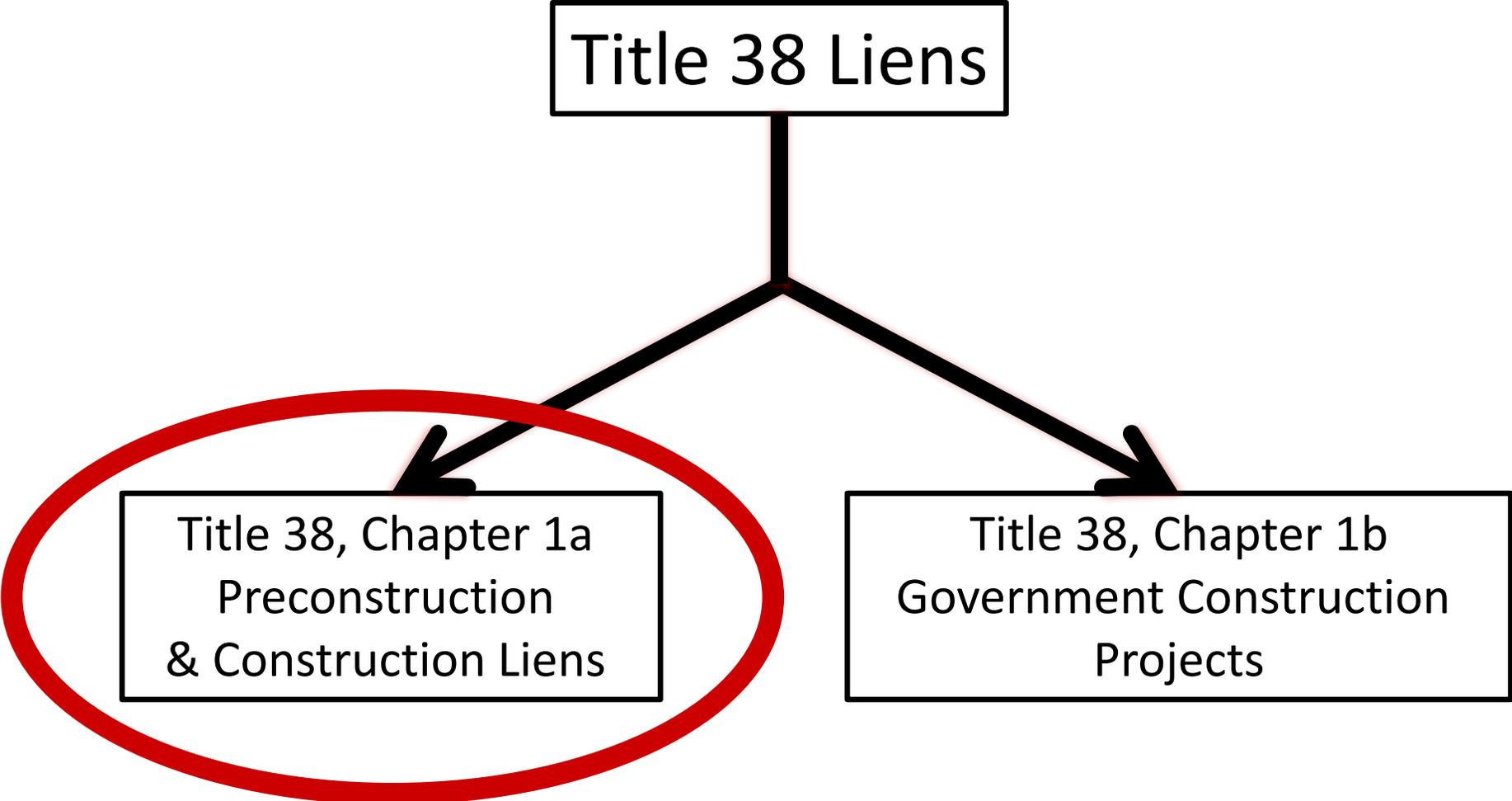


# State Construction Registry

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Purpose: From [www.scr.utah.gov](http://www.scr.utah.gov) ...provides general contractors ...with an easy access to a list of all parties that have provided goods, services and/or equipment to a project...and helps contractors minimize liability and risk.

# Construction Service Liens & the Utah State Construction Registry





## Dashboard

Entry Number Search

Entry Number:

xxxxxxxx

[GO TO ENTRY NUMBER](#)

## Create a Filing



Notice of Commencement



Construction Loan



Notice of Preconstruction Service



Notice of Intent to Finance



Preliminary Notice



Intent to Complete



Remaining to Complete



Notice of Completion



Track a Project



Loan Default

[Dashboard](#)

[Advanced Search](#)

[Fees](#)

[Guides](#)

### My Information

[My Cart](#)

[My Company](#)

[My History](#)

### Create a Filing

[Notice of Commencement](#)

[Construction Loan](#)

[Notice of Preconstruction Service](#)

[Notice of Intent to Finance](#)

[Preliminary Notice](#)

[Intent to Complete](#)

[Remaining to Complete](#)

[Notice of Completion](#)

[Track a Project](#)

[Loan Default](#)

Create a Filing



Notice of Commencement



Construction Loan



Notice of Preconstruction Service



Notice of Intent to Finance



Preliminary Notice



Intent to Complete



Remaining to Complete



Notice of Completion



Track a Project



Loan Default





**Feature Name**

**Who can use? & What does it do?**

**Notice of Pre-Construction Service**

**Architect:** 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. Not.. All preconstruction share priority date.

**Construction Loan**

**Title Company/Bank:** After county recording of a construction mortgage or trust deed on a private project, the lender shall file, the notice of construction loan.

**Preliminary Notice**

**Contractor/Subcontractor/Supplier:** 20 days from first day on project to preserve rights. If filed after 20 days, 5-day penalty & protection for work moving forward. No Prelim-No Construction Services Lien. All preconstruction share priority date.

**Notice of Completion**

**Title Company/Contractor/Owner:** 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 to from 180 down to 90 days.

**Loan Default**

**Title Company/Bank:** Within five business days after a notice of default is filed for recording, the construction lender shall file a notice with the registry.

**Notice of Intent to Finance** **1/1/2020**

**Title Company/Contractor/Owner?:** Filed no less than 14 days before the anticipated financing date. Expires automatically if financing doesn't happen within 30 days of notice.

**Final Lien Waiver**  
**1/1/2020**

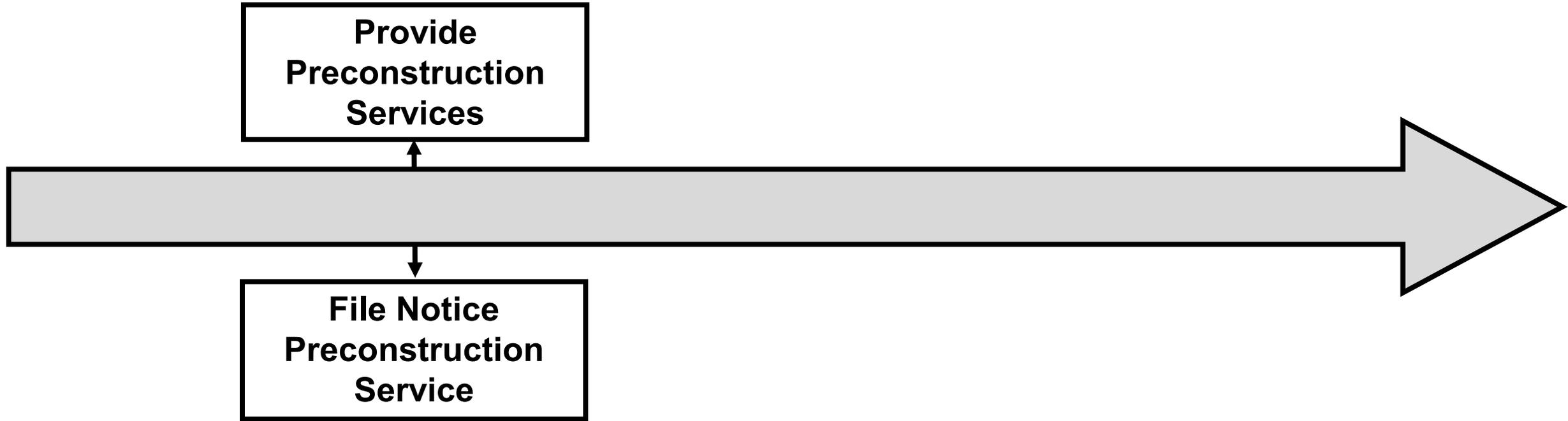
**Contractor/Subcontractor/Supplier:** (1) After a notice of intent to finance is filed each sub. who filed preliminary notice may file a final lien waiver. (2) The final lien waiver may be filed even if no notice of intent to finance was filed

## Notice of preconstruction service

A person that desires to claim a preconstruction lien on real property shall file a notice of preconstruction service with the registry no later than **20 days after the person commences providing preconstruction service for the anticipated improvement on the real property**

**Within 90 days after completing a preconstruction service for which a claimant is not paid in full**, a claimant who desires to claim a preconstruction lien shall submit for recording with each applicable county recorder **a notice of preconstruction lien.**

# Notice of Preconstruction Service



## **38-1a-404. When preconstruction service considered complete.**

Preconstruction service is considered complete for any project, project phase, or bid package as of the date that construction work for that project, project phase, or bid package, respectively, commences.

## **38-1a-405 Preconstruction liens on equal footing.**

(1) Each preconstruction lien on a project property is on equal footing with every other preconstruction lien on the project property,

# Pre Construction Service Liens (PRESL)

**Preconstruction Services**

**Construction Begins**

**Notice of preconstruction service filed on SCR**

**Construction service liens or construction trust deed recorded**

**Preconstruction service lien recorded w/in 90 days of const.**

**Preconstruction service lien priority**



## Notice of Preconstruction Service questions & answers

- Who can file? - Providers of preconstruction services. (Architects, engineers, et.)
- What problem this solve? – Notice of work & lien priority.
- Preconstruction service providers never had service lien rights before.

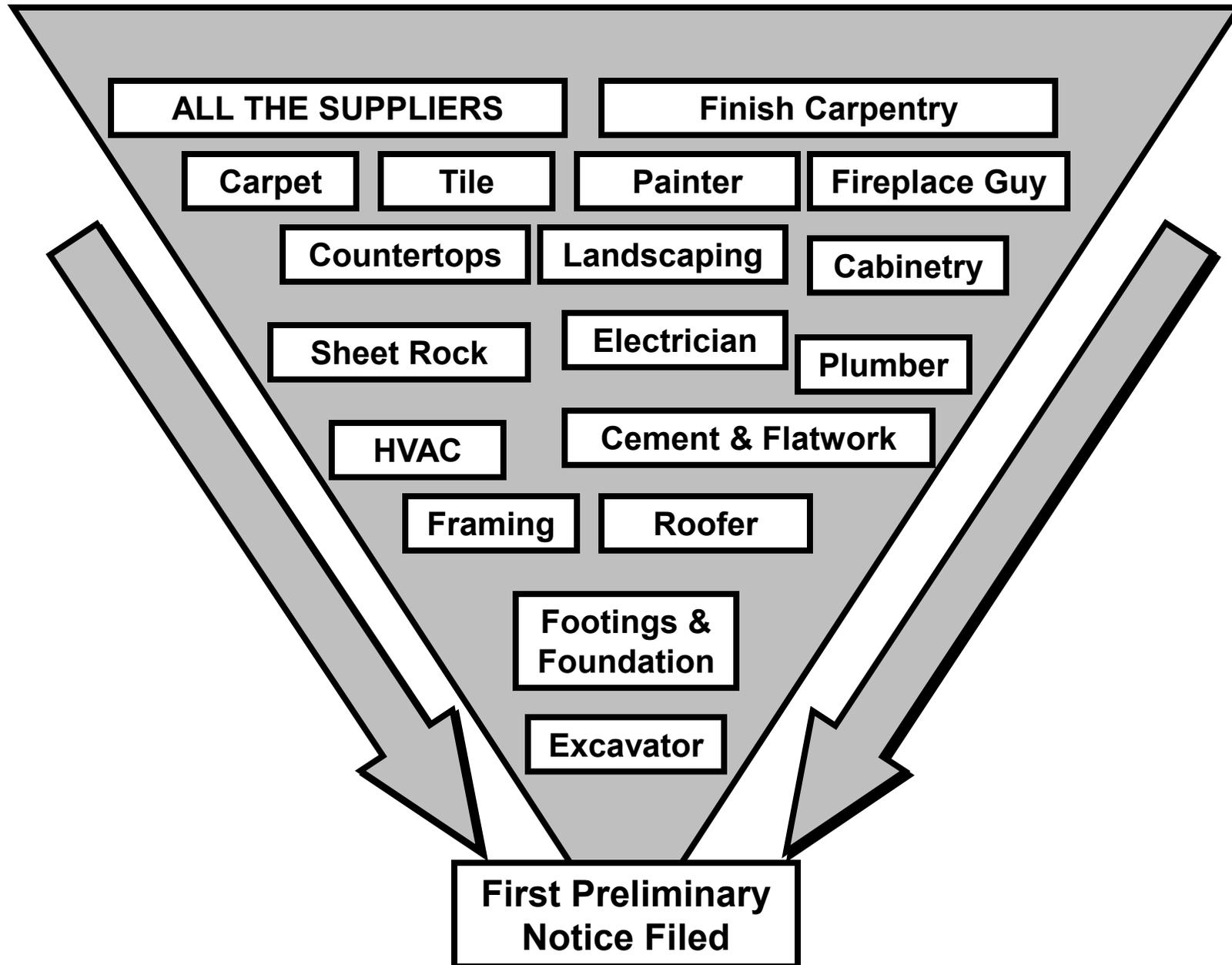


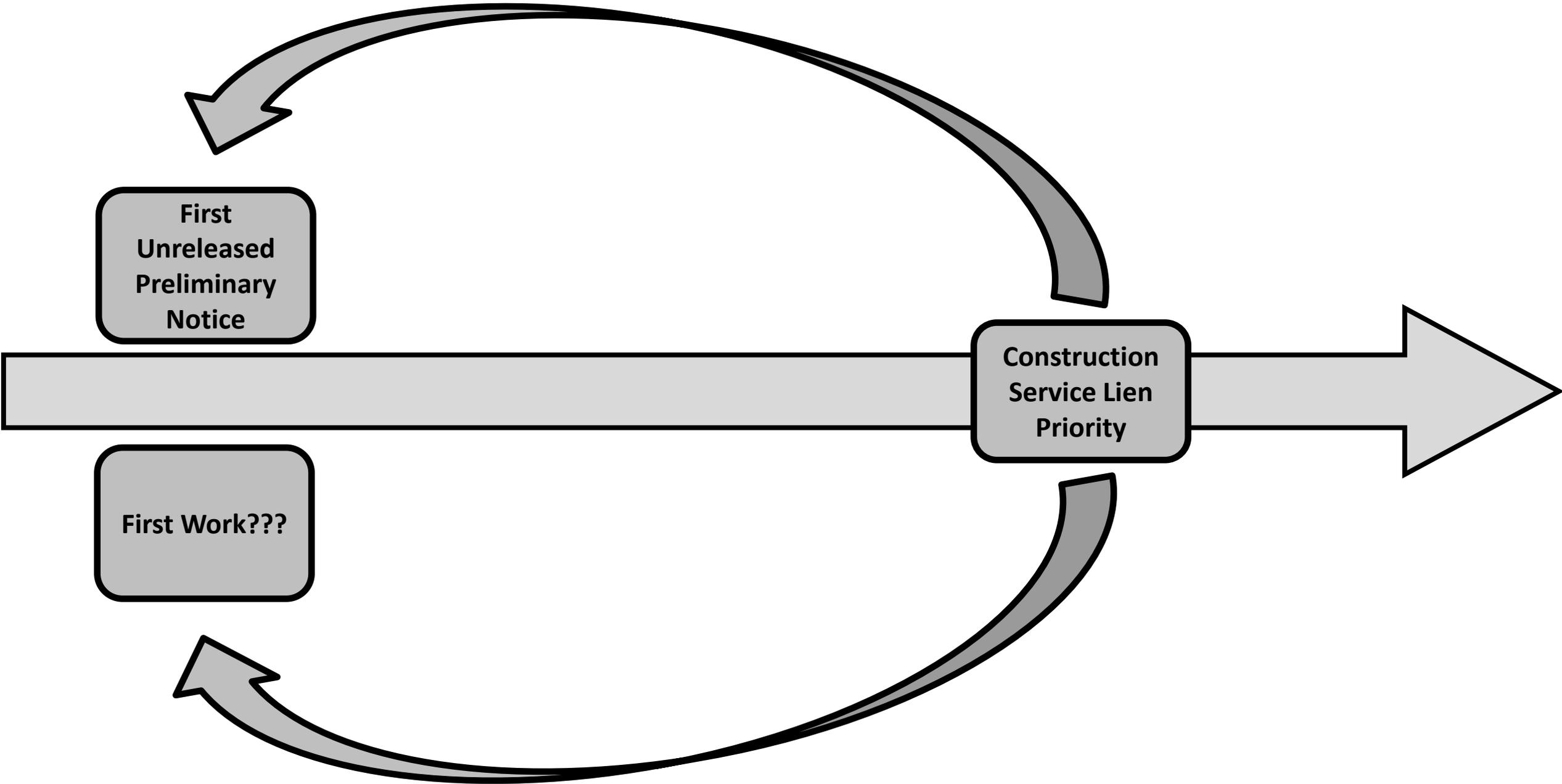
# Preliminary Notice

Filed by contractors, subcontractors, & suppliers

1. Establishes right to file a Construction Service Lien
2. Must be filed within 20 days from when they begin work
3. “A person who fails to file a preliminary notice as required in this section may not claim a construction lien.” 38-1a-501(e)
4. Must contain Parcel ID number

# Construction Service Lien (Priority)





First  
Unreleased  
Preliminary  
Notice

First Work???

Construction  
Service Lien  
Priority



## Preliminary Notice- questions & answers

- Who can file? – Filed by contractors, subcontractors, & suppliers
- What problem this solve? – Notice of work & lien priority construction or materials.
- If there are no unpaid preconstruction service providers and no Notice of Construction Loan, preliminary notice establishes construction service lien rights for filers.
- If a project is found on the SCR, then no preliminary Notice = No Construction Service Lien

# Preconstruction Service

## Real Life

Architect begins work

Engineer begins work

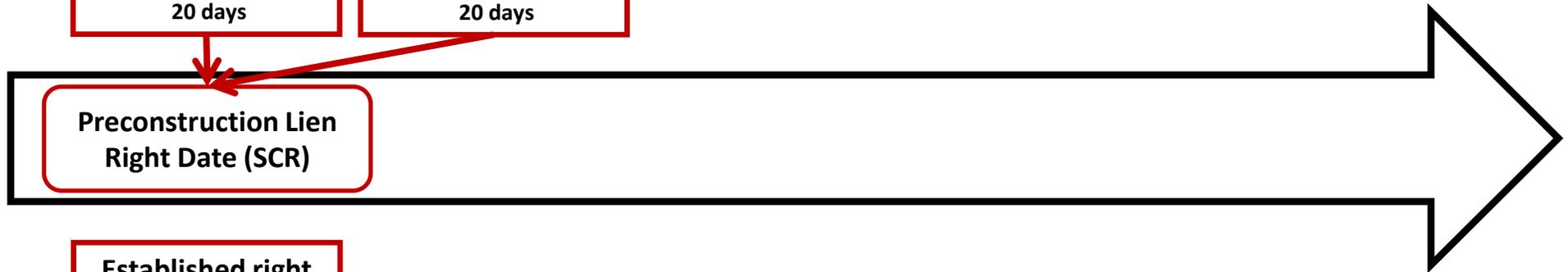
## On State Construction Registry

Filed Notice of Preconstruction Service within 20 days

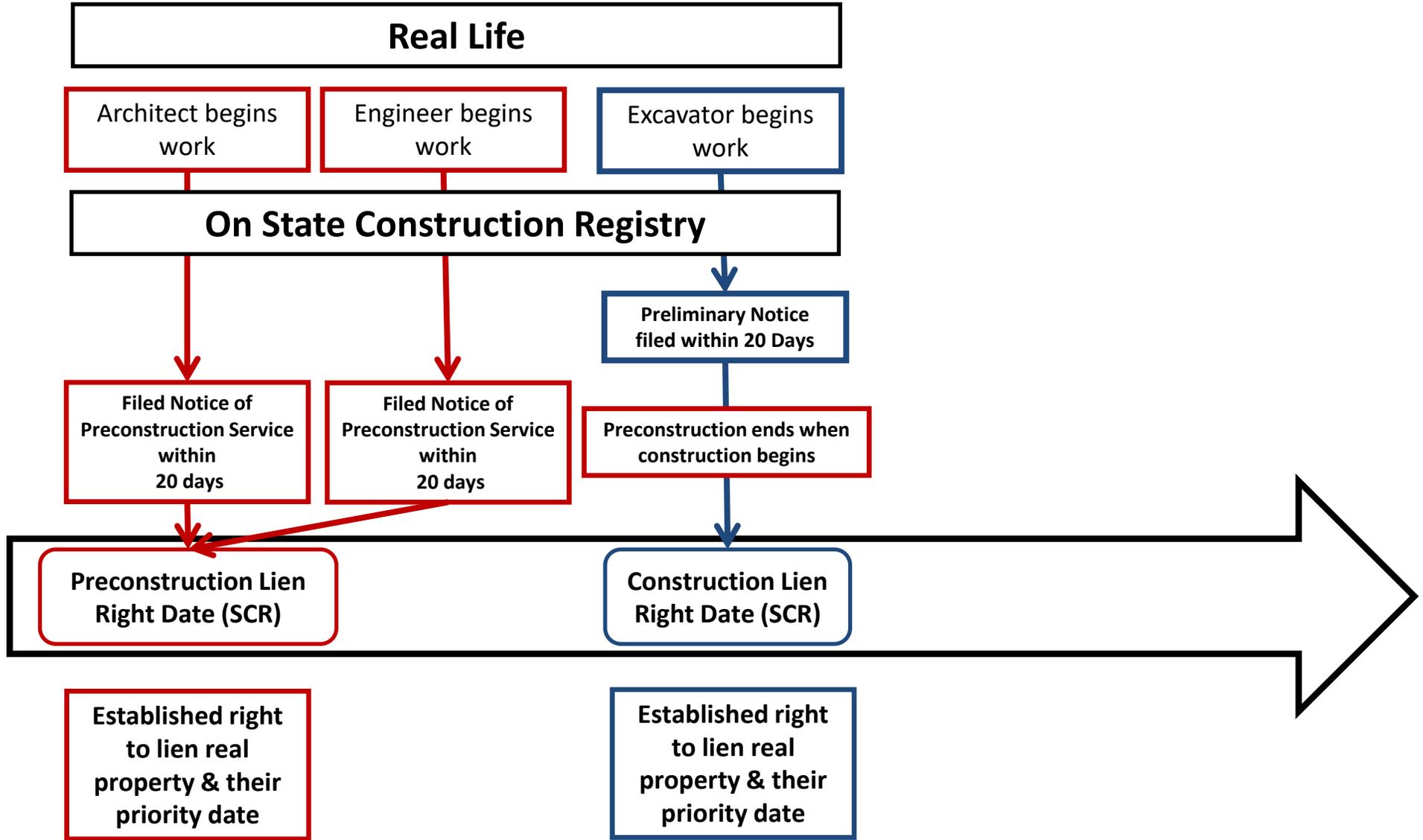
Filed Notice of Preconstruction Service within 20 days

Preconstruction Lien Right Date (SCR)

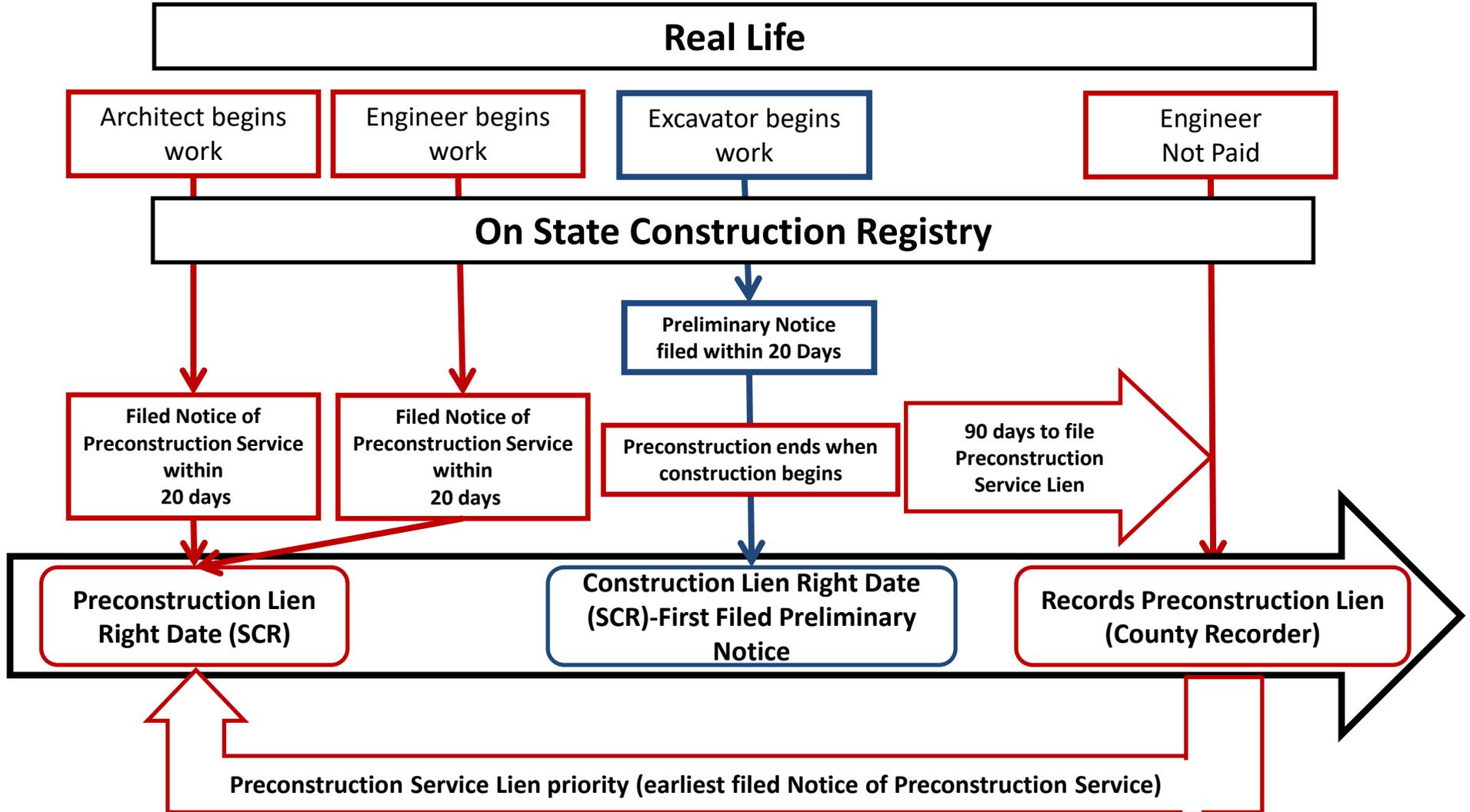
Established right to lien real property & their lien right priority



# Preconstruction Service



# Preconstruction Service



# Construction Loan Application Form

Personal Details

## 38-1a-601 Notice of construction loan.

(1) **After recording a mortgage or trust deed securing a construction loan on a private project,** the construction lender on the loan shall promptly, in conjunction with the closing of the construction loan, **file with the registry a notice of construction loan.**

(2) A notice under Subsection (1) shall accurately state:

- (a) the lender's name, address, and telephone number;
- (b) the name of the trustor on the trust deed securing the loan;
- (c) the tax parcel identification number of each parcel included or to be included in the construction project for which the loan was given;
- (d) the address of the project property; and
- (e) the name of the county in which the project property is located.

(3) A construction lender that files a notice of construction loan containing incomplete or inaccurate information may not be held liable for damages suffered by any other person who relies on the inaccurate or incomplete information in filing a preliminary notice.

# Notice of Construction Loan- questions & answers

- Who can file? – **Bank/Lender, Title Company**
- What problem this solve? –Notice of loan & lien priority for construction lender.
- If there are no unpaid preconstruction service providers and no work has not begun on the property the Notice of Construction Loan establishes lien position for the lender.

# Notice of Construction Loan Default

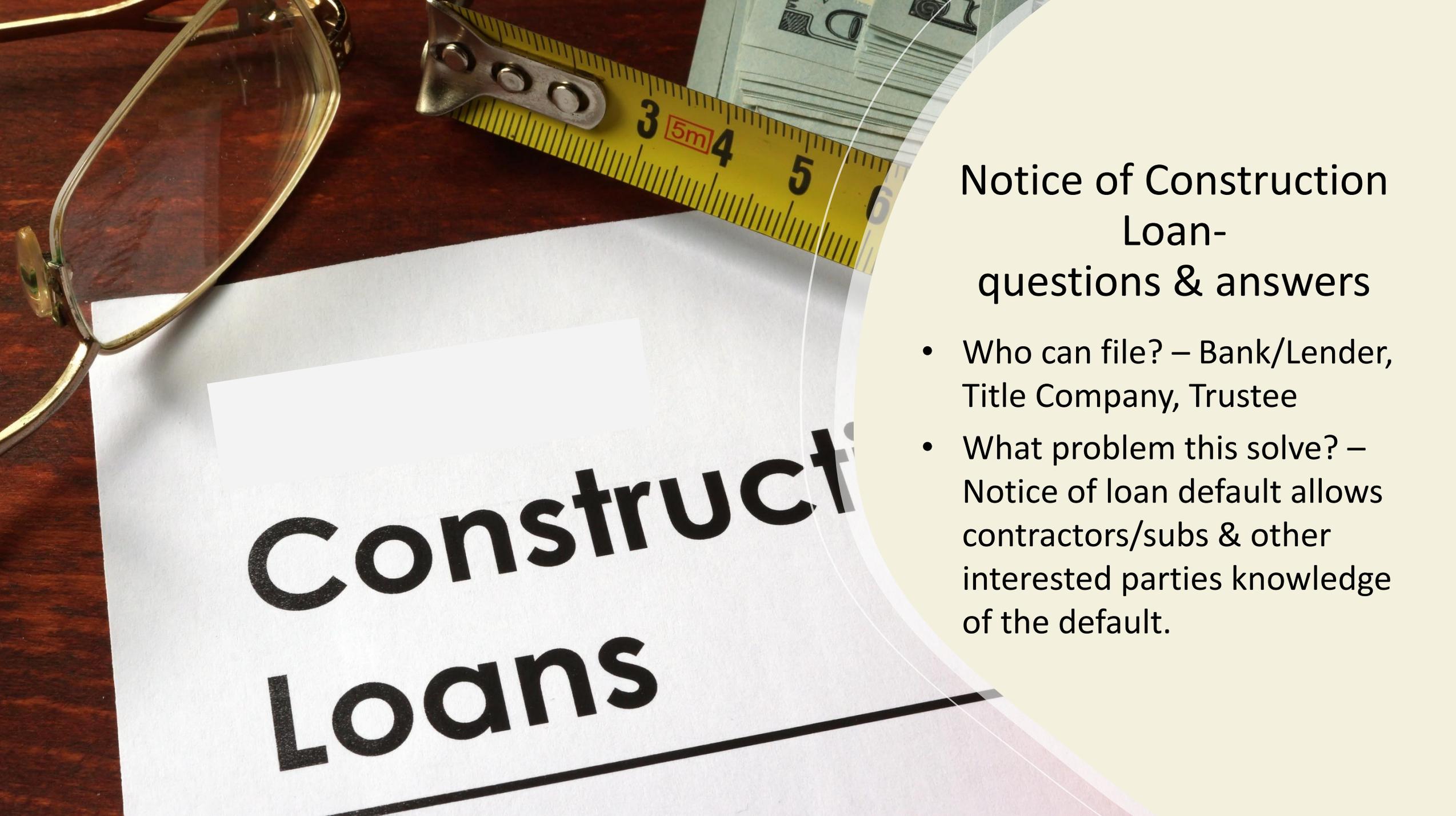
## **38-1a-602 Notice concerning construction loan default.**

(1) Within five business days after a notice of default is filed for recording under Section 57-1-24 with respect to a trust deed on the project property securing a construction loan, the construction lender under the loan shall file a notice with the registry.

(2) A notice under Subsection (1) shall:

- (a) include: (i) the information required to be included in a notice of construction loan under Subsection 38-1a-601(2); and (ii) the entry number of the notice of construction loan;
- (b) state that a notice of default with respect to the construction loan has been recorded; and
- (c) state the date that the notice of default was recorded..





# Construct Loans

## Notice of Construction Loan- questions & answers

- Who can file? – Bank/Lender, Title Company, Trustee
- What problem this solve? – Notice of loan default allows contractors/subs & other interested parties knowledge of the default.

# Notice of Completion

Notice of Completion can be filed by:

1. Lender
2. Title Company
3. Property Owner
4. General Contractor
5. Surety that has provided bonding for the construction property

After Notice of Completion is filed  
Subs and suppliers have 10 days to  
file a preliminary notice.



# COMPLETION

## What is "Final Completion"?

- 1-The date of the issuance of the certificate of occupancy
- 2-The date of the final inspection (if the jurisdiction doesn't have an occupancy certification)
- 3-The date on which there remains no substantial work to be completed (if the jurisdiction doesn't have an occupancy certification or final inspection)
- 4- Last date on which substantial work was performed (if the jurisdiction doesn't have an occupancy certification or final inspection)

# What does a Notice of Completion do?

Original Contractors file a Notice of Completion after the final inspection, certificate of occupancy, or all substantial work is complete. **After a Notice of Completion is filed, all remaining Preliminary Notices must be filed within 10 days after the Notice of Completion is filed and **the time to file a lien is reduced to 90 days instead of 180 days.****

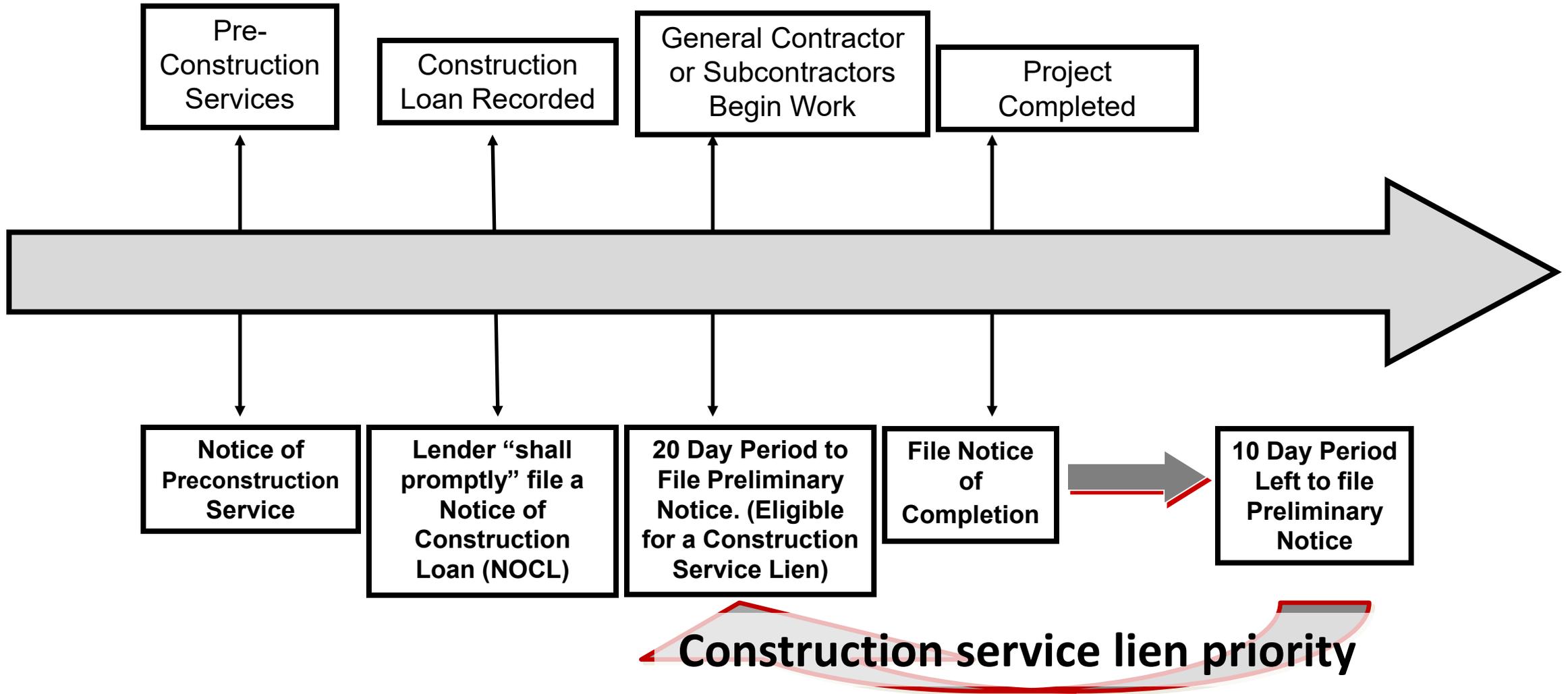
<https://secure.utah.gov/feedback/faq.html?id=498>

# Notice of Completion-questions & answers

- Who can file? – Lender, Title Company, Property Owner, General Contractor, Surety that has provided bonding for the construction property
- What problem this solve?
  1. Provides a certain date for the end of construction.
  2. Limits new preliminary notice filings (10 days)
  3. Reduces time to file Construction Service Lien from 180 days to 90 days

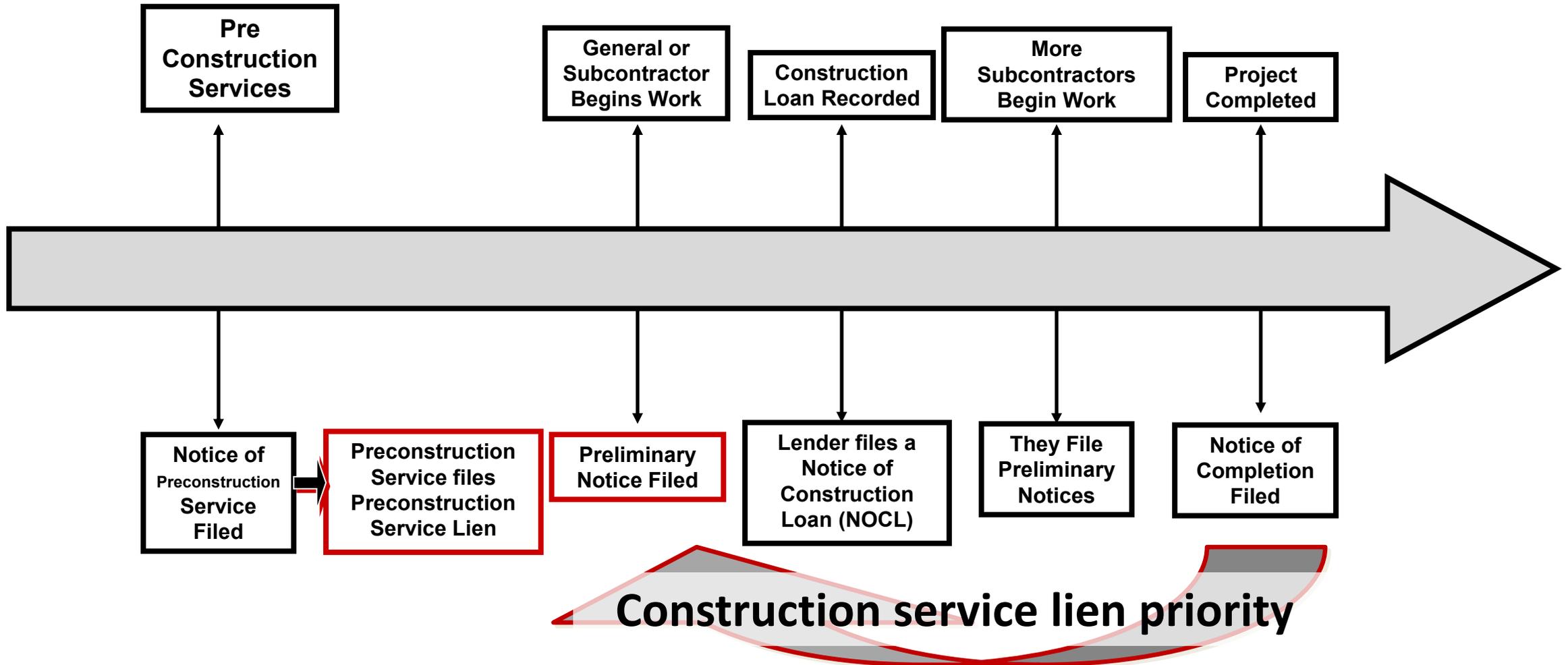


# Construction Registry Timeline



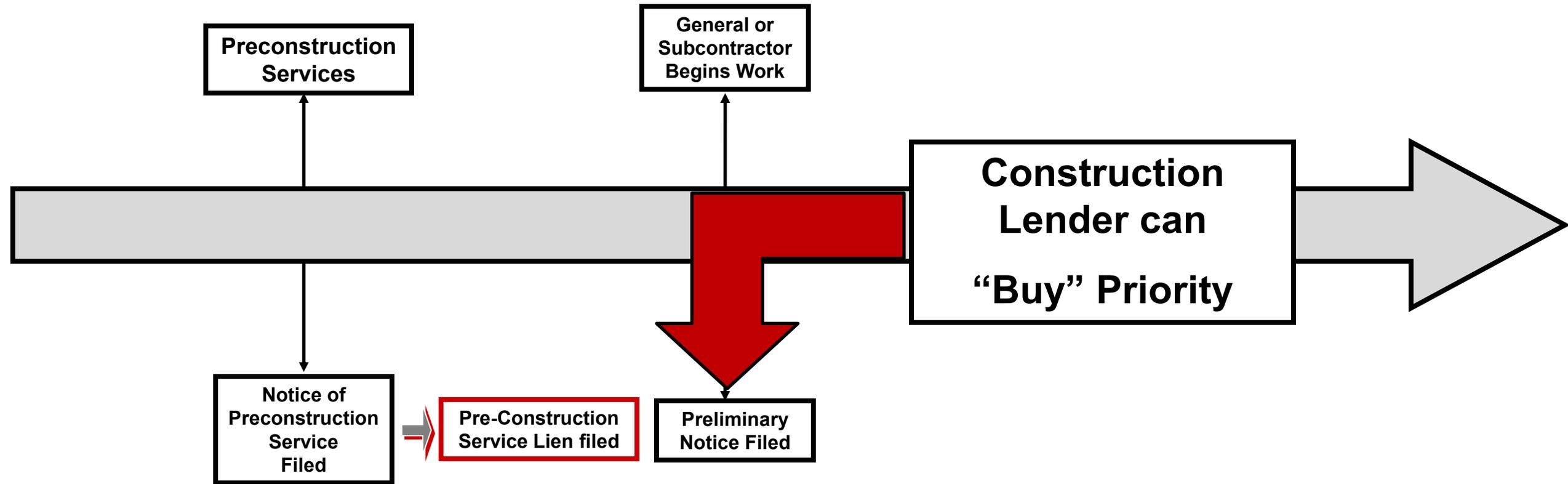
**Construction Service Lien priority relates back to the first Preliminary Notice filing**

# A Solution for Broken Priority



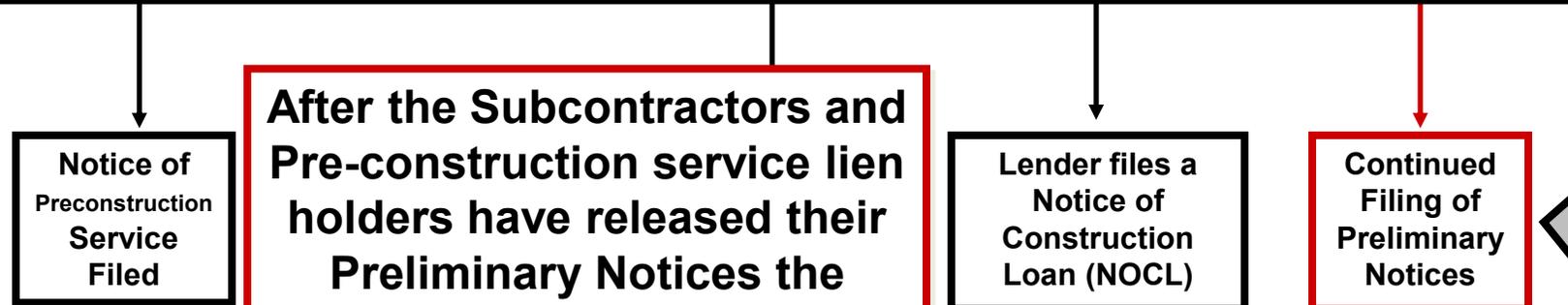
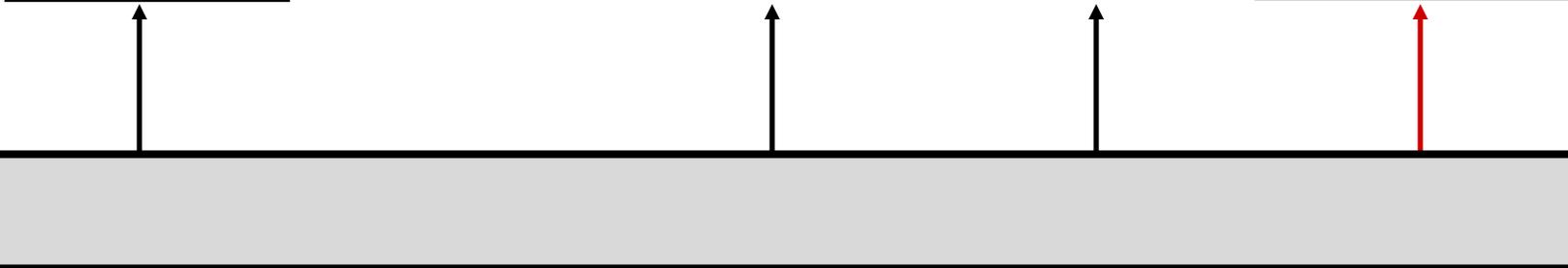
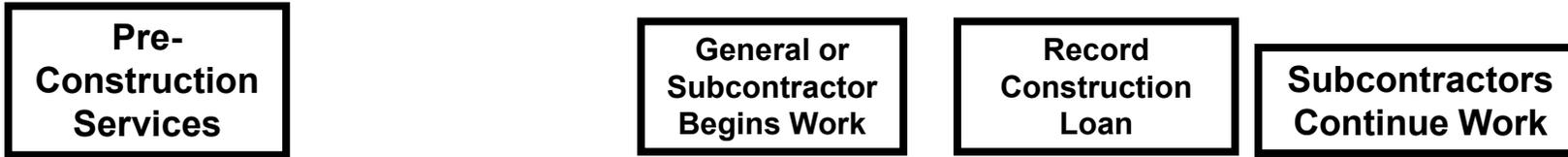
**Remember that Construction Service Lien priority relates back to the first Preliminary Notice filing**

# A Solution for Broken Priority



- 1. Pre-Construction Service Lien rights relate back to the earliest Notice Preconstruction Service**
- 2. Construction Service Liens relate to the first Preliminary Notice Filing**

# A Solution for Broken Priority



**After the Subcontractors and Pre-construction service lien holders have released their Preliminary Notices the Construction Lender has priority**

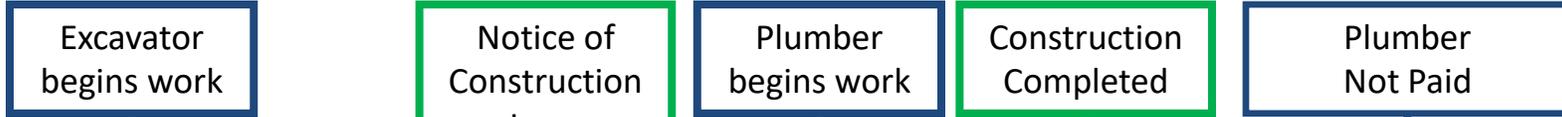
**The Construction Lender, property owner or general contractor can pay in full pre-construction lien holders and subcontractors who have already filed preliminary notices. Contractors must file a withdrawal of their own preliminary notice on the State Construction Registry**

**CSL rights relate to the first unpaid Preliminary Notice**



# Construction Service

## Real Life



## On State Construction Registry

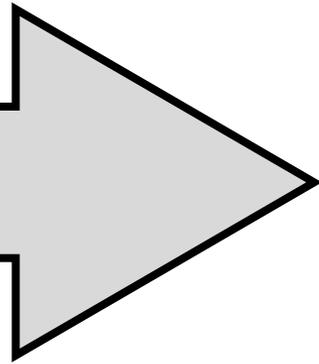


Construction Lien Right Date (SCR)-  
First Filed Preliminary Not.

Trust Deed Recorded  
at County

Construction Service Lien Recorded (within 90 Days)  
(County Recorder)

Construction Service Lien priority is earliest filed Preliminary Notice)



**Feature Name**

**Who can use? & What does it do?**

**Notice of Pre-Construction Service**

**Architect:** 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. Not.. All preconstruction share priority date.

**Construction Loan**

**Title Company/Bank:** After county recording of a construction mortgage or trust deed on a private project, the lender shall file, the notice of construction loan.

**Preliminary Notice**

**Contractor/Subcontractor/Supplier:** 20 days from first day on project to preserve rights. If filed after 20 days, 5-day penalty & protection for work moving forward. No Prelim-No Construction Services Lien. All preconstruction share priority date.

**Notice of Completion**

**Title Company/Contractor/Owner:** 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 to from 180 down to 90 days.

**Loan Default**

**Title Company/Bank:** Within five business days after a notice of default is filed for recording, the construction lender shall file a notice with the registry.

**Notice of Intent to Finance** **1/1/2020**

**Title Company/Contractor/Owner?:** Filed no less than 14 days before the anticipated financing date. Expires automatically if financing doesn't happen within 30 days of notice.

**Final Lien Waiver**  
**1/1/2020**

**Contractor/Subcontractor/Supplier:** (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

# Reviewing the Trouble with Construction Service Liens

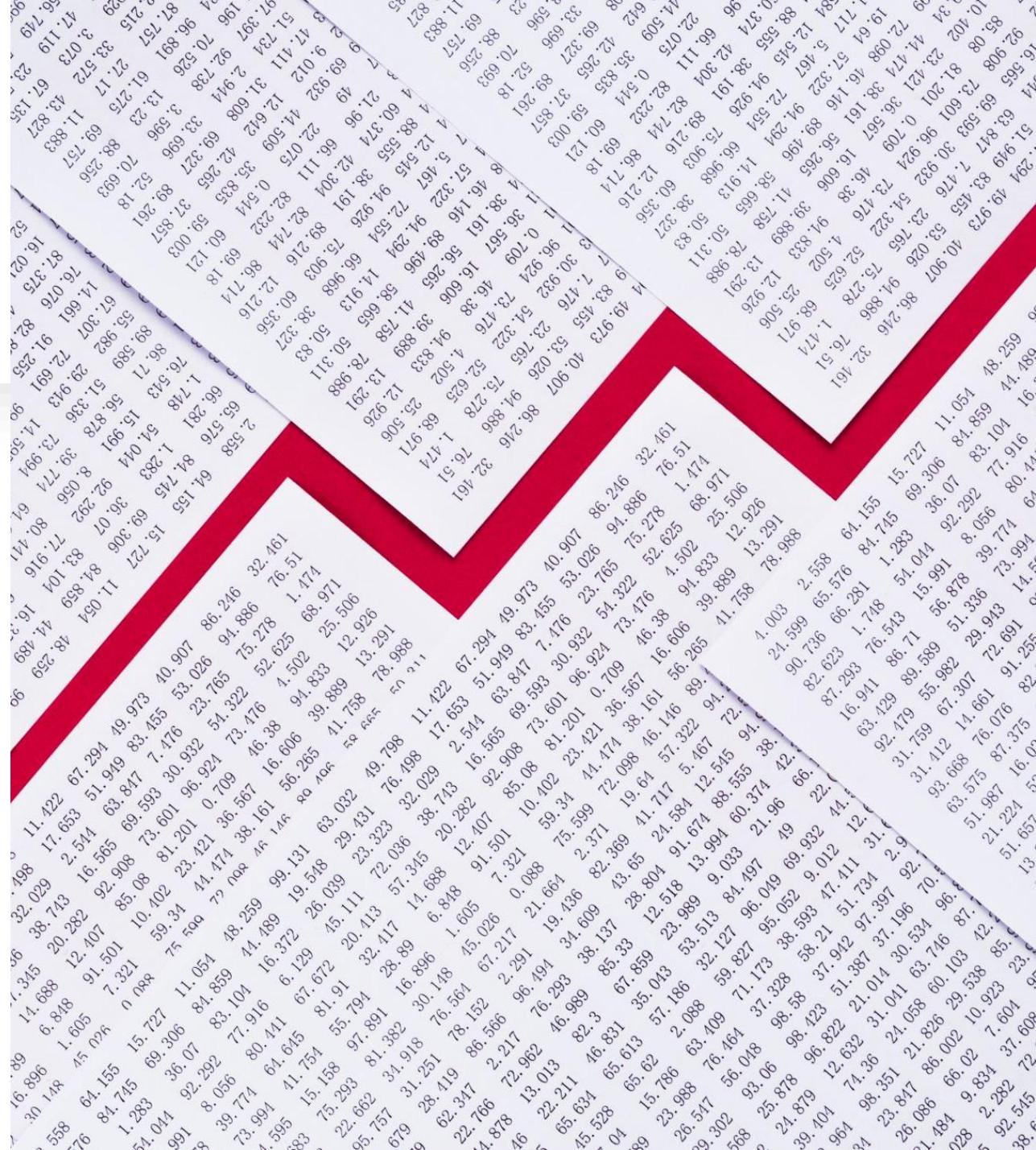
1. Preconstruction service provider rights? - Right to file service notice & Record Preconstruction Service Lien
2. Date for establishing lien rights? - First filed notice of preconstruction service, or first preliminary notice
3. Construction stakeholders & potential lien filers? - Contractors & suppliers must file a notice in order to have construction service lien
4. Construction Loan Default? - Email sent to all filers
5. Broken priority? - Lender/Title can establish priority by paying early filers
6. End of preconstruction & construction lien rights? - Beginning of Construction/filing of notice of completion
7. Date for termination of lien rights? - 90 days after notice of completion filing



# Notice of Intent to Finance 38-1a-603\*

- (1) **An owner may file with the registry a notice of intent to finance.**
- (2) A notice of intent to finance under Subsection (1) shall state:
  - (a) the anticipated date on which financing will occur;
  - (b) the anticipated lender's name, address, and telephone number;
  - (c) the name of the trustor on the trust deed securing the anticipated loan;
  - (d) the tax parcel identification number of each parcel included in the project property;And (e) the name of the county in which the project property is located.
- (3) **If an owner chooses to file a notice of intent to finance, the owner shall file the notice of intent to finance no less than 14 days before the date on which the financing is anticipated to occur.**
- (4) **If the financing does not occur within 30 days after the anticipated date specified in the notice of intent to finance, the notice of intent to finance shall automatically have no effect and shall be removed from the registry.**

\*From HB395- Began January 1, 2020

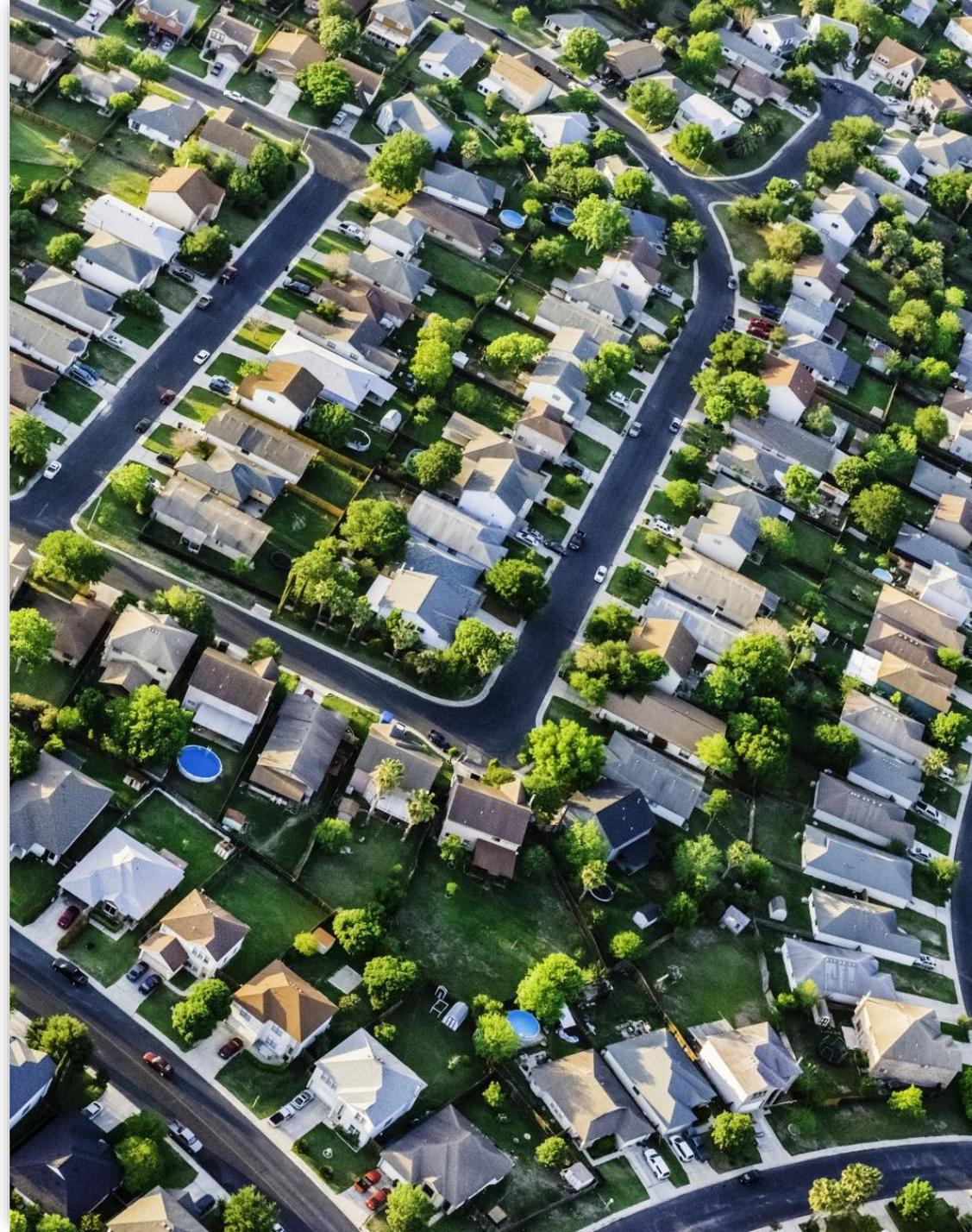


# Notice of final lien waiver 38-1a-604\*

(1) After a notice of intent to finance is filed under Section 38-1a-603 on a project property, each subcontractor that has filed a preliminary notice pertaining to the project property **may file with the registry a final lien waiver.**

(2) The final lien waiver described in Subsection (1) may be filed on the registry even if no notice of intent to finance was filed on the registry.

\*From HB395- Beginning January 1, 2020



**Feature Name**

**Who can use? & What does it do?**

**Notice of Pre-Construction Service**

**Architect:** 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. Not.. All preconstruction share priority date.

**Construction Loan**

**Title Company/Bank:** After county recording of a construction mortgage or trust deed on a private project, the lender shall file, the notice of construction loan.

**Preliminary Notice**

**Contractor/Subcontractor/Supplier:** 20 days from first day on project to preserve rights. If filed after 20 days, 5-day penalty & protection for work moving forward. No Prelim-No Construction Services Lien. All preconstruction share priority date.

**Notice of Completion**

**Title Company/Contractor/Owner:** 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 to from 180 down to 90 days.

**Loan Default**

**Title Company/Bank:** Within five business days after a notice of default is filed for recording, the construction lender shall file a notice with the registry.

**Notice of Intent to Finance** **1/1/2020**

**Title Company/Contractor/Owner?:** Filed no less than 14 days before the anticipated financing date. Expires automatically if financing doesn't happen within 30 days of notice.

**Final Lien Waiver**  
**1/1/2020**

**Contractor/Subcontractor/Supplier:** (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

## 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 deadline from 180 to 90 days

Final Lien Waiver (1/1/2020)

Release Lien Rights- Filed by Contractors/Suppliers

## Notice of Interested Parties

Loan Default

Notice to all parties of the construction loan is in default

Notice of Intent to Finance (1/1/2020)

Notice to all parties of immanent financing

<u>Feature Name</u>	<u>Who can use? &amp; What does it do?</u>
<u>Notice of Pre-Construction Service</u>	<b>Architect:</b> 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. Not.. All preconstruction share priority date.
<u>Construction Loan</u>	<b>Title Company/Bank:</b> After county recording of a construction mortgage or trust deed on a private project, the lender shall file, the notice of construction loan.
<u>Preliminary Notice</u>	<b>Contractor/Subcontractor/Supplier:</b> 20 days from first day on project to preserve rights. If filed after 20 days, 5 day penalty & protection for work moving forward. No Prelim-No Construction Services Lien. All preconstruction share priority date.
<u>Notice of Completion</u>	<b>Title Company/Contractor/Owner:</b> 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 to from 180 down to 90 days.
<u>Loan Default</u>	<b>Title Company/Bank:</b> 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 Intent to Finance 1/1/2020</u>	<b>Title Company/Contractor/Owner?:</b> 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 1/1/2020</u>	<b>Contractor/Subcontractor/Supplier:</b> (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>	<b>General Contractor/Owner: (Only Govt. jobs)</b> 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>	<b>Contractor/Owner:</b> 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. <b>Only applies to nonresidential and non bonded jobs over \$500,000.</b>
<u>Remaining to Complete (COMMERCIAL)</u>	<b>Contractor/Subcontractor/Supplier: (COMMERCIAL)</b> 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 to informs everyone sub or supplier hasn't been paid.

When would a Notice of Commencement be filed?

**Only Government jobs require a Notice of Commencement.** All other jobs no longer require a Notice of Commencement. A notice of Commencement must be filed within 15 days after work on the job site has begun. If it is not filed on time or accurately, anyone working on the job is not required to file a Preliminary Notice to make a claim on the payment bond. If the construction project is not a Government job, there is no Notice of Commencement filed. General contractors, suppliers and sub-contractors would all file Preliminary Notices to preserve their lien rights.

<https://secure.utah.gov/feedback/faq.html?id=496>

What is an Intent to Obtain Final Completion filing?

**NOT COMMON/COMMERCIAL:** Original Contractors may file an Intent to Complete at least 45 days before a project is able to be Completed. After an Intent to Complete is filed, anyone who has filed a Preliminary Notice must file a Remaining to Complete stating if they have not been paid or if they owe others. **The Intent to Complete only applies to non bonded jobs over \$500,000.**

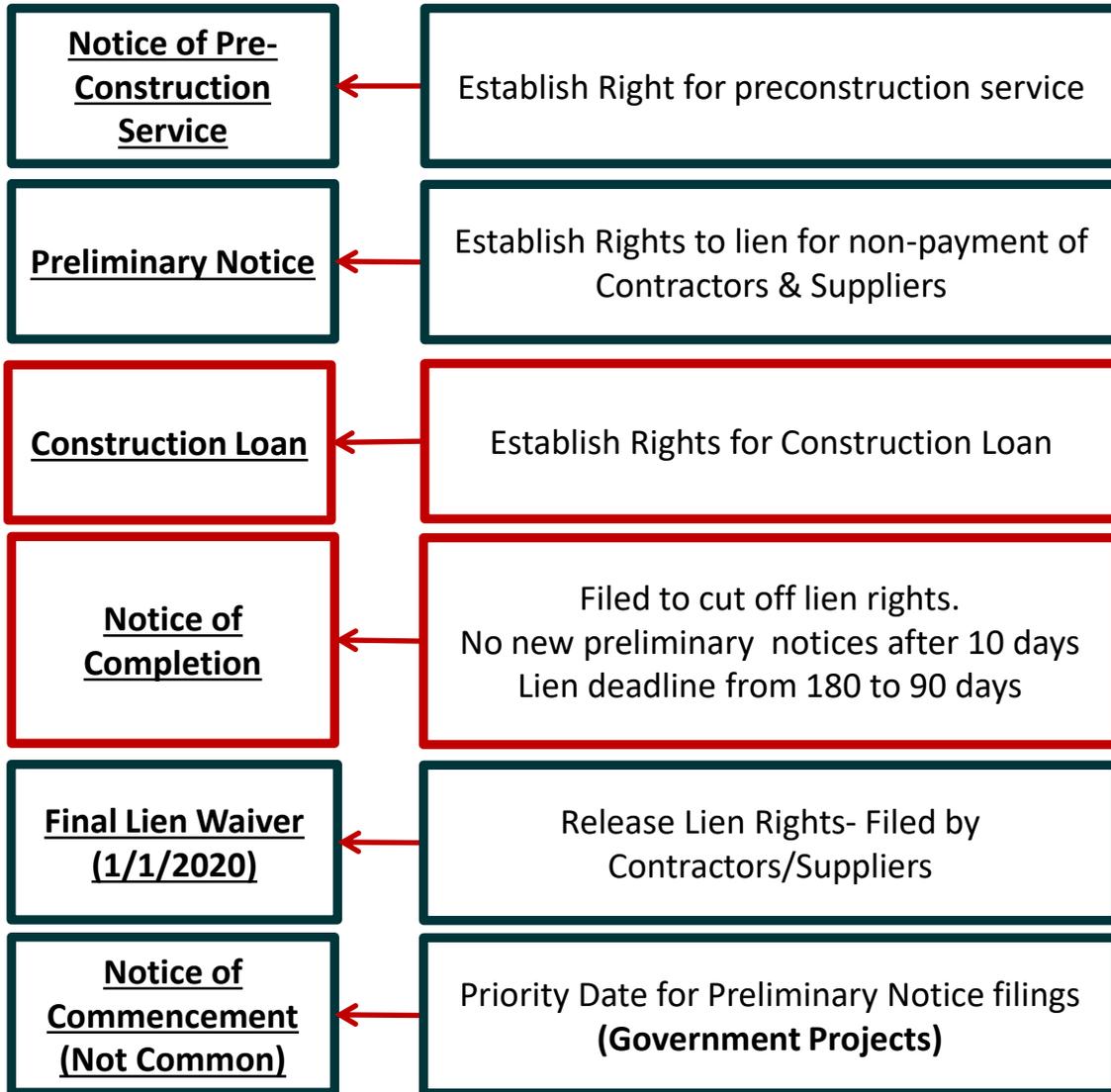
<https://secure.utah.gov/feedback/faq.html?id=499>

## What is a Remaining to Complete filing?

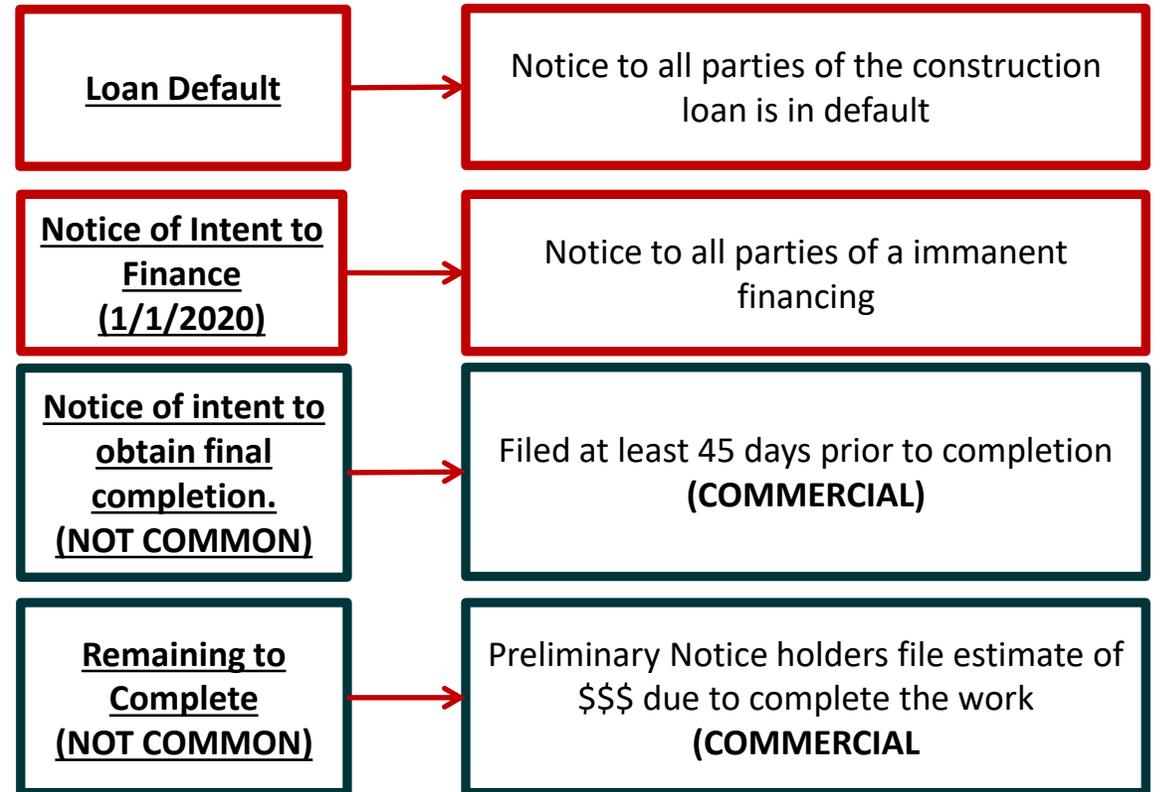
**COMMERCIAL:** On a small number of jobs, an Intent to Complete is filed by the Contractor. After an Intent to Complete is filed, anyone who has filed a preliminary notice must file a Remaining to Complete within 20 days. This filing informs everyone if the subcontractor or supplier has not been paid yet.

<https://secure.utah.gov/feedback/faq.html?id=490>

## Establish/Release Lien Rights



## Notice of Interested Parties



## 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 deadline from 180 to 90 days

Final Lien Waiver (1/1/2020)

Release Lien Rights- Filed by Contractors/Suppliers

## Notice of Interested Parties

Loan Default

Notice to all parties of the construction loan is in default

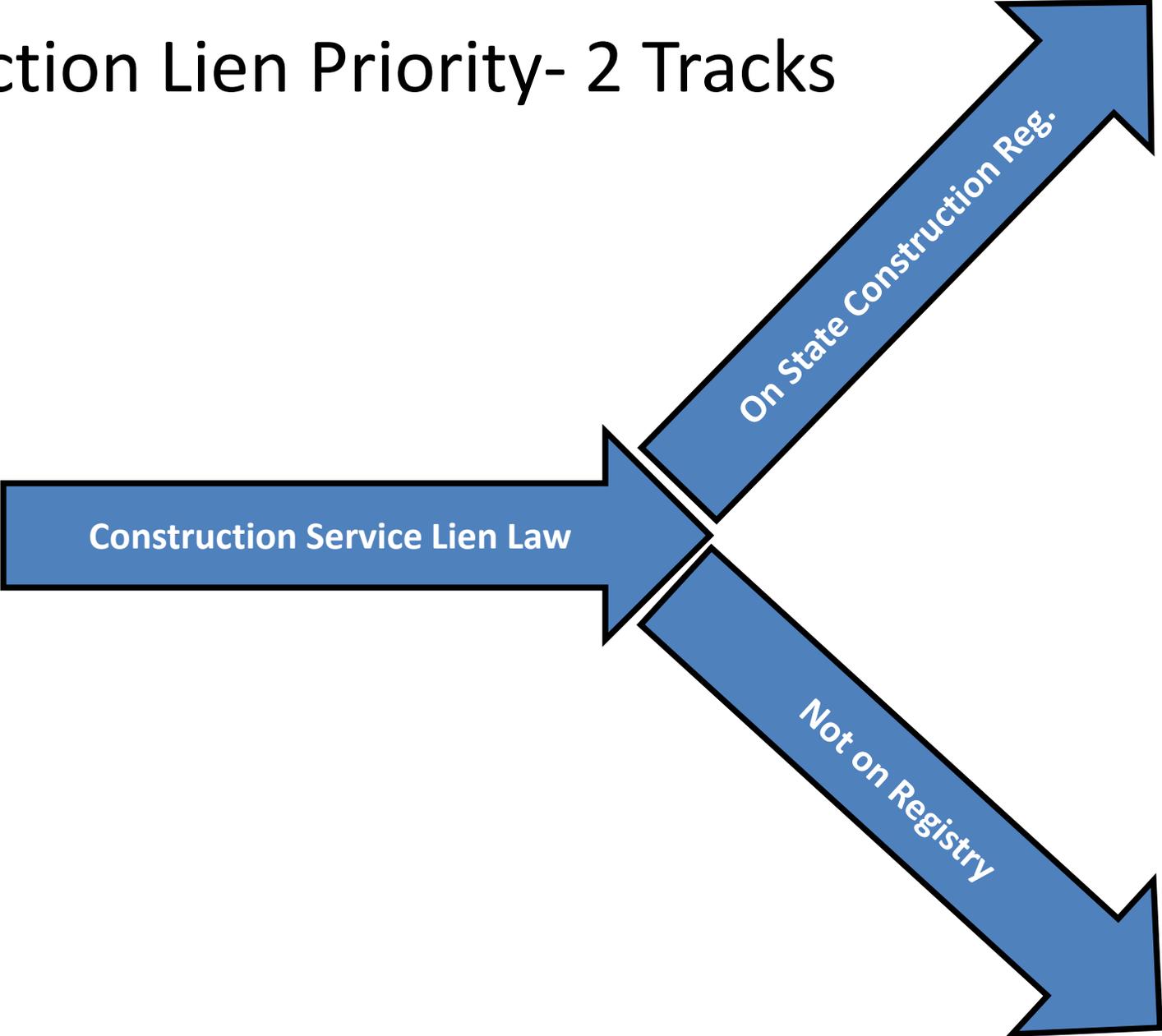
Notice of Intent to Finance (1/1/2020)

Notice to all parties of immanent financing

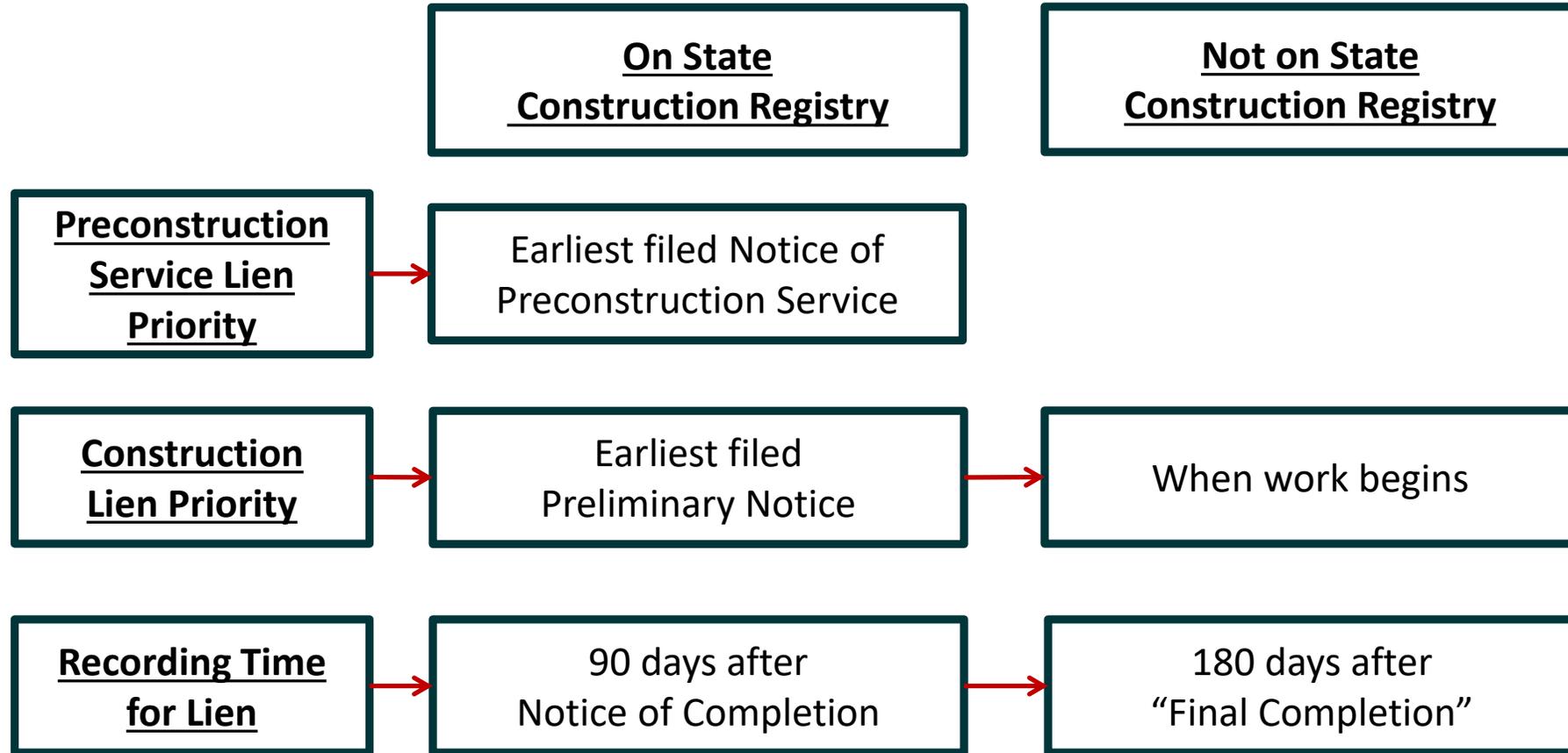
# How does the SCR protect interested parties?

- General Contractor/Builder-
  1. Allows for a list of all parties that have lien rights
- Subcontractor/Supplier-
  1. Allows establishment of lien rights
  2. Notification of loan default & intent to finance/completion
- Owner-
  1. Allows for a list of all parties that have lien rights
  2. Allows for limitation of lien rights by filing notice of completion
- Bank/Lender/Title Company
  1. Allows for a list of all parties that have lien rights
  2. Allows for Notice of Construction Loan to establish lien rights
  3. Fix for broken priority
  4. Allows for Notice of Completion limiting new preliminary notice and construction service lien filing time limits
- Architect/Preconstruction
  1. Allows for filing of preconstruction service liens

# Construction Lien Priority- 2 Tracks



# Construction Service Lien Timelines



180 Days after filing Preconstruction Service Lien/Construction Service Lien to begin lawsuit (Lis Pendens)

# Releasing a Construction Service Lien

- Obtain a Payoff and record a release of lien

OR

The property owner can seek to obtain court relief under the Residential Lien Restriction and Recovery Fund Act UCA §38-11-101 **(Residential Only)**

# What is the Residential Lien Recovery Fund?

<https://commerce.utah.gov/dopl/residence-lien-recovery-fund/>

## Mission Statement

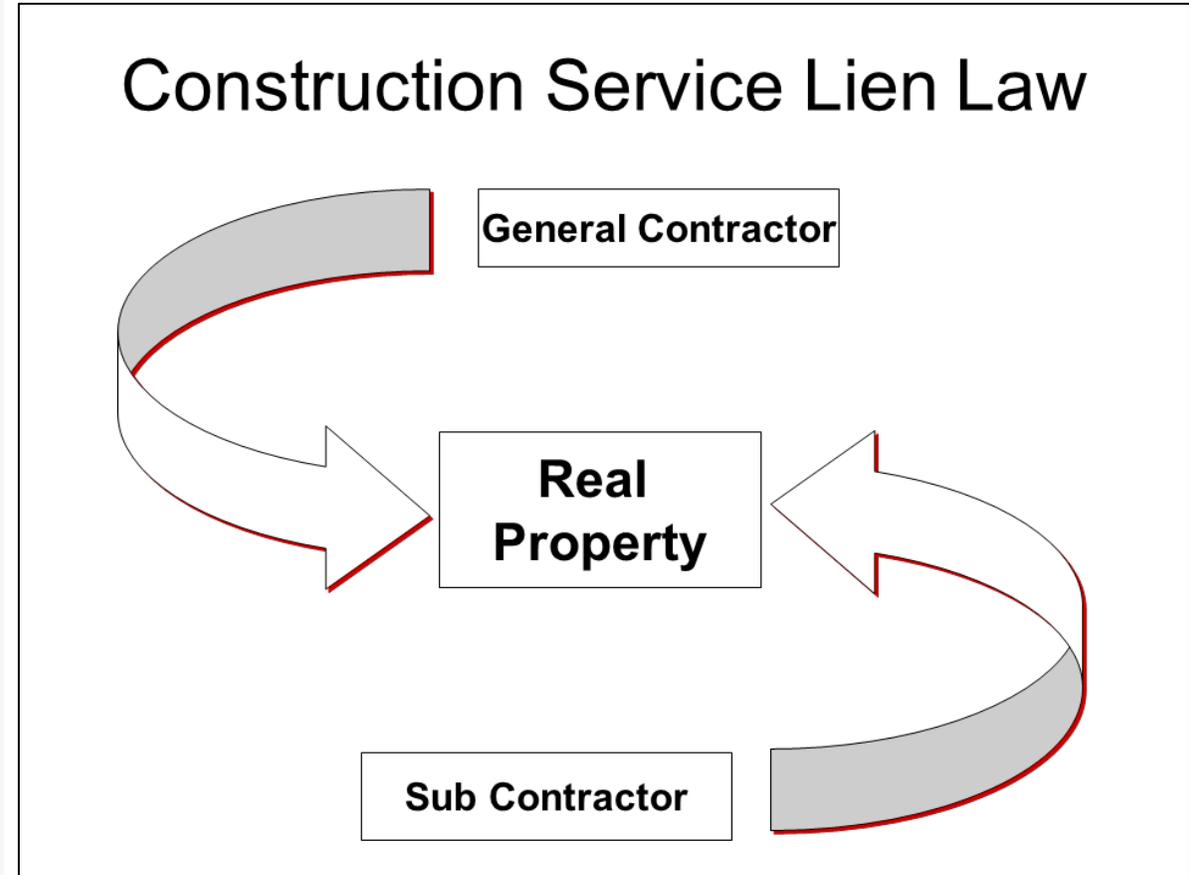
- The Utah Residence Lien Recovery Fund is an alternate payment source for contractors, laborers or suppliers whose liens are voided because a homeowner qualifies for protection under the Residence Lien Restriction and Lien Recovery Fund Act.

# What is the Residential Lien Recovery Fund?

<https://commerce.utah.gov/dopl/residence-lien-recovery-fund/>

## Program History

In 1994, the Utah Legislature recognized a problem within the residential construction industry. **A few contractors were taking money for construction but not paying subcontractors and suppliers.** Therefore, homeowners had to pay the subcontractors and suppliers directly to prevent loss of the home due to lien foreclosure. **In effect, the homeowner had to pay twice for the same product or service.** To correct this inequity, the legislature passed the Utah Residence Lien Restriction and Lien Recovery Fund Act.



# How can you qualify for the Residential Lien Recovery Fund?

1. Do you have a written contract?
2. Did you use a licensed contractor?
3. Do you have proof that your contract was paid in full?
4. Have you occupied the residence as primary or secondary residence with 180 days?

# Application for the Certificate of Compliance

**State of Utah**  
**DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING**

160 East 300 South, P.O. Box 146741  
Salt Lake City, Utah 84114-6741  
Telephone (801) 530-6628  
[www.dopl.utah.gov](http://www.dopl.utah.gov)

**Affidavit of Compliance**

Name: \_\_\_\_\_

Address of Property against which Lien was filed: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: (\_\_\_\_\_) \_\_\_\_\_ Email: \_\_\_\_\_

Is the address listed above the same as your mailing address? \_\_\_\_ Yes \_\_\_\_ No

If "no," please provide your complete mailing address: \_\_\_\_\_

Tax Parcel Number (*found on your annual property tax notice*): \_\_\_\_\_

**Checklist**

- \$30 non-refundable application fee
- Original Affidavit of Compliance
- Attach a list of all known subcontractors and suppliers
- A copy of this checklist

Submit the above items to one of the following:

By U.S. Mail	DOPL / LRF PO Box 146741 Salt Lake City, Utah 84114-6741
In Person or Express Mail	160 East 300 South 1st Floor Salt Lake City, Utah 84111

For Questions or Other Information

Direct: (801) 530-6628 • Toll-free: (866) 275-3675 (*Utah only*) • e-mail: [lrf@utah.gov](mailto:lrf@utah.gov)

**Additional Requirement**

- Send a copy of this application and all attachments by certified mail, return receipt requested, to all lien claimants and the party with whom you contracted

**BEFORE THE DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSING  
OF THE DEPARTMENT OF COMMERCE  
OF THE STATE OF UTAH**

IN THE MATTER OF THE APPLICATION FOR  
A CERTIFICATE OF COMPLIANCE ON THE  
RESIDENCE OF

\_\_\_\_\_  
*(Homeowners' Name)*  
Located at \_\_\_\_\_  
City \_\_\_\_\_ Zip \_\_\_\_\_  
Tax Parcel Number \_\_\_\_\_

AFFIDAVIT OF COMPLIANCE

I, \_\_\_\_\_, being first duly sworn state as follows:

1. The information contained in this application and the supporting documents are true and correct and I will ensure that any information subsequently submitted in conjunction with this application will meet the same standard.
2. I understand that it is my responsibility to read and understand all statutes and rules pertaining to my application for Certificate of Compliance.
3. I entered into an oral or written contract on \_\_\_/\_\_\_/\_\_\_ for service, labor, or materials with:  
\_\_\_\_\_  
and the general contract, including all changes and additions, totaled: \$ \_\_\_\_\_
4. The following entities have demanded payment for service, labor or materials associated with the general contract: (*attach separate sheet if needed*)  
\_\_\_\_\_  
\_\_\_\_\_
5. The residence is a single family dwelling or duplex and contains no more than two separate living units. [Utah Code Ann. § 38-11-102 (22)]
6. The residence is occupied by me or my tenant or lessee as a primary or secondary residence and was occupied within 180 days from the date of the completion of the construction on the residence. [Utah Code Ann. § 38-11-102 (18)]

\_\_\_\_\_  
Signature of Affiant

\_\_\_\_\_  
Date

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_.

(SEAL)

\_\_\_\_\_  
Signature of Notary Public

# Lien Recovery Fund – Set to Expire

## Residence Lien Recovery Fund

Welcome

Frequently Asked Questions 

Laws and Rules

Forms

Related Information

Contact Us



### Announcements

**EFFECTIVE MAY 8, 2018:**

**LIEN RECOVERY FUND (LRF) INITIAL ASSESSMENT FEE IS NO LONGER REQUIRED ON NEW CONTRACTOR APPLICATIONS AND NO SPECIAL ASSESSMENTS WILL BE ISSUED.**

ATTENTION: Architects, Engineers, and Landscape Surveyors choosing not to pay this fee will have no impact on your professional license. Joining the Lien Recovery Fund was a requirement for licensure as a professional from May 1995 to May 1996. You likely joined the Lien Recovery Fund during that period to avoid losing your professional license. Because of a change in 1996, remaining a member of the Lien Recovery Fund for these types of professionals is entirely voluntary and not required.

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# Lien Recovery Fund – Set to Expire

## IMPORTANT

### CONDOMINIUM UNITS ARE TYPICALLY NOT ELIGIBLE

**Condominium units are typically not eligible if part of your structure contains more than a “multifamily dwelling up to two units.” Utah Code § 38-11-102(21). See also *LKL Associates, Inc. v. Farley*, 2004 UT 51 ¶ 8 (“condominium units ... located in a building containing ten units, do not qualify for the protections of the Lien Restriction Act.”)**

The Utah Residence Lien Recovery Fund is an alternate payment source for contractors, laborers or suppliers whose liens are voided because a homeowner qualifies for protection under the Residence Lien Restriction and Lien Recovery Fund Act.

In 1994, the Utah Legislature recognized a problem within the residential construction industry. A few contractors were taking money for construction but not paying subcontractors and suppliers. Therefore, homeowners had to pay the subcontractors and suppliers directly to prevent loss of the home due to lien foreclosure. In effect, the homeowner had to pay twice for the same product or service. To correct this inequity, the legislature passed the Utah Residence Lien Restriction and Lien Recovery Fund Act.

The legislature has not authorized any state agency to assist contractors with filing, enforcing, collecting, etc. on any type of lien. All lien-related activities are handled through the civil court. Therefore, no one in state government can provide advice on how to file or enforce a lien. Persons needing such assistance are encouraged to obtain a copy of the laws related to mechanics’ liens.

# Alternate Security UCA §38-1-28

This statute allows title companies to hold monies in escrow while a dispute with a lien claimant is resolved.

1. Obtain a written payoff from the lien claimant to date certain with a per diem
2. Collect monies to hold in escrow.
  - 150% if claimed amount is equal or greater than \$25,000
  - 175% if claimed amount is equal to \$15,000 but less than \$25,000
  - 200% if claimed amount is less than \$15,000
3. Title companies may collect additional cost for administering the alternate security
4. Escrow Agreement must be completed and signed
5. Notice of Release of Lien and Substitution of Alternate security signed, recorded and Served to all parties.



# Title requirements for new construction for Commercial projects & projects not found on SCR

4. Evidence to, and the approval by the company of the legal capacity and authority under which THE GENERAL CONTRACTOR/BUILDER. intends to execute the contemplated transaction. Said evidence must be delivered to the Company prior to closing, and this commitment may be subject to additional requirements at that time.
5. COMPLETE an Affidavit As To Debts And Liens.
6. ADVISE THE COMPANY of any planned, newly commenced or unfinished, or recently completed construction. If such exists, determine if the original contract for the construction project is registered on the State Construction Registry.

## **If the original contract for the construction project is not registered with the State Construction Registry, please**

- a. identify all contractors that may be owed for their services and/or materials;
- b. pay all unpaid parties;
- c. obtain statutory lien waivers from all parties paid through closing;
- d. obtain a certificate of final occupancy or its equivalent;
- e. obtain signed indemnities from the seller, builder, and/or general contractor; and
- f. obtain underwriter approval.

UTAH CONDITIONAL WAIVER AND RELEASE UPON FINAL PAYMENT

File No. \_\_\_\_\_

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

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

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

Parcel #(s): \_\_\_\_\_

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

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

SCR Entry #(s): \_\_\_\_\_

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

1. The undersigned endorses a check in the above referenced Payment Amount payable to the undersigned and
2. The check is paid by the depository institution on which it is drawn.

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

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

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

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

Its: \_\_\_\_\_

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

- Final Payment – Release Form

## Title requirements for new construction loans

- Advise the Company of any planned, newly commenced or unfinished construction. If such exists, do the following:
- Search the State Construction Registry for any filed Preliminary Notices and require any parties who have so filed to withdraw their notices if paid for work then completed and sign the underwriter's affidavit.
- Collect the filing fee and file with the State Construction Registry a Notice of Construction Loan.
- Issue a SCR endorsement on the loan policy.

# Title requirements for long term or permanent financing (residential)

Advise the Company of any recently started, or completed construction. If such exists, do the following:

- a. Verify that property and builder qualify for the Lien Recovery Fund. Property must be a primary or secondary, single family or duplex. Builder must be a general contractor licensed to do business in the State of Utah.
- b. Obtain a copy of the written contract with the builder or developer to confirm that the construction project has been paid in full.
- c. Obtain a Mechanic's Lien Indemnity from the builder and, if required by the underwriter, from the owner.
- d. File a Notice of Completion with the State Construction Registry.
- e. Verify that the governmental entity/municipality issued a certificate of final occupancy.

What's the difference between the Title Insurer  
and Title/Settlement Agent?



# Settlement/escrow claims

Escrow losses are often not covered through title insurance

1. Escrow Claims can result from the mismanagement of funds
2. Failure to understand & follow instructions
3. Can be the result of incomplete/incorrect information
4. Can also be caused by incompetence, laziness, or not knowing

## Escrow Claims

1. Payoffs
  - FHA Payoffs
  - Second Mortgage/HELOC Closeout
2. Construction Service Liens
3. Fraud
4. Bad Proration
  1. HOA
  2. Taxes
  3. Water/Sewer
5. Notary Duties
  1. Fraud
  2. Probate
  3. Business/LLC Losses

# For any home purchase

- Review dedicated plat and plat notes
- Review requirements (B1) & exceptions (B2)
- Review CCR's
- Know the HOA
  - Who is running the HOA?
  - What improvements to the common area need to be finished?
  - What are the current HOA fees & reinvestment fee covenants?
  - How much money is in the HOA's account?
  - Will money be left in the HOA account when the homeowners take over?

# New construction checklist

- What is the builder's reputation?
  - Is the builder currently licensed?
- Can the property be found on the SCR?
- How is the construction financed?
- When did construction begin?
- Has the notice completion been filed?
- Are the instructions on title schedule B1 being followed?
- Which contract is being used?
  - 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
  - $(\text{Property value}) \times (\text{Tax Rate}) \times (\text{Residential Exception } (.65)) = \text{Estimated Property Taxes}$

# 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

This material is for educational purposes only and does not constitute legal advice. We assume no liability for errors or omissions. Backman Title Services LTD's underwriters are Old Republic National Title Insurance Company, First American Title Insurance Company, and Aliant National Title Company.

# Preliminary Title Report- What is searched? Property Parties

## 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](http://www.scr.utah.gov)

## 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/>



# Backman Title Services

www.backmantitle.com

## New Construction Checklist

### For any home purchase

- Review dedicated plat and plat notes
- Review requirements (B1) & exceptions (B2)
- Review CCR's
- Know the HOA
  - Who is running the HOA?
  - What improvements to the common area need to be finished?
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  - 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

## 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. Not.. All preconstruction share priority date.
<u>Preliminary Notice</u>	→ <u>Contractor Subcontractor 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. No Prelim-No Construction Services Lien. All preconstruction share priority date.
<u>Construction Loan</u>	→ <u>Title Company 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 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 Contractor 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 to from 180 down to 90 days.
<u>Notice of Intent to Finance</u> <i>1/1/2020</i>	→ <u>Owner (Bank?) (Title Co?)</u>	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> <i>1/1/2020</i>	→ <u>Contractor 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 General Contractor</u>	<b>Only Govt. jobs</b> 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.</u> <b>(COMMERCIAL)</b>	→ <u>Contractor 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. <b>Only applies to nonresidential and non bonded jobs over \$500,000.</b>
<u>Remaining to Complete</u> <b>(COMMERCIAL)</b>	→ <u>Contractor Subcontractor Supplier</u>	<b>(COMMERCIAL)</b> 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 to informs everyone sub or supplier hasn't been paid.



## State Construction Registry (Purpose of Filings)

### 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 deadline from 180 to 90 days

Final Lien Waiver (1/1/2020)

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 (1/1/2020)

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"