

1 **38-1-3. Those entitled to lien -- What may be attached.**

2 Contractors, subcontractors, and all persons performing any supervision of, labor for, or furnishing or
3 renting any materials or equipment used in the construction, alteration, or improvement of any building
4 or structure or improvement to any premises in any manner or who have rendered other like service, or
5 bestowed labor, shall have a lien upon the property upon or concerning which they have rendered
6 service, performed labor, or furnished or rented materials or equipment for the value of the service
7 rendered, labor performed, or materials or equipment furnished or rented by each respectively, whether
8 at the instance of the owner or of any other person acting by his authority as agent, contractor, or
9 otherwise except as the lien is barred under Section [38-11-107](#) of the Residence Lien Restriction and
10 Lien Recovery Fund Act. This lien shall attach only to such interest as the owner may have in the
11 property.

Deleted: services

Deleted: and licensed architects and engineers and artisans who have furnished designs, plats, plans, maps, specifications, drawings, estimates of cost, surveys or superintendence,

Deleted: professional

12 **DESIGN CONSULTANT LIENS**

13 **38-14-1. Public buildings not subject to act.**

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14 The provisions of this chapter shall not apply to any public building, structure or improvement.

15 **38-14-2. Definitions.**

- 16 (1) “Claimant” means any person entitled to claim a lien authorized by this chapter.
- 17 (2) “Compensation” means payment specifically for design services rendered or expenses
18 incurred based on time and expense, lump sum, stipulated sum, percentage of construction cost, cost
19 plus fixed or percentage fee, commission, or some combination of any of the foregoing.
- 20 (3) “Design consultant” means an individual or entity engaged in the business of providing
21 design services for compensation, including but not limited to:
- 22 (a) architectural services requiring licensure under Sections 58-3a-301 through -304;

23 (b) engineering services requiring licensure under Section 58-22-301 through -306;

24 (c) land surveying services requiring licensure under Section 58-22-301 through -306; or

25 (d) landscape architectural services requiring licensure under Section 58-53-301 through -304.

26 (4) “Design services” means: consultations; studies; reports; renderings; models; site
27 investigations; soil investigations; boundary or topographic surveys; plats; maps; programming;
28 planning; designs; interior designs; plans; drawings; specifications; cost estimates; scheduling; materials
29 testing; construction staking, procurement, management, administration, observation, or inspection; or
30 similar services regarding improvements to real property. “Design services” do not include supervision
31 of, labor for, or furnishing or renting any materials or equipment used in the construction, alteration, or
32 improvement of real property or any building, structure or improvement thereon.

33 (5) “Prime consultant” means a design consultant contracted by an owner, its agent, or any other
34 individual or entity other than another design consultant to provided design services.

35 (6) “Subconsultant” means a design consultant contracted by another design consultant to
36 provide design services.

37 **38-14-3. Policy – Right to lien – Liens independent of mechanics’ liens.**

38 Design consultant services add value to the real property to which they pertain whether or not the
39 improvements envisioned in those services are ultimately constructed or installed. A design consultant
40 providing design services as an independent contractor for compensation, whether at the instance of the
41 owner of real property or any other person acting by the owner’s authority as agent, contractor,
42 consultant, or otherwise, shall have a lien for the value of the services rendered upon the owner’s
43 interest in the real property upon or concerning which service has been provided. The liens authorized
44 by this chapter shall, for any and all purposes, be wholly independent from those authorized by Sections

45 38-1-1 through -40 and a design consultant shall not be entitled to a lien for design services under those
46 sections.

47 **38-14-4. Preliminary notice of lien – Contents – Recording – Failure to record.**

48 A design consultant entitled to claim a lien under this chapter may, at any time from and after the
49 date it first provides services which it was contracted to provide and on or before the date it completes
50 services which it was contracted to provide, file for record with the county recorder of the county or
51 counties in which all or some of the property is located a preliminary notice of lien against the property.

52 A design consultant who fails to file a preliminary notice of lien as and when required by this section
53 shall not have lien as provided in this chapter. A notice filed under this section shall include:

- 54 (1) the design consultant's name, mailing address and telephone number;
- 55 (2) a declaration that the design consultant intends to hold and claim a lien pursuant to this
56 chapter in the event of nonpayment for its services;
- 57 (3) a general description of the services provided or to be provided by the design consultant;
- 58 (4) the name of the person by whom or which the design consultant was employed;
- 59 (5) the name, if known, of the reputed owner of the property or, if not known, the name of the
60 record owner of the property;
- 61 (6) a description of the property sufficient for identification;
- 62 (7) the signature of the design consultant or its authorized agent; and
- 63 (8) an acknowledgment or certificate as required under Title 57, Chapter 3, Recording of

64 Documents.

65 **38-14-5. Notice of lien – Contents – Recording – Failure to record.**

66 (1) Not later than ninety (90) days following completion of the services which it was contracted
67 to provide, a design consultant entitled to claim a lien under this chapter may, in the event of
68 nonpayment for its services, file for record with the county recorder of the county or counties in which
69 all or some of the property is located a notice of lien against the property. A design consultant who fails
70 to file a notice of lien as and when required by this section shall not have a lien as provided in this
71 chapter. A notice filed under this section shall include:

72 (a) the claimant's name, mailing address and telephone number;

73 (b) a declaration that the claimant claims a lien pursuant to this chapter;

74 (c) the date the claimant recorded its preliminary notice of lien against the property;

75 (d) the name of the person by whom or which the claimant was employed;

76 (e) a general description of the services provided by the claimant;

77 (f) if the claimant completed its services, the date it did so;

78 (g) the name, if known, of the reputed owner of the property or, if not known, the name of the
79 record owner of the property;

80 (h) a description of the property sufficient for identification;

81 (i) the principal amount claimed under the lien, exclusive of interest, costs and attorneys fees;

82 (j) the signature of the claimant or the claimant's authorized agent;

83 (k) an acknowledgment or certificate as required under Title 57, Chapter 3, Recording of
84 Documents; and

85 (l) if the lien is against an owner-occupied residence as defined by Section [38-11-102](#), a
86 statement meeting the requirements established by rule by the Division of Occupational and
87 Professional Licensing in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking

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88 Act, describing what steps the owner may take to require a claimant to remove the lien in accordance
89 with Section 38-11-107.

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90 (2) A prime consultant's notice of lien may include amounts claimed by its subconsultant,
91 regardless of tier, whether or not that subconsultant has filed a preliminary notice of lien or notice of
92 lien.

93 (3)

94 (a) Within 30 days of recording its notice of lien, the claimant shall, by certified mail return
95 receipt requested, deliver a copy of the notice of lien to the reputed or record owner or of the real
96 property.

97 (b) If the record owner's address is not readily known to the claimant, the copy of the notice may
98 be mailed to said owner's last-known address using the names and addresses appearing on the last
99 completed real property assessment rolls of the county or counties wherein the real property is
100 located.

101 (c) Failure to mail a copy of the notice of lien as herein required precludes the claimant from an
102 award of costs and attorneys fees against the reputed or record owner in an action to enforce the lien.

103 (4) Nothing contained herein shall prohibit a design consultant from recording a notice of lien
104 prior to completing the services which it was contracted to provide.

105 **38-14-6. Notice imparted by record.**

106 The recorder must record the preliminary notices of lien and notices of lien in an index maintained
107 for that purpose. From the time a preliminary notice of lien or notice of lien is filed for record, all
108 persons are considered to have notice thereof.

109 **38-14-7. Amount of land affected -- Lots and subdivisions -- Franchises, fixtures, and**
110 **appurtenances.**

111 The liens authorized by this chapter shall extend to and cover so much of the land whereon such
112 building, structure, or improvement shall be made as may be necessary for convenient use and
113 occupation of the land. In case any such building shall occupy two or more lots or other subdivisions of
114 land, such lots or subdivisions shall be considered as one for the purposes of this chapter. The liens
115 provided for in this chapter shall attach to all franchises, privileges, appurtenances, and to all machinery
116 and fixtures, pertaining to or used in connection with any such lands, buildings, structures, or
117 improvements.

118 **38-14-8. Liens on several separate properties in one claim.**

119 Liens against two or more buildings or other improvements owned by the same person may be
120 included in one claim; but in such case the person filing the claim must designate the amount claimed to
121 be due to him on each of such buildings or other improvements.

122 **38-14-9. Priority over other encumbrances – Liens on equal footing.**

123 (1) Each lien provided for herein shall relate back to and take effect as of the date the claimant
124 recorded its preliminary notice of lien as contemplated by Section [38-14-4](#) and shall have priority over
125 any lien, mortgage or other encumbrance which may have attached subsequently to the time of said
126 recording; also over any lien, mortgage or other encumbrance of which the claimant had no notice and
127 which was unrecorded at the time of said recording.

128 (2) Notwithstanding subsection (1), the liens of a prime consultant and its subconsultants, if any
129 and regardless of tier, shall be on equal footing, shall all relate back to and take effect as of the earliest
130 date that the prime consultant or any of its subconsultants recorded a preliminary notice of lien as

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131 contemplated by Section 38-14-4, and shall have priority over any lien, mortgage or other encumbrance
132 which may have attached subsequently to the time of said recording; also over any lien, mortgage or
133 other encumbrance of which the claimant had no notice and which was unrecorded at the time of said
134 recording.

135 **38-14-10. Priority over claims of creditors.**

136 No attachment, garnishment or levy under an execution upon any money due to a prime consultant
137 from the owner of any property subject to lien under this chapter shall be valid as against any lien of a
138 subconsultant, and no such attachment, garnishment or levy upon any money due to a subconsultant
139 from its employer, whether prime consultant or subconsultant, shall be valid as against any lien of that
140 subconsultant's subconsultant.

141 **38-14-11. Payment – Subordination.**

142 If a design consultant receives payment for services provided, together with payment of any accrued
143 interest and lien costs, its lien shall be subordinate to any lien, mortgage or other encumbrance which
144 may have attached at any time after recordation of the design consultant's preliminary notice of lien
145 through the last date upon which it provided the services for which payment was received; provided
146 however, that in no event under this section shall the lien be subordinate to any lien, mortgage or other
147 encumbrance which may have attached at any time from and after the commencement to do work or
148 furnish materials on the ground, as contemplated by Section 38-1-5, for the structure or improvement
149 subject of the design services. For purposes of this section, said payment shall be applied first to pay
150 accrued lien costs, then to pay accrued interest as allowed by contract or statute, whichever is greater, on
151 the principal amount being paid and then to accrued principal in the order accrued. For purposes of this
152 section, lien costs include the cost, if any, of preparing and recording a notice of lien and, if an

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153 enforcement action has been filed pursuant to Section 38-14-12(2), accrued attorneys fees and costs if
154 and as allowed by this chapter, but do not include the cost of preparing and recording a preliminary
155 notice of lien.

156 **38-14-12. Enforcement – Lis pendens – Action for debt not affected – Instructions and form**
157 **affidavit and motion.**

158 (1) As used in this section:

159 (a) “Owner” is as defined in Section 38-11-102.

160 (b) “Residence” is as defined in Section 38-11-102.

161 (2) A claimant shall file an action to enforce the lien filed under this chapter within 180 days
162 from the day on which the claimant filed a notice of lien under Section 38-14-5. Failure to timely file an
163 action to enforce a lien under this chapter shall render the lien void and unenforceable.

164 (3)

165 (a) Within the time period provided for filing in Subsection (2) the claimant shall file for record
166 with the county recorder of each county in which the lien is recorded a notice of the pendency of the
167 action, in the manner provided in actions affecting the title or right to possession of real property, or
168 the lien shall be void, except as to persons who have been made parties to the action and persons
169 having actual knowledge of the commencement of the action.

170 (b) The burden of proof is upon the claimant and those claiming under the claimant to show
171 actual knowledge under Subsection (3)(a).

172 (4) This section may not be interpreted to impair or affect the right of any person to whom a debt
173 may be due for any work done or materials furnished to maintain a personal action to recover the debt.

174 (5)

175 (a) If a claimant files an action to enforce a lien filed under this chapter involving a residence,
176 the claimant shall include with the service of the complaint on the owner of the residence:

177 (i) instructions to the owner of the residence relating to the owner’s rights under Title 38,
178 Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act; and

179 (ii) a form to enable the owner of the residence to specify the grounds upon which the
180 owner may exercise available rights under Title 38, Chapter 11, Residence Lien Restriction and
181 Lien Recovery Fund Act.

182 (b) The instructions and form required by Subsection (6)(a) shall meet the requirements
183 established by rule by the Division of Occupational and Professional Licensing in accordance with
184 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

185 (c) If a claimant fails to provide to the owner of the residence the instructions and form required
186 by Subsection (6)(a), the claimant shall be barred from maintaining or enforcing the lien upon the
187 residence.

188 (d) Judicial determination of the rights and liabilities of the owner of the residence under this
189 chapter and Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act shall be
190 stayed until after the owner is given a reasonable period of time to establish compliance with
191 Subsections [38-11-204](#)(4)(a) and (4)(b) through an informal proceeding, as set forth in Title 63G,
192 Chapter 4, Administrative Procedures Act, commenced within 30 days of the owner being served
193 summons in the foreclosure action, at the Division of Occupational and Professional Licensing and
194 obtain a certificate of compliance or denial of certificate of compliance, as defined in Section [38-11-](#)
195 [102](#).

196 (e) An owner applying for a certificate of compliance under Subsection (6)(d) shall send by
197 certified mail to all claimants:

198 (i) a copy of the application for a certificate of compliance; and

199 (ii) all materials filed in connection with the application.

200 (f) The Division of Occupational and Professional Licensing shall notify all claimants listed in
201 an owner's application for a certificate of compliance under Subsection (6)(d) of the issuance or
202 denial of a certificate of compliance.

203 (6) The written notice requirement applies to liens filed on or after July 1, 2004.

204 **38-14-13. Parties – Joinder – Intervention.**

205 Claimants not contesting the claims of each other may join as plaintiffs, and when separate actions
206 are commenced the court may consolidate them and make all persons having claims filed parties to the
207 action. Those claiming liens who fail or refuse to become parties plaintiff may be made parties
208 defendant, and any one not made a party may at any time before the final hearing intervene.

209 **38-14-14. Decree – Order of Satisfaction.**

210 In every case in which liens are claimed against the same property the decree shall provide for their
211 satisfaction in the following order:

212 (1) subconsultants employed by other subconsultants;

213 (2) subconsultants employed by a prime consultant; and

214 (3) prime consultants.

215 **38-14-15. Sale – Redemption – Disposition of proceeds.**

216 The court shall cause the property to be sold in satisfaction of the liens and costs as in the case of
217 foreclosure of mortgages, subject to the same right of redemption. If the proceeds of sale after the

218 payment of costs shall not be sufficient to satisfy the whole amount of liens included in the decree, then
219 such proceeds shall be paid in the order above designated, and pro rata to the persons claiming in each
220 class where the sum realized is insufficient to pay the persons of such class in full. Any excess shall be
221 paid to the person or persons entitled thereto as determined by the court.

222 **38-14-16. Deficiency judgment.**

223 Every claimant whose claim is not satisfied as herein provided may have judgment docketed for the
224 balance unpaid, and execution therefor against the party personally liable.

225 **38-14-17. Attorneys' fees – Offer of judgment.**

226 (1) Except as provided in Section [38-11-107](#) and in Subsection (2), in any action brought to
227 enforce any lien under this chapter the successful party shall be entitled to recover a reasonable
228 attorneys' fee, to be fixed by the court, which shall be taxed as costs in the action.

229 (2) A person who abuses a lien right as contemplated in Section [38-1-25](#) [38-14-22](#) is not entitled
230 to recover attorneys' fees under Subsection (1).

231 (3) A party against whom any action is brought to enforce a lien under this chapter may make an
232 offer of judgment pursuant to Rule 68 of the Utah Rules of Civil Procedure. If the offer is not accepted
233 and the judgment finally obtained by the offeree is not more favorable than the offer, the offeree shall
234 pay the costs and attorneys' fees incurred by the offeror after the offer was made.

235 **38-14-18. Payment to prime consultant – Subconsultant's lien not affected.**

236 When any subconsultant shall have actually begun to furnish services for which it is entitled to a
237 lien, no payment to the prime consultant shall impair or defeat such lien; and no alteration of any
238 contract shall affect any lien acquired under the provisions of this chapter.

239 **38-14-19. Advance payments – Effect on subconsultant's lien.**

240 No payment made prior to the time when the same is due under the terms and conditions of the
241 prime consultant's contract shall be valid for the purpose of defeating, diminishing or discharging any
242 lien in favor of any person except the prime consultant; but as to any such lien such payment shall be
243 deemed as if not made, notwithstanding that the prime consultant to whom it was paid may thereafter
244 abandon his contract or be or become indebted to the owner for damages for nonperformance of his
245 contract or otherwise.

246 **38-14-20. Advance payments under terms of contract – Effect on liens.**

247 The subconsultant liens provided for in this chapter shall extend to the full price of the
248 subconsultant's contract, but if at the time of the commencement to provide services the owner has paid
249 upon the prime consultant's contract, in accordance with the terms thereof, any portion of the contract
250 price, either in money or property, the lien of the prime consultant shall extend only to such unpaid
251 balance, and the lien of any subconsultant who has notice of such payment shall be limited to the unpaid
252 balance of the contract price. No part of the contract price shall by the terms of any contract be made
253 payable, nor shall the same or any part thereof be paid, in advance of the commencement of services for
254 the purpose of evading or defeating the provisions of this chapter.

255 **38-14-21. Cancellation of record – Penalty.**

256 The claimant of any lien filed as provided herein, on the payment of the amount thereof together
257 with the costs incurred and the fees for cancellation, shall at the request of any person interested in the
258 property charged therewith cause said lien to be canceled of record within ten days from the request, and
259 upon failure to so cancel his lien within the time aforesaid shall forfeit and pay to the person making the
260 request the sum of \$100 per day or actual damages, whichever is greater, until the same shall be
261 canceled, to be recovered in the same manner as other debts.

262 **38-14-22. Abuse of lien right – Penalty.**

263 (1) Any person entitled to record or file a lien under Section 38-14-5 is guilty of a class B
264 misdemeanor who intentionally causes a claim of lien against any property containing a greater demand
265 than the sum due to be recorded or filed:

266 (a) with the intent to cloud the title;

267 (b) to exact from the owner or person liable by means of the excessive claim of lien more than is
268 due; or

269 (c) to procure any unjustified advantage or benefit.

270 (2) In addition to any criminal penalties under Subsection (1), a person who violates Subsection
271 (1) is liable to the owner of the property or an prime consultant or subconsultant who is affected by the
272 lien for the greater of:

273 (a) twice the amount by which the abusive lien exceeds the amount actually due; or

274 (b) the actual damages incurred by the owner of the property.

275 **38-14-23. Assignment of lien.**

276 All liens under this chapter shall be assignable as other choses in action, and the assignee may
277 commence and prosecute actions thereon in its own name in the manner herein provided.

278 **38-14-24. Notice of release of lien and substitution of alternate security.**

279 (1) The owner of any interest in real property that is subject to a lien recorded under this chapter,
280 or any prime consultant or subconsultant affected by the lien, who disputes the correctness or validity of
281 the lien may record a notice of release of lien and substitution of alternate security:

282 (a) that meets the requirements of Subsection (2);

283 (b) in the office of the county recorder where the lien was recorded; and

284 (c) at any time before the expiration of 90 days after the day on which the person filing a notice
285 of release of lien and substitution of alternate security is served with a summons and lien foreclosure
286 complaint.

287 (2) A notice of release of lien and substitution of alternate security recorded under Subsection (1)
288 shall:

289 (a) meet the requirements for the recording of documents in Title 57, Chapter 3, Recording of
290 Documents;

291 (b) reference the lien sought to be released, including an entry number, book number, and page
292 number; and

293 (c) have as an attachment a surety bond or evidence of a cash deposit that:

294 (i)

295 (A) if a surety bond, is executed by a surety company that is treasury listed, A-rated
296 by AM Best Company, and authorized to issue surety bonds in this state; or

297 (B) if evidence of a cash deposit, meets the requirements established by rule by the
298 Department of Commerce in accordance with Title 63G, Chapter 3, Utah
299 Administrative Rulemaking Act;

300 (ii) is in an amount equal to:

301 (A) 150% of the amount claimed by the claimant on a notice of lien or determined
302 under Subsection (7), if the lien claim is for \$25,000 or more;

303 (B) 175% of the amount claimed by the claimant on a notice of lien or determined
304 under Subsection (7), if the lien claim is for at least \$15,000 but less than
305 \$25,000; or

306 (C) 200% of the amount claimed by the claimant on a notice of lien or determined
307 under Subsection (7), if the lien claim is for less than \$15,000;

308 (iii) is made payable to the claimant;

309 (iv) is conditioned for the payment of:

310 (A) the judgment that would have been rendered, or has been rendered against the
311 property in the action to enforce the lien; and

312 (B) any costs and attorneys' fees awarded by the court; and

313 (v) has as principal:

314 (A) the owner of the interest in the real property; or

315 (B) the prime consultant or subconsultant affected by the lien.

316 (3)

317 (a) Upon the recording of the notice of release of lien and substitution of alternate security under
318 Subsection (1), the real property described in the notice shall be released from the lien to which the
319 notice applies.

320 (b) A recorded notice of release of lien and substitution of alternate security is effective as to any
321 amendment to the lien being released if the bond amount remains enough to satisfy the requirements
322 of Subsection (2)(c)(ii).

323 (4)

324 (a) Upon the recording of a notice of release of lien and substitution of alternate security under
325 Subsection (1), the person recording the notice shall serve a copy of the notice, together with any
326 attachments, within 30 days upon the claimant.

327 (b) If a suit is pending to foreclose the lien at the time the notice is served upon the claimant
328 under Subsection (4)(a), the claimant shall, within 90 days from the receipt of the notice, institute
329 proceedings to add the alternate security as a party to the lien foreclosure suit.

330 (5) The alternate security attached to a notice of release of lien shall be discharged and released
331 upon:

332 (a) the failure of the claimant to commence a suit against the alternate security within the same
333 time as an action to enforce the lien under Section ~~38-1-11~~ 38-14-12;

334 (b) the failure of the claimant to institute proceedings to add the alternate security as a party to a
335 lien foreclosure suit within the time required by Subsection (4)(b);

336 (c) the dismissal with prejudice of the lien foreclosure suit or suit against the alternate security as
337 to the claimant; or

338 (d) the entry of judgment against the claimant in:

339 (i) a lien foreclosure suit; or

340 (ii) suit against the alternate security.

341 (6) If a copy of the notice of release of lien and substitution of alternate security is not served
342 upon the claimant as provided in Subsection (4)(a), the claimant shall have six months after the
343 discovery of the notice to commence an action against the alternate security, except that no action may
344 be commenced against the alternate security after two years from the date the notice was recorded.

345 (7)

346 (a) The owner of any interest in real property that is subject to a lien recorded under this chapter
347 or an prime consultant or subconsultant affected by a lien recorded under this chapter who disputes
348 the amount claimed in a notice of lien may petition the district court in the county in which the

349 notice of lien is recorded for a summary determination of the correct amount of a lien claim for the
350 sole purpose of providing alternate security.

351 (b) A petition under this Subsection (7) shall:

352 (i) state with specificity the factual and legal bases for disputing the amount of the lien
353 claim; and

354 (ii) be supported by a sworn affidavit and any other evidence supporting the petition.

355 (c) A petitioner under Subsection (7)(a) shall, under Utah Rules of Civil Procedure, Rule 4,
356 serve on the claimant:

357 (i) a copy of the petition; and

358 (ii) a notice of hearing if a hearing is scheduled.

359 (d) If a court finds a petition under Subsection (7)(a) insufficient, the court may dismiss the
360 petition without a hearing.

361 (e) If a court finds a petition under Subsection (7)(a) sufficient, the court shall schedule a hearing
362 within ten days to determine the correct amount of the lien claim for the sole purpose of providing
363 alternate security.

364 (f) A claimant may:

365 (i) attend a hearing held under this Subsection (7); and

366 (ii) contest the petition.

367 (g) A determination under this section is limited to a determination of the amount of the lien
368 claim for the sole purpose of providing alternate security and does not conclusively establish:

369 (i) the amount to which the claimant is entitled;

370 (ii) the validity of the lien claim; or

371 (iii) any person's right to any other legal remedy.

372 (h) If a court, in a proceeding under this Subsection (7), determines that the amount claimed in a
373 notice of claim is excessive, the court shall set the amount of the lien claim for the sole purpose of
374 providing alternate security.

375 (i) In an order under Subsection (7)(h), the court shall include a legal description of the
376 property.

377 (j) A petitioner under this Subsection (7) may record a certified copy of any order issued under
378 this Subsection (7) in the county in which the lien is recorded.

379 (c) Attorneys' fees may not be awarded for a proceeding under this Subsection (7), but shall be
380 considered in any award of attorneys' fees under any other provision of this chapter.

381 **38-14-25. Rights not waivable.**

382 The rights and privileges authorized under this chapter may not be waived or altered in advance in a
383 contract to provide design services and any contract purporting to waive such rights and privileges shall
384 be null and void. Notwithstanding the foregoing, a claimant may by agreement and in whole or in part
385 wave or limit its lien rights under this chapter upon receipt of payment on account for services
386 provided.