

Overview Utah Bonding Laws

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The Mirror Statutes

Identical Rules, Different Citations

Municipal Law



Title 10, Chapter 20 (LUDMA)

Subdivision Bonds: § 10-20-807

Inspections & Releases: § 10-20-905

County Law



Title 17, Chapter 79 (CUDMA)

Subdivision Bonds: § 17-79-707

Inspections & Releases: § 17-79-805

Synthesis: Whether dealing with a City Council or a County Commission, the substantive rights, caps, and obligations are practically identical.

Balancing Needs



Municipal Need

Guarantee public infrastructure is built securely and built right, avoiding half-paved roads if a project halts.



Developer Need

Maintain capital liquidity, cash flow, and project momentum to ensure the development remains financially viable.

The
Improvement
Completion
Assurance
(The Bond)

Improvement Completion Bonds

The applicant makes the choice

The Old Rule:

Municipalities could force a “Hobson’s Choice” dictating the timeline and withholding bonding options entirely.

The New Rule:

The municipality or county must provide options and shall allow the applicant to elect their path.

Utah Code Sections 10-20-807(3)(a), 17-79-707(c)(a).



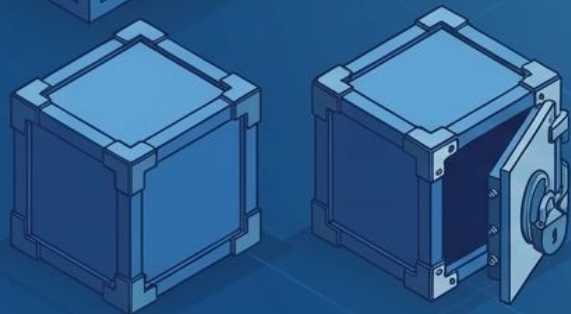
The Transfer of Choice: Who Decides?

Pre-2018 (City's Choice)

Default: Infrastructure must be built first.
(Utah Code Ann. § 10-9a-604.5(2)(a) (pre-2018))

Exception: Bonding was allowed only if the municipality explicitly authorized it by local ordinance.
(Utah Code Ann. § 10-9a-604.5(2)(b) (pre-2018))

Leverage: The Municipality.



Today (Applicant's Choice)

Default: LUDMA mandates that municipalities must accommodate an applicant's choice to post a completion assurance in lieu of completing infrastructure.
(Utah Code Ann. § 10-9a-604.5(2)(a) (current))

Exception: Must still be consistent with local ordinance formats, but the option cannot be denied.
(Utah Code Ann. § 10-9a-604.5(2)(c)(ii) (current))

Leverage: The Applicant.



Improvement Completion Bonds

before an applicant conducts any development activity or records a plat, the applicant shall:

- (i) complete any required public landscaping improvements or infrastructure improvements; or
- (ii) post an improvement completion assurance for any required public landscaping improvements or infrastructure improvements.

Utah Code §§ 10-20-807(3)(a), 17-79-707(3)(a)

Improvement Completion Bonds

Guarantees that unbuilt public infrastructure can be fully constructed if the developer defaults

“Improvement completion assurance” means a surety bond, letter of credit, financial institution bond, cash, assignment of rights, lien, or other equivalent **security required by a municipality to guaranty the proper completion of landscaping or an infrastructure improvement** required as a condition precedent to: (a) recording a subdivision plat; or (b) development of a commercial, industrial, mixed use, or multifamily project.

Utah Code §§10-20-102(33), 17-79-102(35)

What is “Development Activity”?

- (a) any construction or expansion of a building, structure, or use that creates additional demand and need for public facilities;
- (b) any change in use of a building or structure that creates additional demand and need for public facilities; or
- (c) any change in the use of land that creates additional demand and need for public facilities.

Utah Code Sections 10-20-102(17), 17-79-102(19)





Real World Situation for Discussion:

ULUI City insists that the developer post a bond before the pre-con meeting is held “because they’re about to start development activity”.

Is this allowed? Why or why not?

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Real World Situation for Discussion:

A developer wants to post multiple bonds rather than a single large bond (e.g. a separate bond for slurry seal or sidewalks).

What is allowed?

Improvement Completion Bonds



TWO acceptable forms of completion assurance. Cash, letter of credit, surety bond, financial institution bond.

If cash, must place in interest-bearing account.

Reasonable actual cost to complete + 10% admin cap.

Land use authority must inspect and decide within 15 days of receiving a written request (*Exceptions: extensions for adverse weather, extraordinary circumstances (30 days), and if three prior rejections (15 days)*)

90% Release (within 15 days)

Local governments must return 90% of the completion assurance within 15 days after work meets standards and as-built drawings are submitted.



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Real World Situation for Discussion:

A development agreement allows a developer to post a different kind of bond than is authorized by the government entity's code.

What should happen?



Real World Situation for Discussion:

A developer has not completed required improvements, but the remaining bond is insufficient to complete the remaining improvements.

What should be done?

Improvement Warranty Bonds

Guarantees the quality, materials, and workmanship of built infrastructure for a set duration after acceptance.

"Improvement warranty" means an applicant's **unconditional warranty** that the applicant's installed and accepted landscaping or infrastructure improvement:

- (a) **complies with the municipality's written standards** for design, materials, and workmanship; and
- (b) will not fail in any material respect, as a result of **poor workmanship or materials**, within the improvement warranty period.

Utah Code §§10-20-102(34), 17-79-201(36)

Improvement Warranty Bonds

LIMITS

Strictly capped at 10% of the total cost

Remaining 10% release

Within 15 days after the warranty period expires.

1-Year Statutory Warranty Cap

Statutory improvement warranties are strictly capped at one year post-acceptance. Exception allowed for evidence of poor performance or unmitigated suspect soils.

18 Months Sidewalks

Public sidewalk completion assurances cannot be redeemed sooner than 18 months after posting.



Real World Situation for Discussion:

Improvements were accepted and the warranty period has commenced, but a defect that occurred during the performance period is discovered during the warranty period.

What should happen?



Real World Situation for Discussion:

A bonded improvement failed during the warranty period, but the developer was not informed until after the warranty period expired.

What should happen?

Deficiency Notices & Developer Reimbursement Penalties

15

DAYS NOTICE WINDOW

If work fails to meet adopted standards, the local authority must provide a comprehensive, specific list of reasons within 15 days.

5

DAYS CURE DEMAND

If the detailed list is not provided, the developer may submit a written notice demanding the list within a 5-day cure period.

20%

MANDATORY DEFAULT PENALTY

Failure by the local authority to produce the list within those 5 days triggers a mandatory default penalty.

The local government shall provide a reimbursement equal to 20% of the completion assurance or warranty security for that specific category.

The Carve-Outs: What CANNOT Be Bonded

Statutory Carve-Outs (No Bond Allowed)



1. Previously Accepted Work

Cannot bond for public landscaping or infrastructure already inspected and accepted.



2. Private Landscaping Plans

Cannot require a completion bond for landscaping on private residential lots.



3. Private Infrastructure

Non-essential private roads/infrastructure not required for safety codes.



4. "At-Risk" Work

Improvements the developer elects to install at their own risk prior to plat recordation.

§ 10-20-807(3)(d) & (4)(c) / § 17-79-707(3)(d) & (4)(c)

The Landscape Exception: Bonding Private Amenities



The General Rule

Normally, performance bonds only ensure the completion of improvements dedicated to the public.

The Exception

Yes, conditionally. A municipality may require a bond for private landscaped amenities ONLY as a condition for increased density or entitlement benefits not currently available in the zone. This must be memorialized in a formal development agreement.



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Real World Situation for Discussion:

Cindy Councilmember wants to ensure that all of the homes in the new Swanky Acres subdivision have yards put in right away so it looks swanky from day one. She approaches city staff with a great idea - have the developer bond for all of the front yard landscaping so the city can install the yards if the developer or homeowner doesn't. Will Cindy's bright idea bear fruit?

If Swanky Acres received bonus density through a development agreement, would it change your mind?



Real World Situation for Discussion:

Ernie Engineer has noticed that the last few summers have been really hot and dry. Irrigation companies have cut back the length of irrigation season, which makes it hard to get new trees established. In addition, Ernie's cousin, Garrett Greenthumb, who owns the local nursery, tells Ernie that his supplier has passed along a rumor that tree costs will go up next year if transportation costs continue to climb.

Ernie decides that "just in case", he should triple the cost for street trees in the bond, in case the city has to replace dead trees more than once. Is Ernie on the right track?

The Mandatory Release Valve



If an improvement completion assurance is used, the land authority must establish a system for the partial release of those funds.

Holding an entire multi-million dollar bond ransom until the final lightbulb is installed violates the spirit and letter of the statute. Funds must be released as portions of the improvements are completed and accepted.

Protected Developer Rights

- ✓ Right to dictate the timeline (build first vs. bond first).
- ✓ Right to choose from at least two forms of assurance.
- ✓ Right to partial releases as work progresses.
- ✓ Right to statutory caps (110% Completion / 10% Warranty).
- ✓ Protection from bonding private residential landscaping.

Lawful City/County Obligations

- ✓ Right to demand 10% maximum warranty bonds for 1 year.
- ✓ Right to demand bonds for private amenities IF tied to density bonuses.
- ✓ Right to withhold permits if essential safety infrastructure is incomplete.
- ✓ Obligation to respond to inspection/release requests within 15 days.



Real World Situation for Discussion:

David Developer has installed all the utilities and sidewalks and paved the roads in his new subdivision, and now would like to have his bond released and transition to the warranty period. When Inspector Ian comes to the subdivision at David's request, he notices that in front of two of the lots, the homebuilder has cracked the sidewalk with his excavation equipment as he's working on the basements. Under state code, which of the following options should Inspector Ian choose?

- A. Release the entire improvement assurance bond if the homebuilder pinky promises to fix the sidewalk later.
- B. Tell David Developer that he cannot have any portion of the bond released until vertical construction in the subdivision is complete, because future homebuilders will probably crack sidewalks also.
- C. Provide David with a partial release for the items that have been completed and that passed inspection, and move those items into warranty. Keep the sidewalk portion of the completion bond for the damaged lots intact.
- D. Put a "stop work" order on all of the lots until the homebuilder finds a way to build homes without using heavy equipment.



Real World Situation for Discussion:

City maintenance (e.g. snow plowing) causes damage to infrastructure during the warranty period.

What should happen?



Real World Situation for Discussion:

A party involved in a dispute with a developer who posted a bond is asking the government to release the bond to them rather than the developer.

What should be done?

One City Attorney's Perspective on Best Practices

01

**Communication is
key**



02

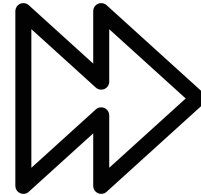
**Cooperation as much
as possible**

(focus on shared goals)



03

Proactivity



A Possible Framework for Resolving Issues

01

1. Identify applicable agreements

- Bond agreement
- Is there a development agreement?



02

2. Review language of applicable agreements

Examine specific terms, conditions, and binding provisions set forth in all identified contracts.



03

3. Determine if the government can legally do what is being requested or if the government can legally do what it is proposing to do

- Local government code
- State law
- Other applicable law



The Financial Lifecycle: Partial & Final Releases

