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5 Strike everything after the enacting clause and insert the
6 following:

7 "NEW SECTION. Sec. 1. DEFINITIONS. Unless the context requires
8 otherwise, the definitions in this section apply throughout this
9 chapter.

10 (1) "Construction agent" means any registered or licensed
11 contractor, registered or licensed subcontractor, architect, engineer,
12 or other person having charge of any improvement to real property, who
13 shall be deemed the agent of the owner for the limited purpose of
14 establishing the lien created by this chapter.

15 (2) "Contract price" means the amount agreed upon by the
16 contracting parties, or if no amount is agreed upon, then the customary
17 and reasonable charge therefor.

18 (3) "Draws" means periodic disbursements of interim or construction
19 financing by a lender.

20 (4) "Furnishing labor, professional services, materials, or
21 equipment" means the performance of any labor or professional services,
22 the contribution owed to any employee benefit plan on account of any
23 labor, the provision of any supplies or materials, and the renting,
24 leasing, or otherwise supplying of equipment for the improvement of
25 real property.

26 (5) "Improvement" means: (a) Constructing, altering, repairing,
27 remodeling, demolishing, clearing, grading, or filling in, of, to, or
28 upon any real property or street or road in front of or adjoining the

1 same; (b) planting of trees, vines, shrubs, plants, hedges, or lawns,
2 or providing other landscaping materials on any real property; and (c)
3 providing professional services upon real property or in preparation
4 for or in conjunction with the intended activities in (a) or (b) of
5 this subsection.

6 (6) "Interim or construction financing" means that portion of money
7 secured by a mortgage, deed of trust, or other encumbrance to finance
8 improvement of, or to real property, but does not include:

9 (a) Funds to acquire real property;

10 (b) Funds to pay interest, insurance premiums, lease deposits,
11 taxes, assessments, or prior encumbrances;

12 (c) Funds to pay loan, commitment, title, legal, closing,
13 recording, or appraisal fees;

14 (d) Funds to pay other customary fees, which pursuant to agreement
15 with the owner or borrower are to be paid by the lender from time to
16 time;

17 (e) Funds to acquire personal property for which the potential lien
18 claimant may not claim a lien pursuant to this chapter.

19 (7) "Labor" means exertion of the powers of body or mind performed
20 at the site for compensation. "Labor" includes amounts due and owed to
21 any employee benefit plan on account of such labor performed.

22 (8) "Mortgagee" means a person who has a valid mortgage of record
23 or deed of trust of record securing a loan.

24 (9) "Owner" means the record holder of any legal or beneficial
25 title to the real property to be improved or developed.

26 (10) "Owner-occupied" means a single-family residence occupied by
27 the owner as his or her principal residence.

28 (11) "Payment bond" means a surety bond issued by a surety licensed
29 to issue surety bonds in the state of Washington that confers upon
30 potential claimants the rights of third party beneficiaries.

1 (12) "Potential lien claimant" means any person or entity entitled
2 to assert lien rights under this chapter who has otherwise complied
3 with the provisions of this chapter and is registered or licensed if
4 required to be licensed or registered by the provisions of the laws of
5 the state of Washington.

6 (13) "Prime contractor" includes all contractors, general
7 contractors, and specialty contractors, as defined by chapter 18.27 or
8 19.28 RCW, or who are otherwise required to be registered or licensed
9 by law, who contract directly with a property owner or their common law
10 agent to assume primary responsibility for the creation of an
11 improvement to real property, and includes property owners or their
12 common law agents who are contractors, general contractors, or
13 specialty contractors as defined in chapter 18.27 or 19.28 RCW, or who
14 are otherwise required to be registered or licensed by law, who offer
15 to sell their property without occupying or using the structures,
16 projects, developments, or improvements for more than one year.

17 (14) "Professional services" means surveying, establishing or
18 marking the boundaries of, preparing maps, plans, or specifications
19 for, or inspecting, testing, or otherwise performing any other
20 architectural or engineering services for the improvement of real
21 property.

22 (15) "Real property lender" means a bank, savings bank, savings and
23 loan association, credit union, mortgage company, or other corporation,
24 association, partnership, trust, or individual that makes loans secured
25 by real property located in the state of Washington.

26 (16) "Site" means the real property which is or is to be improved.

27 (17) "Subcontractor" means a general contractor or specialty
28 contractor as defined by chapter 18.27 or 19.28 RCW, or who is
29 otherwise required to be registered or licensed by law, who contracts

1 for the improvement of real property with someone other than the owner
2 of the property or their common law agent."

3 "NEW SECTION. **Sec. 2.** LIEN AUTHORIZED. Except as provided in
4 section 3 of this act, any person furnishing labor, professional
5 services, materials, or equipment for the improvement of real property
6 shall have a lien upon the improvement for the contract price of labor,
7 professional services, materials, or equipment furnished at the
8 instance of the owner, or the agent or construction agent of the
9 owner."

10 "NEW SECTION. **Sec. 3.** NOTICES--EXCEPTIONS. (1) Except as
11 otherwise provided in this section, every person furnishing
12 professional services, materials, or equipment for the improvement of
13 real property shall give the owner or reputed owner notice in writing
14 of the right to claim a lien. If the prime contractor is in compliance
15 with the requirements of RCW 19.27.095, 60.04.230, and section 24 of
16 this act, this notice shall be given to the prime contractor unless the
17 potential lien claimant has contracted directly with the prime
18 contractor. The notice may be given at any time but only protects the
19 right to claim a lien for professional services, materials, or
20 equipment supplied after the date which is sixty days before:

21 (a) Mailing the notice by certified or registered mail to the owner
22 or reputed owner; or

23 (b) Serving the notice personally upon the owner or reputed owner
24 and obtaining evidence of service in the form of a receipt or other
25 acknowledgement signed by the owner or reputed owner.

26 In the case of new construction of a single-family residence, the
27 notice of a right to claim a lien may be given at any time but only
28 protects the right to claim a lien for professional services,

1 materials, or equipment supplied after a date which is ten days before
2 the notice is mailed or served as described in this subsection.

3 (2) Notices of a right to claim a lien shall not be required of:

4 (a) Persons who contract directly with the owner or the owner's
5 common law agent;

6 (b) Laborers whose claim of lien is based solely on performing
7 labor; or

8 (c) Subcontractors who contract for the improvement of real
9 property directly with the prime contractor.

10 (3) Persons who furnish professional services, materials, or
11 equipment in connection with the repair, alteration, or remodel of an
12 existing owner-occupied single-family residence or appurtenant garage:

13 (a) Who contract directly with the owner-occupier shall not be
14 required to send a written notice of the right to claim a lien and
15 shall have a lien for the full amount due under their contract, as
16 provided in section 2 of this act; or

17 (b) Who do not contract directly with the owner-occupier shall give
18 notice of the right to claim a lien to the owner-occupier. Lien claims
19 by persons who do not contract directly with the owner-occupier may
20 only be satisfied from amounts not yet paid to the prime contractor by
21 the owner at the time the notice described in this section is received,
22 regardless of whether amounts not yet paid to the prime contractor are
23 due.

24 (4) The notice described in subsection (1) of this section, shall
25 include but not be limited to the following information and shall
26 substantially be in the following form, using lower-case and upper-case
27 ten-point type where appropriate.

1 NOTICE TO OWNER

2 IMPORTANT: READ BOTH SIDES OF THIS NOTICE CAREFULLY.

3 PROTECT YOURSELF FROM PAYING TWICE

4 To:.....

5 Date:.....

6 From:.....

7 AT THE REQUEST OF: (Name of person placing the order)

8 THIS IS NOT A LIEN: This notice is sent to you to tell you who is
9 providing professional services, materials, or equipment for the
10 improvement of your property and to advise you of the rights of these
11 persons and your responsibilities. Also take note that laborers on
12 your project may claim a lien without sending you a notice.

13 OWNER/OCCUPIER OF EXISTING RESIDENTIAL PROPERTY

14 Under Washington law, those who work on or provide materials for the
15 repair, remodel, or alteration of your owner-occupied principal
16 residence and who are not paid, have a right to enforce their claim for
17 payment against your property. This claim is known as a construction
18 lien.

19 The law limits the amount that a lien claimant can claim against your
20 property. Claims may only be made against that portion of the contract
21 you have not yet paid to your prime contractor as of the time you
22 received this notice. Review the back of this notice for more
23 information and ways to avoid lien claims.

24 COMMERCIAL AND/OR NEW RESIDENTIAL PROPERTY

25 We have or will be providing labor, materials, professional services,
26 or equipment for the improvement of your commercial or new residential
27 project. In the event you or your contractor fail to pay us, we may
28 file a lien against your property. A lien may be claimed for all
29 materials, equipment, and professional services furnished after a date
30 that is sixty days before this notice was mailed to you, unless the
31 improvement to your property is the construction of a new single-family
32 residence, then ten days before this notice was mailed to you.

33 Sender:

34 Address:

35 Telephone:

36 Brief description of professional services, materials, or equipment
37 provided or to be provided:

38 IMPORTANT INFORMATION ON REVERSE SIDE

39 IMPORTANT INFORMATION FOR YOUR PROTECTION

1 This notice is sent to inform you that we have or will provide
2 materials, professional services, or equipment for the repair, remodel,
3 or alteration of your property. We expect to be paid by the person who
4 ordered our services, but if we are not paid, we have the right to
5 enforce our claim by filing a construction lien against your property.

6 LEARN more about the lien laws and the meaning of this notice by
7 discussing with your contractor, suppliers, department of labor and
8 industries, the firm sending you this notice, your lender, or your
9 attorney.

10 COMMON METHODS TO AVOID CONSTRUCTION LIENS: There are several methods
11 available to protect your property from construction liens. The
12 following are two of the more commonly used methods.

13 DUAL PAYCHECKS (Joint Checks): When paying your contractor for
14 services or materials, you may make checks payable jointly to
15 the contractor and the firms furnishing you this notice.

16 LIEN RELEASES: You may require your contractor to provide lien
17 releases signed by all the suppliers and subcontractors from
18 whom you have received this notice. If they cannot obtain lien
19 releases because you have not paid them, you may use the dual
20 payee check method to protect yourself.

21 YOU SHOULD TAKE WHATEVER STEPS YOU BELIEVE NECESSARY TO PROTECT YOUR
22 PROPERTY FROM LIENS.

23 YOUR PRIME CONTRACTOR AND YOUR CONSTRUCTION LENDER ARE REQUIRED BY LAW
24 TO GIVE YOU WRITTEN INFORMATION ABOUT LIEN CLAIMS. IF YOU HAVE NOT
25 RECEIVED IT, ASK THEM FOR IT.

26 * * * * *

27 (5) Every potential lien claimant providing professional services
28 where no improvement as defined in section 1(5) (a) or (b) of this act
29 has been commenced, and the professional services provided are not
30 visible from an inspection of the real property shall record in the
31 real property records of the county where the property is located a
32 notice which shall contain the provider's name, address, telephone
33 number, legal description of the property, the owner or reputed owner's
34 name, and the general nature of the professional services provided. If
35 such notice is not recorded, the lien claimed shall be subordinate to
36 the interest of any subsequent mortgagee and invalid as to the interest
37 of any subsequent purchaser who acts in good faith and for a valuable
38 consideration acquires an interest in the property prior to the

1 commencement of an improvement as defined in section 1(5) (a) or (b) of
2 this act without notice of the professional services being provided.

3 (6) A lien authorized by this chapter shall not be enforced unless
4 the lien claimant has complied with the provisions of this section."

5 "NEW SECTION. **Sec. 4.** CONTRACTOR REGISTRATION. A contractor or
6 subcontractor required to be registered under chapter 18.27 RCW or
7 licensed under chapter 19.28 RCW, or otherwise required to be
8 registered or licensed by law, shall be deemed the construction agent
9 of the owner for the purposes of establishing the lien created by this
10 chapter only if so registered or licensed. Persons dealing with
11 contractors or subcontractors may rely, for the purposes of this
12 section, upon a certificate of registration issued pursuant to chapter
13 18.27 RCW or license issued pursuant to chapter 19.28 RCW, or other
14 certificate or license issued pursuant to law, covering the period when
15 the labor, professional services, material, or equipment shall be
16 furnished, and the lien rights shall not be lost by suspension or
17 revocation of registration or license without their knowledge. No lien
18 rights described in this section shall be lost or denied by virtue of
19 the absence, suspension, or revocation of such registration or license
20 with respect to any contractor or subcontractor not in immediate
21 contractual privity with the lien claimant."

22 "NEW SECTION. **Sec. 5.** PROPERTY SUBJECT TO LIEN. The lot, tract,
23 or parcel of land which is improved is subject to a lien to the extent
24 of the interest of the person for whom the labor, professional
25 services, equipment, or materials were furnished, as the court deems
26 appropriate for satisfaction of the lien. If, for any reason, the
27 title or interest in the land upon which the improvement is situated
28 cannot be subjected to the lien, the court in order to satisfy the lien

1 may order the sale and removal of the improvement which is subject to
2 the lien, from the land."

3 "NEW SECTION. **Sec. 6.** PRIORITY OF LIEN. The claim of lien
4 created by this chapter upon any lot or parcel of land shall be prior
5 to any lien, mortgage, deed of trust, or other encumbrance which
6 attached to the land after or was unrecorded at the time of
7 commencement of labor or professional services or first delivery of
8 materials or equipment by the lien claimant."

9 "NEW SECTION. **Sec. 7.** RELEASE OF LIEN RIGHTS. Upon payment and
10 acceptance of the amount due to the lien claimant and upon demand of
11 the owner or the person making payment, the lien claimant shall
12 immediately prepare and execute a release of all lien rights for which
13 payment has been made, and deliver the release to the person making
14 payment. In any suit to compel deliverance of the release thereafter
15 in which the court determines the delay was unjustified, the court
16 shall, in addition to ordering the deliverance of the release, award
17 the costs of the action including reasonable attorneys' fees and any
18 damages."

19 "NEW SECTION. **Sec. 8.** FRIVOLOUS CLAIM--PROCEDURE. (1) Any owner
20 of real property subject to a recorded notice of claim of lien under
21 this chapter, or the contractor or subcontractor who believes the claim
22 of lien to be frivolous and made without reasonable cause, or clearly
23 excessive may apply to the superior court for the county where the
24 property, or some part thereof is located, for an order directing the
25 lien claimant to appear before the court at a time no earlier than six
26 nor later than fifteen days following the date of service of the

1 application and order on the lien claimant, and show cause, if any he
2 or she has, why the lien claim should not be dismissed, with prejudice.

3 (2) The order shall clearly state that if the lien claimant fails
4 to appear at the time and place noted the lien claim shall be
5 dismissed, with prejudice and that the lien claimant shall be ordered
6 to pay the costs requested by the applicant including reasonable
7 attorneys' fees.

8 (3) If no action to foreclose the lien claim has been filed, the
9 clerk of the court shall assign a cause number to the application and
10 obtain from the applicant a filing fee of thirty-five dollars. If an
11 action has been filed to foreclose the lien claim, the application
12 shall be made a part of that action.

13 (4) If, following a full hearing on the matter, the court
14 determines that the lien claim is frivolous and made without reasonable
15 cause, or clearly excessive, the court shall issue an order dismissing
16 the lien claim if frivolous or reducing the claim if clearly excessive,
17 and awarding costs and reasonable attorneys' fees to the applicant to
18 be paid by the lien claimant. If the court determines that the claim
19 of lien is not frivolous and made with reasonable cause, and is not
20 clearly excessive, the court shall issue and order so stating and
21 awarding costs and reasonable attorneys' fees to the lien claimant to
22 be paid by the applicant.

23 (5) Proceedings under this section shall not affect other rights
24 and remedies available to the parties under this chapter or otherwise."

25 "NEW SECTION. Sec. 9. RECORDING--TIME--CONTENTS OF LIEN. Every
26 person claiming a lien under section 2 of this act shall record, in the
27 county where the subject property is located, a notice of claim of lien
28 not later than ninety days after the person has ceased to furnish
29 labor, professional services, materials, or equipment or the last date

1 on which employee benefit contributions were due. The notice of claim
2 of lien:

3 (1) Shall state in substance and effect:

4 (a) The name, phone number, and address of the claimant;

5 (b) The first and last date on which the labor, professional
6 services, materials, or equipment was furnished or employee benefit
7 contributions were due;

8 (c) The name of the person indebted to the claimant;

9 (d) The street address, legal description, or other description
10 reasonably calculated to identify, for a person familiar with the area,
11 the location of the real property to be charged with the lien;

12 (e) The name of the owner or reputed owner of the property, if
13 known, and, if not known, that fact shall be stated; and

14 (f) The principal amount for which the lien is claimed.

15 (2) Shall be signed by the claimant or some person authorized to
16 act on his or her behalf who shall affirmatively state they have read
17 the notice of claim of lien and believe the notice of claim of lien to
18 be true and correct under penalty of perjury, and shall be acknowledged
19 pursuant to chapter 64.08 RCW. If the claim has been assigned, the
20 name of the assignee shall be stated. Where an action to foreclose the
21 lien has been commenced such notice of claim of lien may be amended as
22 pleadings may be by order of the court insofar as the interests of
23 third parties are not adversely affected by such amendment. A claim of
24 lien substantially in the following form shall be sufficient:

25 , claimant, vs .. , owner or reputed owner

26 Notice is hereby given that on the day of (date of
27 commencement of furnishing labor, professional services, materials,
28 or equipment and the last date contributions to any type of
29 employee benefit plan became due), at the request of
30, commenced to (perform labor, furnish
31 professional services, materials, or equipment) upon
32 (here describe property subject to the lien) of which property the

1 owner, or reputed owner, is (or if the owner or reputed
2 owner is not known, insert the word "unknown"), the (furnishing of
3 labor, professional services, materials, or equipment) ceased on
4 the day of; that said (labor, professional
5 services, material, or equipment) was of the value of
6 dollars, for which the undersigned claims a lien upon the property
7 herein described for the sum of dollars. (In case the
8 claim has been assigned, add the words "and is assignee
9 of said claim", or claims, if several are united.)

10 , Claimant.

11

12

13 (Phone number, address,
14 city,
15 and state of claimant)

16 STATE OF WASHINGTON, COUNTY OF

17,ss.

18, being sworn, says: I am the claimant (or attorney of
19 the claimant, or administrator, representative, or agent of the
20 trustees of an employee benefit plan) above named; I have read or
21 heard the foregoing claim, read and know the contents thereof, and
22 believe the same to be true and correct under penalty of perjury.

23

24 Subscribed and sworn to before me this day of

25

26 The period provided for recording the notice is a period of
27 limitation and no action to foreclose a claim of lien shall be
28 maintained unless the notice is recorded within the ninety-day period
29 stated. The lien claimant shall give notice of the claim of lien to
30 the owner or reputed owner by certified or registered mail or by
31 personal service within fourteen days of the time the claim is
32 recorded. Failure to do so results in a forfeiture of any right the
33 claimant may have to attorneys' fees and costs against the owner under
34 section 18 of this act."

35 "NEW SECTION. Sec. 10. SEPARATE RESIDENTIAL UNITS--TIME FOR
36 FILING. When furnishing labor, professional services, materials, or

1 equipment for the construction of two or more separate residential
2 units, the time for filing claims of lien against each separate
3 residential unit shall commence to run upon the cessation of the
4 furnishing of labor, professional services, materials, or equipment on
5 each residential unit, as provided in this chapter. For the purposes
6 of this section a separate residential unit is defined as consisting of
7 one residential structure together with any garages or other
8 outbuildings appurtenant thereto."

9 "NEW SECTION. **Sec. 11.** RECORDING--FEES. The county auditor
10 shall record the notice of claim of lien in the same manner as deeds
11 and other instruments of title are recorded under chapter 65.08 RCW.
12 Notices of claim of lien for registered land need not be recorded in
13 the Torrens register. The county auditor shall charge no higher fee
14 for recording notices of claim of lien than other documents."

15 "NEW SECTION. **Sec. 12.** LIEN--ASSIGNMENT. Any lien or right of
16 lien created by this chapter and the right of action to recover
17 therefor, shall be assignable so as to vest in the assignee all rights
18 and remedies of the assignor, subject to all defenses thereto that
19 might be made."

20 "NEW SECTION. **Sec. 13.** CLAIMS--DESIGNATION OF AMOUNT DUE. In
21 every case in which the notice of claim of lien is recorded against two
22 or more separate pieces of property owned by the same person or owned
23 by two or more persons jointly or otherwise, who contracted for the
24 labor, professional services, material, or equipment for which the
25 notice of claim of lien is recorded, the person recording the notice of
26 claim of lien shall designate in the notice of claim of lien the amount
27 due on each piece of property, otherwise the lien is subordinated to

1 other liens that may be established under this chapter. The lien of
2 such claim does not extend beyond the amount designated as against
3 other creditors having liens upon any of such pieces of property."

4 "NEW SECTION. **Sec. 14.** LIEN--DURATION--PROCEDURAL LIMITATIONS.

5 No lien created by this chapter binds the property subject to the lien
6 for a longer period than eight calendar months after the notice of
7 claim of lien has been recorded unless an action is filed by the lien
8 claimant within that time in the superior court in the county where the
9 subject property is located to enforce the lien, and service is made
10 upon the owner of the subject property within ninety days of the date
11 of filing the action; or, if credit is given and the terms thereof are
12 stated in the notice of claim of lien, then eight calendar months after
13 the expiration of such credit; and in case the action is not prosecuted
14 to judgment within two years after the commencement thereof, the court,
15 in its discretion, may dismiss the action for want of prosecution, and
16 the dismissal of the action or a judgment rendered thereon that no lien
17 exists shall constitute a cancellation of the lien. This is a period
18 of limitation, which shall be tolled by the filing of any petition
19 seeking protection under Title Eleven, United States Code by an owner
20 of any property subject to the lien established by this chapter."

21 "NEW SECTION. **Sec. 15.** RIGHTS OF OWNER--RECOVERY OPTIONS. The

22 lien claimant shall be entitled to recover upon the claim recorded the
23 contract price after deducting all claims of other lien claimants to
24 whom the claimant is liable, for furnishing labor, professional
25 services, materials, or equipment; and in all cases where a notice of
26 claim of lien shall be recorded under this chapter for labor,
27 professional services, materials, or equipment supplied to any lien
28 claimant, he or she shall defend any action brought thereupon at his or

1 her own expense; and during the pendency of the action, the owner may
2 withhold from the prime contractor the amount of money for which a
3 claim is recorded by any subcontractor, supplier, or laborer; and in
4 case of judgment against the owner or the owner's property, upon the
5 lien, the owner shall be entitled to deduct the principal amount of the
6 judgment from any amount due or to become due from him or her to the
7 lien claimant plus such costs, including interest and attorneys' fees,
8 as the court deems just and equitable, and he or she shall be entitled
9 to recover back from the lien claimant the amount for which the lien is
10 established in excess of any sum that may remain due from him or her to
11 the lien claimant."

12 "NEW SECTION. **Sec. 16.** BOND IN LIEU OF CLAIM. Any owner of real
13 property subject to a recorded notice of claim of lien under this
14 chapter, or the contractor or subcontractor who disputes the
15 correctness or validity of the notice of claim of lien may record,
16 either before or after the commencement of an action to enforce the
17 lien, in the office of the county recorder or auditor in the county
18 where the notice of claim of lien was recorded, a bond issued by a
19 surety company authorized to issue surety bonds in the state. The
20 surety shall be listed in the latest federal department of the treasury
21 list of surety companies acceptable on federal bonds, published in the
22 Federal Register, as authorized to issue bonds on United States
23 government projects with an underwriting limitation, including
24 applicable reinsurance, equal to or greater than the amount of the bond
25 to be recorded. The bond shall contain a description of the notice of
26 claim of lien and real property involved, and be in an amount equal to
27 the greater of five thousand dollars or two times the amount of the
28 lien claimed if it is ten thousand dollars or less, and in an amount
29 equal to or greater than one and one-half times the amount of the lien

1 if it is in excess of ten thousand dollars. If the notice of claim of
2 lien affects more than one parcel of real property and is segregated to
3 each parcel, the bond may be segregated the same as in the notice of
4 claim of lien. A separate bond shall be required for each notice of
5 claim of lien made by separate claimants. However, a single bond may
6 be used to guarantee payment of amounts claimed by more than one lien
7 claim by a single claimant so long as the amount of the bond meets the
8 requirements of this section as applied to the aggregate sum of all
9 claims by such claimant. The condition of the bond shall be to
10 guarantee payment of any judgment upon the lien in favor of the lien
11 claimant entered in any action to recover the amount claimed in a
12 notice of claim of lien, or on the claim asserted in the notice of
13 claim of lien. The effect of recording a bond shall be to release the
14 real property described in the notice of claim of lien from the lien
15 and any action brought to recover the amount claimed. Unless otherwise
16 prohibited by law, if no action is commenced to recover on a lien
17 within the time specified in section 14 of this act, the surety shall
18 be discharged from liability under the bond. If an action is timely
19 commenced, then on payment of any judgment entered in the action or on
20 payment of the full amount of the bond to the holder of the judgment,
21 whichever is less, the surety shall be discharged from liability under
22 the bond.

23 Nothing in this section shall in any way prohibit or limit the use
24 of other methods, devised by the affected parties to secure the
25 obligation underlying a claim of lien and to obtain a release of real
26 property from a claim of lien."

27 "NEW SECTION. **Sec. 17.** FORECLOSURE--PARTIES. The lien provided
28 by this chapter, for which claims of lien have been recorded, may be
29 foreclosed and enforced by a civil action in the court having

1 jurisdiction in the manner prescribed for the judicial foreclosure of
2 a mortgage. The court shall have the power to order the sale of the
3 property. In any action brought to foreclose a lien, the owner shall
4 be joined as a party. The lien claims of all persons who, prior to the
5 commencement of the action, have legally recorded claims of lien
6 against the same property, or any part thereof, shall not be foreclosed
7 or affected unless they are joined as a party.

8 A person shall not begin an action to foreclose a lien upon any
9 property while a prior action begun to foreclose another lien on the
10 same property is pending, but if not made a party plaintiff or
11 defendant to the prior action, he or she may apply to the court to be
12 joined as a party thereto, and his or her lien may be foreclosed in the
13 same action. The filing of such application shall toll the running of
14 the period of limitation established by section 14 of this act until
15 disposition of the application or other time set by the court. The
16 court shall grant the application for joinder unless to do so would
17 create an undue delay or cause hardship which cannot be cured by the
18 imposition of costs or other conditions as the court deems just. If a
19 lien foreclosure action is filed during the pendency of another such
20 action, the court may, on its own motion or the motion of any party,
21 consolidate actions upon such terms and conditions as the court deems
22 just, unless to do so would create an undue delay or cause hardship
23 which cannot be cured by the imposition of costs or other conditions.
24 If consolidation of actions is not permissible under this section, the
25 lien foreclosure action filed during the pendency of another such
26 action shall not be dismissed if the filing was the result of mistake,
27 inadvertence, surprise, excusable neglect, or irregularity. An action
28 to foreclose a lien shall not be dismissed at the instance of a
29 plaintiff therein to the prejudice of another party to the suit who
30 claims a lien."

1 "NEW SECTION. Sec. 18. RANK OF LIEN--APPLICATION OF PROCEEDS--
2 ATTORNEYS' FEES. (1) In every case in which different construction
3 liens are claimed against the same property, the court shall declare
4 the rank of such lien or class of liens, which liens shall be in the
5 following order:

6 (a) Liens for the performance of labor;

7 (b) Liens for contributions owed to employee benefit plans;

8 (c) Liens for furnishing material, supplies, or equipment;

9 (d) Liens for subcontractors, including but not limited to their
10 labor and materials; and

11 (e) Liens for prime contractors, or for professional services.

12 (2) The proceeds of the sale of property must be applied to each
13 lien or class of liens in order of its rank and, in an action brought
14 to foreclose a lien, pro rata among each claimant in each separate
15 priority class. A personal judgment may be rendered against any party
16 personally liable for any debt for which the lien is claimed. If the
17 lien is established, the judgment shall provide for the enforcement
18 thereof upon the property liable as in the case of foreclosure of
19 judgment liens. The amount realized by such enforcement of the lien
20 shall be credited upon the proper personal judgment. The deficiency,
21 if any, remaining unsatisfied, shall stand as a personal judgment, and
22 may be collected by execution against any party liable therefor.

23 (3) The court may allow the prevailing party in the action, whether
24 plaintiff or defendant, as part of the costs of the action, the moneys
25 paid for recording the notice of claim of lien, costs of title report,
26 bond costs, and attorneys' fees and necessary expenses incurred by the
27 attorney in the superior court, court of appeals, supreme court, or
28 arbitration, as the court or arbitrator deems reasonable. Such costs
29 shall have the priority of the class of lien to which they are related,
30 as established by subsection (1) of this section.

1 (4) Real property against which a lien under this chapter is
2 enforced may be ordered sold by the court and the proceeds deposited
3 into the registry of the clerk of the court, pending further
4 determination respecting distribution of the proceeds of the sale."

5 "NEW SECTION. Sec. 19. EFFECT OF NOTE--PERSONAL ACTION PRESERVED.
6 The taking of a promissory note or other evidence of indebtedness for
7 any labor, professional services, material, or equipment furnished for
8 which a lien is created by this chapter does not discharge the lien
9 therefor, unless expressly received as payment and so specified
10 therein.

11 Nothing in this chapter shall be construed to impair or affect the
12 right of any person to whom any debt may be due for the furnishing of
13 labor, professional services, material, or equipment to maintain a
14 personal action to recover the debt against any person liable
15 therefor."

16 "NEW SECTION. Sec. 20. MATERIAL EXEMPT FROM PROCESS--EXCEPTION.
17 Whenever material is furnished for use in the improvement of property
18 subject to a lien created by this chapter, the material is not subject
19 to attachment, execution, or other legal process to enforce any debt
20 due by the purchaser of the material, except a debt due for the
21 purchase money thereof, so long as in good faith, the material is about
22 to be applied in the improvement of such property."

23 "NEW SECTION. Sec. 21. LIEN--EFFECT ON COMMUNITY INTEREST. The
24 claim of lien, when filed as required by this chapter, shall be notice
25 to the husband or wife of the person who appears of record to be the
26 owner of the property sought to be charged with the lien, and shall

1 subject all the community interest of both husband and wife to the
2 lien."

3 "NEW SECTION. **Sec. 22.** NOTICE TO LENDER--WITHHOLDING OF FUNDS.

4 Any lender providing interim or construction financing where there is
5 not a payment bond of at least fifty percent of the amount of
6 construction financing shall observe the following procedures and the
7 rights and liabilities of the lender and potential lien claimant shall
8 be affected as follows:

9 (1) Any potential lien claimant who has not received a payment
10 within five days after the date required by their contract, invoice,
11 employee benefit plan agreement, or purchase order may within thirty-
12 five days of the date required for payment of the contract, invoice,
13 employee benefit plan agreement, or purchase order, file a notice as
14 provided in subsections (2) and (3) of this section of the sums due and
15 to become due, for which a potential lien claimant may claim a lien
16 under this chapter.

17 (2) The notice shall be signed by the potential lien claimant or
18 some person authorized to act on his or her behalf who shall
19 affirmatively state under penalty of perjury, they have read the notice
20 and believe it to be true and correct.

21 (3) The notice shall be filed in writing with the lender at the
22 office administering the interim or construction financing, with a copy
23 furnished to the owner and appropriate prime contractor. The notice
24 shall state in substance and effect as follows:

25 (a) The person, firm, trustee, or corporation filing the notice is
26 entitled to receive contributions to any type of employee benefit plan
27 or has furnished labor, professional services, materials, or equipment
28 for which a right of lien is given by this chapter.

29 (b) The name of the prime contractor,

1 common law agent, or construction agent ordering the same.

2 (c) A common or street address of the real property being improved
3 or the legal description of the real property.

4 (d) The name, business address, and telephone number of the lien
5 claimant.

6 The notice to the lender may contain additional information but
7 shall be in substantially the following form:

8 NOTICE TO REAL PROPERTY LENDER
9 (Authorized by RCW

10 TO:
11 (Name of Lender)
12
13 (Administrative Office-Street Address)
14
15 (City) (State) (Zip)

16 AND TO:
17 (Owner)

18 AND TO:
19 (Prime Contractor-If Different Than Owner)
20
21 (Name of Laborer, Professional, Materials, or

22 Equipment Supplier)
23 whose business address is, did at the
24 property located at
25 (Check appropriate box) () perform labor () furnish professional
26 services () provide materials () supply equipment as follows:
27
28
29

30 which was ordered by,
31 (Name of Person)
32 whose address was stated to be
33

34 The amount owing to the undersigned according to contract or
35 purchase order for labor, supplies, or equipment (as above
36 mentioned) is the sum of Dollars
37 (\$). Said sums became due and owing as of
38
39 (State Date)
40

41 You are hereby required to withhold from any future draws on
42 existing construction financing which has been made on the subject
43 property (to the extent there remain undisbursed funds) the sum of
44 Dollars
45 (\$).

46 IMPORTANT

1 Failure to comply with the requirements of this notice may subject the
2 lender to a whole or partial compromise of any priority lien interest
3 it may have pursuant to section 23 of this act.

4 DATE:

5 By:
6 Its:

7 (4) After the receipt of the notice, the lender shall withhold from
8 the next and subsequent draws the amount claimed to be due as stated in
9 the notice. Alternatively, the lender may obtain from the prime
10 contractor or borrower a payment bond for the benefit of the potential
11 lien claimant in an amount sufficient to cover the amount stated in the
12 potential lien claimant's notice. The lender shall be obligated to
13 withhold amounts only to the extent that sufficient interim or
14 construction financing funds remain undisbursed as of the date the
15 lender receives the notice.

16 (5) Sums so withheld shall not be disbursed by the lender, except
17 by the written agreement of the potential lien claimant, owner, and
18 prime contractor in such form as may be prescribed by the lender, or
19 the order of a court of competent jurisdiction.

20 (6) In the event a lender fails to abide by the provisions of
21 subsections (4) and (5) of this section, then the mortgage, deed of
22 trust, or other encumbrance securing the lender will be subordinated to
23 the lien of the potential lien claimant to the extent of the interim or
24 construction financing wrongfully disbursed, but in no event more than
25 the amount stated in the notice plus costs as fixed by the court,
26 including reasonable attorneys' fees.

27 (7) Any potential lien claimant shall be liable for any loss, cost,
28 or expense, including reasonable attorneys' fees and statutory costs,
29 to a party injured thereby arising out of any unjust, excessive, or
30 premature notice filed under purported authority of this section.
31 "Notice" as used in this subsection does not include notice given by a

1 potential lien claimant of the right to claim liens under this chapter
2 where no actual claim is made.

3 (8)(a) Any owner of real property subject to a notice to real
4 property lender under this section, or the contractor or subcontractor
5 who believes the claim that underlies the notice is frivolous and made
6 without reasonable cause, or clearly excessive may apply to the
7 superior court for the county where the property, or some part thereof
8 is located, for an order commanding the potential lien claimant who
9 issued the notice to the real property lender to appear before the
10 court at a time no earlier than six nor later than fifteen days from
11 the date of service of the application and order on the potential lien
12 claimant, and show cause, if any he or she has, why the notice to real
13 property lender should not be declared void.

14 (b) The order shall clearly state that if the potential lien
15 claimant fails to appear at the time and place noted, the notice to
16 lender shall be declared void and that the potential lien claimant
17 issuing the notice shall be ordered to pay the costs requested by the
18 applicant including reasonable attorneys' fees.

19 (c) The clerk of the court shall assign a cause number to the
20 application and obtain from the applicant a filing fee of thirty-five
21 dollars.

22 (d) If, following a full hearing on the matter, the court
23 determines that the claim upon which the notice to real property lender
24 is based is frivolous and made without reasonable cause, or clearly
25 excessive, the court shall issue an order declaring the notice to real
26 property lender void if frivolous, or reducing the amount stated in the
27 notice if clearly excessive, and awarding costs and reasonable
28 attorneys' fees to the applicant to be paid by the person who issued
29 the notice. If the court determines that the claim underlying the
30 notice to real property lender is not frivolous and made with

1 reasonable cause, and is not clearly excessive, the court shall issue
2 an order so stating and awarding costs and reasonable attorneys' fees
3 to the issuer of the notice to be paid by the applicant.

4 (e) Proceedings under this subsection shall not affect other rights
5 and remedies available to the parties under this chapter or otherwise."

6 "NEW SECTION. **Sec. 23.** FINANCIAL ENCUMBRANCES--PRIORITIES.

7 Except as otherwise provided in section 6 or 22 of this act, any
8 mortgage or deed of trust shall be prior to all liens, mortgages, deeds
9 of trust, and other encumbrances which have not been recorded prior to
10 the recording of the mortgage or deed of trust to the extent of all
11 sums secured by the mortgage or deed of trust regardless of when the
12 same are disbursed or whether the disbursements are obligatory."

13 "NEW SECTION. **Sec. 24.** AVAILABILITY OF INFORMATION. The prime

14 contractor shall immediately supply the information listed in RCW
15 19.27.095(2) to any person who has contracted to supply materials,
16 equipment, or professional services or who is a subcontractor on the
17 improvement, as soon as the identity and mailing address of such
18 subcontractor, supplier, or professional is made known to the prime
19 contractor either directly or through another subcontractor, supplier,
20 or professional."

21 "NEW SECTION. **Sec. 25.** LIBERAL CONSTRUCTION. RCW 19.27.095,

22 60.04.230, and sections 1 through 24 of this act are to be liberally
23 construed to provide security for all parties intended to be protected
24 by their provisions."

1 "NEW SECTION. Sec. 26. CAPTIONS--NOT PART OF LAW. "Section
2 headings as used in sections 1 through 26 of this act do not constitute
3 any part of the law."

4 "**Sec. 27.** RCW 19.27.095 and 1987 c 104 s 1 are each amended to
5 read as follows:

6 (1) A valid and fully complete building permit application for a
7 structure, that is permitted under the zoning or other land use control
8 ordinances in effect on the date of the application shall be considered
9 under the building permit ordinance in effect at the time of
10 application, and the zoning or other land use control ordinances in
11 effect on the date of application.

12 (2) The requirements for a fully completed application shall be
13 defined by local ordinance but for any construction project costing
14 more than five thousand dollars the application shall include, at a
15 minimum:

16 (a) The legal description, or the tax parcel number assigned
17 pursuant to RCW 84.40.160, and the street address if available, and may
18 include any other identification of the construction site by the prime
19 contractor;

20 (b) The property owner's name, address, and phone number;

21 (c) The prime contractor's business name, address, phone number,
22 current state contractor registration number; and

23 (d) Either:

24 (i) The name, address, and phone number of the office of the lender
25 administering the interim construction financing, if any; or

26 (ii) The name and address of the firm that has issued a payment
27 bond, if any, on behalf of the prime contractor for the protection of
28 the owner, if the bond is for an amount not less than fifty percent of
29 the total amount of the construction project.

1 (3) The information required on the building permit application by
2 subsection (2) (a) through (d) of this section shall be set forth on
3 the building permit document which is issued to the owner, and on the
4 inspection record card which shall be posted at the construction site.

5 (4) The information required by subsection (2) of this section and
6 information supplied by the applicant after the permit is issued under
7 subsection (5) of this section shall be kept on record in the office
8 where building permits are issued and made available to any person on
9 request. If a copy is requested, a reasonable charge may be made.

10 (5) If any of the information required by subsection (2)(d) of this
11 section is not available at the time the application is submitted, the
12 applicant shall so state and the application shall be processed
13 forthwith and the permit issued as if the information had been
14 supplied, and the lack of the information shall not cause the
15 application to be deemed incomplete for the purposes of vesting under
16 subsection (1) of this section. However, the applicant shall provide
17 the remaining information as soon as the applicant can reasonably
18 obtain such information.

19 (6) The limitations imposed by this section shall not restrict
20 conditions imposed under chapter 43.21C RCW."

21 **"Sec. 28.** RCW 60.04.230 and 1984 c 202 s 3 are each amended to
22 read as follows:

23 (1) For any construction project costing more than five thousand
24 dollars (~~where the primary use of the improvements on the real~~
25 ~~property is for one or more residences)) the prime contractor shall
26 post in plain view for the duration of the construction project a
27 legible notice at the construction job site containing the following:~~

28 (a) The legal description, or the tax parcel number assigned
29 pursuant to RCW 84.40.160, and the street address if available, and may

1 include any other identification of the construction site by the prime
2 contractor;

3 (b) The property owner's name, address, and phone number;

4 (c) The prime contractor's business name, address, phone number,
5 current state contractor registration number and identification; and

6 (d) Either:

7 (i) The name, address, and phone number of the office of the lender
8 administering the interim construction financing, if any; or

9 (ii) The name and address of the firm that has issued a payment
10 bond, if any, on behalf of the prime contractor for the protection of
11 the owner if the bond is for an amount not less than fifty percent of
12 the total amount of the construction project.

13 (2) For any construction project (~~(not subject to subsection (1) of~~
14 ~~this section costing more than five thousand dollars, the prime~~
15 ~~contractor shall post in plain view for the duration of the~~
16 ~~construction project a legible notice at the construction job site~~
17 ~~containing the following:~~

18 ~~(a) The legal description or the street address and any other~~
19 ~~identification of the construction site by the prime contractor;~~

20 ~~(b) The property owner's name, address, and phone number;~~

21 ~~(c) The prime contractor's business name, address, phone number,~~
22 ~~current state contractor registration number and identification.~~

23 ~~(3))~~ which requires a building permit under local ordinance,
24 compliance with the posting requirements of RCW 19.27.095 shall
25 constitute compliance with this section. Otherwise, the information
26 shall be posted as set forth in this section.

27 (3) Failure to comply with this section ((is a gross misdemeanor))
28 shall subject the prime contractor to a civil penalty of not more than
29 five thousand dollars, payable to the county where the project is
30 located."

1 "NEW SECTION. Sec. 29. Sections 1 through 26 of this act are
2 each added to chapter 60.04 RCW."

3 "NEW SECTION. Sec. 30. RCW 60.04.045 is recodified as a section
4 in chapter 60.24 RCW."

5 "NEW SECTION. Sec. 31. The following acts or parts of acts are
6 each repealed:

7 (1) RCW 60.04.010 and 1975 c 34 s 3, 1971 ex.s. c 94 s 2, 1959 c
8 279 s 1, 1905 c 116 s 1, & 1893 c 24 s 1;

9 (2) RCW 60.04.020 and 1984 c 202 s 4, 1977 ex.s. c 57 s 1, 1969
10 ex.s. c 84 s 1, 1965 c 98 s 1, 1959 c 279 s 2, 1959 c 278 s 1, 1957 c
11 214 s 1, 1911 c 77 s 1, & 1909 c 45 s 1;

12 (3) RCW 60.04.030 and 1905 c 116 s 2 & 1893 c 24 s 2;

13 (4) RCW 60.04.040 and 1975 c 34 s 4, 1971 ex.s. c 94 s 3, 1959 c
14 279 s 3, 1929 c 230 s 1, & 1893 c 24 s 3;

15 (5) RCW 60.04.050 and 1975 c 34 s 5, 1959 c 279 s 4, & 1893 c 24 s
16 4;

17 (6) RCW 60.04.060 and 1975 c 34 s 6, 1971 ex.s. c 94 s 1, 1959 c
18 279 s 5, 1949 c 217 s 1(5a), & 1893 c 24 s 5;

19 (7) RCW 60.04.064 and 1959 c 279 s 6 & 1949 c 217 s 1(5b);

20 (8) RCW 60.04.067 and 1975 c 34 s 7, 1959 c 279 s 7, & 1949 c 217
21 s 1(5c);

22 (9) RCW 60.04.070 and 1985 c 44 s 10, 1949 c 217 s 2, & 1893 c 24
23 s 6;

24 (10) RCW 60.04.080 and 1893 c 24 s 7;

25 (11) RCW 60.04.090 and 1959 c 279 s 8 & 1893 c 24 s 8;

26 (12) RCW 60.04.100 and 1975 1st ex.s. c 231 s 1, 1943 c 209 s 1, &
27 1893 c 24 s 9;

- 1 (13) RCW 60.04.110 and 1975 c 34 s 8, 1959 c 279 s 9, & 1893 c 24
2 s 10;
- 3 (14) RCW 60.04.115 and 1986 c 314 s 4;
- 4 (15) RCW 60.04.120 and 1893 c 24 s 11;
- 5 (16) RCW 60.04.130 and 1975 c 34 s 9, 1971 c 81 s 129, 1969 c 38 s
6 1, 1959 c 279 s 10, & 1893 c 24 s 12;
- 7 (17) RCW 60.04.140 and 1959 c 279 s 11 & 1893 c 24 s 14;
- 8 (18) RCW 60.04.150 and 1893 c 24 s 15;
- 9 (19) RCW 60.04.160 and 1893 c 24 s 16;
- 10 (20) RCW 60.04.170 and 1893 c 24 s 17;
- 11 (21) RCW 60.04.180 and 1959 c 279 s 12 & 1893 c 24 s 13;
- 12 (22) RCW 60.04.200 and 1984 c 202 s 1 & 1973 1st ex.s. c 47 s 1;
- 13 (23) RCW 60.04.210 and 1984 c 202 s 2, 1975 c 34 s 10, & 1973 1st
14 ex.s. c 47 s 2;
- 15 (24) RCW 60.04.220 and 1973 1st ex.s. c 47 s 3;
- 16 (25) RCW 60.20.010 and 1943 c 18 s 1;
- 17 (26) RCW 60.20.020 and 1943 c 18 s 2;
- 18 (27) RCW 60.20.030 and 1955 c 239 s 1 & 1943 c 18 s 3;
- 19 (28) RCW 60.20.040 and 1943 c 18 s 4;
- 20 (29) RCW 60.20.050 and 1943 c 18 s 5;
- 21 (30) RCW 60.20.060 and 1943 c 18 s 6;
- 22 (31) RCW 60.48.010 and 1931 c 107 s 1; and
- 23 (32) RCW 60.48.020 and 1931 c 107 s 2."

24 "NEW SECTION. Sec. 32. This act shall take effect April 1,
25 1992. Lien claims based on an improvement commenced by a potential
26 lien claimant on or after April 1, 1992, shall be governed by the
27 provisions of this act."

3

4 On page 1, line 1 of the title, after "liens;" strike the remainder
5 of the title and insert "amending RCW 19.27.095 and 60.04.230; adding
6 new sections to chapter 60.04 RCW; adding a new section to chapter
7 60.24 RCW; recodifying RCW 60.04.045; repealing RCW 60.04.010,
8 60.04.020, 60.04.030, 60.04.040, 60.04.050, 60.04.060, 60.04.064,
9 60.04.067, 60.04.070, 60.04.080, 60.04.090, 60.04.100, 60.04.110,
10 60.04.115, 60.04.120, 60.04.130, 60.04.140, 60.04.150, 60.04.160,
11 60.04.170, 60.04.180, 60.04.200, 60.04.210, 60.04.220, 60.20.010,
12 60.20.020, 60.20.030, 60.20.040, 60.20.050, 60.20.060, 60.48.010, and
13 60.48.020; prescribing penalties; and providing an effective date."