
SENATE BILL 6441

State of Washington 52nd Legislature 1992 Regular Session

By Senators McMullen and Matson

Read first time 01/30/92. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to construction liens; amending RCW 60.04.011,
2 60.04.031, 60.04.041, 60.04.051, 60.04.081, 60.04.091, 60.04.141,
3 60.04.151, 60.04.161, 60.04.171, 60.04.181, and 60.04.221; and
4 providing an effective date.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 60.04.011 and 1991 c 281 s 1 are each amended to read
7 as follows:

8 Unless the context requires otherwise, the definitions in this
9 section apply throughout this 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.

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

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

6 (4) "Furnishing labor, professional services, materials, or
7 equipment" means the performance of any labor or professional services,
8 the contribution owed to any employee benefit plan on account of any
9 labor, the provision of any supplies or materials, and the renting,
10 leasing, or otherwise supplying of equipment for the improvement of
11 real property.

12 (5) "Improvement" means: (a) Constructing, altering, repairing,
13 remodeling, demolishing, clearing, grading, or filling in, of, to, or
14 upon any real property or street or road in front of or adjoining the
15 same; (b) planting of trees, vines, shrubs, plants, hedges, or lawns,
16 or providing other landscaping materials on any real property; and (c)
17 providing professional services upon real property or in preparation
18 for or in conjunction with the intended activities in (a) or (b) of
19 this subsection.

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

23 (a) Funds to acquire real property;

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

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

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

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

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

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

8 (9) "Owner" means the record holder of any legal or beneficial
9 title to the real property to be improved or developed, who directly or
10 through his or her common law or construction agent orders the
11 improvement.

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

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

17 (12) "Potential lien claimant" means any person or entity entitled
18 to assert lien rights under this chapter who has otherwise complied
19 with the provisions of this chapter and is registered or licensed if
20 required to be licensed or registered by the provisions of the laws of
21 the state of Washington.

22 (13) "Prime contractor" includes all contractors, general
23 contractors, and specialty contractors, as defined by chapter 18.27 or
24 19.28 RCW, or who are otherwise required to be registered or licensed
25 by law, who contract directly with a property owner or their common law
26 agent to assume primary responsibility for the creation of an
27 improvement to real property, and includes property owners or their
28 common law agents who are contractors, general contractors, or
29 specialty contractors as defined in chapter 18.27 or 19.28 RCW, or who
30 are otherwise required to be registered or licensed by law, who offer

1 to sell their property without occupying or using the structures,
2 projects, developments, or improvements for more than one year.

3 (14) "Professional services" means surveying, establishing or
4 marking the boundaries of, preparing maps, plans, or specifications
5 for, or inspecting, testing, or otherwise performing any other
6 architectural or engineering services for the improvement of real
7 property.

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

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

13 (17) "Subcontractor" means a general contractor or specialty
14 contractor as defined by chapter 18.27 or 19.28 RCW, or who is
15 otherwise required to be registered or licensed by law, who contracts
16 for the improvement of real property with someone other than the owner
17 of the property or their common law agent.

18 **Sec. 2.** RCW 60.04.031 and 1991 c 281 s 3 are each amended to read
19 as follows:

20 (1) Except as otherwise provided in this section, every person
21 furnishing professional services, materials, or equipment for the
22 improvement of real property shall give the owner or reputed owner
23 notice in writing of the right to claim a lien. If the prime
24 contractor is in compliance with the requirements of RCW 19.27.095,
25 60.04.230, and 60.04.261, this notice shall also be given to the prime
26 contractor as described in this subsection unless the potential lien
27 claimant has contracted directly with the prime contractor. The notice
28 may be given at any time but only protects the right to claim a lien

1 for professional services, materials, or equipment supplied after the
2 date which is sixty days before:

3 (a) Mailing the notice by certified or registered mail to the owner
4 or reputed owner; or

5 (b) Delivering or serving the notice personally upon the owner or
6 reputed owner and obtaining evidence of (~~service~~) delivery in the
7 form of a receipt or other acknowledgement signed by the owner or
8 reputed owner or an affidavit of service.

9 In the case of new construction of a single-family residence, the
10 notice of a right to claim a lien may be given at any time but only
11 protects the right to claim a lien for professional services,
12 materials, or equipment supplied after a date which is ten days before
13 the notice is mailed or served as described in this subsection.

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

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

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

19 (c) Subcontractors who contract for the improvement of real
20 property directly with the prime contractor, except as provided in
21 subsection (3)(b) of this section.

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

25 (a) Who contract directly with the owner-occupier or their common
26 law agent shall not be required to send a written notice of the right
27 to claim a lien and shall have a lien for the full amount due under
28 their contract, as provided in RCW 60.04.021; or

29 (b) Who do not contract directly with the owner-occupier or their
30 common law agent shall give notice of the right to claim a lien to the

1 owner-occupier. Liens ~~((claims by))~~ of persons furnishing professional
2 services, materials, or equipment who do not contract directly with the
3 owner-occupier or their common law agent may only be satisfied from
4 amounts not yet paid to the prime contractor by the owner at the time
5 the owner was personally served with the notice described in this
6 section or five calendar days after such notice is ~~((received))~~ mailed,
7 regardless of whether amounts not yet paid to the prime contractor are
8 due.

9 (4) The notice of right to claim a lien described in subsection (1)
10 of this section, shall include but not be limited to the following
11 information and shall substantially be in the following form, using
12 lower-case and upper-case ten-point type where appropriate.

13 NOTICE TO OWNER OF RIGHT TO CLAIM A LIEN

14 IMPORTANT: READ BOTH SIDES OF THIS NOTICE CAREFULLY.

15 PROTECT YOURSELF FROM PAYING TWICE

16 To:.....
17 Date:.....
18 From:.....

19 AT THE REQUEST OF: (Name of person ~~((placing the order))~~ ordering the
20 professional services, materials, or equipment)

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

26 OWNER/OCCUPIER OF EXISTING RESIDENTIAL PROPERTY

27 Under Washington law, those who ~~((work on or provide materials))~~
28 furnish labor, professional services, materials, or equipment for the
29 repair, remodel, or alteration of your owner-occupied principal
30 residence and who are not paid, have a right to enforce their claim for
31 payment against your property. This claim is known as a construction
32 lien.

33 The law limits the amount that a lien claimant can claim against your
34 property. Claims may only be made against that portion of the contract
35 price you have not yet paid to your prime contractor as of the time
36 ~~((you received))~~ this notice was personally served on you or five days

1 after this notice was mailed to you. Review the back of this notice
2 for more information and ways to avoid lien claims.

3 COMMERCIAL AND/OR NEW RESIDENTIAL PROPERTY

4 We have or will be providing (~~labor, materials,~~) professional
5 services, materials, or equipment for the improvement of your
6 commercial or new residential project. In the event you or your
7 contractor fail to pay us, we may file a lien against your property.
8 A lien may be claimed for all (~~materials, equipment, and~~)
9 professional services, materials, or equipment furnished after a date
10 that is sixty days before this notice was personally served on you or
11 mailed to you, unless the improvement to your property is the
12 construction of a new single-family residence, then ten days before
13 this notice was personally served on you or mailed to you.

14 Sender:

15 Address:

16 Telephone:

17 Brief description of professional services, materials, or equipment
18 provided or to be provided:

19 IMPORTANT INFORMATION ON REVERSE SIDE

20 IMPORTANT INFORMATION FOR YOUR PROTECTION

21 This notice is sent to inform you that we have or will provide
22 (~~materials,~~) professional services, materials, or equipment for the
23 repair, remodel, or alteration of your property. We expect to be paid
24 by the person who ordered our services, but if we are not paid, we have
25 the right to enforce our claim by filing a construction lien against
26 your property.

27 LEARN more about the lien laws and the meaning of this notice by
28 discussing them with your contractor, suppliers, Department of Labor
29 and Industries, the firm sending you this notice, your lender, or your
30 attorney.

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

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

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

42 YOU SHOULD TAKE (~~WHATEVER~~) APPROPRIATE STEPS (~~YOU BELIEVE~~
43 ~~NECESSARY~~) TO PROTECT YOUR PROPERTY FROM LIENS.

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

4 * * * * *

5 (5) Every potential lien claimant providing professional services
6 where no improvement as defined in RCW 60.04.011(5) (a) or (b) has been
7 commenced, and the professional services provided are not visible from
8 an inspection of the real property ((shall)) may record in the real
9 property records of the county where the property is located a notice
10 which shall contain the professional service provider's name, address,
11 telephone number, legal description of the property, the owner or
12 reputed owner's name, and the general nature of the professional
13 services provided. If such notice is not recorded, the lien claimed
14 shall be subordinate to the interest of any subsequent mortgagee and
15 invalid as to the interest of any subsequent purchaser ((who)) if the
16 mortgager or purchaser acts in good faith and for a valuable
17 consideration acquires an interest in the property prior to the
18 commencement of an improvement as defined in RCW 60.04.011(5) (a) or
19 (b) without notice of the professional services being provided. The
20 notice described in this subsection shall be substantially in the
21 following form:

22 NOTICE OF FURNISHING PROFESSIONAL SERVICES

23 That on the (day) day of (month and year) , (name of provider)
24 began providing professional services upon or for the improvement of
25 real property legally described as follows:

26 [Legal Description
27 is mandatory]

28 The general nature of the professional services provided is
29
30
31 The owner or reputed owner of the real property is
32

33
34 (Signature)

1
2 (Name of Claimant)
3
4 (Street Address)
5
6 (City, State, Zip Code)
7
8 (Phone Number)

9 (6) A lien authorized by this chapter shall not be enforced unless
10 the lien claimant has complied with the applicable provisions of this
11 section.

12 **Sec. 3.** RCW 60.04.041 and 1991 c 281 s 4 are each amended to read
13 as follows:

14 A contractor or subcontractor required to be registered under
15 chapter 18.27 RCW or licensed under chapter 19.28 RCW, or otherwise
16 required to be registered or licensed by law, shall be deemed the
17 construction agent of the owner for the purposes of establishing the
18 lien created by this chapter only if so registered or licensed.
19 Persons dealing with contractors or subcontractors may rely, for the
20 purposes of this section, upon a certificate of registration issued
21 pursuant to chapter 18.27 RCW or license issued pursuant to chapter
22 19.28 RCW, or other certificate or license issued pursuant to law,
23 covering the period when the labor, professional services, material, or
24 equipment shall be furnished, and the lien rights shall not be lost by
25 suspension or revocation of registration or license without their
26 knowledge. No lien rights described in this (~~section~~) chapter shall
27 be lost or denied by virtue of the absence, suspension, or revocation
28 of such registration or license with respect to any contractor or
29 subcontractor not in immediate contractual privity with the lien
30 claimant.

1 **Sec. 4.** RCW 60.04.051 and 1991 c 281 s 5 are each amended to read
2 as follows:

3 The lot, tract, or parcel of land which is improved is subject to
4 a lien to the extent of the interest of the ((~~person for whom~~)) owner
5 at whose instance, directly or through a common law or construction
6 agent the labor, professional services, equipment, or materials were
7 furnished, as the court deems appropriate for satisfaction of the lien.
8 If, for any reason, the title or interest in the land upon which the
9 improvement is situated cannot be subjected to the lien, the court in
10 order to satisfy the lien may order the sale and removal of the
11 improvement from the land which is subject to the lien((~~, from the~~
12 ~~land~~)).

13 **Sec. 5.** RCW 60.04.081 and 1991 c 281 s 8 are each amended to read
14 as follows:

15 (1) Any owner of real property subject to a recorded ((~~notice of~~))
16 claim of lien under this chapter, or ((~~the~~)) contractor ((~~or~~)),
17 subcontractor, lender, or lien claimant who believes the claim of lien
18 to be frivolous and made without reasonable cause, or clearly excessive
19 may apply by motion to the superior court for the county where the
20 property, or some part thereof is located, for an order directing the
21 lien claimant to appear before the court at a time no earlier than six
22 nor later than fifteen days following the date of service of the
23 application and order on the lien claimant, and show cause, if any he
24 or she has, why the ((~~lien claim~~)) relief requested should not be
25 ((~~dismissed, with prejudice~~)) granted. The motion shall state the
26 grounds upon which relief is asked, and shall be supported by the
27 affidavit of the applicant or his or her attorney setting forth a
28 concise statement of the facts upon which the motion is based.

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

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

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

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

24 **Sec. 6.** RCW 60.04.091 and 1991 c 281 s 9 are each amended to read
25 as follows:

26 Every person claiming a lien under RCW 60.04.021 shall ((record))
27 file for recording, in the county where the subject property is
28 located, a notice of claim of lien not later than ninety days after the
29 person has ceased to furnish labor, professional services, materials,

1 or equipment or the last date on which employee benefit contributions
2 were due. The notice of claim 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)) lien has been
20 assigned, the name of the assignee shall be stated. Where an action to
21 foreclose the lien has been commenced such notice of claim of lien may
22 be amended as pleadings may be by order of the court insofar as the
23 interests of third parties are not adversely affected by such
24 amendment. A claim of lien substantially in the following form shall
25 be sufficient:

26 CLAIM OF LIEN

27, claimant, vs .., owner or reputed owner

1 ((Notice is hereby given that on the day of (date of
2 commencement of furnishing labor, professional services, materials,
3 or equipment and the last date contributions to any type of
4 employee benefit plan became due), at the request of
5, commenced to (perform labor, furnish
6 professional services, materials, or equipment) upon
7 (here describe property subject to the lien) of which property the
8 owner, or reputed owner, is (or if the owner or reputed
9 owner is not known, insert the word "unknown"), the (furnishing of
10 labor, professional services, materials, or equipment) ceased on
11 the day of; that said (labor, professional
12 services, material, or equipment) was of the value of
13 dollars, for which the undersigned claims a lien upon the property
14 herein described for the sum of dollars. (In case the
15 claim has been assigned, add the words "and is assignee
16 of said claim", or claims, if several are united.)) Notice is
17 hereby given that the person named below claims a lien pursuant to
18 chapter 64.04 RCW. In support of this lien the following
19 information is submitted:

20 1. NAME OF LIEN CLAIMANT:
21 TELEPHONE NUMBER:
22 ADDRESS:

23 2. DATE ON WHICH THE CLAIMANT BEGAN TO PERFORM LABOR,
24 PROVIDE PROFESSIONAL SERVICES, SUPPLY MATERIAL OR EQUIPMENT OR
25 THE DATE ON WHICH EMPLOYEE BENEFIT CONTRIBUTIONS BECAME
26 DUE:

27 3. NAME OF PERSON INDEBTED TO THE CLAIMANT:
28

29 4. DESCRIPTION OF THE PROPERTY AGAINST WHICH A LIEN IS
30 CLAIMED (Street address, legal description or other information
31 that will reasonably describe the property).
32
33
34

35 5. NAME OF THE OWNER OR REPUTED OWNER (If not known state
36 "unknown"):

37 6. THE LAST DATE ON WHICH LABOR WAS PERFORMED;
38 PROFESSIONAL SERVICES WERE FURNISHED; CONTRIBUTIONS TO AN
39 EMPLOYEE BENEFIT PLAN WERE DUE; OR MATERIAL, OR EQUIPMENT WAS
40 FURNISHED:
41

42 7. IF THE CLAIMANT IS THE ASSIGNEE OF THIS CLAIM SO STATE
43 HERE:
44

45 , Claimant
46
47
48 (Phone number, address, city,
49 and state of claimant)

1 STATE OF WASHINGTON, COUNTY OF
2,ss.
3, being sworn, says: I am the claimant (or attorney of the
4 claimant, or administrator, representative, or agent of the trustees
5 of an employee benefit plan) above named; I have read or heard the
6 foregoing claim, read and know the contents thereof, and believe the
7 same to be true and correct and that the claim of lien is not
8 frivolous, is made with reasonable cause and is not clearly excessive
9 under penalty of perjury.

10
11 Subscribed and sworn to before me this day of
12

13 The period provided for recording the ((~~notice~~)) claim of lien is
14 a period of limitation and no action to foreclose a ((~~claim of~~)) lien
15 shall be maintained unless the ((~~notice is recorded~~)) claim of lien is
16 filed for recording within the ninety-day period stated. The lien
17 claimant shall give ((~~notice of~~)) a copy of the claim of lien to the
18 owner or reputed owner by mailing it by certified or registered mail or
19 by personal service within fourteen days of the time the claim of lien
20 is ((~~recorded~~)) filed for recording. Failure to do so results in a
21 forfeiture of any right the claimant may have to attorneys' fees and
22 costs against the owner under RCW 60.04.181.

23 **Sec. 7.** RCW 60.04.141 and 1991 c 281 s 14 are each amended to read
24 as follows:

25 No lien created by this chapter binds the property subject to the
26 lien for a longer period than eight calendar months after the ((~~notice~~
27 ~~of~~)) claim of lien has been recorded unless an action is filed by the
28 lien claimant within that time in the superior court in the county
29 where the subject property is located to enforce the lien, and service
30 is made upon the owner of the subject property within ninety days of
31 the date of filing the action; or, if credit is given and the terms
32 thereof are stated in the ((~~notice of~~)) claim of lien, then eight
33 calendar months after the expiration of such credit; and in case the

1 action is not prosecuted to judgment within two years after the
2 commencement thereof, the court, in its discretion, may dismiss the
3 action for want of prosecution, and the dismissal of the action or a
4 judgment rendered thereon that no lien exists shall constitute a
5 cancellation of the lien. This is a period of limitation, which shall
6 be tolled by the filing of any petition seeking protection under Title
7 Eleven, United States Code by an owner of any property subject to the
8 lien established by this chapter.

9 **Sec. 8.** RCW 60.04.151 and 1991 c 281 s 15 are each amended to read
10 as follows:

11 The lien claimant shall be entitled to recover upon the claim
12 recorded the contract price after deducting all claims of other lien
13 claimants to whom the claimant is liable, for furnishing labor,
14 professional services, materials, or equipment; and in all cases where
15 a ~~((notice of))~~ claim of lien shall be recorded under this chapter for
16 labor, professional services, materials, or equipment supplied to any
17 lien claimant, he or she shall defend any action brought thereupon at
18 his or her own expense~~((; and))~~. During the pendency of the action,
19 the owner may withhold from the prime contractor the amount of money
20 for which a claim is recorded by any subcontractor, supplier, or
21 laborer~~((; and))~~. In case of judgment against the owner or the owner's
22 property, upon the lien, the owner shall be entitled to deduct from
23 sums due to the prime contractor the principal amount of the judgment
24 from any amount due or to become due from ~~((him or her))~~ the owner to
25 the ~~((lien claimant))~~ prime contractor plus such costs, including
26 interest and attorneys' fees, as the court deems just and equitable,
27 and ~~((he or she))~~ the owner shall be entitled to recover back from the
28 ~~((lien claimant))~~ prime contractor the amount for which ~~((the))~~ a lien
29 ~~((is))~~ or liens are established in excess of any sum that may remain

1 due from ~~((him or her))~~ the owner to the ~~((lien claimant))~~ prime
2 contractor.

3 **Sec. 9.** RCW 60.04.161 and 1991 c 281 s 16 are each amended to read
4 as follows:

5 Any owner of real property subject to a recorded notice of claim of
6 lien under this chapter, or ~~((the))~~ contractor ~~((or))~~, subcontractor,
7 lender, or lien claimant who disputes the correctness or validity of
8 the ~~((notice of))~~ claim of lien may record, either before or after the
9 commencement of an action to enforce the lien, in the office of the
10 county recorder or auditor in the county where the ~~((notice of))~~ claim
11 of lien was recorded, a bond issued by a surety company authorized to
12 issue surety bonds in the state. The surety shall be listed in the
13 latest federal department of the treasury list of surety companies
14 acceptable on federal bonds, published in the Federal Register, as
15 authorized to issue bonds on United States government projects with an
16 underwriting limitation, including applicable reinsurance, equal to or
17 greater than the amount of the bond to be recorded. The bond shall
18 contain a description of the ~~((notice of))~~ claim of lien and real
19 property involved, and be in an amount equal to the greater of five
20 thousand dollars or two times the amount of the lien claimed if it is
21 ten thousand dollars or less, and in an amount equal to or greater than
22 one and one-half times the amount of the lien if it is in excess of ten
23 thousand dollars. If the ~~((notice of))~~ claim of lien affects more than
24 one parcel of real property and is segregated to each parcel, the bond
25 may be segregated the same as in the ~~((notice of))~~ claim of lien. A
26 separate bond shall be required for each ~~((notice of))~~ claim of lien
27 made by separate claimants. However, a single bond may be used to
28 guarantee payment of amounts claimed by more than one ~~((lien))~~ claim of
29 lien by a single claimant so long as the amount of the bond meets the

1 requirements of this section as applied to the aggregate sum of all
2 claims by such claimant. The condition of the bond shall be to
3 guarantee payment of any judgment upon the lien in favor of the lien
4 claimant entered in any action to recover the amount claimed in a
5 (~~notice of~~) claim of lien, or on the claim asserted in the (~~notice~~
6 ~~of~~) claim of lien. The effect of recording a bond shall be to release
7 the real property described in the notice of claim of lien from the
8 lien and any action brought to recover the amount claimed. Unless
9 otherwise prohibited by law, if no action is commenced to recover on a
10 lien within the time specified in RCW 60.04.141, the surety shall be
11 discharged from liability under the bond. If an action is timely
12 commenced, then on payment of any judgment entered in the action or on
13 payment of the full amount of the bond to the holder of the judgment,
14 whichever is less, the surety shall be discharged from liability under
15 the bond.

16 Nothing in this section shall in any way prohibit or limit the use
17 of other methods, devised by the affected parties to secure the
18 obligation underlying a claim of lien and to obtain a release of real
19 property from a claim of lien.

20 **Sec. 10.** RCW 60.04.171 and 1991 c 281 s 17 are each amended to
21 read as follows:

22 The lien provided by this chapter, for which claims of lien have
23 been recorded, may be foreclosed and enforced by a civil action in the
24 court having jurisdiction in the manner prescribed for the judicial
25 foreclosure of a mortgage. The court shall have the power to order the
26 sale of the property. In any action brought to foreclose a lien, the
27 owner shall be joined as a party. The (~~lien claims of all~~) interest
28 in the real property of any person(-s)) who, prior to the commencement
29 of the action, (~~have legally~~) has a recorded (~~claims of lien~~

1 ~~against~~) interest in the (~~same~~) property, or any part thereof, shall
2 not be foreclosed or affected unless they are joined as a party.

3 A person shall not begin an action to foreclose a lien upon any
4 property while a prior action begun to foreclose another lien on the
5 same property is pending, but if not made a party plaintiff or
6 defendant to the prior action, he or she may apply to the court to be
7 joined as a party thereto, and his or her lien may be foreclosed in the
8 same action. The filing of such application shall toll the running of
9 the period of limitation established by RCW 60.04.141 until disposition
10 of the application or other time set by the court. The court shall
11 grant the application for joinder unless to do so would create an undue
12 delay or cause hardship which cannot be cured by the imposition of
13 costs or other conditions as the court deems just. If a lien
14 foreclosure action is filed during the pendency of another such action,
15 the court may, on its own motion or the motion of any party,
16 consolidate actions upon such terms and conditions as the court deems
17 just, unless to do so would create an undue delay or cause hardship
18 which cannot be cured by the imposition of costs or other conditions.
19 If consolidation of actions is not permissible under this section, the
20 lien foreclosure action filed during the pendency of another such
21 action shall not be dismissed if the filing was the result of mistake,
22 inadvertence, surprise, excusable neglect, or irregularity. An action
23 to foreclose a lien shall not be dismissed at the instance of a
24 plaintiff therein to the prejudice of another party to the suit who
25 claims a lien.

26 **Sec. 11.** RCW 60.04.181 and 1991 c 281 s 18 are each amended to
27 read as follows:

1 (1) In every case in which different construction liens are claimed
2 against the same property, the court shall declare the rank of such
3 lien or class of liens, which liens shall be in the following order:

4 (a) Liens for the performance of labor;

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

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

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

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

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

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

29 (4) Real property against which a lien under this chapter is
30 enforced may be ordered sold by the court and the proceeds deposited

1 into the registry of the clerk of the court, pending further
2 determination respecting distribution of the proceeds of the sale.

3 **Sec. 12.** RCW 60.04.221 and 1991 c 281 s 22 are each amended to
4 read as follows:

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

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

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

22 (3) The notice shall be ~~((filed))~~ given in writing ~~((with))~~ to the
23 lender at the office administering the interim or construction
24 financing, with a copy ~~((furnished))~~ given to the owner and appropriate
25 prime contractor. The notice shall be given by:

26 (a) Mailing the notice by certified or registered mail to the
27 lender, owner, and appropriate prime contractor;

28 (b) Delivering or serving the notice personally and obtaining
29 evidence of delivery in the form of a receipt or other acknowledgment

1 signed by the lender, owner, and appropriate prime contractor, or an
2 affidavit of service;

3 (c) Any combination of (a) and (b) of this subsection.

4 (4) The notice shall state in substance and effect as follows:

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

9 (b) The name of the prime contractor, common law agent, or
10 construction agent ordering the same.

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

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

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

17 NOTICE TO REAL PROPERTY LENDER
18 (Authorized by RCW

19 TO:
20 (Name of Lender)
21
22 (Administrative Office-Street Address)
23
24 (City) (State) (Zip)
25 AND TO:
26 (Owner)
27 AND TO:
28 (Prime Contractor-If Different Than Owner)
29
30 (Name of Laborer, Professional, Materials, or Equipment Supplier)
31 whose business address is, did at the
32 property located at
33 (Check appropriate box) () perform labor () furnish professional
34 services () provide materials () supply equipment as follows:
35
36
37
38 which was ordered by,
39 (Name of Person)
40 whose address was stated to be.....

1

2 The amount owing to the undersigned according to contract or
3 purchase order for labor, supplies, or equipment (as above
4 mentioned) is the sum of Dollars
5 (\$). Said sums became due and owing as of
6
7 (State Date)
8,

9 You are hereby required to withhold from any future draws on
10 existing construction financing which has been made on the subject
11 property (to the extent there remain undisbursed funds) the sum of
12 Dollars
13 (\$).

14 IMPORTANT

15 Failure to comply with the requirements of this notice may subject the
16 lender to a whole or partial compromise of any priority lien interest
17 it may have pursuant to RCW 60.04.226.

18 DATE:

19 By:
20 Its:

21 ~~((4))~~ (5) After the receipt of the notice, the lender shall
22 withhold from the next and subsequent draws the amount claimed to be
23 due as stated in the notice. Alternatively, the lender may obtain from
24 the prime contractor or borrower a payment bond for the benefit of the
25 potential lien claimant in an amount sufficient to cover the amount
26 stated in the potential lien claimant's notice. The lender shall be
27 obligated to withhold amounts only to the extent that sufficient
28 interim or construction financing funds remain undisbursed as of the
29 date the lender receives the notice.

30 ~~((5))~~ (6) Sums so withheld shall not be disbursed by the lender,
31 except by the written agreement of the potential lien claimant, owner,
32 and prime contractor in such form as may be prescribed by the lender,
33 or the order of a court of competent jurisdiction.

34 ~~((6))~~ (7) In the event a lender fails to abide by the provisions
35 of subsections (4) and (5) of this section, then the mortgage, deed of
36 trust, or other encumbrance securing the lender ~~((will))~~ shall be

1 subordinated to the lien of the potential lien claimant to the extent
2 of the interim or construction financing wrongfully disbursed, but in
3 no event more than the amount stated in the notice plus costs as fixed
4 by the court, including reasonable attorneys' fees.

5 ~~((7))~~ (8) Any potential lien claimant shall be liable for any
6 loss, cost, or expense, including reasonable attorneys' fees and
7 statutory costs, to a party injured thereby arising out of any unjust,
8 excessive, or premature notice filed under purported authority of this
9 section. "Notice" as used in this subsection does not include notice
10 given by a potential lien claimant of the right to claim liens under
11 this chapter where no actual claim is made.

12 ~~((8))~~ (9)(a) Any owner of real property subject to a notice to
13 real property lender under this section, or the contractor or
14 subcontractor, or lien claimants who believe ~~((s))~~ the claim that
15 underlies the notice is frivolous and made without reasonable cause, or
16 is clearly excessive may apply by motion to the superior court for the
17 county where the property, or some part thereof is located, for an
18 order commanding the potential lien claimant who issued the notice to
19 the real property lender to appear before the court at a time no
20 earlier than six nor later than fifteen days from the date of service
21 of the application and order on the potential lien claimant, and show
22 cause, if any he or she has, why the notice to real property lender
23 should not be declared void. The motion shall state the grounds upon
24 which relief is asked and shall be supported by the affidavit of the
25 applicant or his or her attorney setting forth a concise statement of
26 the facts upon which the motion is based.

27 (b) The order shall clearly state that if the potential lien
28 claimant fails to appear at the time and place noted, the notice to
29 lender shall be declared void and that the potential lien claimant

1 issuing the notice shall be ordered to pay the costs requested by the
2 applicant including reasonable attorneys' fees.

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

6 (d) If, following a (~~full~~) hearing on the matter, the court
7 determines that the claim upon which the notice to real property lender
8 is based is frivolous and made without reasonable cause, or clearly
9 excessive, the court shall issue an order declaring the notice to real
10 property lender void if frivolous, made without reasonable cause, or
11 reducing the amount stated in the notice if clearly excessive, and
12 awarding costs and reasonable attorneys' fees to the applicant to be
13 paid by the person who issued the notice. If the court determines that
14 the claim underlying the notice to real property lender is not
15 frivolous and was made with reasonable cause, and is not clearly
16 excessive, the court shall issue an order so stating and awarding costs
17 and reasonable attorneys' fees to the issuer of the notice to be paid
18 by the applicant.

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

21 NEW SECTION. **Sec. 13.** This act shall take effect April 1,
22 1992.