

CERTIFICATION OF ENROLLMENT
SUBSTITUTE SENATE BILL 5497

52nd Legislature
1991 Regular Session

Passed by the Senate April 22, 1991
Yeas 46 Nays 0

President of the Senate

Passed by the House April 10, 1991
Yeas 97 Nays 0

**Speaker of the
House of Representatives**

Approved

Governor of the State of Washington

CERTIFICATE

I, Gordon Golob, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5497** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5497

AS AMENDED BY THE HOUSE

Passed Legislature - 1991 Regular Session

State of Washington 52nd Legislature 1991 Regular Session

By Senate Committee on Commerce & Labor (originally sponsored by Senators McMullen, Matson, Rasmussen, Sellar, McCaslin, Murray and Stratton).

Read first time March 6, 1991.

1 AN ACT Relating to construction liens; amending RCW 19.27.095 and
2 60.04.230; adding new sections to chapter 60.04 RCW; adding a new
3 section to chapter 60.24 RCW; recodifying RCW 60.04.045; repealing RCW
4 60.04.010, 60.04.020, 60.04.030, 60.04.040, 60.04.050, 60.04.060,
5 60.04.064, 60.04.067, 60.04.070, 60.04.080, 60.04.090, 60.04.100,
6 60.04.110, 60.04.115, 60.04.120, 60.04.130, 60.04.140, 60.04.150,
7 60.04.160, 60.04.170, 60.04.180, 60.04.200, 60.04.210, 60.04.220,
8 60.20.010, 60.20.020, 60.20.030, 60.20.040, 60.20.050, 60.20.060,
9 60.48.010, and 60.48.020; prescribing penalties; and providing an
10 effective date.

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

12 NEW SECTION. **Sec. 1.** DEFINITIONS. Unless the context requires
13 otherwise, the definitions in this section apply throughout this
14 chapter.

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

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

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

11 (4) "Furnishing labor, professional services, materials, or
12 equipment" means the performance of any labor or professional services,
13 the contribution owed to any employee benefit plan on account of any
14 labor, the provision of any supplies or materials, and the renting,
15 leasing, or otherwise supplying of equipment for the improvement of
16 real property.

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

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

28 (a) Funds to acquire real property;

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

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

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

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

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

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

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

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

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

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

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

1 common law agents who are contractors, general contractors, or
2 specialty contractors as defined in chapter 18.27 or 19.28 RCW, or who
3 are otherwise required to be registered or licensed by law, who offer
4 to sell their property without occupying or using the structures,
5 projects, developments, or improvements for more than one year.

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

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

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

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

21 NEW SECTION. **Sec. 2.** LIEN AUTHORIZED. Except as provided in
22 section 3 of this act, any person furnishing labor, professional
23 services, materials, or equipment for the improvement of real property
24 shall have a lien upon the improvement for the contract price of labor,
25 professional services, materials, or equipment furnished at the
26 instance of the owner, or the agent or construction agent of the owner.

27 NEW SECTION. **Sec. 3.** NOTICES--EXCEPTIONS. (1) Except as
28 otherwise provided in this section, every person furnishing

1 professional services, materials, or equipment for the improvement of
2 real property shall give the owner or reputed owner notice in writing
3 of the right to claim a lien. If the prime contractor is in compliance
4 with the requirements of RCW 19.27.095, 60.04.230, and section 24 of
5 this act, this notice shall be given to the prime contractor unless the
6 potential lien claimant has contracted directly with the prime
7 contractor. The notice may be given at any time but only protects the
8 right to claim a lien for professional services, materials, or
9 equipment supplied after the date which is sixty days before:

10 (a) Mailing the notice by certified or registered mail to the owner
11 or reputed owner; or

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

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

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

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

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

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

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

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

5 (b) Who do not contract directly with the owner-occupier shall give
6 notice of the right to claim a lien to the owner-occupier. Lien claims
7 by persons who do not contract directly with the owner-occupier may
8 only be satisfied from amounts not yet paid to the prime contractor by
9 the owner at the time the notice described in this section is received,
10 regardless of whether amounts not yet paid to the prime contractor are
11 due.

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

16 NOTICE TO OWNER

17 IMPORTANT: READ BOTH SIDES OF THIS NOTICE CAREFULLY.

18 PROTECT YOURSELF FROM PAYING TWICE

19 To:..... Date:.....

20 From:.....

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

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

27 OWNER/OCCUPIER OF EXISTING RESIDENTIAL PROPERTY

28 Under Washington law, those who work on or provide materials 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 you have not yet paid to your prime contractor as of the time you

1 received this notice. Review the back of this notice for more
2 information and ways to avoid lien claims.

3 COMMERCIAL AND/OR NEW RESIDENTIAL PROPERTY

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

12 Sender:

13 Address:

14 Telephone:

15 Brief description of professional services, materials, or equipment
16 provided or to be provided:

17 IMPORTANT INFORMATION ON REVERSE SIDE

18 IMPORTANT INFORMATION FOR YOUR PROTECTION

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

24 LEARN more about the lien laws and the meaning of this notice by
25 discussing with your contractor, suppliers, department of labor and
26 industries, the firm sending you this notice, your lender, or your
27 attorney.

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

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

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

39 YOU SHOULD TAKE WHATEVER STEPS YOU BELIEVE NECESSARY TO PROTECT YOUR
40 PROPERTY FROM LIENS.

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

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(5) Every potential lien claimant providing professional services where no improvement as defined in section 1(5) (a) or (b) of this act has been commenced, and the professional services provided are not visible from an inspection of the real property shall record in the real property records of the county where the property is located a notice which shall contain the provider's name, address, telephone number, legal description of the property, the owner or reputed owner's name, and the general nature of the professional services provided. If such notice is not recorded, the lien claimed shall be subordinate to the interest of any subsequent mortgagee and invalid as to the interest of any subsequent purchaser who acts in good faith and for a valuable consideration acquires an interest in the property prior to the commencement of an improvement as defined in section 1(5) (a) or (b) of this act without notice of the professional services being provided.

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

NEW SECTION. **Sec. 4.** CONTRACTOR REGISTRATION. A contractor or

subcontractor required to be registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW, or otherwise required to be registered or licensed by law, shall be deemed the construction agent of the owner for the purposes of establishing the lien created by this chapter only if so registered or licensed. Persons dealing with contractors or subcontractors may rely, for the purposes of this section, upon a certificate of registration issued pursuant to chapter 18.27 RCW or license issued pursuant to chapter 19.28 RCW, or other certificate or license issued pursuant to law, covering the period when the labor, professional services, material, or equipment shall be furnished, and the lien rights shall not be lost by suspension or

1 revocation of registration or license without their knowledge. No lien
2 rights described in this section shall be lost or denied by virtue of
3 the absence, suspension, or revocation of such registration or license
4 with respect to any contractor or subcontractor not in immediate
5 contractual privity with the lien claimant.

6 NEW SECTION. **Sec. 5.** PROPERTY SUBJECT TO LIEN. The lot, tract,
7 or parcel of land which is improved is subject to a lien to the extent
8 of the interest of the person for whom the labor, professional
9 services, equipment, or materials were furnished, as the court deems
10 appropriate for satisfaction of the lien. If, for any reason, the
11 title or interest in the land upon which the improvement is situated
12 cannot be subjected to the lien, the court in order to satisfy the lien
13 may order the sale and removal of the improvement which is subject to
14 the lien, from the land.

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

21 NEW SECTION. **Sec. 7.** RELEASE OF LIEN RIGHTS. Upon payment and
22 acceptance of the amount due to the lien claimant and upon demand of
23 the owner or the person making payment, the lien claimant shall
24 immediately prepare and execute a release of all lien rights for which
25 payment has been made, and deliver the release to the person making
26 payment. In any suit to compel deliverance of the release thereafter
27 in which the court determines the delay was unjustified, the court

1 shall, in addition to ordering the deliverance of the release, award
2 the costs of the action including reasonable attorneys' fees and any
3 damages.

4 NEW SECTION. **Sec. 8.** FRIVOLOUS CLAIM--PROCEDURE. (1) Any owner
5 of real property subject to a recorded notice of claim of lien under
6 this chapter, or the contractor or subcontractor who believes the claim
7 of lien to be frivolous and made without reasonable cause, or clearly
8 excessive may apply to the superior court for the county where the
9 property, or some part thereof is located, for an order directing the
10 lien claimant to appear before the court at a time no earlier than six
11 nor later than fifteen days following the date of service of the
12 application and order on the lien claimant, and show cause, if any he
13 or she has, why the lien claim should not be dismissed, with prejudice.

14 (2) The order shall clearly state that if the lien claimant fails
15 to appear at the time and place noted the lien claim shall be
16 dismissed, with prejudice and that the lien claimant shall be ordered
17 to pay the costs requested by the applicant including reasonable
18 attorneys' fees.

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

24 (4) If, following a full hearing on the matter, the court
25 determines that the lien claim is frivolous and made without reasonable
26 cause, or clearly excessive, the court shall issue an order dismissing
27 the lien claim if frivolous or reducing the claim if clearly excessive,
28 and awarding costs and reasonable attorneys' fees to the applicant to
29 be paid by the lien claimant. If the court determines that the claim

1 of lien is not frivolous and made with reasonable cause, and is not
2 clearly excessive, the court shall issue and order so stating and
3 awarding costs and reasonable attorneys' fees to the lien claimant to
4 be paid by the applicant.

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

7 NEW SECTION. **Sec. 9.** RECORDING--TIME--CONTENTS OF LIEN. Every
8 person claiming a lien under section 2 of this act shall record, in the
9 county where the subject property is located, a notice of claim of lien
10 not later than ninety days after the person has ceased to furnish
11 labor, professional services, materials, or equipment or the last date
12 on which employee benefit contributions were due. The notice of claim
13 of lien:

14 (1) Shall state in substance and effect:

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

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

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

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

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

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

26 (2) Shall be signed by the claimant or some person authorized to
27 act on his or her behalf who shall affirmatively state they have read
28 the notice of claim of lien and believe the notice of claim of lien to
29 be true and correct under penalty of perjury, and shall be acknowledged

1 stated. The lien claimant shall give notice of the claim of lien to
2 the owner or reputed owner by certified or registered mail or by
3 personal service within fourteen days of the time the claim is
4 recorded. Failure to do so results in a forfeiture of any right the
5 claimant may have to attorneys' fees and costs against the owner under
6 section 18 of this act.

7 NEW SECTION. **Sec. 10.** SEPARATE RESIDENTIAL UNITS--TIME FOR
8 FILING. When furnishing labor, professional services, materials, or
9 equipment for the construction of two or more separate residential
10 units, the time for filing claims of lien against each separate
11 residential unit shall commence to run upon the cessation of the
12 furnishing of labor, professional services, materials, or equipment on
13 each residential unit, as provided in this chapter. For the purposes
14 of this section a separate residential unit is defined as consisting of
15 one residential structure together with any garages or other
16 outbuildings appurtenant thereto.

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

23 NEW SECTION. **Sec. 12.** LIEN--ASSIGNMENT. Any lien or right of
24 lien created by this chapter and the right of action to recover
25 therefor, shall be assignable so as to vest in the assignee all rights
26 and remedies of the assignor, subject to all defenses thereto that
27 might be made.

1 NEW SECTION. **Sec. 13.** CLAIMS--DESIGNATION OF AMOUNT DUE. In
2 every case in which the notice of claim of lien is recorded against two
3 or more separate pieces of property owned by the same person or owned
4 by two or more persons jointly or otherwise, who contracted for the
5 labor, professional services, material, or equipment for which the
6 notice of claim of lien is recorded, the person recording the notice of
7 claim of lien shall designate in the notice of claim of lien the amount
8 due on each piece of property, otherwise the lien is subordinated to
9 other liens that may be established under this chapter. The lien of
10 such claim does not extend beyond the amount designated as against
11 other creditors having liens upon any of such pieces of property.

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

1 NEW SECTION. **Sec. 15.** RIGHTS OF OWNER--RECOVERY OPTIONS. The
2 lien claimant shall be entitled to recover upon the claim recorded the
3 contract price after deducting all claims of other lien claimants to
4 whom the claimant is liable, for furnishing labor, professional
5 services, materials, or equipment; and in all cases where a notice of
6 claim of lien shall be recorded under this chapter for labor,
7 professional services, materials, or equipment supplied to any lien
8 claimant, he or she shall defend any action brought thereupon at his or
9 her own expense; and during the pendency of the action, the owner may
10 withhold from the prime contractor the amount of money for which a
11 claim is recorded by any subcontractor, supplier, or laborer; and in
12 case of judgment against the owner or the owner's property, upon the
13 lien, the owner shall be entitled to deduct the principal amount of the
14 judgment from any amount due or to become due from him or her to the
15 lien claimant plus such costs, including interest and attorneys' fees,
16 as the court deems just and equitable, and he or she shall be entitled
17 to recover back from the lien claimant the amount for which the lien is
18 established in excess of any sum that may remain due from him or her to
19 the lien claimant.

20 NEW SECTION. **Sec. 16.** BOND IN LIEU OF CLAIM. Any owner of real
21 property subject to a recorded notice of claim of lien under this
22 chapter, or the contractor or subcontractor who disputes the
23 correctness or validity of the notice of claim of lien may record,
24 either before or after the commencement of an action to enforce the
25 lien, in the office of the county recorder or auditor in the county
26 where the notice of claim of lien was recorded, a bond issued by a
27 surety company authorized to issue surety bonds in the state. The
28 surety shall be listed in the latest federal department of the treasury
29 list of surety companies acceptable on federal bonds, published in the

1 Federal Register, as authorized to issue bonds on United States
2 government projects with an underwriting limitation, including
3 applicable reinsurance, equal to or greater than the amount of the bond
4 to be recorded. The bond shall contain a description of the notice of
5 claim of lien and real property involved, and be in an amount equal to
6 the greater of five thousand dollars or two times the amount of the
7 lien claimed if it is ten thousand dollars or less, and in an amount
8 equal to or greater than one and one-half times the amount of the lien
9 if it is in excess of ten thousand dollars. If the notice of claim of
10 lien affects more than one parcel of real property and is segregated to
11 each parcel, the bond may be segregated the same as in the notice of
12 claim of lien. A separate bond shall be required for each notice of
13 claim of lien made by separate claimants. However, a single bond may
14 be used to guarantee payment of amounts claimed by more than one lien
15 claim by a single claimant so long as the amount of the bond meets the
16 requirements of this section as applied to the aggregate sum of all
17 claims by such claimant. The condition of the bond shall be to
18 guarantee payment of any judgment upon the lien in favor of the lien
19 claimant entered in any action to recover the amount claimed in a
20 notice of claim of lien, or on the claim asserted in the notice of
21 claim of lien. The effect of recording a bond shall be to release the
22 real property described in the notice of claim of lien from the lien
23 and any action brought to recover the amount claimed. Unless otherwise
24 prohibited by law, if no action is commenced to recover on a lien
25 within the time specified in section 14 of this act, the surety shall
26 be discharged from liability under the bond. If an action is timely
27 commenced, then on payment of any judgment entered in the action or on
28 payment of the full amount of the bond to the holder of the judgment,
29 whichever is less, the surety shall be discharged from liability under
30 the bond.

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

5 NEW SECTION. **Sec. 17.** FORECLOSURE--PARTIES. The lien provided by
6 this chapter, for which claims of lien have been recorded, may be
7 foreclosed and enforced by a civil action in the court having
8 jurisdiction in the manner prescribed for the judicial foreclosure of
9 a mortgage. The court shall have the power to order the sale of the
10 property. In any action brought to foreclose a lien, the owner shall
11 be joined as a party. The lien claims of all persons who, prior to the
12 commencement of the action, have legally recorded claims of lien
13 against the same property, or any part thereof, shall not be foreclosed
14 or affected unless they are joined as a party.

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

1 which cannot be cured by the imposition of costs or other conditions.
2 If consolidation of actions is not permissible under this section, the
3 lien foreclosure action filed during the pendency of another such
4 action shall not be dismissed if the filing was the result of mistake,
5 inadvertence, surprise, excusable neglect, or irregularity. An action
6 to foreclose a lien shall not be dismissed at the instance of a
7 plaintiff therein to the prejudice of another party to the suit who
8 claims a lien.

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

- 14 (a) Liens for the performance of labor;
- 15 (b) Liens for contributions owed to employee benefit plans;
- 16 (c) Liens for furnishing material, supplies, or equipment;
- 17 (d) Liens for subcontractors, including but not limited to their
18 labor and materials; and
- 19 (e) Liens for prime contractors, or for professional services.

20 (2) The proceeds of the sale of property must be applied to each
21 lien or class of liens in order of its rank and, in an action brought
22 to foreclose a lien, pro rata among each claimant in each separate
23 priority class. A personal judgment may be rendered against any party
24 personally liable for any debt for which the lien is claimed. If the
25 lien is established, the judgment shall provide for the enforcement
26 thereof upon the property liable as in the case of foreclosure of
27 judgment liens. The amount realized by such enforcement of the lien
28 shall be credited upon the proper personal judgment. The deficiency,

1 if any, remaining unsatisfied, shall stand as a personal judgment, and
2 may be collected by execution against any party liable therefor.

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

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

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

21 Nothing in this chapter shall be construed to impair or affect the
22 right of any person to whom any debt may be due for the furnishing of
23 labor, professional services, material, or equipment to maintain a
24 personal action to recover the debt against any person liable therefor.

25 NEW SECTION. **Sec. 20.** MATERIAL EXEMPT FROM PROCESS--EXCEPTION.
26 Whenever material is furnished for use in the improvement of property
27 subject to a lien created by this chapter, the material is not subject
28 to attachment, execution, or other legal process to enforce any debt

1 due by the purchaser of the material, except a debt due for the
2 purchase money thereof, so long as in good faith, the material is about
3 to be applied in the improvement of such property.

4 NEW SECTION. **Sec. 21.** LIEN--EFFECT ON COMMUNITY INTEREST. The
5 claim of lien, when filed as required by this chapter, shall be notice
6 to the husband or wife of the person who appears of record to be the
7 owner of the property sought to be charged with the lien, and shall
8 subject all the community interest of both husband and wife to the
9 lien.

10 NEW SECTION. **Sec. 22.** NOTICE TO LENDER--WITHHOLDING OF FUNDS.
11 Any lender providing interim or construction financing where there is
12 not a payment bond of at least fifty percent of the amount of
13 construction financing shall observe the following procedures and the
14 rights and liabilities of the lender and potential lien claimant shall
15 be affected as follows:

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

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

1 (3) The notice shall be filed in writing with the lender at the
2 office administering the interim or construction financing, with a copy
3 furnished to the owner and appropriate prime contractor. The notice
4 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,
10 common law agent, or 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
31 Supplier)
32 whose business address is, did at the
33 property located at
34 (Check appropriate box) () perform labor () furnish professional
35 services () provide materials () supply equipment as follows:
36
37
38
39 which was ordered by,
40 (Name of Person)

1 whose address was stated to be
2

3 The amount owing to the undersigned according to contract or
4 purchase order for labor, supplies, or equipment (as above
5 mentioned) is the sum of Dollars
6 (\$). Said sums became due and owing as of
7
8 (State Date)
9,

10 You are hereby required to withhold from any future draws on
11 existing construction financing which has been made on the subject
12 property (to the extent there remain undisbursed funds) the sum of
13 Dollars
14 (\$).

15 IMPORTANT

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

19 DATE:

20 By:
21 Its:

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

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

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

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

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

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

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

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

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

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

15 NEW SECTION. **Sec. 23.** FINANCIAL ENCUMBRANCES--PRIORITIES. Except
16 as otherwise provided in section 6 or 22 of this act, any mortgage or
17 deed of trust shall be prior to all liens, mortgages, deeds of trust,
18 and other encumbrances which have not been recorded prior to the
19 recording of the mortgage or deed of trust to the extent of all sums
20 secured by the mortgage or deed of trust regardless of when the same
21 are disbursed or whether the disbursements are obligatory.

22 NEW SECTION. **Sec. 24.** AVAILABILITY OF INFORMATION. The prime
23 contractor shall immediately supply the information listed in RCW
24 19.27.095(2) to any person who has contracted to supply materials,
25 equipment, or professional services or who is a subcontractor on the
26 improvement, as soon as the identity and mailing address of such
27 subcontractor, supplier, or professional is made known to the prime

1 contractor either directly or through another subcontractor, supplier,
2 or professional.

3 NEW SECTION. **Sec. 25.** LIBERAL CONSTRUCTION. RCW 19.27.095,
4 60.04.230, and sections 1 through 24 of this act are to be liberally
5 construed to provide security for all parties intended to be protected
6 by their provisions.

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

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

12 (1) A valid and fully complete building permit application for a
13 structure, that is permitted under the zoning or other land use control
14 ordinances in effect on the date of the application shall be considered
15 under the building permit ordinance in effect at the time of
16 application, and the zoning or other land use control ordinances in
17 effect on the date of application.

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

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

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

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

3 (d) Either:

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

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

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

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

19 (5) If any of the information required by subsection (2)(d) of this
20 section is not available at the time the application is submitted, the
21 applicant shall so state and the application shall be processed
22 forthwith and the permit issued as if the information had been
23 supplied, and the lack of the information shall not cause the
24 application to be deemed incomplete for the purposes of vesting under
25 subsection (1) of this section. However, the applicant shall provide
26 the remaining information as soon as the applicant can reasonably
27 obtain such information.

28 (6) The limitations imposed by this section shall not restrict
29 conditions imposed under chapter 43.21C RCW.

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

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

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

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

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

15 (d) Either:

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

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

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

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

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

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

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

7 ~~(3) Failure to comply with this section ((is a gross misdemeanor))~~
8 ~~shall subject the prime contractor to a civil penalty of not more than~~
9 ~~five thousand dollars, payable to the county where the project is~~
10 ~~located.~~

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

13 NEW SECTION. Sec. 30. RCW 60.04.045 is recodified as a section in
14 chapter 60.24 RCW.

15 NEW SECTION. Sec. 31. The following acts or parts of acts are
16 each repealed:

17 (1) RCW 60.04.010 and 1975 c 34 s 3, 1971 ex.s. c 94 s 2, 1959 c
18 279 s 1, 1905 c 116 s 1, & 1893 c 24 s 1;

19 (2) RCW 60.04.020 and 1984 c 202 s 4, 1977 ex.s. c 57 s 1, 1969
20 ex.s. c 84 s 1, 1965 c 98 s 1, 1959 c 279 s 2, 1959 c 278 s 1, 1957 c
21 214 s 1, 1911 c 77 s 1, & 1909 c 45 s 1;

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

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

25 (5) RCW 60.04.050 and 1975 c 34 s 5, 1959 c 279 s 4, & 1893 c 24 s
26 4;

1 (6) RCW 60.04.060 and 1975 c 34 s 6, 1971 ex.s. c 94 s 1, 1959 c
2 279 s 5, 1949 c 217 s 1(5a), & 1893 c 24 s 5;
3 (7) RCW 60.04.064 and 1959 c 279 s 6 & 1949 c 217 s 1(5b);
4 (8) RCW 60.04.067 and 1975 c 34 s 7, 1959 c 279 s 7, & 1949 c 217
5 s 1(5c);
6 (9) RCW 60.04.070 and 1985 c 44 s 10, 1949 c 217 s 2, & 1893 c 24
7 s 6;
8 (10) RCW 60.04.080 and 1893 c 24 s 7;
9 (11) RCW 60.04.090 and 1959 c 279 s 8 & 1893 c 24 s 8;
10 (12) RCW 60.04.100 and 1975 1st ex.s. c 231 s 1, 1943 c 209 s 1, &
11 1893 c 24 s 9;
12 (13) RCW 60.04.110 and 1975 c 34 s 8, 1959 c 279 s 9, & 1893 c 24
13 s 10;
14 (14) RCW 60.04.115 and 1986 c 314 s 4;
15 (15) RCW 60.04.120 and 1893 c 24 s 11;
16 (16) RCW 60.04.130 and 1975 c 34 s 9, 1971 c 81 s 129, 1969 c 38 s
17 1, 1959 c 279 s 10, & 1893 c 24 s 12;
18 (17) RCW 60.04.140 and 1959 c 279 s 11 & 1893 c 24 s 14;
19 (18) RCW 60.04.150 and 1893 c 24 s 15;
20 (19) RCW 60.04.160 and 1893 c 24 s 16;
21 (20) RCW 60.04.170 and 1893 c 24 s 17;
22 (21) RCW 60.04.180 and 1959 c 279 s 12 & 1893 c 24 s 13;
23 (22) RCW 60.04.200 and 1984 c 202 s 1 & 1973 1st ex.s. c 47 s 1;
24 (23) RCW 60.04.210 and 1984 c 202 s 2, 1975 c 34 s 10, & 1973 1st
25 ex.s. c 47 s 2;
26 (24) RCW 60.04.220 and 1973 1st ex.s. c 47 s 3;
27 (25) RCW 60.20.010 and 1943 c 18 s 1;
28 (26) RCW 60.20.020 and 1943 c 18 s 2;
29 (27) RCW 60.20.030 and 1955 c 239 s 1 & 1943 c 18 s 3;
30 (28) RCW 60.20.040 and 1943 c 18 s 4;

- 1 (29) RCW 60.20.050 and 1943 c 18 s 5;
2 (30) RCW 60.20.060 and 1943 c 18 s 6;
3 (31) RCW 60.48.010 and 1931 c 107 s 1; and
4 (32) RCW 60.48.020 and 1931 c 107 s 2.

5 NEW SECTION. **Sec. 32.** This act shall take effect April 1,
6 1992. Lien claims based on an improvement commenced by a potential
7 lien claimant on or after April 1, 1992, shall be governed by the
8 provisions of this act.