

CERTIFICATION OF ENROLLMENT

ENGROSSED SENATE BILL 6441

52nd Legislature
1992 Regular Session

Passed by the Senate March 12, 1992
Yeas 48 Nays 0

President of the Senate

Passed by the House March 11, 1992
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 **ENGROSSED SENATE BILL 6441** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SENATE BILL 6441

AS AMENDED BY THE HOUSE

Passed Legislature - 1992 Regular Session

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, 60.04.221, and 60.04.902;
4 adding a new section to chapter 60.04 RCW; providing an effective date;
5 and declaring an emergency.

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

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

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

11 (1) "Construction agent" means any registered or licensed
12 contractor, registered or licensed subcontractor, architect, engineer,
13 or other person having charge of any improvement to real property, who

1 shall be deemed the agent of the owner for the limited purpose of
2 establishing the lien created by this chapter.

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

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

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

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

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

25 (a) Funds to acquire real property;

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

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

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

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

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

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

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

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

15 (~~((11))~~) (10) "Payment bond" means a surety bond issued by a surety
16 licensed to issue surety bonds in the state of Washington that confers
17 upon potential claimants the rights of third party beneficiaries.

18 (~~((12))~~) (11) "Potential lien claimant" means any person or entity
19 entitled to assert lien rights under this chapter who has otherwise
20 complied with the provisions of this chapter and is registered or
21 licensed if required to be licensed or registered by the provisions of
22 the laws of the state of Washington.

23 (~~((13))~~) (12) "Prime contractor" includes all contractors, general
24 contractors, and specialty contractors, as defined by chapter 18.27 or
25 19.28 RCW, or who are otherwise required to be registered or licensed
26 by law, who contract directly with a property owner or their common law
27 agent to assume primary responsibility for the creation of an
28 improvement to real property, and includes property owners or their
29 common law agents who are contractors, general contractors, or

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

5 ~~((14))~~ (13) "Professional services" means surveying, establishing
6 or marking the boundaries of, preparing maps, plans, or specifications
7 for, or inspecting, testing, or otherwise performing any other
8 architectural or engineering services for the improvement of real
9 property.

10 ~~((15))~~ (14) "Real property lender" means a bank, savings bank,
11 savings and loan association, credit union, mortgage company, or other
12 corporation, association, partnership, trust, or individual that makes
13 loans secured by real property located in the state of Washington.

14 ~~((16))~~ (15) "Site" means the real property which is or is to be
15 improved.

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

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

23 (1) Except as otherwise provided in this section, every person
24 furnishing professional services, materials, or equipment for the
25 improvement of real property shall give the owner or reputed owner
26 notice in writing of the right to claim a lien. If the prime
27 contractor is in compliance with the requirements of RCW 19.27.095,
28 60.04.230, and 60.04.261, this notice shall also be given to the prime

1 contractor as described in this subsection unless the potential lien
2 claimant has contracted directly with the prime contractor. The notice
3 may be given at any time but only protects the right to claim a lien
4 for professional services, materials, or equipment supplied after the
5 date which is sixty days before:

6 (a) Mailing the notice by certified or registered mail to the owner
7 or reputed owner; or

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

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

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

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

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

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

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

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

5 (b) Who do not contract directly with the owner-occupier or their
6 common law agent shall give notice of the right to claim a lien to the
7 owner-occupier. Liens ~~((claims by))~~ of persons furnishing professional
8 services, materials, or equipment who do not contract directly with the
9 owner-occupier or their common law agent may only be satisfied from
10 amounts not yet paid to the prime contractor by the owner at the time
11 the notice described in this section is received, regardless of whether
12 amounts not yet paid to the prime contractor are due. For the purposes
13 of this subsection "received" means actual receipt of notice by
14 personal service, or registered or certified mail, or three days after
15 mailing by registered or certified mail, excluding Saturdays, Sundays,
16 or legal holidays.

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

21 NOTICE TO OWNER

22 IMPORTANT: READ BOTH SIDES OF THIS NOTICE CAREFULLY.

23 PROTECT YOURSELF FROM PAYING TWICE

24 To:.....
25 Date:.....
26 Re:.....(description of property: Street address or
27 general location.)
28 From:.....

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

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

6 OWNER/OCCUPIER OF EXISTING RESIDENTIAL PROPERTY

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

13 The law limits the amount that a lien claimant can claim against your
14 property. Claims may only be made against that portion of the contract
15 price you have not yet paid to your prime contractor as of the time
16 (~~you received~~) this notice was given to you or three days after this
17 notice was mailed to you. Review the back of this notice for more
18 information and ways to avoid lien claims.

19 COMMERCIAL AND/OR NEW RESIDENTIAL PROPERTY

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

30 Sender:

31 Address:

32 Telephone:

33 Brief description of professional services, materials, or equipment
34 provided or to be provided:

35 IMPORTANT INFORMATION ON REVERSE SIDE

36 IMPORTANT INFORMATION FOR YOUR PROTECTION

37 This notice is sent to inform you that we have or will provide
38 (~~materials,~~) professional services, materials, or equipment for the
39 (~~repair, remodel, or alteration~~) improvement of your property. We
40 expect to be paid by the person who ordered our services, but if we are
41 not paid, we have the right to enforce our claim by filing a
42 construction lien against your property.

43 LEARN more about the lien laws and the meaning of this notice by
44 discussing them with your contractor, suppliers, Department of Labor

1 and Industries, the firm sending you this notice, your lender, or your
2 attorney.

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

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

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

14 YOU SHOULD TAKE ((WHATEVER)) APPROPRIATE STEPS ((YOU BELIEVE
15 NECESSARY)) TO PROTECT YOUR PROPERTY FROM LIENS.

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

19 * * * * *

20 ~~(5) Every potential lien claimant providing professional services
21 where no improvement as defined in RCW 60.04.011(5) (a) or (b) has been
22 commenced, and the professional services provided are not visible from
23 an inspection of the real property ((shall)) may record in the real
24 property records of the county where the property is located a notice
25 which shall contain the professional service provider's name, address,
26 telephone number, legal description of the property, the owner or
27 reputed owner's name, and the general nature of the professional
28 services provided. If such notice is not recorded, the lien claimed
29 shall be subordinate to the interest of any subsequent mortgagee and
30 invalid as to the interest of any subsequent purchaser ((who)) if the
31 mortgagee or purchaser acts in good faith and for a valuable
32 consideration acquires an interest in the property prior to the
33 commencement of an improvement as defined in RCW 60.04.011(5) (a) or
34 (b) without notice of the professional services being provided. The~~

1 notice described in this subsection shall be substantially in the
2 following form:

3 NOTICE OF FURNISHING PROFESSIONAL SERVICES

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

7 [Legal Description
8 is mandatory]

9 The general nature of the professional services provided is
10
11
12 The owner or reputed owner of the real property is
13

14
15 (Signature)

16
17 (Name of Claimant)

18
19 (Street Address)

20
21 (City, State, Zip Code)

22
23 (Phone Number)

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

27 NEW SECTION. Sec. 3. A new section is added to chapter 60.04 RCW
28 to read as follows:

29 The legislature finds that acts of coercion or attempted coercion,
30 including threats to withhold future contracts, made by a contractor or
31 developer to discourage a contractor, subcontractor, or material or
32 equipment supplier from giving an owner the notice of right to claim a
33 lien required by RCW 60.04.031, or from filing a claim of lien under
34 this chapter are matters vitally affecting the public interest for the

1 purpose of applying the consumer protection act, chapter 19.86 RCW.
2 These acts of coercion are not reasonable in relation to the
3 development and preservation of business. These acts of coercion shall
4 constitute an unfair or deceptive act or practice in trade or commerce
5 for the purpose of applying the consumer protection act, chapter 19.86
6 RCW.

7 **Sec. 4.** RCW 60.04.041 and 1991 c 281 s 4 are each amended to read
8 as follows:

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

26 **Sec. 5.** RCW 60.04.051 and 1991 c 281 s 5 are each amended to read
27 as follows:

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

11 **Sec. 6.** RCW 60.04.081 and 1991 c 281 s 8 are each amended to read
12 as follows:

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

27 (2) The order shall clearly state that if the lien claimant fails
28 to appear at the time and place noted the lien ((~~claim~~)) shall be

1 ((dismissed)) released, with prejudice (({,})), and that the lien
2 claimant shall be ordered to pay the costs requested by the applicant
3 including reasonable attorneys' fees.

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

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

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

22 **Sec. 7.** RCW 60.04.091 and 1991 c 281 s 9 are each amended to read
23 as follows:

24 Every person claiming a lien under RCW 60.04.021 shall ((record))
25 file for recording, in the county where the subject property is
26 located, a notice of claim of lien not later than ninety days after the
27 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~~) name

of person indebted to claimant:

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

1. NAME OF LIEN CLAIMANT:
TELEPHONE NUMBER:
ADDRESS:

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

3. NAME OF PERSON INDEBTED TO THE CLAIMANT:

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

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

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

7. PRINCIPAL AMOUNT FOR WHICH THE LIEN IS CLAIMED IS:

8. IF THE CLAIMANT IS THE ASSIGNEE OF THIS CLAIM SO STATE HERE:

1 , Claimant
2
3
4 (Phone number, address, city,
5 and state of claimant)

6 STATE OF WASHINGTON, COUNTY OF
7,ss.

8, being sworn, says: I am the claimant (or attorney of the
9 claimant, or administrator, representative, or agent of the trustees
10 of an employee benefit plan) above named; I have read or heard the
11 foregoing claim, read and know the contents thereof, and believe the
12 same to be true and correct and that the claim of lien is not
13 frivolous and is made with reasonable cause, and is not clearly
14 excessive under penalty of perjury.

15
16 Subscribed and sworn to before me this day of
17

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

28 **Sec. 8.** RCW 60.04.141 and 1991 c 281 s 14 are each amended to read
29 as follows:

30 No lien created by this chapter binds the property subject to the
31 lien for a longer period than eight calendar months after the ((~~notice~~
32 ~~of~~)) claim of lien has been recorded unless an action is filed by the
33 lien claimant within that time in the superior court in the county
34 where the subject property is located to enforce the lien, and service

1 is made upon the owner of the subject property within ninety days of
2 the date of filing the action; or, if credit is given and the terms
3 thereof are stated in the ((notice-of)) claim of lien, then eight
4 calendar months after the expiration of such credit; and in case the
5 action is not prosecuted to judgment within two years after the
6 commencement thereof, the court, in its discretion, may dismiss the
7 action for want of prosecution, and the dismissal of the action or a
8 judgment rendered thereon that no lien exists shall constitute a
9 cancellation of the lien. This is a period of limitation, which shall
10 be tolled by the filing of any petition seeking protection under Title
11 Eleven, United States Code by an owner of any property subject to the
12 lien established by this chapter.

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

15 The lien claimant shall be entitled to recover upon the claim
16 recorded the contract price after deducting all claims of other lien
17 claimants to whom the claimant is liable, for furnishing labor,
18 professional services, materials, or equipment; and in all cases where
19 a ((notice-of)) claim of lien shall be recorded under this chapter for
20 labor, professional services, materials, or equipment supplied to any
21 lien claimant, he or she shall defend any action brought thereupon at
22 his or her own expense((;and)). During the pendency of the action,
23 the owner may withhold from the prime contractor the amount of money
24 for which a claim is recorded by any subcontractor, supplier, or
25 laborer((;and)). In case of judgment against the owner or the owner's
26 property, upon the lien, the owner shall be entitled to deduct from
27 sums due to the prime contractor the principal amount of the judgment
28 from any amount due or to become due from ((him-or-her)) the owner to

1 the (~~lien claimant~~) prime contractor plus such costs, including
2 interest and attorneys' fees, as the court deems just and equitable,
3 and (~~he or she~~) the owner shall be entitled to recover back from the
4 (~~lien claimant~~) prime contractor the amount for which (~~the~~) a lien
5 (~~is~~) or liens are established in excess of any sum that may remain
6 due from (~~him or her~~) the owner to the (~~lien claimant~~) prime
7 contractor.

8 **Sec. 10.** RCW 60.04.161 and 1991 c 281 s 16 are each amended to
9 read as follows:

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

1 ef)) claim of lien affects more than one parcel of real property and is
2 segregated to each parcel, the bond may be segregated the same as in
3 the ((~~notice of~~)) claim of lien. A separate bond shall be required for
4 each ((~~notice of~~)) claim of lien made by separate claimants. However,
5 a single bond may be used to guarantee payment of amounts claimed by
6 more than one ((~~lien~~)) claim of lien by a single claimant so long as
7 the amount of the bond meets the requirements of this section as
8 applied to the aggregate sum of all claims by such claimant. The
9 condition of the bond shall be to guarantee payment of any judgment
10 upon the lien in favor of the lien claimant entered in any action to
11 recover the amount claimed in a ((~~notice of~~)) claim of lien, or on the
12 claim asserted in the ((~~notice of~~)) claim of lien. The effect of
13 recording a bond shall be to release the real property described in the
14 notice of claim of lien from the lien and any action brought to recover
15 the amount claimed. Unless otherwise prohibited by law, if no action
16 is commenced to recover on a lien within the time specified in RCW
17 60.04.141, the surety shall be discharged from liability under the
18 bond. If an action is timely commenced, then on payment of any
19 judgment entered in the action or on payment of the full amount of the
20 bond to the holder of the judgment, whichever is less, the surety shall
21 be discharged from liability under the bond.

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

26 **Sec. 11.** RCW 60.04.171 and 1991 c 281 s 17 are each amended to
27 read as follows:

1 The lien provided by this chapter, for which claims of lien have
2 been recorded, may be foreclosed and enforced by a civil action in the
3 court having jurisdiction in the manner prescribed for the judicial
4 foreclosure of a mortgage. The court shall have the power to order the
5 sale of the property. In any action brought to foreclose a lien, the
6 owner shall be joined as a party. The ~~((lien claims of all))~~ interest
7 in the real property of any person~~((s))~~ who, prior to the commencement
8 of the action, ~~((have legally))~~ has a recorded ~~((claims of lien~~
9 ~~against))~~ interest in the ~~((same))~~ property, or any part thereof, shall
10 not be foreclosed or affected unless they are joined as a party.

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

1 inadvertence, surprise, excusable neglect, or irregularity. An action
2 to foreclose a lien shall not be dismissed at the instance of a
3 plaintiff therein to the prejudice of another party to the suit who
4 claims a lien.

5 **Sec. 12.** RCW 60.04.181 and 1991 c 281 s 18 are each amended to
6 read as follows:

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

10 (a) Liens for the performance of labor;

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

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

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

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

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

27 (3) The court may allow the prevailing party in the action, whether
28 plaintiff or defendant, as part of the costs of the action, the moneys

1 paid for recording the (~~notice of~~) claim of lien, costs of title
2 report, bond costs, and attorneys' fees and necessary expenses incurred
3 by the attorney in the superior court, court of appeals, supreme court,
4 or arbitration, as the court or arbitrator deems reasonable. Such
5 costs shall have the priority of the class of lien to which they are
6 related, as established by subsection (1) of this section.

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

11 **Sec. 13.** RCW 60.04.221 and 1991 c 281 s 22 are each amended to
12 read as follows:

13 Any lender providing interim or construction financing where there
14 is not a payment bond of at least fifty percent of the amount of
15 construction financing shall observe the following procedures and the
16 rights and liabilities of the lender and potential lien claimant shall
17 be affected as follows:

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

26 (2) The notice shall be signed by the potential lien claimant or
27 some person authorized to act on his or her behalf (~~who shall~~

1 ~~affirmatively state under penalty of perjury, they have read the notice~~
2 ~~and believe it to be true and correct)).~~

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

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

9 (b) Delivering or serving the notice personally and obtaining
10 evidence of delivery in the form of a receipt or other acknowledgment
11 signed by the lender, owner, and appropriate prime contractor, or an
12 affidavit of service.

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

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

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

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

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

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

26 NOTICE TO REAL PROPERTY LENDER
27 (Authorized by RCW)

28 TO:
29 (Name of Lender)
30

1 (Administrative Office-Street Address)
2
3 (City) (State) (Zip)
4 AND TO:
5 (Owner)
6 AND TO:
7 (Prime Contractor-If Different Than Owner)
8
9 (Name of Laborer, Professional, Materials, or Equipment Supplier)
10 whose business address is, did at the
11 property located at
12 (Check appropriate box) () perform labor () furnish professional
13 services () provide materials () supply equipment as follows:
14
15
16
17 which was ordered by,
18 (Name of Person)
19 whose address was stated to be.....
20

21 The amount owing to the undersigned according to contract or
22 purchase order for labor, supplies, or equipment (as above
23 mentioned) is the sum of Dollars
24 (\$). Said sums became due and owing as of
25
26 (State Date)
27,

28 You are hereby required to withhold from any future draws on
29 existing construction financing which has been made on the subject
30 property (to the extent there remain undisbursed funds) the sum of
31 Dollars
32 (\$).

33 IMPORTANT

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

37 DATE:
38 By:
39 Its:

40 ((~~4~~)) (5) After the receipt of the notice, the lender shall
41 withhold from the next and subsequent draws the amount claimed to be
42 due as stated in the notice. Alternatively, the lender may obtain from
43 the prime contractor or borrower a payment bond for the benefit of the
44 potential lien claimant in an amount sufficient to cover the amount
45 stated in the potential lien claimant's notice. The lender shall be

1 obligated to withhold amounts only to the extent that sufficient
2 interim or construction financing funds remain undisbursed as of the
3 date the lender receives the notice.

4 ~~((+5))~~ (6) Sums so withheld shall not be disbursed by the lender,
5 except by the written agreement of the potential lien claimant, owner,
6 and prime contractor in such form as may be prescribed by the lender,
7 or the order of a court of competent jurisdiction.

8 ~~((+6))~~ (7) In the event a lender fails to abide by the provisions
9 of subsections (4) and (5) of this section, then the mortgage, deed of
10 trust, or other encumbrance securing the lender ~~((will))~~ shall be
11 subordinated to the lien of the potential lien claimant to the extent
12 of the interim or construction financing wrongfully disbursed, but in
13 no event more than the amount stated in the notice plus costs as fixed
14 by the court, including reasonable attorneys' fees.

15 ~~((+7))~~ (8) Any potential lien claimant shall be liable for any
16 loss, cost, or expense, including reasonable attorneys' fees and
17 statutory costs, to a party injured thereby arising out of any unjust,
18 excessive, or premature notice filed under purported authority of this
19 section. "Notice" as used in this subsection does not include notice
20 given by a potential lien claimant of the right to claim liens under
21 this chapter where no actual claim is made.

22 ~~((+8))~~ (9)(a) Any owner of real property subject to a notice to
23 real property lender under this section, or the contractor ~~((or))~~,
24 subcontractor, lender, or lien claimant who believes the claim that
25 underlies the notice is frivolous and made without reasonable cause, or
26 is clearly excessive may apply by motion to the superior court for the
27 county where the property, or some part thereof is located, for an
28 order commanding the potential lien claimant who issued the notice to
29 the real property lender to appear before the court at a time no

1 earlier than six nor later than fifteen days from the date of service
2 of the application and order on the potential lien claimant, and show
3 cause, if any he or she has, why the notice to real property lender
4 should not be declared void. The motion shall state the grounds upon
5 which relief is asked and shall be supported by the affidavit of the
6 applicant or his or her attorney setting forth a concise statement of
7 the facts upon which the motion is based.

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

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

16 (d) If, following a (~~full~~) hearing on the matter, the court
17 determines that the claim upon which the notice to real property lender
18 is based is frivolous and made without reasonable cause, or clearly
19 excessive, the court shall issue an order declaring the notice to real
20 property lender void if frivolous(~~(7)~~) and made without reasonable
21 cause, or reducing the amount stated in the notice if clearly
22 excessive, and awarding costs and reasonable attorneys' fees to the
23 applicant to be paid by the person who issued the notice. If the court
24 determines that the claim underlying the notice to real property lender
25 is not frivolous and was made with reasonable cause, and is not clearly
26 excessive, the court shall issue an order so stating and awarding costs
27 and reasonable attorneys' fees to the issuer of the notice to be paid
28 by the applicant.

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

3 **Sec. 14.** RCW 60.04.902 and 1991 c 281 s 32 are each amended to
4 read as follows:

5 This act shall take effect (~~April~~) June 1, 1992. Lien claims
6 based on an improvement commenced by a potential lien claimant on or
7 after (~~April~~) June 1, 1992, shall be governed by the provisions of
8 this act.

9 NEW SECTION. **Sec. 15.** This act is necessary for the immediate
10 preservation of the public peace, health, or safety, or support of the
11 state government and its existing public institutions, and shall take
12 effect June 1, 1992, except section 14 of this act which shall take
13 effect immediately.