
ENGROSSED SECOND SUBSTITUTE SENATE BILL 5773

State of Washington

59th Legislature

2005 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Fraser, Fairley, Kohl-Welles, Rockefeller, Kline and Pridemore)

READ FIRST TIME 03/08/05.

1 AN ACT Relating to protecting homeowners who hire contractors to
2 remodel or build their homes; amending RCW 60.04.021, 60.04.091,
3 60.04.250, 18.27.020, 60.04.011, 60.04.031, 18.27.030, and 18.27.040;
4 adding new sections to chapter 60.04 RCW; creating a new section;
5 prescribing penalties; and providing an effective date.

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

7 NEW SECTION. **Sec. 1.** The legislature finds that the vast majority
8 of contractors and subcontractors engaged in the business of
9 constructing or remodeling owner-occupied single-family homes are both
10 technically proficient in their trade and able to manage their business
11 dealings in accordance with the highest standards. The legislature
12 also finds, however, that in those relatively few, but all-too-
13 frequent, instances where prime contractors on such construction or
14 remodeling projects intentionally or unintentionally mismanage payments
15 received from homeowners that are intended for subcontractors,
16 suppliers, and others, existing provisions are inadequate to protect
17 homeowners. Additionally, the toll on an individual homeowner's
18 personal economic and emotional condition that such financial
19 mismanagement by this small fraction of prime contractors is not

1 adequately balanced against the responsibilities, obligations, and
2 possible penalties that contractors bear for such mismanagement.
3 Consequently, the legislature finds that it is necessary to (1) clearly
4 establish that prime contractors have a duty to properly manage funds
5 received from or on behalf of homeowners that are intended for
6 suppliers, subcontractors, and others, and to hold those who fail in
7 this duty personally responsible for such financial mismanagement; (2)
8 increase awareness by homeowners to the potential for liens against
9 their residence if contractors fail to pay suppliers and subcontractors
10 as promised; (3) clarify the right of homeowners to contract for the
11 prime contractor to maintain deposits and other similar payments in a
12 trust account for the homeowner, when the homeowner elects to do so;
13 and (4) increase opportunities for homeowners to become better educated
14 about ways to protect themselves from financial mismanagement by those
15 few contractors who are unable or unwilling to meet the financial
16 management standards set by the vast majority of residential
17 contractors in this state.

18 Recognizing the independence of the federal bankruptcy courts, it
19 is, nonetheless, the intent of the legislature that liabilities of
20 contractors and subcontractors arising from mismanagement of funds
21 received from or for the benefit of homeowners should not be
22 dischargeable in bankruptcy. If the mismanagement rises to the level
23 of criminal conduct, nothing in this act is intended to interfere with
24 criminal prosecution.

25 NEW SECTION. **Sec. 2.** A new section is added to chapter 60.04 RCW
26 to read as follows:

27 (1) For the purposes of this section, RCW 60.04.021, 60.04.250, and
28 section 4 of this act:

29 (a) "Prime residential contractor" means (i) a prime contractor as
30 defined in RCW 60.04.011, that is engaged in the business of
31 constructing, repairing, altering, or remodeling a single-family
32 residence of a homeowner; (ii) the prime contractor's principals,
33 partners, officers, directors, vice principals, and the employee with
34 the greatest executive, managerial, supervisory, physical, or actual
35 control over the accounting or disbursement of funds received by the
36 prime residential contractor from or on behalf of residential
37 homeowners; and (iii) if different from those persons identified in

1 (a)(ii) of this subsection, the three persons who received or are
2 entitled to receive the most compensation from the prime residential
3 contractor, regardless of whether the compensation is provided as
4 salary, wages, profits, or otherwise, during the term of the
5 contractor's registration;

6 (b) "Residential subcontractor" means (i) a subcontractor, as
7 defined in RCW 60.04.011, retained by a prime residential contractor to
8 assist in the constructing, repairing, altering, or remodeling of a
9 single-family residence of a homeowner; (ii) the residential
10 subcontractor's principals, partners, officers, directors, vice
11 principals, and the employee with the greatest executive, managerial,
12 supervisory, physical, or actual control over the accounting or
13 disbursement of funds received by the residential subcontractor from or
14 on behalf of residential homeowners; and (iii) if different from those
15 persons identified in (b)(ii) of this subsection, the three persons who
16 received or are entitled to receive the most compensation from the
17 residential subcontractor, regardless of whether the compensation is
18 provided as salary, wages, profits, or otherwise, during the term of
19 the contractor's registration.

20 (2)(a)(i) A prime residential contractor has the duty to act in the
21 best interest of a residential homeowner in the receipt, management,
22 and disbursement of all amounts paid by or on behalf of the homeowner
23 to the prime residential contractor for labor, professional services,
24 materials, or equipment supplied by a potential lien claimant. A prime
25 residential contractor shall defend the homeowner against all such lien
26 claims for which the homeowner paid the prime residential contractor.

27 (ii) Residential subcontractors have the duty to act in the best
28 interest of residential homeowners in the receipt, management, and
29 disbursement of all amounts paid to the subcontractor by, on behalf of,
30 or for the benefit of, the homeowner or the prime residential
31 contractor for labor, professional services, materials, or equipment
32 supplied by a potential lien claimant. A residential subcontractor
33 shall defend the homeowner and the prime residential contractor against
34 all such liens for which the prime residential contractor paid the
35 subcontractor.

36 (b) All residential contractors, including a prime residential
37 contractor and a residential subcontractor, shall maintain accurate and
38 complete accounting records and books adequate to identify all moneys

1 received from or on behalf of a residential homeowner and the use or
2 application of such moneys for the payment of the contract price for
3 labor, professional services, materials, or equipment supplied by any
4 entity having a potential lien claim right against the residential
5 homeowner. Nothing in this section requires a contractor to create or
6 maintain a separate account for each homeowner.

7 (3)(a) Except as provided in (b) of this subsection, all funds paid
8 to a prime residential contractor by or on behalf of a residential
9 homeowner for application toward the contract price for labor,
10 professional services, materials, or equipment supplied by a potential
11 lien claimant other than the prime residential contractor shall not be
12 used by the prime residential contractor for any other purpose unless
13 all amounts owed on the potential lien claimant's contract price have
14 been paid in full.

15 (b) All funds paid to a prime residential contractor by or on
16 behalf of a residential homeowner shall be presumed to be for
17 application toward the contract price for labor, professional services,
18 materials, or equipment supplied by potential lien claimants other than
19 the prime residential contractor unless, before accepting payment from
20 a residential homeowner, a prime residential contractor provides
21 written notice to the homeowner identifying:

22 (i) The potential lien claimants, if any, to which payment is owed,
23 or to which the prime residential contractor intends to apply part or
24 all of the homeowner's payment; and

25 (ii) Which of such potential lien claimants, if any, the prime
26 residential contractor does not intend to fully pay from the
27 homeowner's payment, and the reason for less than full payment.

28 (c) Except as provided in (d) of this subsection, all funds paid to
29 a residential subcontractor by a prime residential contractor for the
30 benefit of, or on behalf of, a residential homeowner for application
31 toward the contract price for labor, professional services, materials,
32 or equipment supplied by a potential lien claimant other than the
33 residential subcontractor shall not be used by the residential
34 subcontractor for any other purpose unless all amounts owed on the
35 potential lien claimant's contract price have been paid in full.

36 (d) All funds paid to a residential subcontractor for the benefit
37 of, or on behalf of, a residential homeowner shall be presumed to be
38 for application toward the contract price for labor, professional

1 services, materials, or equipment supplied by potential lien claimants
2 other than the residential subcontractor unless, before accepting
3 payment from a prime residential contractor, the residential
4 subcontractor provides written notice to the prime residential
5 contractor identifying:

6 (i) The potential lien claimants, if any, to which payment is owed,
7 or to which the residential subcontractor intends to apply part or all
8 of the prime residential contractor's payment; and

9 (ii) Which of such potential lien claimants, if any, the
10 residential subcontractor does not intend to fully pay from the prime
11 residential contractor's payment, and the reason for less than full
12 payment.

13 (4) A prime residential contractor shall be personally liable for
14 the full amount of any lien claim recorded pursuant to RCW 60.04.091
15 if:

16 (a) The prime residential contractor fails to show, by clear and
17 convincing evidence, that funds paid to the prime residential
18 contractor by or on behalf of a residential homeowner for application
19 toward the contract price for labor, professional services, materials,
20 or equipment supplied by a potential lien claimant other than the prime
21 residential contractor were actually paid to a potential lien claimant;

22 (b) The prime residential contractor had or should have had
23 knowledge of such use of funds, unless the prime residential contractor
24 shows, by a preponderance of the evidence in defending against the
25 claimed lien, that he or she actually did not know and had no
26 reasonable opportunity to know of such use of funds; and

27 (c) A notice of claim of lien is recorded, pursuant to RCW
28 60.04.091, against the prime residential contractor or the homeowner by
29 a potential lien claimant to which payment was due when the prime
30 residential contractor received payment from the homeowner for the
31 services, materials, or equipment supplied by the lien claimant.

32 (5) A residential subcontractor shall be personally liable for the
33 full amount of any lien claim recorded pursuant to RCW 60.04.091 if:

34 (a) The residential subcontractor fails to show, by clear and
35 convincing evidence, that funds paid to the residential subcontractor
36 by a prime residential contractor for application toward the contract
37 price for labor, professional services, materials, or equipment

1 supplied by a potential lien claimant other than the residential
2 subcontractor were actually paid to a potential lien claimant;

3 (b) The residential subcontractor has or should have had knowledge
4 of such use of funds, unless the residential subcontractor shows, by a
5 preponderance of the evidence in defending against the claimed lien,
6 that he or she actually did not know and had no reasonable opportunity
7 to know of such use of funds; and

8 (c) A notice of claim of lien is recorded, pursuant to RCW
9 60.04.091, against the residential subcontractor or the homeowner by a
10 potential lien claimant to which payment was due when the residential
11 subcontractor received payment from the prime residential contractor
12 for the services, materials, or equipment supplied by the lien
13 claimant.

14 (6) For the purposes of RCW 60.04.021, 60.04.250, and section 4 of
15 this act, "department" means the department of labor and industries.

16 **Sec. 3.** RCW 60.04.021 and 1991 c 281 s 2 are each amended to read
17 as follows:

18 (1) Except as provided in subsections (2) and (3) of this section
19 and RCW 60.04.031, any person furnishing labor, professional services,
20 materials, or equipment for the improvement of real property shall have
21 a lien upon the improvement for the contract price of labor,
22 professional services, materials, or equipment furnished at the
23 instance of the owner, or the agent or construction agent of the owner.

24 (2)(a) With respect to labor, professional services, materials, or
25 equipment for the improvement of an owner-occupied single-family
26 residence where the aggregate lien claims relating to transactions
27 constituting violations of section 2 of this act exceed the amount of
28 the prime residential contractor's or residential subcontractor's bond
29 that is not available to a homeowner, any person furnishing labor,
30 professional services, materials, or equipment for the improvement of
31 an owner-occupied single-family residence shall have a lien:

32 (i) In the amount of the contract price of labor, professional
33 services, materials, or equipment furnished at the instance of the
34 owner, or the agent or construction agent of the owner, upon any real
35 property owned by the prime residential contractor; and

36 (ii) Upon the improvement for no more than one-half of such
37 contract price.

1 (b) No judgment foreclosing a lien against improvement to an owner-
2 occupied single-family residence pursuant to this subsection shall be
3 entered unless: The court hearing a foreclosure or other collection
4 action involving the prime residential contractor or residential
5 subcontractor finds that the lien claimant seeking the judgment
6 foreclosure has made reasonable efforts to recover its claim from the
7 prime contractor or subcontractor, including the three persons who
8 received or are entitled to receive the most compensation from the
9 contractor, regardless of whether the compensation is provided as
10 salary, wages, profits, or otherwise, during the term of the
11 contractor's registration, and any other parties liable therefor,
12 personally or otherwise.

13 (c) A lien claimant shall provide to the department a certified
14 copy of any judgment entered in an action commenced under this section
15 if the judgment is entered against any party that was a registered or
16 licensed contractor or subcontractor. The department shall establish
17 by rule and charge a reasonable fee to cover the costs of the
18 processing of documents submitted to the department under this section,
19 which the court shall include in the award of costs to a prevailing
20 party.

21 (3) If a potential lien claimant knew or should have known that a
22 prime residential contractor had been the prime residential contractor
23 or construction agent on a single-family residential improvement
24 project with respect to which:

25 (a) A residential homeowner paid the prime residential contractor
26 for goods or services supplied by the potential lien claimant;

27 (b) The prime residential contractor failed to pay the potential
28 lien claimant's contract price for such goods or services; and

29 (c) The potential lien claimant recorded or otherwise pursued a
30 collection action or claim of lien against the homeowner in the
31 previous three years;

32 the potential lien claimant shall have no lien right upon the
33 improvement for labor, professional services, materials, or equipment
34 furnished on behalf of the homeowner at the instance of the prime
35 residential contractor or construction agent employed by a prime
36 residential contractor unless, before supplying any service, materials,
37 or equipment that may be subject to a lien under this chapter, the
38 potential lien claimant has provided written notice to the homeowner of

1 all circumstances surrounding the filing, pursuit, and resolution of
2 such claim, and the homeowner, in writing, affirmatively instructs the
3 potential lien claimant to supply the requested service, materials, or
4 equipment.

5 NEW SECTION. **Sec. 4.** A new section is added to chapter 60.04 RCW
6 to read as follows:

7 (1) Any potential lien claimant may give notice as provided in
8 subsections (2) and (3) of this section if the potential lien claimant
9 has not received a payment from a prime residential contractor: (a)
10 Within thirty days after the date required by their contract, invoice,
11 or purchase order; or (b) if no due date is specified in the contract,
12 invoice, or purchase order, within sixty days after the goods or
13 services specified in the contract, invoice, or purchase order have
14 been provided or delivered.

15 (2) The notice shall be signed by the potential lien claimant or
16 some person authorized to act on his or her behalf.

17 (3) The notice shall be in writing and shall be mailed or delivered
18 to the residential homeowner with a copy mailed or given to the prime
19 residential contractor within fourteen days after the date provided for
20 in subsection (1) of this section. The notice shall be given by:

21 (a) Mailing the notice to the residential homeowner and prime
22 residential contractor using any mail service by which a record of the
23 date of mailing is authenticated by the United States post office; or

24 (b) Delivering or serving the notice personally and obtaining
25 evidence of delivery in the form of a receipt or other acknowledgment
26 signed by the residential homeowner and prime residential contractor or
27 an affidavit of service.

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

29 (a) The person, firm, trustee, or corporation filing the notice has
30 furnished labor, professional services, materials, or equipment for
31 which a lien is given by this chapter;

32 (b) The name of the prime residential contractor ordering the same;

33 (c) A common or street address of the real property being improved
34 or the legal description of the real property;

35 (d) The name, business address, and telephone number of the lien
36 claimant; and

1 (e) The sums due and to become due, for which a potential lien
2 claimant may claim a lien under this chapter.

3 The notice may contain additional information but shall be in
4 substantially the following form:

5 NOTICE TO RESIDENTIAL HOMEOWNER OF LATE PAYMENT
6 (Authorized by RCW)

7 TO:
8 (Name of Homeowner)

9
10 (Street Address)

11
12 (City) (State) (Zip)

13 AND TO:
14 (Prime Residential Contractor)

15 (Name of Laborer, Professional, Materials, or Equipment Supplier)
16 whose business address is, did at the property located
17 at

18 (Check appropriate box) () perform labor () furnish professional
19 services () provide materials () supply equipment as follows:

20
21
22
23 which was ordered by

24 (Name of Person)
25 whose address was stated to be

26

27 The amount owing to the undersigned according to
28 contract or purchase order for labor, supplies, or equipment
29 (as abovementioned) is the sum of Dollars
30 (\$). Said sums became due and owing as of

31
32 (State Date)

33
34,
35

1 **Sec. 5.** RCW 60.04.091 and 1992 c 126 s 7 are each amended to read
2 as follows:

3 ~~Except as provided under subsection (3) of this section, every~~
4 person claiming a lien under RCW 60.04.021 shall file for recording, in
5 the county where the subject property is located, a notice of claim of
6 lien not later than ninety days after the person has ceased to furnish
7 labor, professional services, materials, or equipment or the last date
8 on which employee benefit contributions were due. ~~((The notice of~~
9 ~~claim of lien:))~~

10 (1) The notice of claim of lien shall state in substance and
11 effect:

12 (a) The name, ~~((phone))~~ telephone number, and address of the
13 claimant;

14 (b) The first ~~((and))~~ date on which the claimant began to perform
15 labor, provide professional services, or supply material or equipment
16 or the first date on which employee benefits became due;

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

20 ~~((e))~~ (d) The name of the person indebted to the claimant;

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

25 ~~((e))~~ (f) The name of the owner or reputed owner of the property,
26 if known, and, if not known, that fact shall be stated; ~~((and~~

27 ~~((f))~~ (g) The principal amount for which the lien is claimed,
28 excluding any interest, late fees, costs, attorneys' fees, or similar
29 charges; and

30 (h) Whether the claimant is the assignee of the claim.

31 (2) The notice of claim of lien shall be signed by the claimant or
32 some person authorized to act on his or her behalf who shall
33 affirmatively state they have read or heard and understand the notice
34 of claim of lien ((and)), believe the ((notice of claim of lien))
35 contents to be true and correct, and the lien is not frivolous and is
36 not clearly excessive, under penalty of perjury, and shall be
37 acknowledged as set forth in the form below, or pursuant to chapter
38 64.08 RCW. If the lien has been assigned, the name of the assignee

1 shall be stated. Where an action to foreclose the lien has been
2 commenced such notice of claim of lien may be amended as pleadings may
3 be by order of the court insofar as the interests of third parties are
4 not adversely affected by such amendment. A claim of lien
5 substantially in the following form shall be sufficient:

6 CLAIM OF LIEN

7, claimant, vs, name of person indebted
8 to claimant:

9 Notice is hereby given that the person named below claims a
10 lien pursuant to chapter ((64.04)) 60.04 RCW. In support of
11 this lien the following information is submitted:

- 12 1. NAME OF LIEN CLAIMANT:
- 13 TELEPHONE NUMBER:
- 14 ADDRESS:

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

18 3. NAME OF PERSON INDEBTED TO THE CLAIMANT:
19

20 4. DESCRIPTION OF THE PROPERTY AGAINST WHICH A LIEN IS
21 CLAIMED (Street address, legal description or other information
22 that will reasonably describe the property):
23
24
25

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

28 6. THE LAST DATE ON WHICH LABOR WAS PERFORMED;
29 PROFESSIONAL SERVICES WERE FURNISHED; CONTRIBUTIONS TO AN
30 EMPLOYEE BENEFIT PLAN WERE DUE; OR MATERIAL, OR EQUIPMENT WAS
31 FURNISHED:
32

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

1 (5) A lien claimant that, for any reason, includes any interest,
2 late fee, cost, attorneys' fees, or similar charges as part of the
3 principal amount for which the lien is claimed shall be deemed to have
4 waived any right under contract or otherwise to such charges, and shall
5 also forfeit any right the claimant may have to attorneys' fees and
6 costs against the owner under RCW 60.04.181.

7 **Sec. 6.** RCW 60.04.250 and 1990 c 81 s 1 are each amended to read
8 as follows:

9 The department of labor and industries shall prepare master
10 documents that provide informational material about:

11 (1) Construction lien laws and available safeguards against real
12 property lien claims. The material shall include methods of protection
13 against lien claims, including obtaining lien release documents,
14 performance bonds, joint payee checks, the opportunity to require
15 contractor disclosure of all potential lien claimants as a condition of
16 payment, and lender supervision under RCW 60.04.200 and 60.04.210. The
17 material shall also include sources of further information, including
18 the department of labor and industries and the office of the attorney
19 general.

20 (2) The basics of lien law relating to owner-occupied residential
21 improvements and new construction projects, including a list of
22 available safeguards against real property lien claims, which the
23 homeowner must consider, reject, or select. Before any building permit
24 may be issued for the construction of a new owner-occupied
25 single-family residence or for the improvement to an owner-occupied
26 single-family residence for an amount in excess of one thousand
27 dollars, if the construction will involve the services of a prime
28 contractor, the permit issuing agency shall not issue any permit until
29 the homeowner has personally, and not through an agent, acknowledged
30 receipt of the document. When the homeowner completes the document by
31 making selections, as indicated in the document, and submits it to the
32 agency, the permit issuing agency shall maintain a copy of the
33 completed document in the file of the permit issuing agency relating to
34 the homeowner's permit application. The document shall be in
35 substantially the following form and shall also include information
36 describing the scope and limits of state contractor bonding

1 requirements, the provisions of this act, and the availability of
2 further information, including the department of labor and industries
3 and the office of the attorney general.

4 Dear Homeowner:

5 You must complete the items below and select from the options below
6 what protection, if any, you want against potential lien claims on your
7 property as a result of the construction work for which you are
8 contracting. If your contractor fails to pay subcontractors,
9 suppliers, or laborers or neglects to make other legally required
10 payments, those who are owed money can file a lien against your
11 property for payment, even if you have paid your contractor in full.
12 Anyone filing a valid lien claim may force the sale of your property to
13 recover the unpaid amount. This is true if you have hired a contractor
14 to build a new home or are buying a newly built home. It is also true
15 when you remodel or improve your property.

16 People who supply materials or labor ordered by your contractor are
17 permitted by law to file a lien only if they do so within ninety days
18 of cessation of performance or delivery of materials. The time frame
19 is spelled out in RCW 60.04.091.

20 If you enter into a contract to buy a newly built home, you may not
21 receive a notice of a lien based on a claim by a contractor or material
22 supplier. You should inquire of your lender and title insurer about
23 title insurance coverage for liens that may arise from the construction
24 of your home, but that are not recorded until after you take possession
25 of your home. Be aware that a lien may be claimed even though you have
26 not received a notice. Before making final payment on the project,
27 obtain a completed lien release form from each contractor and material
28 supplier. A sample of this release of lien form is available from the
29 department of labor and industries, contractor registration section.

30 You have final responsibility for seeing that all bills are paid
31 even if you have paid your contractor in full.

32 If you are dealing with a lending institution, ask your loan
33 officer what precautions the lending institution takes to verify that
34 subcontractors and material suppliers are being paid when mortgage
35 money is paid to your contractor. You may want to request lender
36 supervision if your lending institution is providing interim or
37 construction financing.

1 If you receive a notice to enforce a lien, take the notice
2 seriously. Let your contractor know you have received the notice.
3 Find out what arrangements are being made to pay the sender of the
4 notice.

5 When in doubt, or if you need more details, consult your attorney.
6 When and how to pay your contractor is a decision that requires serious
7 consideration. Washington law, RCW 18.27.114, requires contractors to
8 give you this disclosure statement if your contract exceeds one
9 thousand dollars.

10 Complete the following information, select below how you want to
11 protect yourself from possible lien claims on your property, and inform
12 your contractor of your selections or discuss your selections with your
13 contractor.

14 I, (owner's name),
15 am agreeing to have (contractor's name)
16 perform the following construction work (basic description)
17 at (location of your property using an address, legal description
18 or approximate address)
19 in the amount of \$ including all federal, state,
20 and local taxes, and this amount may be adjusted only if authorized by
21 me in writing.

22 To protect myself against possible lien claims in the future for
23 this work, I (select one):

24 will only issue checks made payable jointly,
25 naming the contractor and the subcontractor or supplier as payees.

26 will only issue checks to the contractor and
27 subcontractors in the amounts equal to the amounts for which lien
28 releases that release all lien rights to those amounts, as provided by
29 RCW 60.04.071, have been provided to me by each lien claimant
30 requesting payment.

31 want the contractor to post a bond to assure both
32 performance of this construction work and payment to all subcontractors
33 and suppliers in the amount of (select one) . . . the total contract
34 amount . . . in the amount of \$ (Note: Your contractor
35 may add the cost of this bond to your contract price.)

36 will be using as an escrow agent
37 to disburse construction funds and to protect my interests. (NOTE:
38 Before making this selection, find out whether the escrow agent you

1 plan to use will protect you against liens when disbursing payments.
2 If you are interested in using this alternative, consult your
3 attorney.)

4 want this contractor to set up a trust account for
5 all funds I pay to this contractor, and the trust funds must be
6 disbursed in accordance with our construction agreement to
7 subcontractors and suppliers.

8 DO NOT want any of the above protections from
9 potential lien claims against my property as a result of this
10 construction work.

11 In addition to the above selection, I choose ONE of the following:

12 . . . WANT . . . DO NOT WANT the prime residential contractor to
13 disclose all potential lien claimants as a condition of payment.
14 (NOTE: A lien claimant must, under RCW 60.04.091, mail by certified or
15 registered mail or by personal service a copy of the claim of lien to
16 the owner within fourteen days of the time the lien is recorded. While
17 an action is ongoing, the law, RCW 60.04.151, allows an owner to
18 withhold from this prime residential contractor the amount of money for
19 which a claim is recorded by a subcontractor, supplier, or laborer.)

20 More information about contractors is available by visiting the
21 department of labor and industries on the Internet at
22 www.LNI.wa.gov/SCS/contractors/ or by calling the contractor
23 registration hotline at 1-800-647-0982. You may also call your local
24 department of labor and industries office. See listings under
25 "Washington state of" in the government section or the white pages of
26 the telephone book.

27 Signed by (property owner):
28 Date signed:

29 **Sec. 7.** RCW 18.27.020 and 1997 c 314 s 3 are each amended to read
30 as follows:

- 31 (1) Every contractor shall register with the department.
- 32 (2) It is a gross misdemeanor for any contractor to:
 - 33 (a) Advertise, offer to do work, submit a bid, or perform any work
 - 34 as a contractor without being registered as required by this chapter;
 - 35 (b) Advertise, offer to do work, submit a bid, or perform any work
 - 36 as a contractor when the contractor's registration is suspended or
 - 37 revoked;

1 (c) Use a false or expired registration number in purchasing or
2 offering to purchase an advertisement for which a contractor
3 registration number is required; or

4 (d) Transfer a valid registration to an unregistered contractor or
5 allow an unregistered contractor to work under a registration issued to
6 another contractor.

7 (3) It is not unlawful for a general contractor to employ an
8 unregistered contractor who was registered at the time he or she
9 entered into a contract with the general contractor, unless the general
10 contractor or his or her representative has been notified in writing by
11 the department of labor and industries that the contractor has become
12 unregistered.

13 (4) All (~~misdemeanor~~) actions under this chapter shall be
14 prosecuted in the county where the infraction occurs.

15 (5) A person is guilty of a separate gross misdemeanor for each day
16 worked if, after the person receives a citation from the department,
17 the person works while unregistered, or while his or her registration
18 is suspended or revoked, or works under a registration issued to
19 another contractor. A person is guilty of a separate gross misdemeanor
20 for each worksite on which he or she violates subsection (2) of this
21 section. Nothing in this subsection applies to a registered
22 contractor.

23 (6) The director by rule shall establish a two-year audit and
24 monitoring program for a contractor not registered under this chapter
25 who becomes registered after receiving an infraction or conviction
26 under this chapter as an unregistered contractor. The director shall
27 notify the departments of revenue and employment security of the
28 infractions or convictions and shall cooperate with these departments
29 to determine whether any taxes or registration, license, or other fees
30 or penalties are owed the state.

31 **Sec. 8.** RCW 60.04.011 and 1992 c 126 s 1 are each amended to read
32 as follows:

33 Unless the context requires otherwise, the definitions in this
34 section apply throughout this chapter.

35 (1) "Construction agent" means any registered or licensed
36 contractor, registered or licensed subcontractor, architect, engineer,

1 or other person having charge of any improvement to real property, who
2 shall be deemed the agent of the owner for the limited purpose of
3 establishing the lien created by this chapter.

4 (2) "Contract price" means the amount, including overhead and
5 profit, agreed upon by the contracting parties, or if no amount is
6 agreed upon, then the customary and reasonable charge therefor, but in
7 no case shall "contract price" include any amount payable under the
8 contract, or otherwise, in the event of nonpayment or late payment.

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;

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

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

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

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

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

6 (9) "Owner-occupied" means a single-family residence occupied by
7 the owner as his or her principal residence.

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

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

16 (12) "Prime contractor" includes all contractors, general
17 contractors, and specialty contractors, as defined by chapter 18.27 or
18 19.28 RCW, or who are otherwise required to be registered or licensed
19 by law, who contract directly with a property owner or their common law
20 agent to assume primary responsibility for the creation of an
21 improvement to real property, and includes property owners or their
22 common law agents who are contractors, general contractors, or
23 specialty contractors as defined in chapter 18.27 or 19.28 RCW, or who
24 are otherwise required to be registered or licensed by law, who offer
25 to sell their property without occupying or using the structures,
26 projects, developments, or improvements for more than one year.

27 (13) "Professional services" means surveying, establishing or
28 marking the boundaries of, preparing maps, plans, or specifications
29 for, or inspecting, testing, or otherwise performing any other
30 architectural or engineering services for the improvement of real
31 property.

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

36 (15) "Residential homeowner" or "homeowner" means an individual
37 person or persons owning or leasing real property: (a) Upon which one
38 single-family residence is to be built and in which the owner or lessee

1 intends to reside when construction is completed; or (b) upon which
2 there exists one single-family residence to which improvements are to
3 be made and in which the owner or lessee intends to reside upon
4 completion of the improvements. Solely for the purposes of section 2
5 of this act and RCW 60.04.021, "residential homeowner" or "homeowner"
6 also means an individual person or person who has entered into a
7 contract with a contractor, builder, or developer to purchase and
8 occupy a single-family residence at the completion of the new
9 construction, repair, alteration, or remodel of the single-family
10 residence or garage appurtenant to the residence.

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

12 ~~((16))~~ (17) "Subcontractor" means a general contractor or
13 specialty contractor as defined by chapter 18.27 or 19.28 RCW, or who
14 is otherwise required to be registered or licensed by law, who
15 contracts for the improvement of real property with someone other than
16 the owner of the property or their common law agent.

17 **Sec. 9.** RCW 60.04.031 and 1992 c 126 s 2 are each amended to read
18 as follows:

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

30 (a) Mailing the notice by certified or registered mail to the owner
31 or reputed owner; or

32 (b) Delivering or serving the notice personally upon the owner or
33 reputed owner and obtaining evidence of delivery in the form of a
34 receipt or other ~~((acknowledgement))~~ acknowledgment signed by the owner
35 or reputed owner or an affidavit of service.

36 In the case of new construction, repair, alteration, or remodel of
37 a single-family residence or garage appurtenant to a single-family

1 residence, the notice of a right to claim a lien may be given at any
2 time but only protects the right to claim a lien for professional
3 services, materials, or equipment supplied after a date which is ten
4 days before the notice is given as described in this subsection.

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

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

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

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

13 (3) Persons who furnish professional services, materials, or
14 equipment in connection with the new construction, repair, alteration,
15 or remodel of (~~(an existing owner occupied)~~) a single-family residence
16 or appurtenant garage:

17 (a) Who contract directly with the (~~(owner occupier or their)~~)
18 owner or the owner's common law agent shall not be required to send a
19 written notice of the right to claim a lien and shall have a lien for
20 the full amount due under their contract, as provided in RCW 60.04.021;
21 or

22 (b) Who do not contract directly with the (~~(owner occupier or~~
23 ~~their)~~) owner or the owner's common law agent shall give notice of the
24 right to claim a lien to the (~~(owner occupier)~~) owner. (~~(Liens of~~
25 ~~persons furnishing professional services, materials, or equipment who~~
26 ~~do not contract directly with the owner occupier or their common law~~
27 ~~agent may only be satisfied from amounts not yet paid to the prime~~
28 ~~contractor by the owner at the time the notice described in this~~
29 ~~section is received, regardless of whether amounts not yet paid to the~~
30 ~~prime contractor are due. For the purposes of this subsection~~
31 ~~"received" means actual receipt of notice by personal service, or~~
32 ~~registered or certified mail, or three days after mailing by registered~~
33 ~~or certified mail, excluding Saturdays, Sundays, or legal holidays.)~~)

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

38 NOTICE TO OWNER

1 IMPORTANT: READ BOTH SIDES OF THIS NOTICE CAREFULLY.

2 PROTECT YOURSELF FROM PAYING TWICE

3 To: Date:

4 Re: (description of property: Street address or general
5 location.)

6 From:

7 AT THE REQUEST OF: (Name of person ordering the professional
8 services, materials, or equipment)

9 THIS IS NOT A LIEN--THIS NOTICE IS MEANT TO PROVIDE YOU WITH
10 INFORMATION NECESSARY TO PROPERLY MANAGE YOUR CONSTRUCTION PROJECT:

11 This notice is sent to you to tell you who is providing professional
12 services, materials, or equipment for the improvement of your property
13 and to advise you of the rights of these persons and your
14 responsibilities. Also take note that laborers on your project may
15 claim a lien without sending you a notice.

16 OWNER/OCCUPIER OF EXISTING RESIDENTIAL PROPERTY AND/OR
17 NEW RESIDENTIAL PROPERTY
18

19 Under Washington law, those who furnish labor, professional services,
20 materials, or equipment for the repair, remodel, or alteration of your
21 owner-occupied principal residence and who are not paid, have a right
22 to enforce their claim for payment against your property. This claim
23 is known as a construction lien.

24 The law limits the amount that a lien claimant can claim against your
25 property. (~~Claims may only be made against that portion of the~~
26 ~~contract price you have not yet paid to your prime contractor as of the~~
27 ~~time this notice was given to you or three days after this notice was~~
28 ~~mailed to you.)) If the improvement to your property is new
29 construction, repair, alteration, or remodel of a single-family
30 residence or its appurtenant garage, a lien may be claimed for some or
31 all professional services, materials, or equipment furnished after a
32 date that is ten days before this notice was given to you or mailed to
33 you. Review the back of this notice for more information and ways to
34 avoid lien claims.~~

1 COMMERCIAL ((~~AND/OR NEW~~ RESIDENTIAL)) PROPERTY

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

11 Sender:

12 Address:

13 Telephone:

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

16 IMPORTANT INFORMATION ON REVERSE SIDE

17 IMPORTANT INFORMATION FOR YOUR PROTECTION

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

23 LEARN more about the lien laws and the meaning of this notice by
24 discussing them with your contractor, suppliers, Department of Labor
25 and Industries, the firm sending you this notice, your lender, or your
26 attorney.

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

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

33 LIEN RELEASES: You may require your contractor to provide lien
34 releasesignedbyallthesuppliersandsubcontractorsfromwhomyouhavereceive

1 cannot obtain lien releases because you have not
2 paid them, you may use the dual payee check
3 method to protect yourself.

4 YOU SHOULD TAKE APPROPRIATE STEPS TO PROTECT YOUR PROPERTY FROM LIENS.
5 YOUR PRIME CONTRACTOR AND YOUR CONSTRUCTION LENDER ARE REQUIRED BY LAW
6 TO GIVE YOU WRITTEN INFORMATION ABOUT LIEN CLAIMS. IF YOU HAVE NOT
7 RECEIVED IT, ASK THEM FOR IT.

8 * * * * *

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

25 NOTICE OF FURNISHING PROFESSIONAL SERVICES

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

29 [Legal Description is mandatory]

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

33

34 (Signature)

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

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

12 **Sec. 10.** RCW 18.27.030 and 2001 c 159 s 2 are each amended to read
13 as follows:

14 (1) An applicant for registration as a contractor shall submit an
15 application under oath upon a form to be prescribed by the director and
16 which shall include the following information pertaining to the
17 applicant:

18 (a) Employer social security number.
19 (b) Unified business identifier number, if required by the
20 department of revenue.

21 (c) Evidence of workers' compensation coverage for the applicant's
22 employees working in Washington, as follows:

23 (i) The applicant's industrial insurance account number issued by
24 the department;

25 (ii) The applicant's self-insurer number issued by the department;
26 or

27 (iii) For applicants domiciled in a state or province of Canada
28 subject to an agreement entered into under RCW 51.12.120(7), as
29 permitted by the agreement, filing a certificate of coverage issued by
30 the agency that administers the workers' compensation law in the
31 applicant's state or province of domicile certifying that the applicant
32 has secured the payment of compensation under the other state's or
33 province's workers' compensation law.

34 (d) Employment security department number.

35 (e) State excise tax registration number.

1 (f) Unified business identifier (UBI) account number may be
2 substituted for the information required by (c) of this subsection if
3 the applicant will not employ employees in Washington, and by (d) and
4 (e) of this subsection.

5 (g) Type of contracting activity, whether a general or a specialty
6 contractor and if the latter, the type of specialty, and whether the
7 contractor engages or intends to engage in the new construction,
8 repair, alteration, or remodel of the single-family residence or
9 appurtenant garage of any residential homeowner, as defined in RCW
10 60.04.011.

11 (h)(i) The name and address of each partner if the applicant is a
12 firm or partnership, or the name and address of the owner if the
13 applicant is an individual proprietorship, or the name and address of
14 the corporate officers and statutory agent, if any, if the applicant is
15 a corporation or the name and address of all members of other business
16 entities.

17 (ii) The name and address of the three persons who received or are
18 entitled to receive the most compensation from the prime residential
19 contractor, regardless of whether the compensation is provided as
20 salary, wages, profits, or otherwise, during the term of the
21 contractor's registration; and, if different, each principal, partner,
22 officer, director, vice principal, and the employee with the greatest
23 executive, physical, or actual control over the accounting or
24 disbursement of funds received by the contractor from residential
25 homeowners if the applicant is a contractor engaging in the new
26 construction, repair, alteration, or remodel of the single-family
27 residence or appurtenant garage of any residential homeowner, as
28 defined in RCW 60.04.011. An applicant shall update information
29 required under this section no less frequently than once every six
30 months if there is a change in the persons required to be identified
31 under this section.

32 (iii) A business engaging in the new construction, repair,
33 alteration, or remodel of the single-family residence or appurtenant
34 garage of any residential homeowner, as defined in RCW 60.04.011, shall
35 not be required to provide the names and other information specified in
36 (h)(ii) of this subsection if the business increases the amount of the
37 surety bond filed with the department pursuant to RCW 18.27.040(1) to
38 two hundred fifty thousand dollars.

1 (iv) The information contained in such application is a matter of
2 public record and open to public inspection.

3 (2) The department may verify the workers' compensation coverage
4 information provided by the applicant under subsection (1)(c) of this
5 section, including but not limited to information regarding the
6 coverage of an individual employee of the applicant. If coverage is
7 provided under the laws of another state, the department may notify the
8 other state that the applicant is employing employees in Washington.

9 (3)(a) The department shall deny an application for registration
10 if: (i) The applicant has been previously performing work subject to
11 this chapter as a sole proprietor, partnership, corporation, or other
12 entity and the department has notice that the applicant has an
13 unsatisfied final judgment against him or her in an action based on
14 this chapter or the applicant owes the department money for penalties
15 assessed or fees due under this chapter as a result of a final
16 judgment; (ii) the applicant was a principal or officer of a
17 partnership, corporation, or other entity that either has an
18 unsatisfied final judgment against it in an action that was incurred
19 for work performed subject to this chapter or owes the department money
20 for penalties assessed or fees due under this chapter as a result of a
21 final judgment; or (iii) the applicant does not have a valid unified
22 business identifier number, if required by the department of revenue.

23 (b) The department shall suspend an active registration if (i) the
24 department has notice that the registrant is a sole proprietor or a
25 principal or officer of a registered contractor that has an unsatisfied
26 final judgment against it for work within the scope of this chapter; or
27 (ii) the applicant does not maintain a valid unified business
28 identifier number, if required by the department of revenue.

29 (4) The department shall not deny an application or suspend a
30 registration because of an unsatisfied final judgment if the
31 applicant's or registrant's unsatisfied final judgment was determined
32 by the director to be the result of the fraud or negligence of another
33 party.

34 **Sec. 11.** RCW 18.27.040 and 2001 c 159 s 3 are each amended to read
35 as follows:

36 (1) Each applicant shall file with the department a surety bond
37 issued by a surety insurer who meets the requirements of chapter 48.28

1 RCW in the sum of twelve thousand dollars if the applicant is a general
2 contractor and six thousand dollars if the applicant is a specialty
3 contractor. If no valid bond is already on file with the department at
4 the time the application is filed, a bond must accompany the
5 registration application. The bond shall have the state of Washington
6 named as obligee with good and sufficient surety in a form to be
7 approved by the department. The bond shall be continuous and may be
8 canceled by the surety upon the surety giving written notice to the
9 director. A cancellation or revocation of the bond or withdrawal of
10 the surety from the bond automatically suspends the registration issued
11 to the registrant until a new bond or reinstatement notice has been
12 filed and approved as provided in this section. The bond shall be
13 conditioned that the applicant will pay all persons performing labor,
14 including employee benefits, for the contractor, will pay all taxes and
15 contributions due to the state of Washington, and will pay all persons
16 furnishing labor or material or renting or supplying equipment to the
17 contractor and will pay all amounts that may be adjudged against the
18 contractor by reason of breach of contract including negligent or
19 improper work in the conduct of the contracting business. A change in
20 the name of a business or a change in the type of business entity shall
21 not impair a bond for the purposes of this section so long as one of
22 the original applicants for such bond maintains partial ownership in
23 the business covered by the bond.

24 (2) At the time of initial registration or renewal, the contractor
25 shall provide a bond or other security deposit as required by this
26 chapter and comply with all of the other provisions of this chapter
27 before the department shall issue or renew the contractor's certificate
28 of registration. Any contractor registered as of July 1, 2001, who
29 maintains that registration in accordance with this chapter is in
30 compliance with this chapter until the next renewal of the contractor's
31 certificate of registration.

32 (3) Any person, firm, or corporation having a claim against the
33 contractor for any of the items referred to in this section may bring
34 suit upon the bond or deposit in the superior court of the county in
35 which the work was done or of any county in which jurisdiction of the
36 contractor may be had. The surety issuing the bond shall be named as
37 a party to any suit upon the bond. Action upon the bond or deposit
38 brought by a residential homeowner for breach of contract by a party to

1 the construction contract shall be commenced by filing the summons and
2 complaint with the clerk of the appropriate superior court within two
3 years from the date the claimed contract work was substantially
4 completed or abandoned. Action upon the bond or deposit brought by any
5 other authorized party shall be commenced by filing the summons and
6 complaint with the clerk of the appropriate superior court within one
7 year from the date the claimed labor was performed and benefits
8 accrued, taxes and contributions owing the state of Washington became
9 due, materials and equipment were furnished, or the claimed contract
10 work was substantially completed or abandoned. Service of process in
11 an action against the contractor, the contractor's bond, or the deposit
12 shall be exclusively by service upon the department. Three copies of
13 the summons and complaint and a fee adopted by rule of not less than
14 twenty dollars to cover the costs shall be served by registered or
15 certified mail, or other delivery service requiring notice of receipt,
16 upon the department at the time suit is started and the department
17 shall maintain a record, available for public inspection, of all suits
18 so commenced. Service is not complete until the department receives
19 the fee and three copies of the summons and complaint. The service
20 shall constitute service on the registrant and the surety for suit upon
21 the bond or deposit and the department shall transmit the summons and
22 complaint or a copy thereof to the registrant at the address listed in
23 the registrant's application and to the surety within two days after it
24 shall have been received.

25 (4) The surety upon the bond shall not be liable in an aggregate
26 amount in excess of the amount named in the bond nor for any monetary
27 penalty assessed pursuant to this chapter for an infraction. The
28 liability of the surety shall not cumulate where the bond has been
29 renewed, continued, reinstated, reissued or otherwise extended. The
30 surety upon the bond may, upon notice to the department and the
31 parties, tender to the clerk of the court having jurisdiction of the
32 action an amount equal to the claims thereunder or the amount of the
33 bond less the amount of judgments, if any, previously satisfied
34 therefrom and to the extent of such tender the surety upon the bond
35 shall be exonerated but if the actions commenced and pending at any one
36 time exceed the amount of the bond then unimpaired, claims shall be
37 satisfied from the bond in the following order:

1 (a) Employee labor and claims of laborers, including employee
2 benefits;

3 (b) Claims for breach of contract by a party to the construction
4 contract;

5 (c) Registered or licensed subcontractors, material, and equipment;

6 (d) Taxes and contributions due the state of Washington;

7 (e) Any court costs, interest, and (~~attorney's~~[attorneys'])
8 attorneys' fees plaintiff may be entitled to recover. The surety is
9 not liable for any amount in excess of the penal limit of its bond.

10 A payment made by the surety in good faith exonerates the bond to
11 the extent of any payment made by the surety.

12 (5) The total amount paid from a bond or deposit required of a
13 general contractor by this section to claimants other than residential
14 homeowners must not exceed one-half of the bond amount. The total
15 amount paid from a bond or deposit required of a specialty contractor
16 by this section to claimants other than residential homeowners must not
17 exceed one-half of the bond amount or four thousand dollars, whichever
18 is greater.

19 (6) The prevailing party in an action filed under this section
20 against the contractor and contractor's bond or deposit, for breach of
21 contract by a party to a construction contract, is entitled to costs,
22 interest, and reasonable attorneys' fees. The surety upon the bond is
23 not liable in an aggregate amount in excess of the amount named in the
24 bond nor for any monetary penalty assessed pursuant to this chapter for
25 an infraction.

26 (7) If a final judgment impairs the liability of the surety upon
27 the bond so furnished that there is not in effect a bond in the full
28 amount prescribed in this section, the registration of the contractor
29 is automatically suspended until the bond liability in the required
30 amount unimpaired by unsatisfied judgment claims is furnished.

31 (8) In lieu of the surety bond required by this section the
32 contractor may file with the department a deposit consisting of cash or
33 other security acceptable to the department.

34 (9) Any person having filed and served a summons and complaint as
35 required by this section having an unsatisfied final judgment against
36 the registrant for any items referred to in this section may execute
37 upon the security held by the department by serving a certified copy of
38 the unsatisfied final judgment by registered or certified mail upon the

1 department within one year of the date of entry of such judgment. Upon
2 the receipt of service of such certified copy the department shall pay
3 or order paid from the deposit, through the registry of the superior
4 court which rendered judgment, towards the amount of the unsatisfied
5 judgment. The priority of payment by the department shall be the order
6 of receipt by the department, but the department shall have no
7 liability for payment in excess of the amount of the deposit.

8 (10) The director (~~(may)~~) shall require an applicant applying to
9 renew or reinstate a registration or applying for a new registration to
10 file a bond of (~~up to three~~) at least two times, but not more than
11 five times the normally required amount, if the director determines
12 that:

13 (a) An applicant, or a previous registration of a corporate
14 officer, owner, or partner of a current applicant, has had in the past
15 five years a total of six final judgments in actions under this chapter
16 involving a residential single-family dwelling on two or more different
17 structures; or

18 (b) The applicant engages in the new construction, repair,
19 alteration, or remodel of the single-family residence or appurtenant
20 garage of any residential homeowner, as defined in RCW 60.04.011, and
21 the applicant or any of the applicant's principals, partners, officers,
22 directors, vice principals, and the employee with the greatest
23 executive, physical, or actual control over the accounting or
24 disbursement of funds received by the contractor from residential
25 homeowners have been party to collection action or lien action
26 instituted pursuant to RCW 60.04.021(2)(a)(i), where the claims against
27 parties other than the residential homeowner were insufficient to
28 satisfy the lien.

29 (11) The director may adopt rules necessary for the proper
30 administration of the security.

31 NEW SECTION. Sec. 12. This act takes effect July 1, 2006.

--- END ---