
SENATE BILL 5773

State of Washington 59th Legislature 2005 Regular Session

By Senators Fraser, Fairley, Kohl-Welles, Rockefeller, Kline and Pridemore

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1 AN ACT Relating to protecting homeowners who hire contractors to
2 remodel or build their homes; amending RCW 60.04.021, 60.04.250,
3 18.27.020, 60.04.035, 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; and
5 prescribing penalties.

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

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

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

19 (1) For the purposes of this section, RCW 60.04.021, 60.04.250, and
20 section 5 of this act, "prime residential contractor" means a prime
21 contractor as defined in RCW 60.04.011 and the prime contractor's
22 principals, partners, officers, directors, vice principals, authorized
23 purchasing agents, and management employees who have physical or actual
24 control over the accounting or disbursement of funds received by the
25 prime residential contractor from residential homeowners.

26 (2)(a) A contractor, including a prime residential contractor, has
27 the duty to act in the best interest of a residential homeowner in the
28 management and disbursement of all amounts paid by the homeowner to the
29 prime residential contractor for labor, professional services,
30 materials, or equipment supplied by a potential lien claimant. A prime
31 residential contractor shall defend the homeowner against all such lien
32 claims for which the homeowner paid the prime residential contractor.

33 (b) A contractor, including a prime residential contractor, shall
34 maintain accounting records and books adequate to identify all moneys
35 received from a residential homeowner and the use or application of
36 such moneys for the payment of services, materials, or equipment

1 supplied by any entity having a potential lien claim right against the
2 residential homeowner.

3 (3)(a) Except as provided in (b) of this subsection, all funds paid
4 to a prime residential contractor by a residential homeowner for labor,
5 professional services, materials, or equipment supplied by a potential
6 lien claimant shall not be used by the prime residential contractor for
7 any other purpose unless the potential lien claimant's contract price
8 has been paid in full.

9 (b) All funds paid to a prime residential contractor by or on
10 behalf of a residential homeowner shall be presumed to be for labor,
11 professional services, materials, or equipment supplied by potential
12 lien claimants unless, before accepting payment from a residential
13 homeowner, a prime residential contractor provides written notice to
14 the homeowner identifying:

15 (i) The potential lien claimants, if any, to which payment is due,
16 or to which the prime residential contractor intends to apply part or
17 all of the homeowner's payment; and

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

21 (4) A prime residential contractor shall be personally liable for
22 the full amount of any lien claim filed pursuant to RCW 60.04.091 if:

23 (a) Funds paid to the prime residential contractor by a residential
24 homeowner for labor, professional services, materials, or equipment
25 supplied by a potential lien claimant are withheld from a potential
26 lien claimant or otherwise diverted in violation of this section;

27 (b) The prime residential contractor has or should have knowledge
28 of such use of funds, unless the prime residential contractor shows, by
29 a preponderance of the evidence in defending against the claimed lien,
30 that he or she actually did not know and had no opportunity to know of
31 such use of funds; and

32 (c) A notice of claim of lien is filed, pursuant to RCW 60.04.091,
33 against the homeowner by a potential lien claimant to which payment was
34 due when the prime residential contractor received payment from the
35 homeowner for the services, materials, or equipment supplied by the
36 lien claimant.

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

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

9 (2)(a) With respect to labor, professional services, materials, or
10 equipment for the improvement of an owner-occupied single-family
11 residence where the aggregate lien claims relating to transactions
12 constituting violations of section 2 of this act exceed the amount of
13 the prime residential contractor's bond that is not available to a
14 homeowner, any person furnishing labor, professional services,
15 materials, or equipment for the improvement of an owner-occupied
16 single-family residence shall have a lien:

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

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

23 (b) No lien against improvement to an owner-occupied single-family
24 residence shall be foreclosed unless: (i) The lien claim or claims
25 against all of the entities and persons identified in (a)(i) of this
26 subsection are insufficient to satisfy the lien; (ii) a court of
27 competent jurisdiction has rendered a decision regarding the liability
28 and ability of each of such entities to contribute to the satisfaction
29 of the claimed lien; and (iii) the lien claimant has complied with (c)
30 of this subsection.

31 (c) A lien claimant shall provide to the department a certified
32 copy of any ruling or judgment entered in an action commenced under
33 this section if the ruling or judgment contains findings relating to an
34 entity or person identified in (a)(i) of this subsection and the
35 liability or ability of such an entity or person to contribute to the
36 satisfaction of the claimed lien.

37 (3) If a potential lien claimant knew or should have known that a

1 prime residential contractor had been the prime residential contractor
2 or construction agent on a single-family residential improvement
3 project with respect to which:

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

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

8 (c) The potential lien claimant filed or otherwise pursued a claim
9 of lien against the homeowner in the previous three years;

10 the potential lien claimant shall have no lien right upon the
11 improvement for labor, professional services, materials, or equipment
12 furnished on behalf of the homeowner at the instance of the prime
13 residential contractor or construction agent employed by a prime
14 residential contractor unless, before supplying any service, materials,
15 or equipment that may be subject to a lien under this chapter, the
16 potential lien claimant has provided written notice to the homeowner of
17 all circumstances surrounding the filing, pursuit, and resolution of
18 such claim, and the homeowner, in writing, affirmatively instructs the
19 potential lien claimant to supply the requested service, materials, or
20 equipment.

21 NEW SECTION. Sec. 4. A new section is added to chapter 60.04 RCW
22 to read as follows:

23 (1) At the option of the residential homeowner, a prime residential
24 contractor shall deposit in a trust account, or other accounts
25 authorized by rule, maintained in a federally insured financial
26 institution located in Washington state all sums received from the
27 residential homeowner for services provided or to be provided by a
28 potential lien claimant.

29 (2) The trust account shall be established and maintained for the
30 benefit of residential homeowners paying money to the prime residential
31 contractor for services provided or to be provided by a potential lien
32 claimant. The prime residential contractor shall not in any manner
33 encumber the amounts in trust and shall not withdraw money from the
34 account, except the following amounts may be withdrawn at any time:

35 (a) Partial or full payment to a potential lien claimant that has
36 provided goods or services to the homeowner;

37 (b) Refunds of amounts to the homeowner; or

1 (c) Interest earned and credited to the trust account.

2 (3) Funds of a homeowner owed to the prime residential contractor
3 may be withdrawn from the account established pursuant to this section
4 only when all potential liens against the homeowner have been released.

5 (4) The prime residential contractor shall notify the department of
6 any change in the account number or location of the trust account, or
7 other approved account, within one business day of the change.

8 (5) The director, by rule, may allow for the use of other types of
9 funds or accounts only if the protection for consumers is no less than
10 that provided by this section.

11 **Sec. 5.** RCW 60.04.250 and 1990 c 81 s 1 are each amended to read
12 as follows:

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

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

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

1 the homeowner's permit application. The document shall be in
2 substantially the following form and shall also include information
3 describing the scope and limits of state contractor bonding
4 requirements, the provisions of this act, and the availability of
5 further information, including the department of labor and industries
6 and the office of the attorney general.

7 Dear Homeowner:

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

21 Under Washington laws, those who work on your property or provide
22 materials and are not paid have a right to enforce their claim for
23 payment against your property. This claim is known as a construction
24 lien.

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

29 If you enter into a contract to buy a newly built home, you may not
30 receive a notice of a lien based on a claim by a contractor or material
31 handler. Be aware that a lien may be claimed even though you have not
32 received a notice. Before making final payment on the project, obtain
33 a completed lien release form from each contractor and material
34 supplier. A sample of this release of lien form is available from the
35 department of labor and industries, contractor registration section.

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

1 If you are dealing with a lending institution, ask your loan
2 officer what precautions the lending institution takes to verify that
3 subcontractors and material suppliers are being paid when mortgage
4 money is paid to your contractor. You may want to request lender
5 supervision if your lending institution is providing interim or
6 construction financing.

7 If you receive a notice to enforce a lien, take the notice
8 seriously. Let your contractor know you have received the notice.
9 Find out what arrangements are being made to pay the sender of the
10 notice.

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

16 Complete the following information, select below how you want to
17 protect yourself from possible lien claims on your property, and inform
18 your contractor of your selections or discuss your selections with your
19 contractor.

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

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

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

32 will only issue checks to the contractor and
33 subcontractors in the amounts equal to the amounts for which lien
34 releases that release all lien rights to those amounts, as provided by
35 RCW 60.04.071, have been provided to me by each lien claimant
36 requesting payment.

37 want the contractor to post a bond to assure both
38 performance of this construction work and payment to all subcontractors

1 and suppliers in the amount of (select one) . . . the total contract
2 amount . . . in the amount of \$ (Note: Your contractor
3 may add the cost of this bond to your contract price.)

4 will be using as an escrow agent
5 to disburse construction funds and to protect my interests. (NOTE:
6 Before making this selection, find out whether the escrow agent you
7 plan to use will protect you against liens when disbursing payments.
8 If you are interested in using this alternative, consult your
9 attorney.)

10 want this contractor to set up a trust account for
11 all funds I pay to this contractor, and the trust funds must be
12 disbursed in accordance with our construction agreement to
13 subcontractors and suppliers.

14 DO NOT want any of the above protections from
15 potential lien claims against my property as a result of this
16 construction work.

17 In addition to the above selection, I choose ONE of the following:
18 . . . WANT . . . DO NOT WANT the prime residential contractor to
19 disclose all potential lien claimants as a condition of payment.
20 (NOTE: A lien claimant must, under RCW 60.04.091(2), mail by certified
21 or registered mail or by personal service a copy of the claim of lien
22 to the owner within fourteen days of the time the lien is recorded.
23 While an action is ongoing, the law, RCW 60.04.151, allows an owner to
24 withhold from this prime residential contractor the amount of money for
25 which a claim is recorded by a subcontractor, supplier, or laborer.)

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

33 Signed by (property owner):
34 Date signed:

35 **Sec. 6.** RCW 18.27.020 and 1997 c 314 s 3 are each amended to read
36 as follows:

- 37 (1) Every contractor shall register with the department.
38 (2) It is a gross misdemeanor for any contractor to:

1 (a) Advertise, offer to do work, submit a bid, or perform any work
2 as a contractor without being registered as required by this chapter;

3 (b) Advertise, offer to do work, submit a bid, or perform any work
4 as a contractor when the contractor's registration is suspended or
5 revoked;

6 (c) Use a false or expired registration number in purchasing or
7 offering to purchase an advertisement for which a contractor
8 registration number is required; or

9 (d) Transfer a valid registration to an unregistered contractor or
10 allow an unregistered contractor to work under a registration issued to
11 another contractor.

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

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

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

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

36 **Sec. 7.** RCW 60.04.035 and 1992 c 126 s 3 are each amended to read
37 as follows:

1 (1) The legislature finds that acts of coercion or attempted
2 coercion, including threats to withhold future contracts, made by a
3 contractor or developer to discourage a contractor, subcontractor, or
4 material or equipment supplier from giving an owner the notice of right
5 to claim a lien required by RCW 60.04.031, or from filing a claim of
6 lien under this chapter are matters vitally affecting the public
7 interest for the purpose of applying the consumer protection act,
8 chapter 19.86 RCW.

9 (2) The legislature further finds that acts of coercion or
10 attempted coercion by a lien claimant or potential lien claimant
11 against a residential homeowner, including but not limited to the lien
12 claimant or potential lien claimant threatening to include or actually
13 including in the amount of the lien claimed interest, collection costs,
14 or any amount other than the actual price charged under the agreement
15 between the lien claimant and the homeowner for the goods and services
16 provided, are matters vitally affecting the public interest for the
17 purpose of applying the consumer protection act, chapter 19.86 RCW.

18 (3) These acts of coercion are not reasonable in relation to the
19 development and preservation of business. These acts of coercion shall
20 constitute an unfair or deceptive act or practice in trade or commerce
21 for the purpose of applying the consumer protection act, chapter 19.86
22 RCW.

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

25 Unless the context requires otherwise, the definitions in this
26 section apply throughout this chapter.

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

32 (2) "Contract price" means the amount agreed upon by the
33 contracting parties, or if no amount is agreed upon, then the customary
34 and reasonable charge therefor, but in no case shall "contract price"
35 include any amount payable under the contract, or otherwise, in the
36 event of nonpayment or late payment.

- 1 (3) "Draws" means periodic disbursements of interim or construction
2 financing by a lender.
- 3 (4) "Furnishing labor, professional services, materials, or
4 equipment" means the performance of any labor or professional services,
5 the contribution owed to any employee benefit plan on account of any
6 labor, the provision of any supplies or materials, and the renting,
7 leasing, or otherwise supplying of equipment for the improvement of
8 real property.
- 9 (5) "Improvement" means: (a) Constructing, altering, repairing,
10 remodeling, demolishing, clearing, grading, or filling in, of, to, or
11 upon any real property or street or road in front of or adjoining the
12 same; (b) planting of trees, vines, shrubs, plants, hedges, or lawns,
13 or providing other landscaping materials on any real property; and (c)
14 providing professional services upon real property or in preparation
15 for or in conjunction with the intended activities in (a) or (b) of
16 this subsection.
- 17 (6) "Interim or construction financing" means that portion of money
18 secured by a mortgage, deed of trust, or other encumbrance to finance
19 improvement of, or to real property, but does not include:
- 20 (a) Funds to acquire real property;
- 21 (b) Funds to pay interest, insurance premiums, lease deposits,
22 taxes, assessments, or prior encumbrances;
- 23 (c) Funds to pay loan, commitment, title, legal, closing,
24 recording, or appraisal fees;
- 25 (d) Funds to pay other customary fees, which pursuant to agreement
26 with the owner or borrower are to be paid by the lender from time to
27 time;
- 28 (e) Funds to acquire personal property for which the potential lien
29 claimant may not claim a lien pursuant to this chapter.
- 30 (7) "Labor" means exertion of the powers of body or mind performed
31 at the site for compensation. "Labor" includes amounts due and owed to
32 any employee benefit plan on account of such labor performed.
- 33 (8) "Mortgagee" means a person who has a valid mortgage of record
34 or deed of trust of record securing a loan.
- 35 (9) "Owner-occupied" means a single-family residence occupied by
36 the owner as his or her principal residence.
- 37 (10) "Payment bond" means a surety bond issued by a surety licensed

1 to issue surety bonds in the state of Washington that confers upon
2 potential claimants the rights of third party beneficiaries.

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

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

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

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

28 (15) "Residential homeowner" or "homeowner" means the owner or
29 potential owner who occupies or will occupy a single-family residence
30 at the completion of the new construction, repair, alteration, or
31 remodel of the single-family residence or garage appurtenant to the
32 residence.

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

34 ((+16+)) (17) "Subcontractor" means a general contractor or
35 specialty contractor as defined by chapter 18.27 or 19.28 RCW, or who
36 is otherwise required to be registered or licensed by law, who
37 contracts for the improvement of real property with someone other than
38 the owner of the property or their common law agent.

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

3 (1) Except as otherwise provided in this section, every person
4 furnishing professional services, materials, or equipment for the
5 improvement of real property shall give the owner or reputed owner
6 notice in writing of the right to claim a lien. If the prime
7 contractor is in compliance with the requirements of RCW 19.27.095,
8 60.04.230, and 60.04.261, this notice shall also be given to the prime
9 contractor as described in this subsection unless the potential lien
10 claimant has contracted directly with the prime contractor. The notice
11 may be given at any time but only protects the right to claim a lien
12 for professional services, materials, or equipment supplied after the
13 date which is sixty days before:

14 (a) Mailing the notice by certified or registered mail to the owner
15 or reputed owner; or

16 (b) Delivering or serving the notice personally upon the owner or
17 reputed owner and obtaining evidence of delivery in the form of a
18 receipt or other acknowledgement signed by the owner or reputed owner
19 or an affidavit of service.

20 In the case of new construction, repair, alteration, or remodel of
21 a single-family residence or garage appurtenant to a single-family
22 residence, the notice of a right to claim a lien may be given at any
23 time but only protects the right to claim a lien for professional
24 services, materials, or equipment supplied after a date which is ten
25 days before the notice is given as described in this subsection.

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

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

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

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

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

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

6 (b) Who do not contract directly with the (~~owner-occupier-or~~
7 ~~their~~) owner or the owner's common law agent shall give notice of the
8 right to claim a lien to the (~~owner-occupier~~) owner. (~~Liens-of~~)
9 Persons furnishing professional services, materials, or equipment who
10 do not contract directly with the (~~owner-occupier-or-their~~) owner or
11 the owner's common law agent have a lien for such amounts as provided
12 in RCW 60.04.021, which may only be satisfied from amounts not yet paid
13 to the prime contractor by the owner at the time the notice described
14 in this section is received, regardless of whether amounts not yet paid
15 to the prime contractor are due. For the purposes of this subsection
16 "received" means actual receipt of notice by personal service, or
17 registered or certified mail, or three days after mailing by registered
18 or certified mail, excluding Saturdays, Sundays, or legal holidays.

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

23 NOTICE TO OWNER

24 IMPORTANT: READ BOTH SIDES OF THIS NOTICE
25 CAREFULLY.

26 PROTECT YOURSELF FROM PAYING TWICE

27 To: Date:

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

29 From:

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

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

34 This notice is sent to you to tell you who is providing professional
35 services, materials, or equipment for the improvement of your property

1 and to advise you of the rights of these persons and your
2 responsibilities. Also take note that laborers on your project may
3 claim a lien without sending you a notice.

4 OWNER/OCCUPIER OF EXISTING
5 RESIDENTIAL PROPERTY AND/OR
6 NEW RESIDENTIAL PROPERTY
7

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

13 The law limits the amount that a lien claimant can claim against your
14 property. If the improvement to your property is new construction,
15 repair, alteration, or remodel of a single-family residence or its
16 appurtenant garage, a lien may be claimed for some or all professional
17 services, materials, or equipment furnished after a date that is ten
18 days before this notice was given to you or mailed to you. Claims may
19 only be made against that portion of the contract price you have not
20 yet paid to your prime contractor as of the time this notice was given
21 to you or three days after this notice was mailed to you. Review the
22 back of this notice for more information and ways to avoid lien claims.

23 COMMERCIAL (~~AND/OR NEW~~
24 ~~RESIDENTIAL~~) PROPERTY

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

34 Sender:
35 Address:
36 Telephone:

1 Brief description of professional services, materials, or equipment
2 provided or to be provided:

3 IMPORTANT INFORMATION
4 ON REVERSE SIDE

5 IMPORTANT INFORMATION
6 FOR YOUR PROTECTION

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

12 LEARN more about the lien laws and the meaning of this notice by
13 discussing them with your contractor, suppliers, Department of Labor
14 and Industries, the firm sending you this notice, your lender, or your
15 attorney.

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

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

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

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

31 * * * * *

32 (5) Every potential lien claimant providing professional services
33 where no improvement as defined in RCW 60.04.011(5) (a) or (b) has been
34 commenced, and the professional services provided are not visible from

1 an inspection of the real property may record in the real property
2 records of the county where the property is located a notice which
3 shall contain the professional service provider's name, address,
4 telephone number, legal description of the property, the owner or
5 reputed owner's name, and the general nature of the professional
6 services provided. If such notice is not recorded, the lien claimed
7 shall be subordinate to the interest of any subsequent mortgagee and
8 invalid as to the interest of any subsequent purchaser if the mortgagee
9 or purchaser acts in good faith and for a valuable consideration
10 acquires an interest in the property prior to the commencement of an
11 improvement as defined in RCW 60.04.011(5) (a) or (b) without notice of
12 the professional services being provided. The notice described in this
13 subsection shall be substantially in the following form:

14 NOTICE OF FURNISHING
15 PROFESSIONAL SERVICES

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

19 [Legal Description
20 is mandatory]

21 The general nature of the professional services provided is . . .
22 The owner or reputed owner of the real property is
23

24

(Signature)

26

(Name of Claimant)

28

(Street Address)

30

(City, State, Zip Code)

32

(Phone Number)

33

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

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

6 (1) An applicant for registration as a contractor shall submit an
7 application under oath upon a form to be prescribed by the director and
8 which shall include the following information pertaining to the
9 applicant:

10 (a) Employer social security number.

11 (b) Unified business identifier number, if required by the
12 department of revenue.

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

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

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

19 (iii) For applicants domiciled in a state or province of Canada
20 subject to an agreement entered into under RCW 51.12.120(7), as
21 permitted by the agreement, filing a certificate of coverage issued by
22 the agency that administers the workers' compensation law in the
23 applicant's state or province of domicile certifying that the applicant
24 has secured the payment of compensation under the other state's or
25 province's workers' compensation law.

26 (d) Employment security department number.

27 (e) State excise tax registration number.

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

32 (g) Type of contracting activity, whether a general or a specialty
33 contractor and if the latter, the type of specialty, and whether the
34 contractor engages or intends to engage in the new construction,
35 repair, alteration, or remodel of the single-family residence or
36 appurtenant garage of any residential homeowner, as defined in RCW
37 60.04.011.

1 (h)(i) The name and address of each partner if the applicant is a
2 firm or partnership, or the name and address of the owner if the
3 applicant is an individual proprietorship, or the name and address of
4 the corporate officers and statutory agent, if any, if the applicant is
5 a corporation or the name and address of all members of other business
6 entities.

7 (ii) The name and address of each principal, partner, officer,
8 director, vice principal, authorized purchasing agent, and management
9 employee who has physical or actual control over the accounting or
10 disbursement of funds received by the contractor from residential
11 homeowners if the applicant is a contractor engaging in the new
12 construction, repair, alteration, or remodel of the single-family
13 residence or appurtenant garage of any residential homeowner, as
14 defined in RCW 60.04.011.

15 (iii) The information contained in such application is a matter of
16 public record and open to public inspection.

17 (2) The department may verify the workers' compensation coverage
18 information provided by the applicant under subsection (1)(c) of this
19 section, including but not limited to information regarding the
20 coverage of an individual employee of the applicant. If coverage is
21 provided under the laws of another state, the department may notify the
22 other state that the applicant is employing employees in Washington.

23 (3)(a) The department shall deny an application for registration
24 if: (i) The applicant has been previously performing work subject to
25 this chapter as a sole proprietor, partnership, corporation, or other
26 entity and the department has notice that the applicant has an
27 unsatisfied final judgment against him or her in an action based on
28 this chapter or the applicant owes the department money for penalties
29 assessed or fees due under this chapter as a result of a final
30 judgment; (ii) the applicant was a principal or officer of a
31 partnership, corporation, or other entity that either has an
32 unsatisfied final judgment against it in an action that was incurred
33 for work performed subject to this chapter or owes the department money
34 for penalties assessed or fees due under this chapter as a result of a
35 final judgment; or (iii) the applicant does not have a valid unified
36 business identifier number, if required by the department of revenue.

37 (b) The department shall suspend an active registration if (i) the
38 department has notice that the registrant is a sole proprietor or a

1 principal or officer of a registered contractor that has an unsatisfied
2 final judgment against it for work within the scope of this chapter; or
3 (ii) the applicant does not maintain a valid unified business
4 identifier number, if required by the department of revenue.

5 (4) The department shall not deny an application or suspend a
6 registration because of an unsatisfied final judgment if the
7 applicant's or registrant's unsatisfied final judgment was determined
8 by the director to be the result of the fraud or negligence of another
9 party.

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

12 (1) Each applicant shall file with the department a surety bond
13 issued by a surety insurer who meets the requirements of chapter 48.28
14 RCW in the sum of twelve thousand dollars if the applicant is a general
15 contractor and six thousand dollars if the applicant is a specialty
16 contractor. If no valid bond is already on file with the department at
17 the time the application is filed, a bond must accompany the
18 registration application. The bond shall have the state of Washington
19 named as obligee with good and sufficient surety in a form to be
20 approved by the department. The bond shall be continuous and may be
21 canceled by the surety upon the surety giving written notice to the
22 director. A cancellation or revocation of the bond or withdrawal of
23 the surety from the bond automatically suspends the registration issued
24 to the registrant until a new bond or reinstatement notice has been
25 filed and approved as provided in this section. The bond shall be
26 conditioned that the applicant will pay all persons performing labor,
27 including employee benefits, for the contractor, will pay all taxes and
28 contributions due to the state of Washington, and will pay all persons
29 furnishing labor or material or renting or supplying equipment to the
30 contractor and will pay all amounts that may be adjudged against the
31 contractor by reason of breach of contract including negligent or
32 improper work in the conduct of the contracting business. A change in
33 the name of a business or a change in the type of business entity shall
34 not impair a bond for the purposes of this section so long as one of
35 the original applicants for such bond maintains partial ownership in
36 the business covered by the bond.

1 (2) At the time of initial registration or renewal, the contractor
2 shall provide a bond or other security deposit as required by this
3 chapter and comply with all of the other provisions of this chapter
4 before the department shall issue or renew the contractor's certificate
5 of registration. Any contractor registered as of July 1, 2001, who
6 maintains that registration in accordance with this chapter is in
7 compliance with this chapter until the next renewal of the contractor's
8 certificate of registration.

9 (3) Any person, firm, or corporation having a claim against the
10 contractor for any of the items referred to in this section may bring
11 suit upon the bond or deposit in the superior court of the county in
12 which the work was done or of any county in which jurisdiction of the
13 contractor may be had. The surety issuing the bond shall be named as
14 a party to any suit upon the bond. Action upon the bond or deposit
15 brought by a residential homeowner for breach of contract by a party to
16 the construction contract shall be commenced by filing the summons and
17 complaint with the clerk of the appropriate superior court within two
18 years from the date the claimed contract work was substantially
19 completed or abandoned. Action upon the bond or deposit brought by any
20 other authorized party shall be commenced by filing the summons and
21 complaint with the clerk of the appropriate superior court within one
22 year from the date the claimed labor was performed and benefits
23 accrued, taxes and contributions owing the state of Washington became
24 due, materials and equipment were furnished, or the claimed contract
25 work was substantially completed or abandoned. Service of process in
26 an action against the contractor, the contractor's bond, or the deposit
27 shall be exclusively by service upon the department. Three copies of
28 the summons and complaint and a fee adopted by rule of not less than
29 twenty dollars to cover the costs shall be served by registered or
30 certified mail, or other delivery service requiring notice of receipt,
31 upon the department at the time suit is started and the department
32 shall maintain a record, available for public inspection, of all suits
33 so commenced. Service is not complete until the department receives
34 the fee and three copies of the summons and complaint. The service
35 shall constitute service on the registrant and the surety for suit upon
36 the bond or deposit and the department shall transmit the summons and
37 complaint or a copy thereof to the registrant at the address listed in

1 the registrant's application and to the surety within two days after it
2 shall have been received.

3 (4) The surety upon the bond shall not be liable in an aggregate
4 amount in excess of the amount named in the bond nor for any monetary
5 penalty assessed pursuant to this chapter for an infraction. The
6 liability of the surety shall not cumulate where the bond has been
7 renewed, continued, reinstated, reissued or otherwise extended. The
8 surety upon the bond may, upon notice to the department and the
9 parties, tender to the clerk of the court having jurisdiction of the
10 action an amount equal to the claims thereunder or the amount of the
11 bond less the amount of judgments, if any, previously satisfied
12 therefrom and to the extent of such tender the surety upon the bond
13 shall be exonerated but if the actions commenced and pending at any one
14 time exceed the amount of the bond then unimpaired, claims shall be
15 satisfied from the bond in the following order:

16 (a) Employee labor and claims of laborers, including employee
17 benefits;

18 (b) Claims for breach of contract by a party to the construction
19 contract;

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

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

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

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

27 (5) The total amount paid from a bond or deposit required of a
28 general contractor by this section to claimants other than residential
29 homeowners must not exceed one-half of the bond amount. The total
30 amount paid from a bond or deposit required of a specialty contractor
31 by this section to claimants other than residential homeowners must not
32 exceed one-half of the bond amount or four thousand dollars, whichever
33 is greater.

34 (6) The prevailing party in an action filed under this section
35 against the contractor and contractor's bond or deposit, for breach of
36 contract by a party to a construction contract, is entitled to costs,
37 interest, and reasonable attorneys' fees. The surety upon the bond is

1 not liable in an aggregate amount in excess of the amount named in the
2 bond nor for any monetary penalty assessed pursuant to this chapter for
3 an infraction.

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

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

12 (9) Any person having filed and served a summons and complaint as
13 required by this section having an unsatisfied final judgment against
14 the registrant for any items referred to in this section may execute
15 upon the security held by the department by serving a certified copy of
16 the unsatisfied final judgment by registered or certified mail upon the
17 department within one year of the date of entry of such judgment. Upon
18 the receipt of service of such certified copy the department shall pay
19 or order paid from the deposit, through the registry of the superior
20 court which rendered judgment, towards the amount of the unsatisfied
21 judgment. The priority of payment by the department shall be the order
22 of receipt by the department, but the department shall have no
23 liability for payment in excess of the amount of the deposit.

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

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

34 (b) The applicant engages in the new construction, repair,
35 alteration, or remodel of the single-family residence or appurtenant
36 garage of any residential homeowner, as defined in RCW 60.04.011, and
37 the applicant or any of the applicant's principals, partners, officers,
38 directors, vice principals, authorized purchasing agents, or management

1 employees who have physical or actual control over the accounting or
2 disbursement of funds received by the contractor from residential
3 homeowners have been party to a lien action instituted pursuant to RCW
4 60.04.021(2)(a)(i), where the claims against parties other than the
5 residential homeowner were insufficient to satisfy the lien.

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

--- END ---