

1 Additionally, the toll on an individual homeowner's personal economic
2 and emotional condition that such financial mismanagement by this small
3 fraction of prime contractors is not adequately balanced against the
4 responsibilities, obligations, and possible penalties that contractors
5 bear for such mismanagement. Consequently, the legislature finds that
6 it is necessary to (1) clearly establish when prime contractors are
7 personally responsible for mismanagement of funds received from or on
8 behalf of homeowners that are intended for suppliers, subcontractors,
9 and others; (2) increase awareness by homeowners to the potential for
10 liens against their residence if contractors fail to pay suppliers and
11 subcontractors as promised; and (3) increase opportunities for
12 homeowners to become better educated about ways to protect themselves
13 from financial mismanagement by those few contractors who are unable or
14 unwilling to meet the financial management standards set by the vast
15 majority of residential contractors in this state.

16 The legislature recognizes the independence of the federal
17 bankruptcy courts, but nonetheless encourages such courts, when
18 addressing whether or not to discharge liabilities of contractors
19 arising under this act due to the mismanagement of funds received from
20 or for the benefit of homeowners, to adopt a policy disfavoring the
21 discharge of such liabilities in bankruptcy. If the mismanagement
22 rises to the level of criminal conduct, nothing in this act is intended
23 to interfere with criminal prosecution.

24 **TRANSACTIONS CREATING PERSONAL LIABILITY**

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

27 (1) A prime residential contractor and all persons financially
28 responsible for the prime residential contractor shall be presumed to
29 be personally liable to all lien claimants for the full amount of any
30 lien claim filed against a residential homeowner under RCW 60.04.091,
31 if the prime residential contractor retained by the residential
32 homeowner:

33 (a) Is not properly registered, insured, and bonded pursuant to
34 chapter 18.27 or 19.28 RCW at the time the prime residential
35 contractor: (i) Incurs any expense or obligation for or on behalf of

1 the homeowner from any other potential lien claimant; or (ii) requests
2 or receives any funds from the homeowner;

3 (b) Requests or accepts funds from the residential homeowner in an
4 amount exceeding one-half of the amount of the contractor's bond on
5 file with the department of labor and industries under RCW 18.27.040 or
6 19.28.041(3) and the amount requested or accepted exceeds the amount
7 owed or due to all other potential lien claimants at the time the funds
8 are requested or accepted; or

9 (c) Requests or accepts any funds from the residential homeowner
10 after the prime residential contractor incurs expenses or obligations
11 for or on behalf of the homeowner from any other potential lien
12 claimant, but before providing the homeowner a billing statement,
13 invoice, or other written notice described in subsection (3) of this
14 section.

15 (2) A prime residential contractor and all persons financially
16 responsible for the prime residential contractor shall be presumed to
17 be personally liable to a lien claimant for the full amount of any lien
18 claim filed against a residential homeowner if:

19 (a) The prime residential contractor retained by the residential
20 homeowner:

21 (i) Requests or accepts any funds from the homeowner after the
22 contractor incurs expenses or obligations for or on behalf of the
23 homeowner from any other potential lien claimant;

24 (ii) Makes the request for and accepts funds from the homeowner at
25 the same time or after the prime residential contractor provides the
26 homeowner with a billing statement, invoice, or other written notice as
27 described in subsection (3) of this section; and

28 (iii) Purposefully fails to (A) identify a potential lien claimant
29 on such written notice pursuant to subsection (3)(a) of this section;
30 or (B) identify the potential lien claimants to which the payment due
31 and amount owed has not been fully satisfied as of the date of the
32 notice pursuant to subsection (3)(b) of this section; or (C) apply the
33 requested homeowner's payment to the potential lien claimant or
34 claimants as indicated on such written notice under subsection (3)(c)
35 or (d) of this section; and

36 (b) A potential lien claimant that the prime residential contractor
37 failed to properly identify or pay, as described in (a)(iii) of this

1 subsection, files a lien claim against the homeowner under RCW
2 60.04.091.

3 (3) The written notice provided by this section shall identify:

4 (a) The other potential lien claimants, if any, from which goods or
5 services have been ordered or obtained by the prime residential
6 contractor for or on behalf of the homeowner, and for which the payment
7 due and amount owed has been fully satisfied as the date of the notice;

8 (b) The other potential lien claimants, if any, from which goods or
9 services have been ordered or obtained by the prime residential
10 contractor for or on behalf of the homeowner, and for which the payment
11 due and amount owed has not been fully satisfied as of the date of the
12 notice;

13 (c) The other potential lien claimants, if any, identified pursuant
14 to (b) of this subsection to which the prime residential contractor
15 intends to pay all amounts owed from the homeowner's payment; and

16 (d) The potential lien claimants, if any, identified pursuant to
17 (b) of this subsection to which the prime residential contractor does
18 not intend to pay all amounts owed from the homeowner's payment, and
19 the reason for less than full payment.

20 **ENFORCING CONTRACTOR PERSONAL LIABILITY**

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

23 (1) Except as provided in RCW 60.04.031 and subsection (2) of this
24 section, any person furnishing labor, professional services, materials,
25 or equipment for the improvement of real property shall have a lien
26 upon the improvement for the contract price of labor, professional
27 services, materials, or equipment furnished at the instance of the
28 owner, or the agent or construction agent of the owner.

29 (2) If a prime residential contractor is engaged in any activity
30 described in section 2 of this act giving rise to personal liability on
31 the part of the prime residential contractor and the prime residential
32 contractor's financially responsible parties:

33 (a) Any person furnishing labor, professional services, materials,
34 or equipment for the improvement of the property of the residential
35 homeowner who retained the prime residential contractor has a lien upon
36 any real property owned by the prime residential contractor and the

1 prime residential contractor's financially responsible parties in the
2 amount of the contract price of labor, professional services,
3 materials, or equipment furnished at the instance of the prime
4 residential contractor; and

5 (b) Any person furnishing professional services, materials, or
6 equipment for the improvement of the property of the residential
7 homeowner who retained the prime residential contractor has a lien upon
8 the improvement for no more than one-half of such contract price.

9 **Sec. 4.** RCW 60.04.171 and 1992 c 126 s 11 are each amended to read
10 as follows:

11 (1) The lien provided by this chapter, for which claims of lien
12 have been recorded, may be foreclosed and enforced by a civil action in
13 the court having jurisdiction in the manner prescribed for the judicial
14 foreclosure of a mortgage. The court shall have the power to order the
15 sale of the property.

16 (2)(a) In any action brought to foreclose a lien, the owner shall
17 be joined as a party.

18 (b) The court shall dismiss, with prejudice, any action to
19 foreclose a lien filed with respect to property owned by a residential
20 homeowner if:

21 (i) The lien is filed pursuant to RCW 60.04.021(1); and

22 (ii) The homeowner shows, by a preponderance of the evidence, that
23 the prime residential contractor retained by the homeowner engaged in
24 any activity or transaction described in section 2 of this act.

25 (c) The court shall dismiss, without prejudice, any action to
26 foreclose a lien filed with respect to property owned by a residential
27 homeowner if:

28 (i) The lien is filed pursuant to RCW 60.04.021(2);

29 (ii) The homeowner shows, by a preponderance of the evidence, that
30 the prime residential contractor retained by the homeowner engaged in
31 any activity or transaction described in section 2 of this act; and

32 (iii) The party bringing the action fails to show, by clear and
33 convincing evidence, that the party (A) has made or is making
34 reasonable attempts to satisfy the debt underlying the lien through
35 reasonable collection efforts, including an action authorized by RCW
36 60.04.021(2) where applicable, against the prime residential contractor
37 and the prime residential contractor's financially responsible parties;

1 and (B) has substantially complied with the procedures established by
2 rule by the department of labor and industries for notifying the
3 department of such collection attempts and efforts, including but not
4 limited to the payment of required filing fees.

5 (d) A court may consolidate (i) any action to foreclose a lien
6 filed pursuant to RCW 60.04.021(2) with respect to property owned by a
7 residential homeowner; and (ii) any action to foreclose a lien filed
8 pursuant to RCW 60.04.021(2) with respect to property owned by a prime
9 residential contractor retained by the residential homeowner, and
10 property owned by any person financially responsible for the prime
11 residential contractor, if the prime residential contractor has
12 incurred any expense or obligation for or on behalf of a homeowner from
13 the party bringing the actions.

14 (3) The interest in the real property of any person who, prior to
15 the commencement of the action, has a recorded interest in the
16 property, or any part thereof, shall not be foreclosed or affected
17 unless they are joined as a party.

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

1 to foreclose a lien shall not be dismissed at the instance of a
2 plaintiff therein to the prejudice of another party to the suit who
3 claims a lien.

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

6 (1) The personal liability inuring to any person under section 2 of
7 this act shall not extend to the community or separate property of the
8 spouse of a prime residential contractor or a person financially
9 responsible for a prime residential contractor, unless such spouse is
10 otherwise a person financially responsible for the prime residential
11 contractor.

12 (2) An action to enforce the personal liability inuring to any
13 person under section 2 of this act shall be dismissed with respect to
14 that person if the person shows, by clear and convincing evidence in
15 defending against a claimed lien or other collection action, that:

16 (a) He or she is a person financially responsible for the prime
17 residential contractor who actually did not know and, in the exercise
18 of due diligence incumbent to the person's position as a financially
19 responsible party, had no reasonable opportunity to know of the
20 registration status, activities, or transactions of the contractor that
21 gave rise to the liability;

22 (b) The prime residential contractor or an entity other than the
23 prime residential contractor paid the lien claimant the full contract
24 price for the labor, professional services, materials, or equipment
25 incurred on behalf of the homeowner by the prime residential contractor
26 and supplied by a lien claimant;

27 (c) The failure to either identify a potential lien claimant or
28 apply a homeowner's payment as provided in section 2(2)(a)(iii) of this
29 act was due to an inadvertent error or a reasonable mistake, and was
30 not a substantial cause of the filing of the lien claim; or

31 (d) The prime residential contractor: (i) Did not incur personal
32 liability pursuant to section 2(1) of this act; (ii) substantially
33 complied with the notice provisions of section 2 (2) and (3) of this
34 act; and (iii) the amount claimed by the lien claimant was not paid
35 solely because of a dispute between the prime residential contractor or
36 the homeowner and the lien claimant over the quality or quantity of

1 work performed or goods supplied, the legitimacy or accuracy of the
2 amount billed, or similar issues.

3 (3)(a) A person is guilty of a gross misdemeanor if the person (i)
4 obtains personal liability under section 2 of this act; (ii) enters
5 into an agreement or is party to a judgment where a residential
6 homeowner is required to pay some or all of such claimed debt; and
7 (iii) fails to file a certified copy of such judgment or agreement with
8 the department of labor and industries, and pay the filing fee
9 established by rule by the department, within thirty days of the entry
10 of such judgment or agreement.

11 (b) The clerk of the court entering a judgment in a lien action
12 commenced pursuant to RCW 60.04.021(2) shall mail a copy of the
13 judgment to the department of labor and industries, by certified mail,
14 if (i) a residential homeowner, a prime residential contractor, or any
15 person financially responsible for the prime residential contractor are
16 parties, and (ii) the residential homeowner is required under the
17 judgment to pay any part of the claimed lien.

18 CONSUMER EDUCATION NOTICES--TOLLING

19 **Sec. 6.** RCW 60.04.091 and 1992 c 126 s 7 are each amended to read
20 as follows:

21 Except as provided under subsection (4) of this section, every
22 person claiming a lien under RCW 60.04.021 shall file for recording, in
23 the county where the subject property is located, a notice of claim of
24 lien not later than ninety days after the person has ceased to furnish
25 labor, professional services, materials, or equipment or the last date
26 on which employee benefit contributions were due.

27 (1) The notice of claim of lien(÷
28 (1÷)) shall state in substance and effect:

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

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

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

1 Subscribed and sworn to before me this day of

2

3 (3) The period provided for recording the claim of lien is a period
4 of limitation and no action to foreclose a lien shall be maintained
5 unless the claim of lien is filed for recording within the ninety-day
6 period stated. The lien claimant shall give a copy of the claim of
7 lien to the owner or reputed owner by mailing it by certified or
8 registered mail or by personal service within fourteen days of the time
9 the claim of lien is filed for recording. Failure to do so results in
10 a forfeiture of any right the claimant may have to attorneys' fees and
11 costs against the owner under RCW 60.04.181.

12 (4) The time period during which a potential lien claimant has
13 commenced and is maintaining either (a) a lien action, pursuant to RCW
14 60.04.021(2), against the real property of; or (b) any other collection
15 action against, the prime residential contractor and the prime
16 residential contractor's financially responsible parties, shall not be
17 part of the period limited for the commencement of any action against
18 the property of the homeowner.

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

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

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

29 (1) Construction lien laws and available safeguards against real
30 property lien claims. The material shall include methods of protection
31 against lien claims, including obtaining lien release documents,
32 performance bonds, joint payee checks, the opportunity to require
33 contractor disclosure of all potential lien claimants as a condition of
34 payment, and lender supervision under ((RCW 60.04.200 and 60.04.210))
35 this chapter. The material shall also include sources of further

1 information, including the department of labor and industries and the
2 office of the attorney general.

3 (2) The basics of lien law relating to owner-occupied residential
4 improvements and new construction projects, including a list of
5 available safeguards against real property lien claims. Before any
6 building permit may be issued for (a) the construction of a new owner-
7 occupied single-family residence; or (b) the improvement to an owner-
8 occupied single-family residence for an amount in excess of one
9 thousand dollars, if the construction will involve the services of a
10 prime residential contractor, the permit-issuing agency shall not issue
11 any permit until the homeowner has acknowledged receipt of the document
12 personally, or through an agent who is not the prime residential
13 contractor or any employee, owner, or agent of the prime residential
14 contractor. The permit-issuing agency shall maintain a copy of the
15 acknowledgment of receipt of the document in the file of the permit-
16 issuing agency relating to the homeowner's permit application. The
17 document shall be in substantially the following form and shall also
18 include information describing the scope and limits of state contractor
19 bonding requirements, the provisions of this act, and the availability
20 of further information, including the department of labor and
21 industries and the office of the attorney general.

22 Dear Homeowner:

23 Before any permit can be issued, you must file with this agency the
24 attached document acknowledging that you have received and read this
25 form. You should also review the items below and select from the
26 options below what protection, if any, you want against potential lien
27 claims on your property as a result of the construction work for which
28 you are contracting. If your contractor fails to pay subcontractors,
29 suppliers, or laborers or neglects to make other legally required
30 payments, those who are owed money can file a lien against your
31 property for payment, even if you have paid your contractor in full.
32 Anyone filing a valid lien claim may force the sale of your property to
33 recover the unpaid amount. This is true if you have hired a contractor
34 to build a new home or are buying a newly built home. It is also true
35 when you remodel or improve your property.

36 People who supply materials or labor ordered by your contractor are
37 permitted by law to file a lien only if they do so within ninety days

1 of cessation of performance or delivery of materials. The time frame
2 is spelled out in RCW 60.04.091.

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

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

12 If you are dealing with a lending institution, ask your loan
13 officer what precautions the lending institution takes to verify that
14 subcontractors and material suppliers are being paid when mortgage
15 money is paid to your contractor. You may want to request lender
16 supervision if your lending institution is providing interim or
17 construction financing.

18 If you receive a notice to enforce a lien, take the notice
19 seriously. Let your contractor know you have received the notice.
20 Find out what arrangements are being made to pay the sender of the
21 notice.

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

27 Complete the following information, select below how you want to
28 protect yourself from possible lien claims on your property, and inform
29 your contractor of your selections or discuss your selections with your
30 contractor.

31 I, (owner's name),
32 am agreeing to have (contractor's name)
33 perform the following construction work (basic description)
34 at (location of your property using an address, legal description
35 or approximate address)
36 in the amount of \$ including all federal, state,
37 and local taxes, and this amount may be adjusted only if authorized by
38 me in writing.

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

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

5 will only issue checks to the contractor and
6 subcontractors in the amounts equal to the amounts for which lien
7 releases that release all lien rights to those amounts, as provided by
8 RCW 60.04.071, have been provided to me by each lien claimant
9 requesting payment.

10 want the contractor to post a bond to assure both
11 performance of this construction work and payment to all subcontractors
12 and suppliers in the amount of (select one) . . . the total contract
13 amount . . . in the amount of \$ (Note: Your
14 contractor may add the cost of this bond to your contract price.)

15 will be using as an escrow agent
16 to disburse construction funds and to protect my interests. (NOTE:
17 Before making this selection, find out whether the escrow agent you
18 plan to use will protect you against liens when disbursing payments.
19 If you are interested in using this alternative, consult your
20 attorney.)

21 want this contractor to set up a trust account
22 for all funds I pay to this contractor, and the trust funds must be
23 disbursed in accordance with our construction agreement to
24 subcontractors and suppliers.

25 DO NOT want any of the above protections from
26 potential lien claims against my property as a result of this
27 construction work.

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

37 More information about contractors is available by visiting the
38 department of labor and industries on the internet at

1 www.LNI.wa.gov/SCS/contractors/ or by calling the contractor
2 registration hotline at 1-800-647-0982. You may also call your local
3 department of labor and industries office. See listings under
4 "Washington, state of" in the government section or the white pages of
5 the telephone book.

6 Signed by (property owner):
7 Date signed:

8 **Sec. 8.** RCW 60.04.031 and 1992 c 126 s 2 are each amended to read
9 as follows:

10 (1) Except as otherwise provided in this section, every person
11 furnishing professional services, materials, or equipment for the
12 improvement of real property shall give the owner or reputed owner
13 notice in writing of the right to claim a lien. If the prime
14 contractor is in compliance with the requirements of RCW 19.27.095,
15 60.04.230, and 60.04.261, this notice shall also be given to the prime
16 contractor as described in this subsection unless the potential lien
17 claimant has contracted directly with the prime contractor. The notice
18 may be given at any time but only protects the right to claim a lien
19 for professional services, materials, or equipment supplied after the
20 date which is sixty days before:

21 (a) Mailing the notice by certified or registered mail to the owner
22 or reputed owner; or

23 (b) Delivering or serving the notice personally upon the owner or
24 reputed owner and obtaining evidence of delivery in the form of a
25 receipt or other (~~acknowledgement~~) acknowledgment signed by the owner
26 or reputed owner or an affidavit of service.

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

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

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

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

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

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

8 ~~((a))~~ (i) Who contract directly with the ~~((owner occupier or
9 their))~~ residential homeowner or the homeowner's common law agent shall
10 not be required to send a written notice of the right to claim a lien
11 and shall have a lien for the full amount due under their contract, as
12 provided in RCW 60.04.021; or

13 ~~((b))~~ (ii) Who do not contract directly with the ~~((owner occupier
14 or their))~~ residential homeowner or the homeowner's common law agent
15 shall give notice of the right to claim a lien to the ~~((owner-
16 occupier))~~ homeowner.

17 (b) Claims of liens of persons furnishing professional services,
18 materials, or equipment who do not contract directly with the ~~((owner-
19 occupier))~~ homeowner or their common law agent ~~((may only be satisfied
20 from))~~ for the repair, alteration, or remodel of the homeowner's
21 residence shall be dismissed if:

22 (i) The amounts ~~((not yet))~~ paid to the prime residential
23 contractor by the owner at the time the notice described in this
24 section is received equals or otherwise satisfies all amounts owed by
25 the homeowner to all potential lien claimants, including the prime
26 residential contractor, regardless of whether amounts ~~((not yet))~~ paid
27 to the prime residential contractor are due; and

28 (ii) The homeowner notifies the potential lien claimant in writing
29 that the lien is subject to dismissal pursuant to this subsection, and
30 such notice is received by the potential lien claimant within thirty
31 days of receipt of the notice provided by (a)(ii) of this subsection.

32 (c) For the purposes of this subsection "received" means actual
33 receipt of notice by personal service, or registered or certified mail,
34 or three days after mailing by registered or certified mail, excluding
35 Saturdays, Sundays, or legal holidays.

36 (4) The notice of right to claim a lien described in subsection (1)
37 of this section, shall include but not be limited to the following

1 information and shall substantially be in the following form, using
2 lower-case and upper-case ten-point type where appropriate.

3 NOTICE TO OWNER

4 IMPORTANT: READ BOTH SIDES OF THIS NOTICE
5 CAREFULLY.

6 PROTECT YOURSELF FROM PAYING TWICE

7 To: Date:

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

9 -

10 From:

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

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

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

20 OWNER/OCCUPIER OF EXISTING
21 RESIDENTIAL PROPERTY AND/OR
22 NEW RESIDENTIAL PROPERTY

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

28 The law limits the amount that a lien claimant can claim against your
29 property. (~~Claims may only be made against that portion of the~~
30 ~~contract price you have not yet paid to your prime contractor as of the~~
31 ~~time this notice was given to you or three days after this notice was~~
32 ~~mailed to you.)) If the improvement to your property is new
33 construction, repair, alteration, or remodel of a single-family
34 residence or its appurtenant garage, a lien may be claimed for some or~~

1 all professional services, materials, or equipment furnished after a
2 date that is ten days before this notice was given to you or mailed to
3 you. Review the back of this notice for more information and ways to
4 avoid lien claims.

5 COMMERCIAL ((~~AND/OR NEW~~
6 RESIDENTIAL)) PROPERTY

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

16 Sender:
17 Address:
18 Telephone:

19 Brief description of professional services, materials, or equipment
20 provided or to be provided:

21 IMPORTANT INFORMATION
22 ON REVERSE SIDE

23 IMPORTANT INFORMATION
24 FOR YOUR PROTECTION

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

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

34 COMMON METHODS TO AVOID CONSTRUCTION LIENS: There are several methods

1 available to protect your property from construction liens. The
2 following are two of the more commonly used methods.

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

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

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

15 * * * * *

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

32 NOTICE OF FURNISHING
33 PROFESSIONAL SERVICES

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

[Legal Description
is mandatory]

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

.....

(Signature)

.....

(Name of Claimant)

.....

(Street Address)

.....

(City, State, Zip Code)

.....

(Phone Number)

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

LIEN LAW DEFINITIONS

Sec. 9. RCW 60.04.011 and 1992 c 126 s 1 are each amended to read
as follows:

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

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

(2) "Contract price" means the amount, including overhead and
profit, agreed upon by the contracting parties, or if no amount is
agreed upon, then the customary and reasonable charge therefor, but in

1 no case shall contract price include any amount payable under the
2 contract, or otherwise, in the event of nonpayment or late payment.

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

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

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

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

22 (a) Funds to acquire real property;

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

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

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

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

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

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

37 (9) "Other potential lien claimant" means a lien claimant other
38 than a prime residential contractor.

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

3 ~~((+10+))~~ (11) "Payment bond" means a surety bond issued by a surety
4 licensed to issue surety bonds in the state of Washington that confers
5 upon potential claimants the rights of third party beneficiaries.

6 ~~((+11+))~~ (12) "Potential lien claimant" means any person or entity
7 entitled to assert lien rights under this chapter who has otherwise
8 complied with the provisions of this chapter and is registered or
9 licensed if required to be licensed or registered by the provisions of
10 the laws of the state of Washington.

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

22 ~~((+13+))~~ (14) "Prime residential contractor" or "residential
23 contractor" means a prime residential contractor, as defined in RCW
24 18.27.010(6).

25 (15) "Prime residential contractor's financially responsible
26 parties" or "persons financially responsible for a prime residential
27 contractor" means (a) all persons having a contractual right to more
28 than five percent of the profits of, or legal responsibility for more
29 than five percent of the debts of, a prime residential contractor; (b)
30 all partners, officers, directors, principals, or vice-principals of
31 the prime residential contractor; and (c) the person, if different from
32 those persons identified in (a) or (b) of this subsection, who received
33 or is entitled to receive the most compensation from the prime
34 residential contractor, regardless of whether the compensation is
35 provided as salary, wages, profits, or otherwise, during the term of
36 the contractor's registration.

37 (16) "Professional services" means surveying, establishing or
38 marking the boundaries of, preparing maps, plans, or specifications

1 for, or inspecting, testing, or otherwise performing any other
2 architectural or engineering services for the improvement of real
3 property.

4 ~~((14))~~ (17) "Real property lender" means a bank, savings bank,
5 savings and loan association, credit union, mortgage company, or other
6 corporation, association, partnership, trust, or individual that makes
7 loans secured by real property located in the state of Washington.

8 ~~((15))~~ (18) "Residential homeowner" or "homeowner" means the same
9 as the term is defined by RCW 18.27.010.

10 (19) "Site" means the real property which is or is to be improved.

11 ~~((16))~~ (20) "Subcontractor" means a general contractor or
12 specialty contractor as defined by chapter 18.27 or 19.28 RCW, or who
13 is otherwise required to be registered or licensed by law, who
14 contracts for the improvement of real property with someone other than
15 the owner of the property or their common law agent.

16 **CONTRACTOR REGISTRATION AND BONDING**

17 **Sec. 10.** RCW 18.27.010 and 2001 c 159 s 1 are each amended to read
18 as follows:

19 Unless the context clearly requires otherwise, the definitions in
20 this section apply throughout this chapter.

21 (1)(a) "Contractor" means any person, firm, or corporation who or
22 which, in the pursuit of an independent business undertakes to, or
23 offers to undertake, or submits a bid to, construct, alter, repair, add
24 to, subtract from, provide construction consultation or management
25 services for, develop, improve, move, wreck or demolish, for another,
26 any building, highway, road, railroad, excavation or other structure,
27 project, development, or improvement attached to real estate or to do
28 any part thereof including the installation of doors, windows,
29 carpeting or other floor covering, kitchen and bathroom cabinetry,
30 fixtures, and built-in appliances, the erection of scaffolding or other
31 structures or works in connection therewith or who installs or repairs
32 roofing or siding, or who provides tree removal or trimming services;
33 or, who, to do similar work upon his or her own property, employs
34 members of more than one trade upon a single job or project or under a
35 single building permit except as otherwise provided herein.

1 **(b)** "Contractor" includes any person, firm, corporation, or other
2 entity covered by this subsection, whether or not registered as
3 required under this chapter.

4 **(c)** A "contractor" is presumed to be a developer and prime
5 residential contractor in business for another, and is not eligible for
6 the exemption provided in RCW 18.27.090 (11) or (12), when the
7 contractor owns and constructs, alters, repairs, or remodels one or
8 more residential structures, and offers for sale or lease (i) more than
9 two such structures in any twenty-four month period, or (ii) any such
10 structure without occupying or using it for more than one year.

11 (2) "Department" means the department of labor and industries.

12 (3) "Director" means the director of the department of labor and
13 industries or designated representative employed by the department.

14 (4) "General contractor" means a contractor whose business
15 operations (~~(require)~~) involve the use or supervision of more than
16 (~~(two unrelated)~~) one building (~~(trades or crafts)~~) trade, craft, or
17 contractor whose work the general contractor (~~(shall)~~) superintends or
18 (~~(do)~~) does in whole or in part. "General contractor" (~~(shall)~~) does
19 not include an individual who does all work personally without
20 employees or other "specialty contractors" as defined in this section.
21 The terms "general contractor," "developer," and "builder" are
22 synonymous.

23 (5) "Partnership" means a business formed under Title 25 RCW.

24 (6) "Prime residential contractor" means a prime contractor, as
25 defined in RCW 60.04.011, that is engaged in the business of
26 constructing, altering, repairing, or remodeling single-family homes
27 for residential homeowners.

28 (7) "Registration cancellation" means a written notice from the
29 department that a contractor's action is in violation of this chapter
30 and that the contractor's registration has been revoked.

31 (~~(7)~~) (8) "Registration suspension" means a written notice from
32 the department that a contractor's action is a violation of this
33 chapter and that the contractor's registration has been suspended for
34 a specified time, or until the contractor shows evidence of compliance
35 with this chapter.

36 (~~(8)~~) (9) "Residential homeowner" for the purposes of this
37 chapter and chapter 64.04 RCW means an individual person or persons
38 owning or leasing real property:

1 (a) Upon which one single-family residence is to be built and in
2 which the owner or lessee intends to reside upon completion of any
3 construction; or

4 (b) Upon which there is a single-family residence to which
5 improvements are to be made and in which the owner or lessee intends to
6 reside upon completion of any construction.

7 ~~((+9+))~~ (10) "Specialty contractor" means a contractor whose
8 operations do not (a) require or involve the use of any unrelated
9 building trade, craft, or contractor; nor (b) fall within the
10 definition of "general contractor".

11 ~~((+10+))~~ (11) "Unregistered contractor" means a person, firm,
12 corporation, or other entity doing work as a contractor without being
13 registered in compliance with this chapter. "Unregistered contractor"
14 includes contractors whose registration is expired, revoked, or
15 suspended. "Unregistered contractor" does not include a contractor who
16 has maintained a valid bond and the insurance or assigned account
17 required by RCW 18.27.050, and whose registration has lapsed for thirty
18 or fewer days.

19 ~~((+11+))~~ (12) "Unsatisfied final judgment" means a judgment that
20 has not been satisfied either through payment, court approved
21 settlement, discharge in bankruptcy, or assignment under RCW 19.72.070.

22 ~~((+12+))~~ (13) "Verification" means the receipt and duplication by
23 the city, town, or county of a contractor registration card that is
24 current on its face, checking the department's contractor registration
25 data base, or calling the department to confirm that the contractor is
26 registered.

27 **Sec. 11.** RCW 18.27.020 and 1997 c 314 s 3 are each amended to read
28 as follows:

29 (1) Every contractor shall register with the department.

30 (2) It is a gross misdemeanor for any contractor to:

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

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

36 (c) Use a false or expired registration number in purchasing or

1 offering to purchase an advertisement for which a contractor
2 registration number is required; (~~(e)~~)

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

6 (e) Subcontract work to or employ an unregistered 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. 12.** RCW 18.27.030 and 2001 c 159 s 2 are each amended to read
32 as follows:

33 (1) An applicant for registration as a contractor shall submit an
34 application under oath upon a form to be prescribed by the director and
35 which shall include the following information pertaining to the
36 applicant:

37 (a) Employer social security number.

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

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

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

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

9 (iii) For applicants domiciled in a state or province of Canada
10 subject to an agreement entered into under RCW 51.12.120(7), as
11 permitted by the agreement, filing a certificate of coverage issued by
12 the agency that administers the workers' compensation law in the
13 applicant's state or province of domicile certifying that the applicant
14 has secured the payment of compensation under the other state's or
15 province's workers' compensation law.

16 (d) Employment security department number.

17 (e) State excise tax registration number.

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

22 (g) Type of contracting activity, whether a general or a specialty
23 contractor and if the latter, the type of specialty, and whether the
24 contractor engages or intends to engage in the new construction,
25 repair, alteration, or remodel of the single-family residence or
26 appurtenant garage of any residential homeowner.

27 (h) The name and address of each partner if the applicant is a firm
28 or partnership, or the name and address of the owner if the applicant
29 is an individual proprietorship, or the name and address of the
30 corporate officers and statutory agent, if any, if the applicant is a
31 corporation or the name and address of all members of other business
32 entities.

33 (i) If the applicant is a prime residential contractor, (i) the
34 name and address of the person who received or is entitled to receive
35 the most compensation from the contractor, regardless of whether the
36 compensation is provided as salary, wages, profits, or otherwise,
37 during the term of the contractor's registration; and, if different,
38 each person financially responsible for the prime residential

1 contractor, as defined by RCW 60.04.011; and (ii) whether any person so
2 identified has obtained personal liability under section 2 of this act
3 and has, in the previous two years, entered into an agreement or was a
4 party to a judgment where a residential homeowner was required to pay
5 some or all of such claimed debt.

6 (A) An applicant shall update information required under this
7 subsection (1)(i) no later than thirty days after there is a change in
8 the persons required to be identified under this subsection (1)(i).

9 (B) A prime residential contractor shall not be required to provide
10 the names and other information specified in this subsection (1)(i) if
11 the contractor files with the department a surety bond pursuant to RCW
12 18.27.040(1) in the amount of two hundred fifty thousand dollars.

13 (j) The information contained in such application is a matter of
14 public record and open to public inspection.

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

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

35 (b) The department shall suspend an active registration if (i) the
36 department has notice that the registrant is a contractor or sole
37 proprietor or a principal or officer of a registered contractor that
38 has an unsatisfied final judgment against it for work within the scope

1 of this chapter; or (ii) the applicant does not maintain a valid
2 unified business identifier number, if required by the department of
3 revenue.

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

9 **Sec. 13.** RCW 18.27.040 and 2001 c 159 s 3 are each amended to read
10 as follows:

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

36 (2) At the time of initial registration or renewal, the contractor
37 shall provide a bond or other security deposit as required by this

1 chapter and comply with all of the other provisions of this chapter
2 before the department shall issue or renew the contractor's certificate
3 of registration. Any contractor registered as of July 1, 2001, who
4 maintains that registration in accordance with this chapter is in
5 compliance with this chapter until the next renewal of the contractor's
6 certificate of registration.

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

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

14 (a) Employee labor and claims of laborers, including employee
15 benefits;

16 (b) Claims for breach of contract by a party to the construction
17 contract;

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

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

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

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

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

32 (6) The prevailing party in an action filed under this section
33 against the contractor and contractor's bond or deposit, for breach of
34 contract by a party to ((a)) the construction contract involving a
35 residential homeowner, is entitled to costs, interest, and reasonable
36 attorneys' fees. The surety upon the bond is not liable in an
37 aggregate amount in excess of the amount named in the bond nor for any
38 monetary penalty assessed pursuant to this chapter for an infraction.

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

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

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

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

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

31 (b) The applicant is a prime residential contractor, and the
32 contractor or any of the prime residential contractor's financially
33 responsible parties has or have been, in the twenty-four months
34 preceding the application or renewal, party to (i) any lien action
35 instituted pursuant to RCW 60.04.021(2); or (ii) more than one
36 collection action, other than a lien action instituted pursuant to RCW
37 60.04.021(2), in which the action or actions, respectively, resulted in

1 a residential homeowner being required to make any payment to satisfy
2 some or all of a debt arising out of a transaction described in section
3 2 of this act.

4 (11) The director may adopt rules necessary for the proper
5 administration of the security, including such rules relating to
6 procedures and fees reasonably necessary to administer the filing and
7 notification requirements of RCW 60.04.171(2)(c)(iii)(B) and section
8 5(3)(a)(iii) of this act.

9 **Sec. 14.** RCW 18.27.080 and 1988 c 285 s 2 are each amended to read
10 as follows:

11 (1) No person engaged in the business or acting in the capacity of
12 a contractor may: (a) Bring or maintain any action in any court of
13 this state for the collection of compensation for the performance of
14 any work or for breach of any contract for which registration is
15 required under this chapter; or (b) commence any action to compel
16 another to comply with an arbitration or similar provision in the
17 contractor's contract, or to enforce any such arbitration ruling;
18 without alleging and proving that he was a duly registered contractor
19 and held a current and valid certificate of registration at the time he
20 contracted for the performance of such work or entered into such
21 contract.

22 (2) For the purposes of this section, the court shall not find a
23 contractor in substantial compliance with the registration requirements
24 of this chapter unless: ((+1+)) (a) The department has on file the
25 information required by RCW 18.27.030; ((+2+)) (b) the contractor has
26 a current bond or other security as required by RCW 18.27.040; and
27 ((+3+)) (c) the contractor has current insurance as required by RCW
28 18.27.050. In determining under this section whether a contractor is
29 in substantial compliance with the registration requirements of this
30 chapter, the court shall take into consideration the length of time
31 during which the contractor did not hold a valid certificate of
32 registration.

33 NEW SECTION. **Sec. 15.** This act takes effect July 1, 2007.

--- END ---