
ENGROSSED SUBSTITUTE HOUSE BILL 1708

State of Washington

62nd Legislature

2011 Regular Session

By House Labor & Workforce Development (originally sponsored by Representative Moeller)

READ FIRST TIME 02/17/11.

1 AN ACT Relating to mechanics' and materialmen's claims of liens;
2 amending RCW 60.04.091, 60.04.171, and 60.04.900; and adding a new
3 section to chapter 60.04 RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 60.04 RCW
6 to read as follows:

7 (1) The legislature finds that persons furnishing labor,
8 professional services, materials, or equipment for the improvement of
9 real property routinely rely upon the enforcement of their lien rights
10 to secure payment for their work. This chapter is intended to provide
11 a simple, reliable, and uniform mechanism for preservation of lien
12 rights and pursuit of lien claims such that technical errors may be
13 corrected by retroactive amendment in the absence of prejudice to
14 others, and technical objections will not override resolution of
15 competing interests on their merits. Yet controversy has arisen at
16 times as to the intent of certain provisions of this chapter.

17 (2) The legislature therefore intends to clarify that: (a) The use
18 of the "safe harbor" form in RCW 60.04.091 is sufficient to state a
19 lien claim for all claims and claimants; (b) the full array of civil

1 procedures generally available to the courts in regular civil actions
2 are also available to the courts in lien foreclosure actions, including
3 procedures that allow technical defects to be corrected so that lien
4 claims are decided on the merits; and (c) all aspects of designated
5 statutes are to be liberally construed to protect the interests of lien
6 claimants, including all requirements for entitlement to lien, drafting
7 and recording claims of lien, and pursuing foreclosures of liens.

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

10 Every person claiming a lien under RCW 60.04.021 shall file for
11 recording, in the county where the subject property is located, a
12 notice of claim of lien not later than ninety days after the person has
13 ceased to furnish labor, professional services, materials, or equipment
14 or the last date on which employee benefit contributions were due. The
15 notice of claim of lien:

- 16 (1) Shall state in substance and effect:
- 17 (a) The name, phone number, and address of the claimant;
 - 18 (b) The first and last date on which the labor, professional
19 services, materials, or equipment was furnished or employee benefit
20 contributions were due;
 - 21 (c) The name of the person indebted to the claimant;
 - 22 (d) The street address, legal description, or other description
23 reasonably calculated to identify, for a person familiar with the area,
24 the location of the real property to be charged with the lien;
 - 25 (e) The name of the owner or reputed owner of the property, if
26 known, and, if not known, that fact shall be stated; and
 - 27 (f) The principal amount for which the lien is claimed.

28 (2) Shall be signed by the claimant or some person authorized to
29 act on his or her behalf who shall affirmatively state they have read
30 the notice of claim of lien and believe the notice of claim of lien to
31 be true and correct and that the claim of lien is not frivolous and is
32 made with reasonable cause, and is not clearly excessive under penalty
33 of perjury(~~(, and shall be acknowledged pursuant to chapter 64.08 RCW)~~)
34 before a notary public. If the lien has been assigned, the name of the
35 assignee shall be stated. If the claim of lien is signed by a
36 corporate representative, attorney, lien filing agent, or other
37 individual authorized to act on the claimant's behalf, the claim of

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

7 CLAIM OF LIEN

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

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

14 1. NAME OF LIEN CLAIMANT:
15 TELEPHONE NUMBER:
16 ADDRESS:

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

20 3. NAME OF PERSON INDEBTED TO THE CLAIMANT:
21

22 4. DESCRIPTION OF THE PROPERTY AGAINST WHICH A LIEN IS
23 CLAIMED (Street address, legal description or other information
24 that will reasonably describe the property):
25
26
27

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

30 6. THE LAST DATE ON WHICH LABOR WAS PERFORMED;
31 PROFESSIONAL SERVICES WERE FURNISHED; CONTRIBUTIONS TO AN
32 EMPLOYEE BENEFIT PLAN WERE DUE; OR MATERIAL, OR EQUIPMENT WAS
33 FURNISHED:
34

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

10 **Sec. 3.** RCW 60.04.171 and 1992 c 126 s 11 are each amended to read
11 as follows:

12 The lien provided by this chapter, for which claims of lien have
13 been recorded, may be foreclosed and enforced by a civil action in the
14 court having jurisdiction in the manner prescribed for the judicial
15 foreclosure of a mortgage, and the court rules ordinarily applicable to
16 civil actions shall apply to that action. The court shall have the
17 power to order the sale of the property. In any action brought to
18 foreclose a lien, the owner shall be joined as a party. The interest
19 in the real property of any person who, prior to the commencement of
20 the action, has a recorded interest in the property, or any part
21 thereof, shall not be foreclosed or affected unless they are joined as
22 a party.

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

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

9 **Sec. 4.** RCW 60.04.900 and 1991 c 281 s 25 are each amended to read
10 as follows:

11 All aspects of RCW 19.27.095, 60.04.230, and 60.04.011 through
12 60.04.226 and 60.04.261 are to be liberally construed to (~~provide~~
13 ~~security for all parties intended to be protected by their provisions~~)
14 protect the interests of permit applicants and of persons furnishing
15 labor, professional services, materials, or equipment for the
16 improvement of real property.

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