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**SENATE BILL 6482**

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**State of Washington 64th Legislature 2016 Regular Session**

**By** Senators Hewitt, Keiser, Fraser, Conway, Angel, Hasegawa, King, Bailey, Brown, Dansel, Schoesler, Warnick, Honeyford, and Sheldon

AN ACT Relating to construction bonds and liens; and amending RCW 18.27.040, 60.04.021, and 60.04.031.

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

**Sec.**  RCW 18.27.040 and 2007 c 436 s 4 are each amended to read as follows:

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

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

(3) Any person, firm, or corporation having a claim against the contractor for any of the items referred to in this section may bring suit against the contractor and the bond or deposit in the superior court of the county in which the work was done or of any county in which jurisdiction of the contractor may be had. The surety issuing the bond shall be named as a party to any suit upon the bond. Action upon the bond or deposit brought by a residential homeowner for breach of contract by a party to the construction contract shall be commenced by filing the summons and complaint with the clerk of the appropriate superior court within two years from the date the claimed contract work was substantially completed or abandoned, whichever occurred first. Action upon the bond or deposit brought by any other authorized party shall be commenced by filing the summons and complaint with the clerk of the appropriate superior court within one year from the date the claimed labor was performed and benefits accrued, taxes and contributions owing the state of Washington became due, materials and equipment were furnished, or the claimed contract work was substantially completed or abandoned, whichever occurred first. Service of process in an action filed under this chapter against the contractor and the contractor's bond or the deposit shall be exclusively by service upon the department. Three copies of the summons and complaint and a fee adopted by rule of not less than fifty dollars to cover the costs shall be served by registered or certified mail, or other delivery service requiring notice of receipt, upon the department at the time suit is started and the department shall maintain a record, available for public inspection, of all suits so commenced. Service is not complete until the department receives the fee and three copies of the summons and complaint. The service shall constitute service and confer personal jurisdiction on the contractor and the surety for suit on claimant's claim against the contractor and the bond or deposit and the department shall transmit the summons and complaint or a copy thereof to the contractor at the address listed in the contractor's application and to the surety within two days after it shall have been received.

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

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

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

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

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

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

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

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

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

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

(8) In lieu of the surety bond required by this section the contractor may file with the department an assigned savings account, upon forms provided by the department.

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

(10) Within ten days after resolution of the case, a certified copy of the final judgment and order, or any settlement documents where a case is not disposed of by a court trial, a certified copy of the dispositive settlement documents must be provided to the department by the prevailing party. Failure to provide a copy of the final judgment and order or the dispositive settlement documents to the department within ten days of entry of such an order constitutes a violation of this chapter and a penalty adopted by rule of not less than two hundred fifty dollars may be assessed against the prevailing party.

(11) The director may require an applicant applying to renew or reinstate a registration or applying for a new registration to file a bond of up to three times the normally required amount, if the director determines that an applicant, or a previous registration of a corporate officer, owner, or partner of a current applicant, has had in the past five years a total of three final judgments in actions under this chapter involving a residential single-family dwelling on two or more different structures.

(12) The director may adopt rules necessary for the proper administration of the security.

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

Except as provided in RCW 60.04.031, any person furnishing labor, professional services, materials, or equipment for the improvement of real property shall have a lien upon the improvement for the ((~~contract price of~~)) actual costs to the person furnishing labor, professional services, materials, or equipment ((~~furnished~~)) at the instance of the owner, or the agent or construction agent of the owner.

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

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

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

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

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

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

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

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

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

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

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

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

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

NOTICE TO OWNER

IMPORTANT: READ BOTH SIDES OF THIS NOTICE CAREFULLY.

PROTECT YOURSELF FROM PAYING TWICE

|  |  |
| --- | --- |
| To: | Date: |

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

From:

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

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

OWNER/OCCUPIER OF EXISTING

RESIDENTIAL PROPERTY

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

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

COMMERCIAL AND/OR NEW

RESIDENTIAL PROPERTY

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

Sender:

Address:

Telephone:

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

IMPORTANT INFORMATION

ON REVERSE SIDE

IMPORTANT INFORMATION

FOR YOUR PROTECTION

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

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

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

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

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

YOU SHOULD TAKE APPROPRIATE STEPS TO PROTECT YOUR PROPERTY FROM LIENS.

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

\* \* \* \* \* \* \* \* \* \* \* \* \*

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

NOTICE OF FURNISHING

PROFESSIONAL SERVICES

That on the    (day)    day of    (month and year)   ,    (name of provider)    began providing professional services upon or for the 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.

(7) Once the notice under subsection (1) of this section has been given, the person who gave the owner or reputed owner the notice of the right to claim a lien must, after a written request from the owner or reputed owner, provide in writing information regarding any late payments or overdue amounts during the previous five years by the person who ordered, purchased, or requested the labor, professional services, materials, or equipment for the improvement of the real property. Late payments or overdue amounts include, but are not limited to, payment made more than thirty days late or amounts overdue by more than thirty days.

**--- END ---**