
HOUSE BILL 2388

State of Washington

54th Legislature

1996 Regular Session

By Representatives Crouse, Casada, Kessler, Mastin, Hankins, Poulsen, Patterson, Mitchell and Chandler

Read first time 01/10/96. Referred to Committee on Energy & Utilities.

1 AN ACT Relating to the satisfaction of unrecorded utility liens at
2 the time of sale of real property; adding a new chapter to Title 60
3 RCW; and providing an effective date.

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

5 NEW SECTION. **Sec. 1.** Unless the context clearly requires
6 otherwise, the definitions in this section apply throughout this
7 chapter:

8 (1) "Charges" includes all lawful charges assessed by a utility
9 operated under chapter 35.21, 35.67, 36.36, 36.89, 36.94, 56.16, 57.08,
10 or 87.03 RCW, but not evidenced by a recorded lien, recorded covenant,
11 recorded agreement, or special assessment roll filed with the city or
12 county treasurer or assessor. "Charges" also includes penalties and
13 interest, and reasonable attorneys' fees and other costs of foreclosure
14 if foreclosure proceedings have been commenced.

15 (2) "Closing agent" means an escrow agent as defined in RCW
16 18.44.010(4) or a person exempt from licensing and registration
17 requirements under RCW 18.44.020, handling the escrow on the sale of
18 the real property.

1 (3) "Real estate agent" means a real estate broker, real estate
2 salesperson, associate real estate broker, or person as defined in RCW
3 18.85.010 (1) through (4).

4 (4) "Business day" means a day the business office of the utility
5 in question is open for business.

6 NEW SECTION. **Sec. 2.** (1) Unless otherwise stated and acknowledged
7 in writing by the purchaser, the seller of a fee interest in real
8 property is responsible for satisfying, upon closing, any lien provided
9 for by RCW 35.21.290, 35.67.200, 36.36.045, 36.89.090, 36.94.150,
10 56.16.100, 57.08.080, or 87.03.445.

11 (2) No closing agent may refuse a written request by the seller or
12 purchaser of a fee interest in real property to administer the
13 disbursement of closing funds necessary to satisfy unpaid charges as
14 charges are defined in section 1 of this act. Except as otherwise
15 provided in this subsection (2), a closing agent who refuses such a
16 written request is liable for unpaid charges for utility services
17 covered by the request. A closing agent is not liable if the closing
18 agent's refusal is based on the seller's inaccurate or incomplete
19 identification of utilities providing service to the property, or if a
20 utility fails to provide an estimated or actual final billing, or
21 written extension of the per diem rate, as required by section 3 of
22 this act, or if disbursement of closing funds necessary to satisfy the
23 unpaid charges would violate RCW 18.44.070.

24 NEW SECTION. **Sec. 3.** (1) Unless the seller and purchaser waive,
25 in writing, the services of a closing agent in administering the
26 disbursement of closing funds necessary to satisfy unpaid charges as
27 charges are defined in section 1 of this act, the seller shall, as a
28 provision in a written agreement for the purchase and sale of real
29 estate, inform the closing agent for the sale of the names and
30 addresses of all utilities, including special districts, providing
31 service to the property under chapter 35.21, 35.67, 36.36, 36.89,
32 36.94, 56.16, 57.08, or 87.03 RCW. The provision of the information in
33 a written agreement for the purchase and sale of real estate
34 constitutes a written request to the closing agent to administer
35 disbursement of closing funds necessary to satisfy unpaid charges.

36 The closing agent shall submit a written request for a final
37 billing to each utility identified by the seller as providing service

1 to the property under chapter 35.21, 35.67, 36.36, 36.89, 36.94, 56.16,
2 57.08, or 87.03 RCW. The written request shall identify the property
3 by both legal description and address. The closing agent may submit a
4 written request to a utility by facsimile. In requesting final
5 billings for utility services, the closing agent may rely upon
6 information provided by the seller, and a closing agent or a real
7 estate agent who is not the seller is not liable for inaccurate or
8 incomplete information.

9 (2) After receiving a written request for a final billing for
10 utility services to real property to be sold, a utility operated under
11 chapter 35.21, 35.67, 36.36, 36.89, 36.94, 56.16, 57.08, or 87.03 RCW
12 shall provide the requesting party with a written estimated or actual
13 final billing as provided in this section. If the utility is unable to
14 provide a written estimated or actual final billing or written
15 extension of the per diem rate, due to insufficient information to
16 identify the account, the utility shall notify the requesting party in
17 writing that the information is insufficient to identify the account.

18 The utility shall provide the written estimated or actual final
19 billing, or statement that the information in the request is
20 insufficient to identify the account, to the requesting party within
21 seven business days of receipt of the written request if the request
22 was mailed to the utility, or within three business days if the request
23 was sent to the utility by facsimile or delivered to the utility by
24 messenger. A utility may provide a written estimated or actual final
25 billing to the closing agent by facsimile.

26 (a) The final billing must include all outstanding charges and, in
27 addition to the estimated or actual final amount owing as of the stated
28 closing date, must state the average per diem rate for the utility or
29 utilities involved, including taxes and other charges, which shall
30 apply for up to thirty days beyond the stated closing date if the
31 closing date is delayed.

32 (b) If closing is delayed beyond thirty days, a new estimated or
33 actual final billing must be requested in writing. In lieu of
34 furnishing a written revised final billing, the utility may extend, in
35 writing, the number of days for which the per diem charge applies. The
36 utility shall respond within seven business days of receipt of the
37 written request for a new estimated or actual final billing if the
38 request was mailed to the utility, or within three business days if the

1 request was sent to the utility by facsimile or delivered to the
2 utility by messenger.

3 (c) If a utility fails to provide a written estimated or actual
4 final billing, written extension of the per diem rate, or statement
5 that the information in the request is insufficient to identify the
6 account, within seven business days of receipt of a written request if
7 the request was mailed to the utility, or within three business days if
8 the request was sent to the utility by facsimile or delivered to the
9 utility by messenger, an unrecorded lien provided for by RCW 35.21.290,
10 35.67.200, 36.36.045, 36.89.090, 36.94.150, 56.16.100, 57.08.080, or
11 87.03.445 for charges incurred prior to the closing date is
12 extinguished, and the utility may not recover the charges from the
13 purchaser of the property.

14 (d) A closing agent shall inform the seller and purchaser of all
15 applicable estimated and actual final billings furnished by utilities.

16 (3) If closing occurs no later than the last date for which per
17 diem charges may be applied, full payment of the estimated or actual
18 final billing plus per diem charges extinguishes a lien of the utility
19 provided for by RCW 35.21.290, 35.67.200, 36.36.045, 36.89.090,
20 36.94.150, 56.16.100, 57.08.080, or 87.03.445 for charges incurred
21 prior to the closing date.

22 (4)(a) Except as otherwise provided in this subsection (4)(a), this
23 section does not limit the right of a utility to recover from the
24 purchaser of the property unpaid utility charges incurred prior to
25 closing, if the utility did not receive a written request for a final
26 billing or if the utility complied with subsection (2) of this section.

27 A utility may not recover from a purchaser unpaid utility charges
28 incurred prior to closing in excess of an estimated final billing.

29 (b) This section does not limit the right of a utility to recover
30 unpaid utility charges incurred prior to closing, including unpaid
31 utility charges in excess of an estimated final billing, from the
32 seller of the property, or from the person or persons who incurred the
33 charges.

34 (c) If an estimated final billing is in excess of the actual final
35 billing, unless otherwise directed in writing by the seller and
36 purchaser, the utility shall refund any overcharge to the seller of the
37 property within fourteen business days of the date the utility receives
38 payment for the final billing, by sending the refund in the seller's
39 name to the last address provided by the seller.

1 NEW SECTION. **Sec. 4.** This act shall take effect January 1, 1997.

2 NEW SECTION. **Sec. 5.** Sections 1 through 3 of this act shall
3 constitute a new chapter in Title 60 RCW.

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