
SENATE BILL 6329

State of Washington

54th Legislature

1996 Regular Session

By Senators Deccio and Pelz

Read first time 01/11/96. Referred to Committee on Labor, Commerce & Trade.

1 AN ACT Relating to notices of mechanics and materialmen's liens;
2 amending RCW 60.04.031 and 60.04.226; and repealing RCW 60.04.061.

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

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

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

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

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

5 In the case of new construction of a (~~single-family~~) residence of
6 three or fewer units, the notice of a right to claim a lien may be
7 given at any time but only protects the right to claim a lien for
8 professional services, materials, or equipment supplied after a date
9 which is ten days before the notice is given as described in this
10 subsection.

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

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

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

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

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

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

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

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

5 NOTICE TO OWNER

6 IMPORTANT: READ BOTH SIDES OF THIS NOTICE
7 CAREFULLY.

8 PROTECT YOURSELF FROM PAYING TWICE

9 To: Date:

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

12 From:

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

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

20 OWNER/OCCUPIER OF EXISTING
21 RESIDENTIAL PROPERTY

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

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

1 COMMERCIAL AND/OR NEW
2 RESIDENTIAL PROPERTY

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

12 Sender:
13 Address:
14 Telephone:

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

17 IMPORTANT INFORMATION
18 ON REVERSE SIDE

19 IMPORTANT INFORMATION
20 FOR YOUR PROTECTION

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

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

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

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

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

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

10 * * * * *

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

27 NOTICE OF FURNISHING
28 PROFESSIONAL SERVICES

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

32 [Legal Description
33 is mandatory]

34 The general nature of the professional services provided is . . .
35

1 The owner or reputed owner of the real property is
2
3
4 (Signature)
5
6 (Name of Claimant)
7
8 (Street Address)
9
10 (City, State, Zip Code)
11
12 (Phone Number)

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

16 (7) In cases of new construction of owner-occupied residences of
17 three or fewer units:

18 (a) A lien authorized by this chapter and perfected under RCW
19 60.04.091 has priority over prior liens, mortgages, deeds of trust, or
20 other encumbrances upon which the improvement was constructed. To
21 enforce such a lien: The improvement may be sold separately from the
22 land; and the purchaser may remove the improvement within a reasonable
23 time thereafter, not to exceed thirty days, upon the payment to the
24 owner of the land of a reasonable rent for its use from the date of its
25 purchase to the time of its removal. If the removal is prevented by
26 legal proceedings, the thirty days does not begin to run until the
27 final determination of the proceedings in the court of first resort or
28 the appellate court if appeal is taken.

29 (b) A lien shall not have priority over a recorded mortgage or deed
30 of trust on either the land or improvement unless the person furnishing
31 the professional services, materials, equipment, or labor delivers a
32 copy of the notice of a right to claim a lien, as described in
33 subsection (4) of this section, to the mortgagee. Delivery of this
34 notice must be within ten days of cessation of the furnishing of
35 professional services, materials, equipment, or labor.

1 (c) A mortgagee who has received notice of a right to lien in
2 accordance with (b) of this subsection may demand an itemized list of
3 amounts owing. The itemized list must be delivered to the mortgagee
4 within ten days of receipt of demand, as evidenced by receipt or
5 receipt of delivery of a registered or certified letter containing the
6 demand. Failure to timely provide the itemized list is a waiver of the
7 preference provided in (a) of this subsection.

8 (d) Upon payment and acceptance of the amount due to a person
9 furnishing professional services, materials, equipment, or labor, and
10 upon demand of the person making payment, the person furnishing
11 professional services, materials, equipment, or labor shall execute a
12 waiver of all lien rights for which payment has been made.

13 **Sec. 2.** RCW 60.04.226 and 1991 c 281 s 23 are each amended to read
14 as follows:

15 Except as otherwise provided in RCW (~~60.04.061 or~~) 60.04.221, any
16 mortgage or deed of trust shall be prior to all liens, mortgages, deeds
17 of trust, and other encumbrances which have not been recorded prior to
18 the recording of the mortgage or deed of trust to the extent of all
19 sums secured by the mortgage or deed of trust regardless of when the
20 same are disbursed or whether the disbursements are obligatory.

21 NEW SECTION. **Sec. 3.** RCW 60.04.061 and 1991 c 281 s 6 are each
22 repealed.

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