

**2SSB 5773 - S AMD 347**

By Senator Honeyford

NOT ADOPTED 03/15/2005

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 60.04.250 and 1990 c 81 s 1 are each amended to read  
4 as follows:

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

7 (1) Construction lien laws and available safeguards against real  
8 property lien claims. The material shall include methods of protection  
9 against lien claims, including obtaining lien release documents,  
10 performance bonds, joint payee checks, the opportunity to require  
11 contractor disclosure of all potential lien claimants as a condition of  
12 payment, and lender supervision under RCW 60.04.200 and 60.04.210. The  
13 material shall also include sources of further information, including  
14 the department of labor and industries and the office of the attorney  
15 general.

16 (2) The basics of lien law relating to owner-occupied residential  
17 improvements and new construction projects, including a list of  
18 available safeguards against real property lien claims, which the  
19 homeowner must consider, reject, or select. Before any building permit  
20 may be issued for the construction of a new owner-occupied  
21 single-family residence or for the improvement to an owner-occupied  
22 single-family residence for an amount in excess of one thousand  
23 dollars, if the construction will involve the services of a prime  
24 contractor, the permit issuing agency shall not issue any permit until  
25 the homeowner has personally, and not through an agent, acknowledged  
26 receipt of the document. When the homeowner completes the document by  
27 making selections, as indicated in the document, and submits it to the  
28 agency, the permit issuing agency shall maintain a copy of the  
29 completed document in the file of the permit issuing agency relating to  
30 the homeowner's permit application. The document shall be in

1 substantially the following form and shall also include information  
2 describing the scope and limits of state contractor bonding  
3 requirements, the provisions of this act, and the availability of  
4 further information, including the department of labor and industries  
5 and the office of the attorney general.

6 Dear Homeowner:

7 You must complete the items below and select from the options below  
8 what protection, if any, you want against potential lien claims on your  
9 property as a result of the construction work for which you are  
10 contracting. If your contractor fails to pay subcontractors,  
11 suppliers, or laborers or neglects to make other legally required  
12 payments, those who are owed money can file a lien against your  
13 property for payment, even if you have paid your contractor in full.  
14 Anyone filing a valid lien claim may force the sale of your property to  
15 recover the unpaid amount. This is true if you have hired a contractor  
16 to build a new home or are buying a newly built home. It is also true  
17 when you remodel or improve your property.

18 People who supply materials or labor ordered by your contractor are  
19 permitted by law to file a lien only if they do so within ninety days  
20 of cessation of performance or delivery of materials. The time frame  
21 is spelled out in RCW 60.04.091.

22 If you enter into a contract to buy a newly built home, you may not  
23 receive a notice of a lien based on a claim by a contractor or material  
24 supplier. You should inquire of your lender and title insurer about  
25 title insurance coverage for liens that may arise from the construction  
26 of your home, but that are not recorded until after you take possession  
27 of your home. Be aware that a lien may be claimed even though you have  
28 not received a notice. Before making final payment on the project,  
29 obtain a completed lien release form from each contractor and material  
30 supplier. A sample of this release of lien form is available from the  
31 department of labor and industries, contractor registration section.

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

34 If you are dealing with a lending institution, ask your loan  
35 officer what precautions the lending institution takes to verify that  
36 subcontractors and material suppliers are being paid when mortgage  
37 money is paid to your contractor. You may want to request lender

1 supervision if your lending institution is providing interim or  
2 construction financing.

3 If you receive a notice to enforce a lien, take the notice  
4 seriously. Let your contractor know you have received the notice.  
5 Find out what arrangements are being made to pay the sender of the  
6 notice.

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

12 Complete the following information, select below how you want to  
13 protect yourself from possible lien claims on your property, and inform  
14 your contractor of your selections or discuss your selections with your  
15 contractor.

16 I, (owner's name) . . . . .,  
17 am agreeing to have (contractor's name)  
18 perform the following construction work (basic description)  
19 at (location of your property using an address, legal description  
20 or approximate address)  
21 in the amount of \$ . . . . . including all federal, state,  
22 and local taxes, and this amount may be adjusted only if authorized by  
23 me in writing.

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

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

28 . . . . . will only issue checks to the contractor and  
29 subcontractors in the amounts equal to the amounts for which lien  
30 releases that release all lien rights to those amounts, as provided by  
31 RCW 60.04.071, have been provided to me by each lien claimant  
32 requesting payment.

33 . . . . . want the contractor to post a bond to assure both  
34 performance of this construction work and payment to all subcontractors  
35 and suppliers in the amount of (select one) . . . the total contract  
36 amount . . . in the amount of \$ . . . . . (Note: Your contractor  
37 may add the cost of this bond to your contract price.)

1 . . . . . will be using . . . . . as an escrow agent  
2 to disburse construction funds and to protect my interests. (NOTE:  
3 Before making this selection, find out whether the escrow agent you  
4 plan to use will protect you against liens when disbursing payments.  
5 If you are interested in using this alternative, consult your  
6 attorney.)

7 . . . . . want this contractor to set up a trust account for  
8 all funds I pay to this contractor, and the trust funds must be  
9 disbursed in accordance with our construction agreement to  
10 subcontractors and suppliers.

11 . . . . . DO NOT want any of the above protections from  
12 potential lien claims against my property as a result of this  
13 construction work.

14 In addition to the above selection, I choose ONE of the following:  
15 . . . WANT . . . DO NOT WANT the prime residential contractor to  
16 disclose all potential lien claimants as a condition of payment.  
17 (NOTE: A lien claimant must, under RCW 60.04.091, mail by certified or  
18 registered mail or by personal service a copy of the claim of lien to  
19 the owner within fourteen days of the time the lien is recorded. While  
20 an action is ongoing, the law, RCW 60.04.151, allows an owner to  
21 withhold from this prime residential contractor the amount of money for  
22 which a claim is recorded by a subcontractor, supplier, or laborer.)

23 More information about contractors is available by visiting the  
24 department of labor and industries on the Internet at  
25 www.LNI.wa.gov/SCS/contractors/ or by calling the contractor  
26 registration hotline at 1-800-647-0982. You may also call your local  
27 department of labor and industries office. See listings under  
28 "Washington state of" in the government section or the white pages of  
29 the telephone book.

30 Signed by (property owner): . . . . .  
31 Date signed: . . . . .

32 **Sec. 2.** RCW 18.27.020 and 1997 c 314 s 3 are each amended to read  
33 as follows:

- 34 (1) Every contractor shall register with the department.  
35 (2) It is a gross misdemeanor for any contractor to:  
36 (a) Advertise, offer to do work, submit a bid, or perform any work  
37 as a contractor without being registered as required by this chapter;

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

4 (c) Use a false or expired registration number in purchasing or  
5 offering to purchase an advertisement for which a contractor  
6 registration number is required; or

7 (d) Transfer a valid registration to an unregistered contractor or  
8 allow an unregistered contractor to work under a registration issued to  
9 another contractor.

10 (3) It is not unlawful for a general contractor to employ an  
11 unregistered contractor who was registered at the time he or she  
12 entered into a contract with the general contractor, unless the general  
13 contractor or his or her representative has been notified in writing by  
14 the department of labor and industries that the contractor has become  
15 unregistered.

16 (4) All (~~misdemeanor~~) actions under this chapter shall be  
17 prosecuted in the county where the infraction occurs.

18 (5) A person is guilty of a separate gross misdemeanor for each day  
19 worked if, after the person receives a citation from the department,  
20 the person works while unregistered, or while his or her registration  
21 is suspended or revoked, or works under a registration issued to  
22 another contractor. A person is guilty of a separate gross misdemeanor  
23 for each worksite on which he or she violates subsection (2) of this  
24 section. Nothing in this subsection applies to a registered  
25 contractor.

26 (6) The director by rule shall establish a two-year audit and  
27 monitoring program for a contractor not registered under this chapter  
28 who becomes registered after receiving an infraction or conviction  
29 under this chapter as an unregistered contractor. The director shall  
30 notify the departments of revenue and employment security of the  
31 infractions or convictions and shall cooperate with these departments  
32 to determine whether any taxes or registration, license, or other fees  
33 or penalties are owed the state.

34 **Sec. 3.** RCW 60.04.031 and 1992 c 126 s 2 are each amended to read  
35 as follows:

36 (1) Except as otherwise provided in this section, every person  
37 furnishing professional services, materials, or equipment for the

1 improvement of real property shall give the owner or reputed owner  
2 notice in writing of the right to claim a lien. If the prime  
3 contractor is in compliance with the requirements of RCW 19.27.095,  
4 60.04.230, and 60.04.261, this notice shall also be given to the prime  
5 contractor as described in this subsection unless the potential lien  
6 claimant has contracted directly with the prime contractor. The notice  
7 may be given at any time but only protects the right to claim a lien  
8 for professional services, materials, or equipment supplied after the  
9 date which is sixty days before:

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

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

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

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

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

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

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

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

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

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

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

17 NOTICE TO OWNER

18 IMPORTANT: READ BOTH SIDES OF THIS NOTICE  
19 CAREFULLY.

20 PROTECT YOURSELF FROM PAYING TWICE

21 To: ..... Date: .....

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

23 From: . . . . .

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

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

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

33 OWNER/OCCUPIER OF EXISTING  
34 RESIDENTIAL PROPERTY AND/OR  
35 NEW RESIDENTIAL PROPERTY

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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.))~~ If the improvement to your property is new construction, repair, alteration, or remodel of a single-family residence or its appurtenant garage, a lien may be claimed for some or all professional services, materials, or equipment furnished after a date that is ten days before this notice was given to you or 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

1 shall be subordinate to the interest of any subsequent mortgagee and  
2 invalid as to the interest of any subsequent purchaser if the mortgagee  
3 or purchaser acts in good faith and for a valuable consideration  
4 acquires an interest in the property prior to the commencement of an  
5 improvement as defined in RCW 60.04.011(5) (a) or (b) without notice of  
6 the professional services being provided. The notice described in this  
7 subsection shall be substantially in the following form:

8 NOTICE OF FURNISHING  
9 PROFESSIONAL SERVICES

10 That on the \_\_\_\_ (day) \_\_\_\_ day of \_\_\_\_ (month and year) \_\_\_\_, \_\_\_\_ (name of  
11 provider) \_\_\_\_ began providing professional services upon or for the  
12 improvement of real property legally described as follows:

13 [Legal Description  
14 is mandatory]

15 The general nature of the professional services provided is . . . .  
16 The owner or reputed owner of the real property is . . . . .  
17 . . . . .

18 .....  
19 (Signature)

20 .....  
21 (Name of Claimant)

22 .....  
23 (Street Address)

24 .....  
25 (City, State, Zip Code)

26 .....  
27 (Phone Number)

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

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By Senator Honeyford

**NOT ADOPTED 03/15/2005**

1        On page 1, line 2 of the title, after "homes;" strike the remainder  
2 of the title and insert "amending RCW 60.04.250, 18.27.020, and  
3 60.04.031."

**--- END ---**