

4 ADOPTED AS AMENDED 3/11/92

5 Strike everything after the enacting clause and insert the
6 following:

7 "Sec. 1. RCW 60.04.011 and 1991 c 281 s 1 are each amended to read
8 as follows:

9 Unless the context requires otherwise, the definitions in this
10 section apply throughout this chapter.

11 (1) "Construction agent" means any registered or licensed
12 contractor, registered or licensed subcontractor, architect, engineer,
13 or other person having charge of any improvement to real property, who
14 shall be deemed the agent of the owner for the limited purpose of
15 establishing the lien created by this chapter.

16 (2) "Contract price" means the amount agreed upon by the
17 contracting parties, or if no amount is agreed upon, then the customary
18 and reasonable charge therefor.

19 (3) "Draws" means periodic disbursements of interim or construction
20 financing by a lender.

21 (4) "Furnishing labor, professional services, materials, or
22 equipment" means the performance of any labor or professional services,
23 the contribution owed to any employee benefit plan on account of any
24 labor, the provision of any supplies or materials, and the renting,
25 leasing, or otherwise supplying of equipment for the improvement of
26 real property.

27 (5) "Improvement" means: (a) Constructing, altering, repairing,
28 remodeling, demolishing, clearing, grading, or filling in, of, to, or

1 upon any real property or street or road in front of or adjoining the
2 same; (b) planting of trees, vines, shrubs, plants, hedges, or lawns,
3 or providing other landscaping materials on any real property; and (c)
4 providing professional services upon real property or in preparation
5 for or in conjunction with the intended activities in (a) or (b) of
6 this subsection.

7 (6) "Interim or construction financing" means that portion of money
8 secured by a mortgage, deed of trust, or other encumbrance to finance
9 improvement of, or to real property, but does not include:

10 (a) Funds to acquire real property;

11 (b) Funds to pay interest, insurance premiums, lease deposits,
12 taxes, assessments, or prior encumbrances;

13 (c) Funds to pay loan, commitment, title, legal, closing,
14 recording, or appraisal fees;

15 (d) Funds to pay other customary fees, which pursuant to agreement
16 with the owner or borrower are to be paid by the lender from time to
17 time;

18 (e) Funds to acquire personal property for which the potential lien
19 claimant may not claim a lien pursuant to this chapter.

20 (7) "Labor" means exertion of the powers of body or mind performed
21 at the site for compensation. "Labor" includes amounts due and owed to
22 any employee benefit plan on account of such labor performed.

23 (8) "Mortgagee" means a person who has a valid mortgage of record
24 or deed of trust of record securing a loan.

25 ~~(9) ("Owner" means the record holder of any legal or beneficial
26 title to the real property to be improved or developed.~~

27 ~~(10))~~ "Owner-occupied" means a single-family residence occupied by
28 the owner as his or her principal residence.

1 (~~(11)~~) (10) "Payment bond" means a surety bond issued by a surety
2 licensed to issue surety bonds in the state of Washington that confers
3 upon potential claimants the rights of third party beneficiaries.

4 (~~(12)~~) (11) "Potential lien claimant" means any person or entity
5 entitled to assert lien rights under this chapter who has otherwise
6 complied with the provisions of this chapter and is registered or
7 licensed if required to be licensed or registered by the provisions of
8 the laws of the state of Washington.

9 (~~(13)~~) (12) "Prime contractor" includes all contractors, general
10 contractors, and specialty contractors, as defined by chapter 18.27 or
11 19.28 RCW, or who are otherwise required to be registered or licensed
12 by law, who contract directly with a property owner or their common law
13 agent to assume primary responsibility for the creation of an
14 improvement to real property, and includes property owners or their
15 common law agents who are contractors, general contractors, or
16 specialty contractors as defined in chapter 18.27 or 19.28 RCW, or who
17 are otherwise required to be registered or licensed by law, who offer
18 to sell their property without occupying or using the structures,
19 projects, developments, or improvements for more than one year.

20 (~~(14)~~) (13) "Professional services" means surveying, establishing
21 or marking the boundaries of, preparing maps, plans, or specifications
22 for, or inspecting, testing, or otherwise performing any other
23 architectural or engineering services for the improvement of real
24 property.

25 (~~(15)~~) (14) "Real property lender" means a bank, savings bank,
26 savings and loan association, credit union, mortgage company, or other
27 corporation, association, partnership, trust, or individual that makes
28 loans secured by real property located in the state of Washington.

29 (~~(16)~~) (15) "Site" means the real property which is or is to be
30 improved.

1 (~~(17)~~) (16) "Subcontractor" means a general contractor or
2 specialty contractor as defined by chapter 18.27 or 19.28 RCW, or who
3 is otherwise required to be registered or licensed by law, who
4 contracts for the improvement of real property with someone other than
5 the owner of the property or their common law agent."

6 "**Sec. 2.** RCW 60.04.031 and 1991 c 281 s 3 are each amended to read
7 as follows:

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

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

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

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

1 the notice is (~~mailed or served~~) given as described in this
2 subsection.

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

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

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

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

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

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

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

7 PROTECT YOURSELF FROM PAYING TWICE

8 To:.....
9 Date:.....
10 Re:.....(description of property: Street address or
11 general location.)
12 From:.....

13 AT THE REQUEST OF: (Name of person (~~placing the~~
14 ~~order~~) ordering the professional 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 RESIDENTIAL PROPERTY

21 Under Washington law, those who (~~work on or provide materials~~)
22 furnish labor, professional services, materials, or equipment for the
23 repair, remodel, or alteration of your owner-occupied principal
24 residence and who are not paid, have a right to enforce their claim for
25 payment against your property. This claim is known as a construction
26 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 (~~you received~~) this notice was given to you or three days after this
31 notice was mailed to you. Review the back of this notice for more
32 information and ways to avoid lien claims.

33 COMMERCIAL AND/OR NEW RESIDENTIAL PROPERTY

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

1 Sender:
2 Address:
3 Telephone:
4 Brief description of professional services, materials, or equipment
5 provided or to be provided:

6 IMPORTANT INFORMATION ON REVERSE SIDE

7 IMPORTANT INFORMATION FOR YOUR PROTECTION

8 This notice is sent to inform you that we have or will provide
9 (~~materials,~~) professional services, materials, or equipment for the
10 (~~repair, remodel, or alteration~~) improvement of your property. We
11 expect to be paid by the person who ordered our services, but if we are
12 not paid, we have the right to enforce our claim by filing a
13 construction lien against your property.

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

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

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

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

29 YOU SHOULD TAKE (~~WHATEVER~~) APPROPRIATE STEPS (~~YOU BELIEVE~~
30 ~~NECESSARY~~) TO PROTECT YOUR PROPERTY FROM LIENS.

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

34 * * * * *

35 (5) Every potential lien claimant providing professional services
36 where no improvement as defined in RCW 60.04.011(5) (a) or (b) has been
37 commenced, and the professional services provided are not visible from
38 an inspection of the real property (~~shall~~) may record in the real

1 property records of the county where the property is located a notice
2 which shall contain the professional service provider's name, address,
3 telephone number, legal description of the property, the owner or
4 reputed owner's name, and the general nature of the professional
5 services provided. If such notice is not recorded, the lien claimed
6 shall be subordinate to the interest of any subsequent mortgagee and
7 invalid as to the interest of any subsequent purchaser (~~who~~) if the
8 mortgagee or purchaser acts in good faith and for a valuable
9 consideration acquires an interest in the property prior to the
10 commencement of an improvement as defined in RCW 60.04.011(5) (a) or
11 (b) without notice of the professional services being provided. The
12 notice described in this subsection shall be substantially in the
13 following form:

14 NOTICE OF FURNISHING PROFESSIONAL SERVICES

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

18 [Legal Description
19 is mandatory]

20 The general nature of the professional services provided is
21
22
23 The owner or reputed owner of the real property is
24

25
26 (Signature)

27
28 (Name of Claimant)

29
30 (Street Address)

31
32 (City, State, Zip Code)

33
34 (Phone Number)

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

4 "NEW SECTION. **Sec. 3.** A new section is added to chapter 60.04 RCW
5 to read as follows:

6 The legislature finds that acts of coercion or attempted coercion,
7 including threats to withhold future contracts, made by a contractor or
8 developer to discourage a contractor, subcontractor, or material or
9 equipment supplier from giving an owner the notice of right to claim a
10 lien required by RCW 60.04.031, or from filing a claim of lien under
11 this chapter are matters vitally affecting the public interest for the
12 purpose of applying the consumer protection act, chapter 19.86 RCW.
13 These acts of coercion are not reasonable in relation to the
14 development and preservation of business. These acts of coercion shall
15 constitute an unfair or deceptive act or practice in trade or commerce
16 for the purpose of applying the consumer protection act, chapter 19.86
17 RCW."

18 "**Sec. 4.** RCW 60.04.041 and 1991 c 281 s 4 are each amended to read
19 as follows:

20 A contractor or subcontractor required to be registered under
21 chapter 18.27 RCW or licensed under chapter 19.28 RCW, or otherwise
22 required to be registered or licensed by law, shall be deemed the
23 construction agent of the owner for the purposes of establishing the
24 lien created by this chapter only if so registered or licensed.
25 Persons dealing with contractors or subcontractors may rely, for the
26 purposes of this section, upon a certificate of registration issued
27 pursuant to chapter 18.27 RCW or license issued pursuant to chapter
28 19.28 RCW, or other certificate or license issued pursuant to law,

1 covering the period when the labor, professional services, material, or
2 equipment shall be furnished, and the lien rights shall not be lost by
3 suspension or revocation of registration or license without their
4 knowledge. No lien rights described in this (~~section~~) chapter shall
5 be lost or denied by virtue of the absence, suspension, or revocation
6 of such registration or license with respect to any contractor or
7 subcontractor not in immediate contractual privity with the lien
8 claimant."

9 "Sec. 5. RCW 60.04.051 and 1991 c 281 s 5 are each amended to read
10 as follows:

11 The lot, tract, or parcel of land which is improved is subject to
12 a lien to the extent of the interest of the (~~person for whom~~) owner
13 at whose instance, directly or through a common law or construction
14 agent the labor, professional services, equipment, or materials were
15 furnished, as the court deems appropriate for satisfaction of the lien.
16 If, for any reason, the title or interest in the land upon which the
17 improvement is situated cannot be subjected to the lien, the court in
18 order to satisfy the lien may order the sale and removal of the
19 improvement from the land which is subject to the lien(~~(, from the~~
20 ~~land)~~))."

21 "Sec. 6. RCW 60.04.081 and 1991 c 281 s 8 are each amended to read
22 as follows:

23 (1) Any owner of real property subject to a recorded (~~notice of~~)
24 claim of lien under this chapter, or (~~the~~) contractor (~~or~~),
25 subcontractor, lender, or lien claimant who believes the claim of lien
26 to be frivolous and made without reasonable cause, or clearly excessive
27 may apply by motion to the superior court for the county where the
28 property, or some part thereof is located, for an order directing the

1 lien claimant to appear before the court at a time no earlier than six
2 nor later than fifteen days following the date of service of the
3 application and order on the lien claimant, and show cause, if any he
4 or she has, why the ~~((lien claim))~~ relief requested should not be
5 ~~((dismissed, with prejudice))~~ granted. The motion shall state the
6 grounds upon which relief is asked, and shall be supported by the
7 affidavit of the applicant or his or her attorney setting forth a
8 concise statement of the facts upon which the motion is based.

9 (2) The order shall clearly state that if the lien claimant fails
10 to appear at the time and place noted the lien ~~((claim))~~ shall be
11 ~~((dismissed))~~ released, with prejudice ~~((+))~~, and that the lien
12 claimant shall be ordered to pay the costs requested by the applicant
13 including reasonable attorneys' fees.

14 (3) If no action to foreclose the lien claim has been filed, the
15 clerk of the court shall assign a cause number to the application and
16 obtain from the applicant a filing fee of thirty-five dollars. If an
17 action has been filed to foreclose the lien claim, the application
18 shall be made a part of that action.

19 (4) If, following a ~~((full))~~ hearing on the matter, the court
20 determines that the lien ~~((claim))~~ is frivolous and made without
21 reasonable cause, or clearly excessive, the court shall issue an order
22 ~~((dismissing))~~ releasing the lien ~~((claim))~~ if frivolous and made
23 without reasonable cause, or reducing the ~~((claim))~~ lien if clearly
24 excessive, and awarding costs and reasonable attorneys' fees to the
25 applicant to be paid by the lien claimant. If the court determines
26 that the ~~((claim-of))~~ lien is not frivolous and was made with
27 reasonable cause, and is not clearly excessive, the court shall issue
28 ~~((and))~~ an order so stating and awarding costs and reasonable
29 attorneys' fees to the lien claimant to be paid by the applicant.

1 (5) Proceedings under this section shall not affect other rights
2 and remedies available to the parties under this chapter or otherwise."

3 "Sec. 7. RCW 60.04.091 and 1991 c 281 s 9 are each amended to read
4 as follows:

5 Every person claiming a lien under RCW 60.04.021 shall (~~record~~)
6 file for recording, in the county where the subject property is
7 located, a notice of claim of lien not later than ninety days after the
8 person has ceased to furnish labor, professional services, materials,
9 or equipment or the last date on which employee benefit contributions
10 were due. The notice of claim of lien:

11 (1) Shall state in substance and effect:

12 (a) The name, phone number, and address of the claimant;

13 (b) The first and last date on which the labor, professional
14 services, materials, or equipment was furnished or employee benefit
15 contributions were due;

16 (c) The name of the person indebted to the claimant;

17 (d) The street address, legal description, or other description
18 reasonably calculated to identify, for a person familiar with the area,
19 the location of the real property to be charged with the lien;

20 (e) The name of the owner or reputed owner of the property, if
21 known, and, if not known, that fact shall be stated; and

22 (f) The principal amount for which the lien is claimed.

23 (2) Shall be signed by the claimant or some person authorized to
24 act on his or her behalf who shall affirmatively state they have read
25 the notice of claim of lien and believe the notice of claim of lien to
26 be true and correct under penalty of perjury, and shall be acknowledged
27 pursuant to chapter 64.08 RCW. If the (~~claim~~) lien has been
28 assigned, the name of the assignee shall be stated. Where an action to
29 foreclose the lien has been commenced such notice of claim of lien may

1 be amended as pleadings may be by order of the court insofar as the
2 interests of third parties are not adversely affected by such
3 amendment. A claim of lien substantially in the following form shall
4 be sufficient:

5 CLAIM OF LIEN

6 , claimant, vs .. , (~~owner or reputed owner~~) name
7 of person indebted to claimant:

8 (~~Notice is hereby given that on the day of (date of~~
9 ~~commencement of furnishing labor, professional services, materials,~~
10 ~~or equipment and the last date contributions to any type of~~
11 ~~employee benefit plan became due), at the request of~~
12 ~~....., commenced to (perform labor, furnish~~
13 ~~professional services, materials, or equipment) upon~~
14 ~~(here describe property subject to the lien) of which property the~~
15 ~~owner, or reputed owner, is (or if the owner or reputed~~
16 ~~owner is not known, insert the word "unknown"), the (furnishing of~~
17 ~~labor, professional services, materials, or equipment) ceased on~~
18 ~~the day of; that said (labor, professional~~
19 ~~services, material, or equipment) was of the value of~~
20 ~~dollars, for which the undersigned claims a lien upon the property~~
21 ~~herein described for the sum of dollars. (In case the~~
22 ~~claim has been assigned, add the words "and is assignee~~
23 ~~of said claim", or claims, if several are united.)) Notice is
24 hereby given that the person named below claims a lien pursuant to
25 chapter 64.04 RCW. In support of this lien the following
26 information is submitted:~~

27 1. NAME OF LIEN CLAIMANT:
28 TELEPHONE NUMBER:
29 ADDRESS:

30 2. DATE ON WHICH THE CLAIMANT BEGAN TO PERFORM LABOR,
31 PROVIDE PROFESSIONAL SERVICES, SUPPLY MATERIAL OR EQUIPMENT OR
32 THE DATE ON WHICH EMPLOYEE BENEFIT CONTRIBUTIONS BECAME
33 DUE:

34 3. NAME OF PERSON INDEBTED TO THE CLAIMANT:
35

36 4. DESCRIPTION OF THE PROPERTY AGAINST WHICH A LIEN IS
37 CLAIMED (Street address, legal description or other information
38 that will reasonably describe the property):
39
40
41

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

3 6. THE LAST DATE ON WHICH LABOR WAS PERFORMED;
4 PROFESSIONAL SERVICES WERE FURNISHED; CONTRIBUTIONS TO AN
5 EMPLOYEE BENEFIT PLAN WERE DUE; OR MATERIAL, OR EQUIPMENT WAS
6 FURNISHED:.....
7

8 7. PRINCIPAL AMOUNT FOR WHICH THE LIEN IS CLAIMED
9 IS:.....

10 8. IF THE CLAIMANT IS THE ASSIGNEE OF THIS CLAIM SO STATE
11 HERE:.....
12

13 , Claimant
14
15
16 (Phone number, address, city,
17 and state of claimant)

18 STATE OF WASHINGTON, COUNTY OF
19,ss.
20, being sworn, says: I am the claimant (or attorney of the
21 claimant, or administrator, representative, or agent of the trustees
22 of an employee benefit plan) above named; I have read or heard the
23 foregoing claim, read and know the contents thereof, and believe the
24 same to be true and correct and that the claim of lien is not
25 frivolous and is made with reasonable cause, and is not clearly
26 excessive under penalty of perjury.

27
28 Subscribed and sworn to before me this day of
29

30 The period provided for recording the ((notice)) claim of lien is
31 a period of limitation and no action to foreclose a ((claim of)) lien
32 shall be maintained unless the ((notice is recorded)) claim of lien is
33 filed for recording within the ninety-day period stated. The lien
34 claimant shall give ((notice of)) a copy of the claim of lien to the
35 owner or reputed owner by mailing it by certified or registered mail or
36 by personal service within fourteen days of the time the claim of lien
37 is ((recorded)) filed for recording. Failure to do so results in a
38 forfeiture of any right the claimant may have to attorneys' fees and
39 costs against the owner under RCW 60.04.181."

1 **"Sec. 8.** RCW 60.04.141 and 1991 c 281 s 14 are each amended to
2 read as follows:

3 No lien created by this chapter binds the property subject to the
4 lien for a longer period than eight calendar months after the ((notice
5 of)) claim of lien has been recorded unless an action is filed by the
6 lien claimant within that time in the superior court in the county
7 where the subject property is located to enforce the lien, and service
8 is made upon the owner of the subject property within ninety days of
9 the date of filing the action; or, if credit is given and the terms
10 thereof are stated in the ((notice—of)) claim of lien, then eight
11 calendar months after the expiration of such credit; and in case the
12 action is not prosecuted to judgment within two years after the
13 commencement thereof, the court, in its discretion, may dismiss the
14 action for want of prosecution, and the dismissal of the action or a
15 judgment rendered thereon that no lien exists shall constitute a
16 cancellation of the lien. This is a period of limitation, which shall
17 be tolled by the filing of any petition seeking protection under Title
18 Eleven, United States Code by an owner of any property subject to the
19 lien established by this chapter."

20 **"Sec. 9.** RCW 60.04.151 and 1991 c 281 s 15 are each amended to
21 read as follows:

22 The lien claimant shall be entitled to recover upon the claim
23 recorded the contract price after deducting all claims of other lien
24 claimants to whom the claimant is liable, for furnishing labor,
25 professional services, materials, or equipment; and in all cases where
26 a ((notice—of)) claim of lien shall be recorded under this chapter for
27 labor, professional services, materials, or equipment supplied to any
28 lien claimant, he or she shall defend any action brought thereupon at
29 his or her own expense((;—and)). During the pendency of the action,

1 the owner may withhold from the prime contractor the amount of money
2 for which a claim is recorded by any subcontractor, supplier, or
3 laborer(~~(; and)~~). In case of judgment against the owner or the owner's
4 property, upon the lien, the owner shall be entitled to deduct from
5 sums due to the prime contractor the principal amount of the judgment
6 from any amount due or to become due from (~~(him or her)~~) the owner to
7 the (~~(lien claimant)~~) prime contractor plus such costs, including
8 interest and attorneys' fees, as the court deems just and equitable,
9 and (~~(he or she)~~) the owner shall be entitled to recover back from the
10 (~~(lien claimant)~~) prime contractor the amount for which (~~(the)~~) a lien
11 (~~(is)~~) or liens are established in excess of any sum that may remain
12 due from (~~(him or her)~~) the owner to the (~~(lien claimant)~~) prime
13 contractor."

14 "Sec. 10. RCW 60.04.161 and 1991 c 281 s 16 are each amended to
15 read as follows:

16 Any owner of real property subject to a recorded (~~(notice of)~~)
17 claim of lien under this chapter, or (~~(the)~~) contractor (~~(or)~~),
18 subcontractor, lender, or lien claimant who disputes the correctness or
19 validity of the (~~(notice of)~~) claim of lien may record, either before
20 or after the commencement of an action to enforce the lien, in the
21 office of the county recorder or auditor in the county where the
22 (~~(notice of)~~) claim of lien was recorded, a bond issued by a surety
23 company authorized to issue surety bonds in the state. The surety
24 shall be listed in the latest federal department of the treasury list
25 of surety companies acceptable on federal bonds, published in the
26 Federal Register, as authorized to issue bonds on United States
27 government projects with an underwriting limitation, including
28 applicable reinsurance, equal to or greater than the amount of the bond
29 to be recorded. The bond shall contain a description of the (~~(notice~~

1 ef)) claim of lien and real property involved, and be in an amount
2 equal to the greater of five thousand dollars or two times the amount
3 of the lien claimed if it is ten thousand dollars or less, and in an
4 amount equal to or greater than one and one-half times the amount of
5 the lien if it is in excess of ten thousand dollars. If the ((notice
6 ef)) claim of lien affects more than one parcel of real property and is
7 segregated to each parcel, the bond may be segregated the same as in
8 the ((notice-ef)) claim of lien. A separate bond shall be required for
9 each ((notice-ef)) claim of lien made by separate claimants. However,
10 a single bond may be used to guarantee payment of amounts claimed by
11 more than one ((lien)) claim of lien by a single claimant so long as
12 the amount of the bond meets the requirements of this section as
13 applied to the aggregate sum of all claims by such claimant. The
14 condition of the bond shall be to guarantee payment of any judgment
15 upon the lien in favor of the lien claimant entered in any action to
16 recover the amount claimed in a ((notice-ef)) claim of lien, or on the
17 claim asserted in the ((notice-ef)) claim of lien. The effect of
18 recording a bond shall be to release the real property described in the
19 notice of claim of lien from the lien and any action brought to recover
20 the amount claimed. Unless otherwise prohibited by law, if no action
21 is commenced to recover on a lien within the time specified in RCW
22 60.04.141, the surety shall be discharged from liability under the
23 bond. If an action is timely commenced, then on payment of any
24 judgment entered in the action or on payment of the full amount of the
25 bond to the holder of the judgment, whichever is less, the surety shall
26 be discharged from liability under the bond.

27 Nothing in this section shall in any way prohibit or limit the use
28 of other methods, devised by the affected parties to secure the
29 obligation underlying a claim of lien and to obtain a release of real
30 property from a claim of lien."

1 **"Sec. 11.** RCW 60.04.171 and 1991 c 281 s 17 are each amended to
2 read as follows:

3 The lien provided by this chapter, for which claims of lien have
4 been recorded, may be foreclosed and enforced by a civil action in the
5 court having jurisdiction in the manner prescribed for the judicial
6 foreclosure of a mortgage. The court shall have the power to order the
7 sale of the property. In any action brought to foreclose a lien, the
8 owner shall be joined as a party. The ~~((lien claims of all))~~ interest
9 in the real property of any person~~((s))~~ who, prior to the commencement
10 of the action, ~~((have legally))~~ has a recorded ~~((claims of lien~~
11 ~~against))~~ interest in the ~~((same))~~ property, or any part thereof, shall
12 not be foreclosed or affected unless they are joined as a party.

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

1 action shall not be dismissed if the filing was the result of mistake,
2 inadvertence, surprise, excusable neglect, or irregularity. An action
3 to foreclose a lien shall not be dismissed at the instance of a
4 plaintiff therein to the prejudice of another party to the suit who
5 claims a lien."

6 "Sec. 12. RCW 60.04.181 and 1991 c 281 s 18 are each amended to
7 read as follows:

8 (1) In every case in which different construction liens are claimed
9 against the same property, the court shall declare the rank of such
10 lien or class of liens, which liens shall be in the following order:

11 (a) Liens for the performance of labor;

12 (b) Liens for contributions owed to employee benefit plans;

13 (c) Liens for furnishing material, supplies, or equipment;

14 (d) Liens for subcontractors, including but not limited to their
15 labor and materials; and

16 (e) Liens for prime contractors, or for professional services.

17 (2) The proceeds of the sale of property must be applied to each
18 lien or class of liens in order of its rank and, in an action brought
19 to foreclose a lien, pro rata among each claimant in each separate
20 priority class. A personal judgment may be rendered against any party
21 personally liable for any debt for which the lien is claimed. If the
22 lien is established, the judgment shall provide for the enforcement
23 thereof upon the property liable as in the case of foreclosure of
24 judgment liens. The amount realized by such enforcement of the lien
25 shall be credited upon the proper personal judgment. The deficiency,
26 if any, remaining unsatisfied, shall stand as a personal judgment, and
27 may be collected by execution against any party liable therefor.

28 (3) The court may allow the prevailing party in the action, whether
29 plaintiff or defendant, as part of the costs of the action, the moneys

1 paid for recording the (~~notice of~~) claim of lien, costs of title
2 report, bond costs, and attorneys' fees and necessary expenses incurred
3 by the attorney in the superior court, court of appeals, supreme court,
4 or arbitration, as the court or arbitrator deems reasonable. Such
5 costs shall have the priority of the class of lien to which they are
6 related, as established by subsection (1) of this section.

7 (4) Real property against which a lien under this chapter is
8 enforced may be ordered sold by the court and the proceeds deposited
9 into the registry of the clerk of the court, pending further
10 determination respecting distribution of the proceeds of the sale."

11 "Sec. 13. RCW 60.04.221 and 1991 c 281 s 22 are each amended to
12 read as follows:

13 Any lender providing interim or construction financing where there
14 is not a payment bond of at least fifty percent of the amount of
15 construction financing shall observe the following procedures and the
16 rights and liabilities of the lender and potential lien claimant shall
17 be affected as follows:

18 (1) Any potential lien claimant who has not received a payment
19 within five days after the date required by their contract, invoice,
20 employee benefit plan agreement, or purchase order may within thirty-
21 five days of the date required for payment of the contract, invoice,
22 employee benefit plan agreement, or purchase order, (~~file~~) give a
23 notice as provided in subsections (2) and (3) of this section of the
24 sums due and to become due, for which a potential lien claimant may
25 claim a lien under this chapter.

26 (2) The notice shall be signed by the potential lien claimant or
27 some person authorized to act on his or her behalf (~~who shall~~
28 ~~affirmatively state under penalty of perjury, they have read the notice~~
29 ~~and believe it to be true and correct~~)).

1 (3) The notice shall be (~~filed~~) given in writing (~~with~~) to the
2 lender at the office administering the interim or construction
3 financing, with a copy (~~furnished~~) given to the owner and appropriate
4 prime contractor. The notice shall be given by:

5 (a) Mailing the notice by certified or registered mail to the
6 lender, owner, and appropriate prime contractor; or

7 (b) Delivering or serving the notice personally and obtaining
8 evidence of delivery in the form of a receipt or other acknowledgment
9 signed by the lender, owner, and appropriate prime contractor, or an
10 affidavit of service.

11 (4) The notice shall state in substance and effect as follows:

12 (a) The person, firm, trustee, or corporation filing the notice is
13 entitled to receive contributions to any type of employee benefit plan
14 or has furnished labor, professional services, materials, or equipment
15 for which a (~~right of~~) lien is given by this chapter.

16 (b) The name of the prime contractor, common law agent, or
17 construction agent ordering the same.

18 (c) A common or street address of the real property being improved
19 or the legal description of the real property.

20 (d) The name, business address, and telephone number of the lien
21 claimant.

22 The notice to the lender may contain additional information but
23 shall be in substantially the following form:

24 NOTICE TO REAL PROPERTY LENDER
25 (Authorized by RCW

26 TO:
27 (Name of Lender)
28
29 (Administrative Office-Street Address)
30
31 (City) (State) (Zip)
32 AND TO:
33 (Owner)

1 AND TO:
2 (Prime Contractor-If Different Than Owner)
3
4 (Name of Laborer, Professional, Materials, or Equipment Supplier)
5 whose business address is, did at the
6 property located at
7 (Check appropriate box) () perform labor () furnish professional
8 services () provide materials () supply equipment as follows:
9
10
11
12 which was ordered by,
13 (Name of Person)
14 whose address was stated to be.....
15

16 The amount owing to the undersigned according to contract or
17 purchase order for labor, supplies, or equipment (as above
18 mentioned) is the sum of Dollars
19 (\$). Said sums became due and owing as of
20
21 (State Date)
22,

23 You are hereby required to withhold from any future draws on
24 existing construction financing which has been made on the subject
25 property (to the extent there remain undisbursed funds) the sum of
26 Dollars
27 (\$).

28 IMPORTANT

29 Failure to comply with the requirements of this notice may subject the
30 lender to a whole or partial compromise of any priority lien interest
31 it may have pursuant to RCW 60.04.226.

32 DATE:

33 By:
34 Its:

35 ((+4)) (5) After the receipt of the notice, the lender shall
36 withhold from the next and subsequent draws the amount claimed to be
37 due as stated in the notice. Alternatively, the lender may obtain from
38 the prime contractor or borrower a payment bond for the benefit of the
39 potential lien claimant in an amount sufficient to cover the amount
40 stated in the potential lien claimant's notice. The lender shall be
41 obligated to withhold amounts only to the extent that sufficient
42 interim or construction financing funds remain undisbursed as of the
43 date the lender receives the notice.

1 ~~((5))~~ (6) Sums so withheld shall not be disbursed by the lender,
2 except by the written agreement of the potential lien claimant, owner,
3 and prime contractor in such form as may be prescribed by the lender,
4 or the order of a court of competent jurisdiction.

5 ~~((6))~~ (7) In the event a lender fails to abide by the provisions
6 of subsections (4) and (5) of this section, then the mortgage, deed of
7 trust, or other encumbrance securing the lender ~~((will))~~ shall be
8 subordinated to the lien of the potential lien claimant to the extent
9 of the interim or construction financing wrongfully disbursed, but in
10 no event more than the amount stated in the notice plus costs as fixed
11 by the court, including reasonable attorneys' fees.

12 ~~((7))~~ (8) Any potential lien claimant shall be liable for any
13 loss, cost, or expense, including reasonable attorneys' fees and
14 statutory costs, to a party injured thereby arising out of any unjust,
15 excessive, or premature notice filed under purported authority of this
16 section. "Notice" as used in this subsection does not include notice
17 given by a potential lien claimant of the right to claim liens under
18 this chapter where no actual claim is made.

19 ~~((8))~~ (9)(a) Any owner of real property subject to a notice to
20 real property lender under this section, or the contractor ~~((or))~~,
21 subcontractor, lender, or lien claimant who believes the claim that
22 underlies the notice is frivolous and made without reasonable cause, or
23 is clearly excessive may apply by motion to the superior court for the
24 county where the property, or some part thereof is located, for an
25 order commanding the potential lien claimant who issued the notice to
26 the real property lender to appear before the court at a time no
27 earlier than six nor later than fifteen days from the date of service
28 of the application and order on the potential lien claimant, and show
29 cause, if any he or she has, why the notice to real property lender
30 should not be declared void. The motion shall state the grounds upon

1 which relief is asked and shall be supported by the affidavit of the
2 applicant or his or her attorney setting forth a concise statement of
3 the facts upon which the motion is based.

4 (b) The order shall clearly state that if the potential lien
5 claimant fails to appear at the time and place noted, the notice to
6 lender shall be declared void and that the potential lien claimant
7 issuing the notice shall be ordered to pay the costs requested by the
8 applicant including reasonable attorneys' fees.

9 (c) The clerk of the court shall assign a cause number to the
10 application and obtain from the applicant a filing fee of thirty-five
11 dollars.

12 (d) If, following a (~~full~~) hearing on the matter, the court
13 determines that the claim upon which the notice to real property lender
14 is based is frivolous and made without reasonable cause, or clearly
15 excessive, the court shall issue an order declaring the notice to real
16 property lender void if frivolous(~~(7)~~) and made without reasonable
17 cause, or reducing the amount stated in the notice if clearly
18 excessive, and awarding costs and reasonable attorneys' fees to the
19 applicant to be paid by the person who issued the notice. If the court
20 determines that the claim underlying the notice to real property lender
21 is not frivolous and was made with reasonable cause, and is not clearly
22 excessive, the court shall issue an order so stating and awarding costs
23 and reasonable attorneys' fees to the issuer of the notice to be paid
24 by the applicant.

25 (e) Proceedings under this subsection shall not affect other rights
26 and remedies available to the parties under this chapter or otherwise."

27 "Sec. 14. RCW 60.04.902 and 1991 c 281 s 32 are each amended to
28 read as follows:

1 This act shall take effect (~~April~~) June 1, 1992. Lien claims
2 based on an improvement commenced by a potential lien claimant on or
3 after (~~April~~) June 1, 1992, shall be governed by the provisions of
4 this act."

5 "NEW SECTION. Sec. 15. This act is necessary for the immediate
6 preservation of the public peace, health, or safety, or support of the
7 state government and its existing public institutions, and shall take
8 effect June 1, 1992, except section 14 of this act which shall take
9 effect immediately."

10 **ESB 6441** - H COMM AMD
11 By Committee on Commerce & Labor

ADOPTED 3/11/92

12
13 On page 1, line 1 of the title, after "liens;" strike the remainder
14 of the title and insert "amending RCW 60.04.011, 60.04.031, 60.04.041,
15 60.04.051, 60.04.081, 60.04.091, 60.04.141, 60.04.151, 60.04.161,
16 60.04.171, 60.04.181, 60.04.221, and 60.04.902; adding a new section to
17 chapter 60.04 RCW; providing an effective date; and declaring an
18 emergency."