

2 SB 6441 - S COMM AMD
3 By Committee on Commerce & Labor

4 Adopted 2/12/92

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
29 the notice is mailed or served as described in this subsection.

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

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

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

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

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

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

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

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

1 NOTICE TO OWNER

2 IMPORTANT: READ BOTH SIDES OF THIS NOTICE CAREFULLY.

3 PROTECT YOURSELF FROM PAYING TWICE

4 To:.....
5 Date:.....
6 Re:.....(description of property: Street address or
7 general location.)
8 From:.....

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

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

16 OWNER/OCCUPIER OF EXISTING RESIDENTIAL PROPERTY

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

23 The law limits the amount that a lien claimant can claim against your
24 property. Claims may only be made against that portion of the contract
25 price you have not yet paid to your prime contractor as of the time
26 ((you received)) this notice was personally served on you or five days
27 after this notice was mailed to you. Review the back of this notice
28 for more information and ways to avoid lien claims.

29 COMMERCIAL AND/OR NEW RESIDENTIAL PROPERTY

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

40 Sender:
41 Address:
42 Telephone:

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

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

9 NOTICE OF FURNISHING PROFESSIONAL SERVICES

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

13 [Legal Description
14 is mandatory]

15 The general nature of the professional services provided is
16
17
18 The owner or reputed owner of the real property is
19

20
21 (Signature)

22
23 (Name of Claimant)

24
25 (Street Address)

26
27 (City, State, Zip Code)

28
29 (Phone Number)

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

33 "NEW SECTION. Sec. 3. A new section is added to chapter 60.04 RCW
34 to read as follows:

1 Any act of coercion or attempted coercion, including a threat to
2 withhold future contracts, by a contractor or developer to discourage
3 a contractor, subcontractor, or material or equipment supplier from
4 giving an owner the notice of right to claim a lien required by RCW
5 60.04.031, or from filing a lien claim under this chapter shall
6 constitute an unfair or deceptive act or practice in trade or commerce
7 and a violation of chapter 19.86 RCW."

8 "Sec. 4. RCW 60.04.041 and 1991 c 281 s 4 are each amended to read
9 as follows:

10 A contractor or subcontractor required to be registered under
11 chapter 18.27 RCW or licensed under chapter 19.28 RCW, or otherwise
12 required to be registered or licensed by law, shall be deemed the
13 construction agent of the owner for the purposes of establishing the
14 lien created by this chapter only if so registered or licensed.
15 Persons dealing with contractors or subcontractors may rely, for the
16 purposes of this section, upon a certificate of registration issued
17 pursuant to chapter 18.27 RCW or license issued pursuant to chapter
18 19.28 RCW, or other certificate or license issued pursuant to law,
19 covering the period when the labor, professional services, material, or
20 equipment shall be furnished, and the lien rights shall not be lost by
21 suspension or revocation of registration or license without their
22 knowledge. No lien rights described in this (~~section~~) chapter shall
23 be lost or denied by virtue of the absence, suspension, or revocation
24 of such registration or license with respect to any contractor or
25 subcontractor not in immediate contractual privity with the lien
26 claimant."

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

1 The lot, tract, or parcel of land which is improved is subject to
2 a lien to the extent of the interest of the ((~~person for whom~~)) owner
3 at whose instance, directly or through a common law or construction
4 agent the labor, professional services, equipment, or materials were
5 furnished, as the court deems appropriate for satisfaction of the lien.
6 If, for any reason, the title or interest in the land upon which the
7 improvement is situated cannot be subjected to the lien, the court in
8 order to satisfy the lien may order the sale and removal of the
9 improvement from the land which is subject to the lien(~~(, from the~~
10 ~~land))~~)."

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

13 (1) Any owner of real property subject to a recorded ((~~notice of~~))
14 claim of lien under this chapter, or ((~~the~~)) contractor ((~~or~~)),
15 subcontractor, lender, or lien claimant who believes the claim of lien
16 to be frivolous and made without reasonable cause, or clearly excessive
17 may apply by motion to the superior court for the county where the
18 property, or some part thereof is located, for an order directing the
19 lien claimant to appear before the court at a time no earlier than six
20 nor later than fifteen days following the date of service of the
21 application and order on the lien claimant, and show cause, if any he
22 or she has, why the ((~~lien claim~~)) relief requested should not be
23 ((~~dismissed, with prejudice~~)) granted. The motion shall state the
24 grounds upon which relief is asked, and shall be supported by the
25 affidavit of the applicant or his or her attorney setting forth a
26 concise statement of the facts upon which the motion is based.

27 (2) The order shall clearly state that if the lien claimant fails
28 to appear at the time and place noted the lien ((~~claim~~)) shall be
29 ((~~dismissed~~)) released, with prejudice ((~~{,}~~)), and that the lien

1 claimant shall be ordered to pay the costs requested by the applicant
2 including reasonable attorneys' fees.

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

8 (4) If, following a (~~full~~) hearing on the matter, the court
9 determines that the lien (~~claim~~) is frivolous and made without
10 reasonable cause, or clearly excessive, the court shall issue an order
11 (~~dismissing~~) releasing the lien claim if frivolous and made without
12 reasonable cause, or reducing the (~~claim~~) lien if clearly excessive,
13 and awarding costs and reasonable attorneys' fees to the applicant to
14 be paid by the lien claimant. If the court determines that the (~~claim~~
15 ~~of~~) lien is not frivolous and was made with reasonable cause, and is
16 not clearly excessive, the court shall issue (~~and~~) an order so
17 stating and awarding costs and reasonable attorneys' fees to the lien
18 claimant to be paid by the applicant.

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

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

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

29 (1) Shall state in substance and effect:

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

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

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

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

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

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

12 (2) Shall be signed by the claimant or some person authorized to
13 act on his or her behalf who shall affirmatively state they have read
14 the notice of claim of lien and believe the notice of claim of lien to
15 be true and correct under penalty of perjury, and shall be acknowledged
16 pursuant to chapter 64.08 RCW. If the ((claim)) lien has been
17 assigned, the name of the assignee shall be stated. Where an action to
18 foreclose the lien has been commenced such notice of claim of lien may
19 be amended as pleadings may be by order of the court insofar as the
20 interests of third parties are not adversely affected by such
21 amendment. A claim of lien substantially in the following form shall
22 be sufficient:

23 CLAIM OF LIEN

24, claimant, vs .., ((owner or reputed owner)) defendant:

25 ((Notice is hereby given that on the day of (date of
26 commencement of furnishing labor, professional services, materials,
27 or equipment and the last date contributions to any type of
28 employee benefit plan became due), at the request of
29, commenced to (perform labor, furnish
30 professional services, materials, or equipment) upon
31 (here describe property subject to the lien) of which property the

1 owner, or reputed owner, is (or if the owner or reputed
2 owner is not known, insert the word "unknown"), the (furnishing of
3 labor, professional services, materials, or equipment) ceased on
4 the day of; that said (labor, professional
5 services, material, or equipment) was of the value of
6 dollars, for which the undersigned claims a lien upon the property
7 herein described for the sum of dollars. (In case the
8 claim has been assigned, add the words "and is assignee
9 of said claim", or claims, if several are united.)) Notice is
10 hereby given that the person named below claims a lien pursuant to
11 chapter 64.04 RCW. In support of this lien the following
12 information is submitted:

13 1. NAME OF LIEN CLAIMANT:
14 TELEPHONE NUMBER:
15 ADDRESS:

16 2. DATE ON WHICH THE CLAIMANT BEGAN TO PERFORM LABOR,
17 PROVIDE PROFESSIONAL SERVICES, SUPPLY MATERIAL OR EQUIPMENT OR
18 THE DATE ON WHICH EMPLOYEE BENEFIT CONTRIBUTIONS BECAME
19 DUE:

20 3. NAME OF PERSON INDEBTED TO THE CLAIMANT:
21
22

23 4. DESCRIPTION OF THE PROPERTY AGAINST WHICH A LIEN IS
24 CLAIMED (Street address, legal description or other information
25 that will reasonably describe the property).
26
27

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

30 6. THE LAST DATE ON WHICH LABOR WAS PERFORMED;
31 PROFESSIONAL SERVICES WERE FURNISHED; CONTRIBUTIONS TO AN
32 EMPLOYEE BENEFIT PLAN WERE DUE; OR MATERIAL, OR EQUIPMENT WAS
33 FURNISHED:.....
34

35 7. IF THE CLAIMANT IS THE ASSIGNEE OF THIS CLAIM SO STATE
36 HERE:.....
37

38 , Claimant
39
40
41 (Phone number, address, city,
42 and state of claimant)

43 STATE OF WASHINGTON, COUNTY OF
44, ss.

45, being sworn, says: I am the claimant (or attorney of the
46 claimant, or administrator, representative, or agent of the trustees
47 of an employee benefit plan) above named; I have read or heard the
48 foregoing claim, read and know the contents thereof, and believe the
49 same to be true and correct and that the claim of lien is not

1 frivolous, is made with reasonable cause and is not clearly excessive
2 under penalty of perjury.

3
4 Subscribed and sworn to before me this day of
5

6 The period provided for recording the ((~~notice~~)) claim of lien is
7 a period of limitation and no action to foreclose a ((~~claim of~~)) lien
8 shall be maintained unless the ((~~notice is recorded~~)) claim of lien is
9 filed for recording within the ninety-day period stated. The lien
10 claimant shall give ((~~notice of~~)) a copy of the claim of lien to the
11 owner or reputed owner by mailing it by certified or registered mail or
12 by personal service within fourteen days of the time the claim of lien
13 is ((~~recorded~~)) filed for recording. Failure to do so results in a
14 forfeiture of any right the claimant may have to attorneys' fees and
15 costs against the owner under RCW 60.04.181."

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

18 No lien created by this chapter binds the property subject to the
19 lien for a longer period than eight calendar months after the ((~~notice~~
20 ~~of~~)) claim of lien has been recorded unless an action is filed by the
21 lien claimant within that time in the superior court in the county
22 where the subject property is located to enforce the lien, and service
23 is made upon the owner of the subject property within ninety days of
24 the date of filing the action; or, if credit is given and the terms
25 thereof are stated in the ((~~notice of~~)) claim of lien, then eight
26 calendar months after the expiration of such credit; and in case the
27 action is not prosecuted to judgment within two years after the
28 commencement thereof, the court, in its discretion, may dismiss the
29 action for want of prosecution, and the dismissal of the action or a

1 judgment rendered thereon that no lien exists shall constitute a
2 cancellation of the lien. This is a period of limitation, which shall
3 be tolled by the filing of any petition seeking protection under Title
4 Eleven, United States Code by an owner of any property subject to the
5 lien established by this chapter."

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

8 The lien claimant shall be entitled to recover upon the claim
9 recorded the contract price after deducting all claims of other lien
10 claimants to whom the claimant is liable, for furnishing labor,
11 professional services, materials, or equipment; and in all cases where
12 a ~~((notice of))~~ claim of lien shall be recorded under this chapter for
13 labor, professional services, materials, or equipment supplied to any
14 lien claimant, he or she shall defend any action brought thereupon at
15 his or her own expense~~((; and))~~. During the pendency of the action,
16 the owner may withhold from the prime contractor the amount of money
17 for which a claim is recorded by any subcontractor, supplier, or
18 laborer~~((; and))~~. In case of judgment against the owner or the owner's
19 property, upon the lien, the owner shall be entitled to deduct from
20 sums due to the prime contractor the principal amount of the judgment
21 from any amount due or to become due from ~~((him or her))~~ the owner to
22 the ~~((lien claimant))~~ prime contractor plus such costs, including
23 interest and attorneys' fees, as the court deems just and equitable,
24 and ~~((he or she))~~ the owner shall be entitled to recover back from the
25 ~~((lien claimant))~~ prime contractor the amount for which ~~((the))~~ a lien
26 ~~((is))~~ or liens are established in excess of any sum that may remain
27 due from ~~((him or her))~~ the owner to the ~~((lien claimant))~~ prime
28 contractor."

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

3 Any owner of real property subject to a recorded (~~notice of~~)
4 claim of lien under this chapter, or (~~the~~) contractor (~~or~~),
5 subcontractor, lender, or lien claimant who disputes the correctness or
6 validity of the (~~notice of~~) claim of lien may record, either before
7 or after the commencement of an action to enforce the lien, in the
8 office of the county recorder or auditor in the county where the
9 (~~notice of~~) claim of lien was recorded, a bond issued by a surety
10 company authorized to issue surety bonds in the state. The surety
11 shall be listed in the latest federal department of the treasury list
12 of surety companies acceptable on federal bonds, published in the
13 Federal Register, as authorized to issue bonds on United States
14 government projects with an underwriting limitation, including
15 applicable reinsurance, equal to or greater than the amount of the bond
16 to be recorded. The bond shall contain a description of the (~~notice~~
17 ~~of~~) claim of lien and real property involved, and be in an amount
18 equal to the greater of five thousand dollars or two times the amount
19 of the lien claimed if it is ten thousand dollars or less, and in an
20 amount equal to or greater than one and one-half times the amount of
21 the lien if it is in excess of ten thousand dollars. If the (~~notice~~
22 ~~of~~) claim of lien affects more than one parcel of real property and is
23 segregated to each parcel, the bond may be segregated the same as in
24 the (~~notice of~~) claim of lien. A separate bond shall be required for
25 each (~~notice of~~) claim of lien made by separate claimants. However,
26 a single bond may be used to guarantee payment of amounts claimed by
27 more than one (~~lien~~) claim of lien by a single claimant so long as
28 the amount of the bond meets the requirements of this section as
29 applied to the aggregate sum of all claims by such claimant. The
30 condition of the bond shall be to guarantee payment of any judgment

1 upon the lien in favor of the lien claimant entered in any action to
2 recover the amount claimed in a (~~notice of~~) claim of lien, or on the
3 claim asserted in the (~~notice of~~) claim of lien. The effect of
4 recording a bond shall be to release the real property described in the
5 notice of claim of lien from the lien and any action brought to recover
6 the amount claimed. Unless otherwise prohibited by law, if no action
7 is commenced to recover on a lien within the time specified in RCW
8 60.04.141, the surety shall be discharged from liability under the
9 bond. If an action is timely commenced, then on payment of any
10 judgment entered in the action or on payment of the full amount of the
11 bond to the holder of the judgment, whichever is less, the surety shall
12 be discharged from liability under the bond.

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

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

19 The lien provided by this chapter, for which claims of lien have
20 been recorded, may be foreclosed and enforced by a civil action in the
21 court having jurisdiction in the manner prescribed for the judicial
22 foreclosure of a mortgage. The court shall have the power to order the
23 sale of the property. In any action brought to foreclose a lien, the
24 owner shall be joined as a party. The (~~lien claims of all~~) interest
25 in the real property of any person(~~(s)~~) who, prior to the commencement
26 of the action, (~~have legally~~) has a recorded (~~claims of lien~~
27 ~~against~~) interest in the (~~same~~) property, or any part thereof, shall
28 not be foreclosed or affected unless they are joined as a party.

1 A person shall not begin an action to foreclose a lien upon any
2 property while a prior action begun to foreclose another lien on the
3 same property is pending, but if not made a party plaintiff or
4 defendant to the prior action, he or she may apply to the court to be
5 joined as a party thereto, and his or her lien may be foreclosed in the
6 same action. The filing of such application shall toll the running of
7 the period of limitation established by RCW 60.04.141 until disposition
8 of the application or other time set by the court. The court shall
9 grant the application for joinder unless to do so would create an undue
10 delay or cause hardship which cannot be cured by the imposition of
11 costs or other conditions as the court deems just. If a lien
12 foreclosure action is filed during the pendency of another such action,
13 the court may, on its own motion or the motion of any party,
14 consolidate actions upon such terms and conditions as the court deems
15 just, unless to do so would create an undue delay or cause hardship
16 which cannot be cured by the imposition of costs or other conditions.
17 If consolidation of actions is not permissible under this section, the
18 lien foreclosure action filed during the pendency of another such
19 action shall not be dismissed if the filing was the result of mistake,
20 inadvertence, surprise, excusable neglect, or irregularity. An action
21 to foreclose a lien shall not be dismissed at the instance of a
22 plaintiff therein to the prejudice of another party to the suit who
23 claims a lien."

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

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

29 (a) Liens for the performance of labor;

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

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

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

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

6 (2) The proceeds of the sale of property must be applied to each
7 lien or class of liens in order of its rank and, in an action brought
8 to foreclose a lien, pro rata among each claimant in each separate
9 priority class. A personal judgment may be rendered against any party
10 personally liable for any debt for which the lien is claimed. If the
11 lien is established, the judgment shall provide for the enforcement
12 thereof upon the property liable as in the case of foreclosure of
13 judgment liens. The amount realized by such enforcement of the lien
14 shall be credited upon the proper personal judgment. The deficiency,
15 if any, remaining unsatisfied, shall stand as a personal judgment, and
16 may be collected by execution against any party liable therefor.

17 (3) The court may allow the prevailing party in the action, whether
18 plaintiff or defendant, as part of the costs of the action, the moneys
19 paid for recording the (~~notice of~~) claim of lien, costs of title
20 report, bond costs, and attorneys' fees and necessary expenses incurred
21 by the attorney in the superior court, court of appeals, supreme court,
22 or arbitration, as the court or arbitrator deems reasonable. Such
23 costs shall have the priority of the class of lien to which they are
24 related, as established by subsection (1) of this section.

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

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

3 Any lender providing interim or construction financing where there
4 is not a payment bond of at least fifty percent of the amount of
5 construction financing shall observe the following procedures and the
6 rights and liabilities of the lender and potential lien claimant shall
7 be affected as follows:

8 (1) Any potential lien claimant who has not received a payment
9 within five days after the date required by their contract, invoice,
10 employee benefit plan agreement, or purchase order may within thirty-
11 five days of the date required for payment of the contract, invoice,
12 employee benefit plan agreement, or purchase order, ~~((file))~~ give a
13 notice as provided in subsections (2) and (3) of this section of the
14 sums due and to become due, for which a potential lien claimant may
15 claim a lien under this chapter.

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

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

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

26 (b) Delivering or serving the notice personally and obtaining
27 evidence of delivery in the form of a receipt or other acknowledgment
28 signed by the lender, owner, and appropriate prime contractor, or an
29 affidavit of service;

30 (c) Any combination of (a) and (b) of this subsection.

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

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

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

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

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

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

14 NOTICE TO REAL PROPERTY LENDER
15 (Authorized by RCW

16 TO:
17 (Name of Lender)
18
19 (Administrative Office-Street Address)
20
21 (City) (State) (Zip)
22 AND TO:
23 (Owner)
24 AND TO:
25 (Prime Contractor-If Different Than Owner)
26
27 (Name of Laborer, Professional, Materials, or Equipment Supplier)
28 whose business address is, did at the
29 property located at
30 (Check appropriate box) () perform labor () furnish professional
31 services () provide materials () supply equipment as follows:
32
33
34
35 which was ordered by,
36 (Name of Person)
37 whose address was stated to be.....
38

39 The amount owing to the undersigned according to contract or
40 purchase order for labor, supplies, or equipment (as above
41 mentioned) is the sum of Dollars
42 (\$). Said sums became due and owing as of

1
2 (State Date)
3,

4 You are hereby required to withhold from any future draws on
5 existing construction financing which has been made on the subject
6 property (to the extent there remain undisbursed funds) the sum of
7 Dollars
8 (\$).

9 IMPORTANT

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

13 DATE:

14 By:
15 Its:

16 ~~((4))~~ (5) After the receipt of the notice, the lender shall
17 withhold from the next and subsequent draws the amount claimed to be
18 due as stated in the notice. Alternatively, the lender may obtain from
19 the prime contractor or borrower a payment bond for the benefit of the
20 potential lien claimant in an amount sufficient to cover the amount
21 stated in the potential lien claimant's notice. The lender shall be
22 obligated to withhold amounts only to the extent that sufficient
23 interim or construction financing funds remain undisbursed as of the
24 date the lender receives the notice.

25 ~~((5))~~ (6) Sums so withheld shall not be disbursed by the lender,
26 except by the written agreement of the potential lien claimant, owner,
27 and prime contractor in such form as may be prescribed by the lender,
28 or the order of a court of competent jurisdiction.

29 ~~((6))~~ (7) In the event a lender fails to abide by the provisions
30 of subsections (4) and (5) of this section, then the mortgage, deed of
31 trust, or other encumbrance securing the lender ~~((will))~~ shall be
32 subordinated to the lien of the potential lien claimant to the extent
33 of the interim or construction financing wrongfully disbursed, but in

1 no event more than the amount stated in the notice plus costs as fixed
2 by the court, including reasonable attorneys' fees.

3 ~~((7))~~ (8) Any potential lien claimant shall be liable for any
4 loss, cost, or expense, including reasonable attorneys' fees and
5 statutory costs, to a party injured thereby arising out of any unjust,
6 excessive, or premature notice filed under purported authority of this
7 section. "Notice" as used in this subsection does not include notice
8 given by a potential lien claimant of the right to claim liens under
9 this chapter where no actual claim is made.

10 ~~((8))~~ (9)(a) Any owner of real property subject to a notice to
11 real property lender under this section, or the contractor or
12 subcontractor, or lien claimants who believe~~((s))~~ the claim that
13 underlies the notice is frivolous and made without reasonable cause, or
14 is clearly excessive may apply by motion to the superior court for the
15 county where the property, or some part thereof is located, for an
16 order commanding the potential lien claimant who issued the notice to
17 the real property lender to appear before the court at a time no
18 earlier than six nor later than fifteen days from the date of service
19 of the application and order on the potential lien claimant, and show
20 cause, if any he or she has, why the notice to real property lender
21 should not be declared void. The motion shall state the grounds upon
22 which relief is asked and shall be supported by the affidavit of the
23 applicant or his or her attorney setting forth a concise statement of
24 the facts upon which the motion is based.

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

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

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

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

19 "NEW SECTION. Sec. 14. This act shall take effect April 1,
20 1992."

21 **SB 6441** - S COMM AMD
22 By Committee on Commerce & Labor

23 Adopted 2/12/92

24 On page 1, line 1 of the title, after "liens;" strike the remainder
25 of the title and insert "amending RCW 60.04.011, 60.04.031, 60.04.041,
26 60.04.051, 60.04.081, 60.04.091, 60.04.141, 60.04.151, 60.04.161,
27 60.04.171, 60.04.181, and 60.04.221; adding a new section to chapter
28 60.04 RCW; and providing an effective date."