
SENATE BILL 5497

State of Washington 52nd Legislature 1991 Regular Session

By Senators McMullen, Matson, Rasmussen, Sellar, McCaslin, Murray and Stratton.

Read first time February 4, 1991. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to construction liens; amending RCW 19.27.095 and
2 60.04.230; adding new sections to chapter 60.04 RCW; repealing RCW
3 60.04.010, 60.04.020, 60.04.030, 60.04.040, 60.04.045, 60.04.050,
4 60.04.060, 60.04.064, 60.04.067, 60.04.070, 60.04.080, 60.04.090,
5 60.04.100, 60.04.110, 60.04.115, 60.04.120, 60.04.130, 60.04.140,
6 60.04.150, 60.04.160, 60.04.170, 60.04.180, 60.04.200, 60.04.210,
7 60.04.220, 60.20.010, 60.20.020, 60.20.030, 60.20.040, 60.20.050,
8 60.20.060, 60.48.010, and 60.48.020; prescribing penalties; and
9 providing an effective date.

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

11 NEW SECTION. **Sec. 1.** DEFINITIONS. Unless the context requires
12 otherwise, the definitions in this section apply throughout this
13 chapter.

14 (1) "Construction agent" means any registered or licensed
15 contractor, registered or licensed subcontractor, architect, engineer,

1 or other person having charge of any improvement to real property, who
2 shall be deemed the agent of the owner for the limited purpose of
3 establishing the lien created by this chapter.

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

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

9 (4) "Furnishing labor, professional services, materials, or
10 equipment" means the performance of any labor or professional services,
11 the contribution owed to any employee benefit plan on account of any
12 labor, the provision of any supplies or materials, and the renting,
13 leasing, or otherwise supplying of equipment for the improvement of
14 real property.

15 (5) "Improvement" means: (a) Constructing, altering, repairing,
16 remodeling, demolishing, clearing, grading, or filling in, of, to, or
17 upon any real property or street or road in front of or adjoining the
18 same; (b) planting of trees, vines, shrubs, plants, hedges, or lawns,
19 or providing other landscaping materials on any real property; and (c)
20 providing professional services in preparation for or in conjunction
21 with the intended activities in (a) or (b) of this subsection.

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

25 (a) Funds to acquire real property;

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

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

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

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

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

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

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

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

15 (11) "Payment bond" means a surety bond issued by a surety licensed
16 to issue surety bonds in the state of Washington that confers upon
17 potential claimants the rights of third party beneficiaries.

18 (12) "Potential lien claimant" means any person or entity entitled
19 to assert lien rights under this chapter who has otherwise complied
20 with the provisions of this chapter and is registered or licensed if
21 required to be licensed or registered by the provisions of the laws of
22 the state of Washington.

23 (13) "Prime contractor" includes all contractors, general
24 contractors, and specialty contractors, as defined by chapter 18.27 or
25 19.28 RCW, or who are otherwise required to be registered or licensed
26 by law, who contract directly with a property owner or their common law
27 agent to assume primary responsibility for the creation of an
28 improvement to real property, and includes property owners or their
29 common law agents who are contractors, general contractors, or
30 specialty contractors as defined in chapter 18.27 or 19.28 RCW, or who

1 are otherwise required to be registered or licensed by law, who offer
2 to sell their property without occupying or using the structures,
3 projects, developments, or improvements for more than one year.

4 (14) "Professional services" means surveying, establishing or
5 marking the boundaries of, preparing maps, plans, or specifications
6 for, or inspecting, testing, or otherwise performing any other
7 architectural or engineering services for the improvement of real
8 property.

9 (15) "Real property lender" means a bank, savings bank, savings and
10 loan association, credit union, mortgage company, or other corporation,
11 association, partnership, trust, or individual that makes loans secured
12 by real property located in the state of Washington.

13 (16) "Site" means the real property which is or is to be improved.

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

19 NEW SECTION. **Sec. 2.** LIEN AUTHORIZED. Except as provided in
20 section 3 of this act, any person furnishing labor, professional
21 services, materials, or equipment for the improvement of real property
22 shall have a lien upon the improvement for the contract price of labor,
23 professional services, materials, or equipment furnished at the
24 instance of the owner, or the agent or construction agent of the owner.

25 NEW SECTION. **Sec. 3.** NOTICES--EXCEPTIONS. (1) Except as
26 otherwise provided in this section, every person furnishing
27 professional services, materials, or equipment for the improvement of
28 real property must give the owner or reputed owner notice in writing of

1 the right to a lien. If the prime contractor is in compliance with the
2 requirements of RCW 19.27.095 and 60.04.230 this notice shall be given
3 to the prime contractor unless the potential lien claimant has
4 contracted directly with the prime contractor. Failure to give notice
5 to the prime contractor, as required by this section, does not
6 invalidate the lien claim but shall constitute a forfeiture of
7 attorneys' fees and costs that would have otherwise been recoverable
8 under section 17 of this act. The notice may be given at any time but
9 only protects the right to claim a lien for professional services,
10 materials, or equipment supplied after the date which is sixty days
11 before:

12 (a) The notice is mailed by certified or registered mail to the
13 owner or reputed owner; or

14 (b) Serving the same personally upon the owner or reputed owner and
15 obtaining evidence of such service in the form of a receipt or other
16 acknowledgement signed by the owner or reputed owner.

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

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.

29 (3)(a) Persons who furnish professional services, material, or
30 equipment in connection with the repair, alteration, or remodel of an

1 existing owner-occupied single-family residence or appurtenant garage
2 and who contract directly with the owner-occupier shall not be required
3 to send a written notice of the right to lien and shall have a lien for
4 the full amount due under their contract, as provided in section 2 of
5 this act.

6 (b) Persons who do not contract directly with the owner-occupier
7 must give notice of the right to lien to the owner-occupier. Lien
8 claims by persons who do not contract directly with the owner-occupier
9 may only be satisfied from amounts not yet paid to the prime contractor
10 by the owner at the time the notice described in this section is
11 received, regardless of whether amounts not yet paid to the prime
12 contractor are due.

13 (4) The notices described in this section, except those described
14 in subsection (5) of this section, shall include but not be limited to
15 the following information and shall substantially be in the following
16 form, using lower-case and upper-case ten-point type where appropriate.

17 NOTICE TO OWNER

18 IMPORTANT: READ BOTH SIDES OF THIS NOTICE CAREFULLY.

19 PROTECT YOURSELF FROM PAYING TWICE

20 To:..... Date:.....

21 From:.....

22 AT THE REQUEST OF: (Name of person placing the order)

23 THIS IS NOT A LIEN: This notice is sent to you to tell you who is
24 providing professional services, materials, or equipment for the
25 improvement of your property and to advise you of the rights of these
26 persons and the responsibilities you have.

27 OWNER/OCCUPIER OF EXISTING RESIDENTIAL PROPERTY

28 Under Washington law, those who work on or provide materials for your
29 repair, remodel, or alteration and who are not paid, have a right to
30 enforce their claim for payment against your property. This claim is
31 known as a construction lien.

32 The law limits the amount that a construction lien can be claimed
33 against your property. Claims may only be made against that portion of
34 the contract you have not yet paid to your prime contractor as of the

1 time you received this notice. Review the back of this notice for more
2 information and ways to avoid lien claims.

3 COMMERCIAL AND/OR NEW RESIDENTIAL PROPERTY

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

12 Sender:

13 Address:

14 Telephone:

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

17 IMPORTANT INFORMATION ON REVERSE SIDE

18 IMPORTANT INFORMATION FOR YOUR PROTECTION

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

24 LEARN more about the lien laws and the meaning of this notice by
25 discussing with your contractor, suppliers, department of labor and
26 industries, the firm sending you this notice, your lender, or your
27 attorney.

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

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

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

39 YOU SHOULD TAKE WHATEVER STEPS YOU BELIEVE NECESSARY TO PROTECT YOUR
40 PROPERTY FROM LIENS.

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

1

2 (5) Every potential lien claimant providing professional services

3 where no improvement as defined in section 1 (5) (a) or (b) of this act

4 has been commenced, and the professional services provided are not

5 visible from an inspection of the real property shall record in the

6 real property records of the county where the property is located a

7 notice which shall contain the provider's name, address, telephone

8 number, legal description of the property, the owner or reputed owner's

9 name, and the general nature of the professional services provided. If

10 such notice is not recorded, the lien claimed shall be subordinate to

11 the interest of any subsequent purchaser or mortgagee who acts in good

12 faith and for a valuable consideration acquires an interest in the

13 property without notice of the professional services being provided.

14 NEW SECTION. **Sec. 4.** CONTRACTOR REGISTRATION. A contractor or

15 subcontractor required to be registered under chapter 18.27 RCW or

16 licensed under chapter 19.28 RCW, or otherwise required to be

17 registered or licensed by law, shall be deemed the construction agent

18 of the owner for the purposes of establishing the lien created by this

19 chapter only if so registered or licensed. Persons dealing with

20 contractors or subcontractors may rely, for the purposes of this

21 section, upon a certificate of registration issued pursuant to chapter

22 18.27 RCW or license issued pursuant to chapter 19.28 RCW, or other

23 certificate or license issued pursuant to law, covering the period when

24 the labor, professional services, material, or equipment shall be

25 furnished, and the lien rights shall not be lost by suspension or

26 revocation of registration or license without their knowledge. No lien

27 rights described in this section shall be lost or denied by virtue of

28 the absence, suspension, or revocation of such registration or license

1 with respect to any contractor or subcontractor not in immediate
2 contractual privity with the lien claimant.

3 NEW SECTION. **Sec. 5.** PROPERTY SUBJECT TO LIEN. The lot, tract,
4 or parcel of land which is improved is subject to a lien to the extent
5 of the interest of the person for whom the labor, professional
6 services, equipment, or materials were furnished, as the court deems
7 appropriate for satisfaction of the lien. If, for any reason, the
8 title or interest in the land upon which the improvement is situated
9 cannot be subjected to the lien, the court in order to satisfy the lien
10 may order the sale and removal of the improvement which is subject to
11 the lien, from the land.

12 NEW SECTION. **Sec. 6.** PRIORITY OF LIEN. The claim of lien created
13 by this chapter upon any lot or parcel of land shall be prior to any
14 lien, mortgage, deed of trust, or other encumbrance which attached to
15 the land after or was unrecorded at the time of commencement of labor
16 or professional services or first delivery of materials or equipment by
17 the lien claimant.

18 NEW SECTION. **Sec. 7.** RELEASE OF LIEN RIGHTS. Upon payment and
19 acceptance of the amount due to the lien claimant and upon demand of
20 the owner or the person making payment, the lien claimant shall
21 immediately prepare and execute a release of all lien rights for which
22 payment has been made, and deliver the release to the person making
23 payment. In any suit to compel deliverance of the release thereafter
24 in which the court determines the delay was unjustified, the court
25 shall, in addition to ordering the deliverance of the release, award
26 the costs of the action including a reasonable attorneys' fee.

1 NEW SECTION. **Sec. 8.** RECORDING--TIME--CONTENTS OF LIEN. Every

2 person claiming a lien under section 2 of this act shall record, in the
3 county where the subject property is located, a notice of claim of lien
4 not later than ninety days after the person has ceased to furnish
5 labor, professional services, materials, or equipment or the last date
6 on which employee benefit contributions were due. The notice of claim
7 of lien:

8 (1) Shall state in substance and effect:

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

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

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

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

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

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

20 (2) Shall be signed by the claimant or some person authorized to
21 act on his or her behalf who shall affirmatively state they have read
22 the notice of claim of lien and believe the notice of claim of lien to
23 be true and correct under penalty of

24 perjury. If the claim has been assigned, the name of the assignee
25 shall be stated. Where an action to foreclose the lien has been
26 commenced such notice of claim of lien may be amended as pleadings may
27 be by order of the court insofar as the interests of third parties are
28 not adversely affected by such amendment. A claim of lien
29 substantially in the following form shall be sufficient:

30 , claimant, vs .., owner or reputed owner

1 Notice is hereby given that on the day of (date of
2 commencement of furnishing labor, professional services, materials,
3 or equipment and the last date contributions to any type of
4 employee benefit plan became due), at the request of
5, commenced to (perform labor, furnish
6 professional services, materials, or equipment) upon
7 (here describe property subject to the lien) of which property the
8 owner, or reputed owner, is (or if the owner or reputed
9 owner is not known, insert the word "unknown"), the (furnishing of
10 labor, professional services, materials, or equipment) ceased on
11 the day of; that said (labor, professional
12 services, material, or equipment) was of the value of
13 dollars, for which the undersigned claims a lien upon the property
14 herein described for the sum of dollars. (In case the
15 claim has been assigned, add the words "and is assignee
16 of said claim", or claims, if several are united.)

17 Claimant.
18
19
20 (Phone number, address, city,
21 and state of claimant)

22 STATE OF WASHINGTON, COUNTY OF
23,ss.
24, being sworn, says: I am the claimant (or attorney of
25 the claimant, or administrator, representative, or agent of the
26 trustees of an employee benefit plan) above named; I have read or
27 heard the foregoing claim, read and know the contents thereof, and
28 believe the same to be true and correct under penalty of perjury.

29
30 Subscribed and sworn to before me this day of
31

32 The period provided for recording the notice is a period of
33 limitation and no action to foreclose a claim of lien shall be
34 maintained unless the notice is recorded within the ninety-day period
35 stated. The lien claimant must give notice of the claim of lien to the
36 owner or reputed owner by certified or registered mail or by personal
37 service within fourteen days of the time the claim is recorded.
38 Failure to do so results in a forfeiture of any right the claimant may
39 have to attorneys' fees and costs against the owner under section 17 of
40 this act.

1 NEW SECTION. **Sec. 9.** SEPARATE RESIDENTIAL UNITS--TIME FOR FILING.

2 When furnishing labor, professional services, materials, or equipment
3 for the construction of two or more separate residential units, the
4 time for filing claims of lien against each separate residential unit
5 shall commence to run upon the cessation of the furnishing of labor,
6 professional services, materials, or equipment on each residential
7 unit, as provided in this chapter. For the purposes of this section a
8 separate residential unit is defined as consisting of one residential
9 structure together with any garages or other outbuildings appurtenant
10 thereto.

11 NEW SECTION. **Sec. 10.** RECORDING--FEES. The county auditor shall

12 record the notice of claim of lien in the same manner as deeds and
13 other instruments of title are recorded under chapter 65.08 RCW.
14 Notices of claim of lien for registered land need not be recorded in
15 the Torrens register. The county auditor shall charge no higher fee
16 for recording notices of claim of lien than other documents.

17 NEW SECTION. **Sec. 11.** LIEN--ASSIGNMENT. Any lien or right of

18 lien created by this chapter and the right of action to recover
19 therefor, shall be assignable so as to vest in the assignee all rights
20 and remedies of the assignor, subject to all defenses thereto that
21 might be made.

22 NEW SECTION. **Sec. 12.** CLAIMS--DESIGNATION OF AMOUNT DUE. In

23 every case in which the notice of claim of lien is recorded against two
24 or more separate pieces of property owned by the same person or owned
25 by two or more persons jointly or otherwise, who contracted for the
26 labor, professional services, material, or equipment for which the
27 notice of claim of lien is recorded, the person recording the notice of

1 claim of lien must designate in the notice of claim of lien the amount
2 due on each piece of property, otherwise the lien is subordinated to
3 other liens that may be established under this chapter. The lien of
4 such claim does not extend beyond the amount designated as against
5 other creditors having liens upon any of such pieces of property.

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

23 NEW SECTION. **Sec. 14.** RIGHTS OF OWNER--RECOVERY OPTIONS. The
24 lien claimant shall be entitled to recover upon the claim recorded the
25 contract price after deducting all claims of other lien claimants to
26 whom the claimant is liable, for furnishing labor, professional
27 services, materials, or equipment; and in all cases where a notice of
28 claim of lien shall be recorded under this chapter for labor,

1 professional services, materials, or equipment supplied to any lien
2 claimant, he or she shall defend any action brought thereupon at his or
3 her own expense; and during the pendency of the action, the owner may
4 withhold from the prime contractor the amount of money for which a
5 claim is recorded by any subcontractor, supplier, or laborer; and in
6 case of judgment against the owner or the owner's property, upon the
7 lien, the owner shall be entitled to deduct the principal amount of the
8 judgment from any amount due or to become due from him or her to the
9 lien claimant plus such costs, including interest and attorneys' fees,
10 as the court deems just and equitable, and he or she shall be entitled
11 to recover back from the lien claimant the amount for which the lien is
12 established in excess of any sum that may remain due from him or her to
13 the lien claimant.

14 NEW SECTION. **Sec. 15.** BOND IN LIEU OF CLAIM. Any owner of real
15 property subject to a recorded notice of claim of lien under this
16 chapter, or the contractor or subcontractor who disputes the
17 correctness or validity of the notice of claim of lien may record,
18 either before or after the commencement of an action to enforce the
19 lien, in the office of the county recorder or auditor in the county
20 where the notice of claim of lien was recorded, a bond issued by a
21 surety company authorized to issue surety bonds in the state. The
22 surety shall be listed in the latest federal department of the treasury
23 list of surety companies acceptable on federal bonds, published in the
24 Federal Register, as authorized to issue bonds on United States
25 government projects with an underwriting limitation, including
26 applicable reinsurance, equal to or greater than the amount of the bond
27 to be recorded. The bond must contain a description of the notice of
28 claim of lien and real property involved, and is in an amount equal to
29 the greater of five thousand dollars or two times the amount of the

1 lien claimed if it is ten thousand dollars or less, and in an amount
2 equal to or greater than one and one-half times the amount of the lien
3 if it is in excess of ten thousand dollars. If the notice of claim of
4 lien affects more than one parcel of real property and is segregated to
5 each parcel, the bond may be segregated the same as in the notice of
6 claim of lien. A separate bond shall be required for each notice of
7 claim of lien. The condition of the bond shall be to guarantee payment
8 of any judgment upon the lien in favor of the lien claimant entered in
9 any action to recover the amount claimed in a notice of claim of lien,
10 or on the claim asserted in the notice of claim of lien. The effect of
11 recording a bond shall be to release the real property described in the
12 notice of claim of lien from the lien and any action brought to recover
13 the amount claimed. Unless otherwise prohibited by law, if no action
14 is commenced to recover on a lien within the time specified in section
15 13 of this act, the surety shall be discharged from liability under the
16 bond. If an action is timely commenced, then on payment of any
17 judgment entered in the action or on payment of the full amount of the
18 bond to the holder of the judgment, whichever is less, the surety shall
19 be discharged from liability under the bond.

20 NEW SECTION. **Sec. 16.** FORECLOSURE--PARTIES. The lien provided by
21 this chapter, for which claims of lien have been recorded, may be
22 foreclosed and enforced by a civil action in the court having
23 jurisdiction in the manner prescribed for the judicial foreclosure of
24 a mortgage. The court shall have the power to order the sale of the
25 property. In any action brought to foreclose a lien, the owner shall
26 be joined as a party. The lien claims of all persons who, prior to the
27 commencement of the action, have legally recorded claims of lien
28 against the same property, or any part thereof, shall not be foreclosed
29 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 section 13 of this act until
8 disposition of the application or other time set by the court. The
9 court shall grant the application unless to do so would create for any
10 party an undue delay or cause hardship which cannot be cured by the
11 imposition of costs or other conditions as the court deems just. A
12 lien foreclosure action filed during the pendency of another such
13 action shall not be deemed void until so ordered by a court of
14 competent jurisdiction. A court on its own motion or the motion of any
15 party may consolidate actions upon such terms and conditions as the
16 court deems just. An action to foreclose a lien shall not be dismissed
17 at the instance of a plaintiff therein to the prejudice of another
18 party to the suit who claims a lien.

19 NEW SECTION. **Sec. 17.** RANK OF LIEN--APPLICATION OF PROCEEDS--
20 ATTORNEYS' FEES. (1) In every case in which different construction
21 liens are claimed against the same property, the court shall declare
22 the rank of such lien or class of liens, which liens shall be in the
23 following order:

- 24 (a) Liens for the performance of labor;
- 25 (b) Liens for contributions owed to employee benefit plans;
- 26 (c) Liens for furnishing material, supplies, or equipment;
- 27 (d) Liens for subcontractors, including but not limited to their
28 labor and materials; and
- 29 (e) Liens for prime contractors, or for professional services.

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

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

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

24 NEW SECTION. **Sec. 18.** EFFECT OF NOTE--PERSONAL ACTION PRESERVED.
25 The taking of a promissory note or other evidence of indebtedness for
26 any labor, professional services, material, or equipment furnished for
27 which a lien is created by this chapter does not discharge the lien
28 therefor, unless expressly received as payment and so specified
29 therein.

1 Nothing in this chapter shall be construed to impair or affect the
2 right of any person to whom any debt may be due for the furnishing of
3 labor, professional services, material, or equipment to maintain a
4 personal action to recover the debt against any person liable therefor.

5 NEW SECTION. **Sec. 19.** MATERIAL EXEMPT FROM PROCESS--EXCEPTION.
6 Whenever material is furnished for use in the improvement of property
7 subject to a lien created by this chapter, the material is not subject
8 to attachment, execution, or other legal process to enforce any debt
9 due by the purchaser of the material, except a debt due for the
10 purchase money thereof, so long as in good faith, the material is about
11 to be applied in the improvement of such property.

12 NEW SECTION. **Sec. 20.** LIEN--EFFECT ON COMMUNITY INTEREST. The
13 claim of lien, when filed as required by this chapter, shall be notice
14 to the husband or wife of the person who appears of record to be the
15 owner of the property sought to be charged with the lien, and shall
16 subject all the community interest of both husband and wife to said
17 lien.

18 NEW SECTION. **Sec. 21.** NOTICE TO LENDER--WITHHOLDING OF FUNDS.
19 Any lender providing interim or construction financing where there is
20 not a payment bond of at least fifty percent of the amount of
21 construction financing shall observe the following procedures and the
22 rights and liabilities of the lender and potential lien claimant shall
23 be affected as follows:

24 (1) Any potential lien claimant who has not received a payment
25 within five days after the date required by their contract, invoice,
26 employee benefit plan agreement, or purchase order may within thirty-
27 five days of the date required for payment of the contract, invoice,

1 employee benefit plan agreement, or purchase order, file a notice as
2 provided in subsections (2) and (3) of this section of the sums due and
3 to become due, for which a potential lien claimant may claim a lien
4 under this chapter.

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

9 (3) The notice must be filed in writing with the lender at the
10 office administering the interim or construction financing, with a copy
11 furnished to the owner and appropriate prime contractor. The notice
12 shall state in substance and effect as follows:

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

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

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

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

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

25 NOTICE TO REAL PROPERTY LENDER
26 (Authorized by RCW

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

1 AND TO:
2 (Owner)
3 AND TO:
4 (Prime Contractor-If Different Than Owner)
5
6 (Name of Laborer, Professional, Materials, or Equipment
7 Supplier)
8 whose business address is, did at the
9 property located at
10 (Check appropriate box) () perform labor () furnish professional
11 services () provide materials () supply equipment as follows:
12
13
14
15 which was ordered by,
16 (Name of Person)
17 whose address was stated to be
18

19 The amount owing to the undersigned according to contract or
20 purchase order for labor, supplies, or equipment (as above
21 mentioned) is the sum of Dollars
22 (\$). Said sums became due and owing as of
23
24 (State Date)
25,

26 You are hereby required to withhold from any future draws on
27 existing construction financing which has been made on the subject
28 property (to the extent there remain undisbursed funds) the sum of
29 Dollars
30 (\$).

31 IMPORTANT
32 Failure to comply with the requirements of this notice may subject the
33 lender to a whole or partial compromise of any priority lien interest
34 it may have pursuant to section 22 of this act.

35 DATE:
36
37 By:
38 Its:

39 (4) After the receipt of the notice, the lender shall withhold from
40 the next and subsequent draws the amount claimed to be due as stated in
41 the notice. Alternatively, the lender may obtain from the prime
42 contractor or borrower a payment bond for the benefit of the potential
43 lien claimant in an amount sufficient to cover the amount stated in the
44 potential lien claimant's notice. The lender shall be obligated to
45 withhold amounts only to the extent that sufficient interim or

1 construction financing funds remain undisbursed as of the date the
2 lender receives the notice.

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

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

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

21 NEW SECTION. **Sec. 22.** FINANCIAL ENCUMBRANCES--PRIORITIES. Except
22 as otherwise provided in section 6 or 21 of this act, any mortgage or
23 deed of trust shall be prior to all liens, mortgages, deeds of trust,
24 and other encumbrances which have not been recorded prior to the
25 recording of the mortgage or deed of trust to the extent of all sums
26 secured by the mortgage or deed of trust regardless of when the same
27 are disbursed or whether the disbursements are obligatory.

1 NEW SECTION. **Sec. 23.** CAPTIONS--NOT PART OF LAW. Section
2 headings as used in sections 1 through 23 of this act do not constitute
3 any part of the law.

4 **Sec. 24.** RCW 19.27.095 and 1987 c 104 s 1 are each amended to read
5 as follows:

6 (1) A valid and fully complete building permit application for a
7 structure, that is permitted under the zoning or other land use control
8 ordinances in effect on the date of the application shall be considered
9 under the building permit ordinance in effect at the time of
10 application, and the zoning or other land use control ordinances in
11 effect on the date of application.

12 (2) The requirements for a fully completed application shall be
13 defined by local ordinance but for any construction project costing
14 more than five thousand dollars the application must include:

15 (a) The legal description, the street address if available, and any
16 other identification of the construction site by the prime contractor;

17 (b) The property owner's name, address, and phone number;

18 (c) The prime contractor's business name, address, phone number,
19 current state contractor registration number; and

20 (d) Either:

21 (i) The name, address, and phone number of the office of the lender
22 administering the interim construction financing, if any; or

23 (ii) The name and address of the firm that has issued a payment
24 bond, if any, on behalf of the prime contractor for the protection of
25 the owner, if the bond is for an amount not less than fifty percent of
26 the total amount of the construction project.

27 (3) The information required by subsection (2) of this section
28 shall be set forth on the building permit document which is issued to
29 the owner and shall be posted at the construction site.

1 (4) The information required by subsection (2) of this section
2 shall be kept on record in the office where building permits are issued
3 and made available to any person on request. If a copy is requested,
4 a reasonable charge may be made.

5 (5) If any of the information required by this section is not
6 available at the time the application is submitted, the applicant shall
7 so state and the application shall be processed forthwith as if the
8 information had been supplied. However, the applicant shall provide
9 the remaining information prior to the issuance of the building permit.

10 (6) The limitations imposed by this section shall not restrict
11 conditions imposed under chapter 43.21C RCW.

12 **Sec. 25.** RCW 60.04.230 and 1984 c 202 s 3 are each amended to read
13 as follows:

14 (1) For any construction project costing more than five thousand
15 dollars (~~((where the primary use of the improvements on the real~~
16 ~~property is for one or more residences))~~) the prime contractor shall
17 post in plain view for the duration of the construction project a
18 legible notice at the construction job site containing the following:

19 (a) The legal description, the street address if available, and any
20 other identification of the construction site by the prime contractor;

21 (b) The property owner's name, address, and phone number;

22 (c) The prime contractor's business name, address, phone number,
23 current state contractor registration number and identification; and

24 (d) Either:

25 (i) The name, address, and phone number of the office of the lender
26 administering the interim construction financing, if any; or

27 (ii) The name and address of the firm that has issued a payment
28 bond, if any, on behalf of the prime contractor for the protection of

1 the owner if the bond is for an amount not less than fifty percent of
2 the total amount of the construction project.

3 (2) For any construction project (~~(not subject to subsection (1) of~~
4 ~~this section costing more than five thousand dollars, the prime~~
5 ~~contractor shall post in plain view for the duration of the~~
6 ~~construction project a legible notice at the construction job site~~
7 ~~containing the following:~~

8 (a) ~~The legal description or the street address and any other~~
9 ~~identification of the construction site by the prime contractor;~~

10 (b) ~~The property owner's name, address, and phone number;~~

11 (c) ~~The prime contractor's business name, address, phone number,~~
12 ~~current state contractor registration number and identification.~~

13 ~~(3))~~ which requires a building permit under local ordinance,
14 compliance with the posting requirements of RCW 19.27.095 shall
15 constitute compliance with this section. Otherwise, the information
16 shall be posted as set forth in this section.

17 (3) Failure to comply with this section ((is a gross misdemeanor))
18 shall subject the person in noncompliance to a civil penalty of not
19 more than five thousand dollars, payable to the county where the
20 project is located.

21 NEW SECTION. Sec. 26. Sections 1 through 23 of this act are each
22 added to chapter 60.04 RCW.

23 NEW SECTION. Sec. 27. The following acts or parts of acts are
24 each repealed:

25 (1) RCW 60.04.010 and 1975 c 34 s 3, 1971 ex.s. c 94 s 2, 1959 c
26 279 s 1, 1905 c 116 s 1, & 1893 c 24 s 1;

1 (2) RCW 60.04.020 and 1984 c 202 s 4, 1977 ex.s. c 57 s 1, 1969
2 ex.s. c 84 s 1, 1965 c 98 s 1, 1959 c 279 s 2, 1959 c 278 s 1, 1957 c
3 214 s 1, 1911 c 77 s 1, & 1909 c 45 s 1;
4 (3) RCW 60.04.030 and 1905 c 116 s 2 & 1893 c 24 s 2;
5 (4) RCW 60.04.040 and 1975 c 34 s 4, 1971 ex.s. c 94 s 3, 1959 c
6 279 s 3, 1929 c 230 s 1, & 1893 c 24 s 3;
7 (5) RCW 60.04.045 and 1986 c 179 s 1;
8 (6) RCW 60.04.050 and 1975 c 34 s 5, 1959 c 279 s 4, & 1893 c 24 s
9 4;
10 (7) RCW 60.04.060 and 1975 c 34 s 6, 1971 ex.s. c 94 s 1, 1959 c
11 279 s 5, 1949 c 217 s 1(5a), & 1893 c 24 s 5;
12 (8) RCW 60.04.064 and 1959 c 279 s 6 & 1949 c 217 s 1(5b);
13 (9) RCW 60.04.067 and 1975 c 34 s 7, 1959 c 279 s 7, & 1949 c 217
14 s 1(5c);
15 (10) RCW 60.04.070 and 1985 c 44 s 10, 1949 c 217 s 2, & 1893 c 24
16 s 6;
17 (11) RCW 60.04.080 and 1893 c 24 s 7;
18 (12) RCW 60.04.090 and 1959 c 279 s 8 & 1893 c 24 s 8;
19 (13) RCW 60.04.100 and 1975 1st ex.s. c 231 s 1, 1943 c 209 s 1, &
20 1893 c 24 s 9;
21 (14) RCW 60.04.110 and 1975 c 34 s 8, 1959 c 279 s 9, & 1893 c 24
22 s 10;
23 (15) RCW 60.04.115 and 1986 c 314 s 4;
24 (16) RCW 60.04.120 and 1893 c 24 s 11;
25 (17) RCW 60.04.130 and 1975 c 34 s 9, 1971 c 81 s 129, 1969 c 38 s
26 1, 1959 c 279 s 10, & 1893 c 24 s 12;
27 (18) RCW 60.04.140 and 1959 c 279 s 11 & 1893 c 24 s 14;
28 (19) RCW 60.04.150 and 1893 c 24 s 15;
29 (20) RCW 60.04.160 and 1893 c 24 s 16;
30 (21) RCW 60.04.170 and 1893 c 24 s 17;

- 1 (22) RCW 60.04.180 and 1959 c 279 s 12 & 1893 c 24 s 13;
2 (23) RCW 60.04.200 and 1984 c 202 s 1 & 1973 1st ex.s. c 47 s 1;
3 (24) RCW 60.04.210 and 1984 c 202 s 2, 1975 c 34 s 10, & 1973 1st
4 ex.s. c 47 s 2;
5 (25) RCW 60.04.220 and 1973 1st ex.s. c 47 s 3;
6 (26) RCW 60.20.010 and 1943 c 18 s 1;
7 (27) RCW 60.20.020 and 1943 c 18 s 2;
8 (28) RCW 60.20.030 and 1955 c 239 s 1 & 1943 c 18 s 3;
9 (29) RCW 60.20.040 and 1943 c 18 s 4;
10 (30) RCW 60.20.050 and 1943 c 18 s 5;
11 (31) RCW 60.20.060 and 1943 c 18 s 6;
12 (32) RCW 60.48.010 and 1931 c 107 s 1; and
13 (33) RCW 60.48.020 and 1931 c 107 s 2.

14 NEW SECTION. **Sec. 28.** This act shall take effect April 1, 1992.
15 Lien claims based on an improvement commenced by a potential lien
16 claimant on or after April 1, 1992, shall be governed by the provisions
17 of this act.