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HOUSE BILL 1309

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State of Washington

59th Legislature

2005 Regular Session

By Representatives Conway, Hudgins, McCoy, Wood and Chase; by request of Department of Labor & Industries

Read first time 01/20/2005. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to limiting lien authority against a residential  
2 homeowner; and amending RCW 60.04.031.

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

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

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

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

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

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

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

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

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

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

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

23 (~~(a)~~) (i) Who contract directly with the (~~owner occupier or~~  
24 ~~their~~) owner or the owner's common law agent shall not be required to  
25 send a written notice of the right to claim a lien and shall have a  
26 lien for the full amount due under their contract, as provided in RCW  
27 60.04.021; or

28 (~~(b)~~) (ii) Who do not contract directly with the (~~owner occupier~~  
29 ~~or their~~) owner or the owner's common law agent shall give notice of  
30 the right to claim a lien to the (~~owner occupier~~) owner. Liens of  
31 persons furnishing professional services, materials, or equipment who  
32 do not contract directly with the (~~owner occupier or their~~) owner or  
33 the owner's common law agent may only be satisfied from actual amounts  
34 designated in the contract for the professional services, materials, or  
35 equipment supplied upon which the lien claim is based and not yet paid  
36 to the prime contractor by the owner at the time the notice described  
37 in this section is received, regardless of whether amounts not yet paid  
38 to the prime contractor are due. For lien claims under this subsection

1 based on new construction, repair, alteration, or remodel of a single-  
2 family residence or appurtenant garage for a residential homeowner,  
3 recovery is limited to the lesser of the full amount of the claim or  
4 ten percent of the actual amounts designated in the construction  
5 contract for the professional services, materials, or equipment  
6 supplied.

7 ~~((For the purposes of this subsection))~~ (b) The definitions in this  
8 subsection apply throughout (a)(ii) of this subsection unless the  
9 context clearly requires otherwise.

10 (i) "Received" means actual receipt of notice by personal service,  
11 or registered or certified mail, or three days after mailing by  
12 registered or certified mail, excluding Saturdays, Sundays, or legal  
13 holidays.

14 (ii) "Professional services, materials, or equipment supplied" do  
15 not include any professional services, materials, or equipment supplied  
16 by a subcontractor performing the new construction, repair, alteration,  
17 or remodel of a single-family residence or appurtenant garage for a  
18 residential homeowner.

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

23 NOTICE TO OWNER

24 IMPORTANT: READ BOTH SIDES OF THIS NOTICE  
25 CAREFULLY.

26 PROTECT YOURSELF FROM PAYING TWICE

27 To: ..... Date: .....

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

29 From: . . . . .

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

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

34 This notice is sent to you to tell you who is providing professional  
35 services, materials, or equipment for the improvement of your property

1 and to advise you of the rights of these persons and your  
2 responsibilities. Also take note that laborers on your project may  
3 claim a lien without sending you a notice.

4 OWNER/OCCUPIER OF EXISTING  
5 RESIDENTIAL PROPERTY AND/OR  
6 NEW RESIDENTIAL PROPERTY

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

12 The law limits the amount that a lien claimant can claim against your  
13 property. If the improvement to your property is the new construction,  
14 repair, alteration, or remodel of a single-family residence or  
15 appurtenant garage for a residential homeowner, a lien may be claimed  
16 for all professional services, materials, or equipment furnished after  
17 the date this notice was given to you or mailed to you. Claims may  
18 only be made against that portion of the contract price you have not  
19 yet paid to your prime contractor as of the time this notice was given  
20 to you or three days after this notice was mailed to you. Review the  
21 back of this notice for more information and ways to avoid lien claims.

22 COMMERCIAL (~~AND/OR NEW~~  
23 ~~RESIDENTIAL~~)) PROPERTY

24 We have or will be providing professional services, materials, or  
25 equipment for the improvement of your commercial (~~or new residential~~)  
26 project. In the event you or your contractor fail to pay us, we may  
27 file a lien against your property. A lien may be claimed for all  
28 professional services, materials, or equipment furnished after a date  
29 that is sixty days before this notice was given to you or mailed to  
30 you(~~, unless the improvement to your property is the construction of~~  
31 ~~a new single family residence, then ten days before this notice was~~  
32 ~~given to you or mailed to you~~)).

33 Sender: . . . . .  
34 Address: . . . . .  
35 Telephone: . . . . .

1 Brief description of professional services, materials, or equipment  
2 provided or to be provided: . . . . .

3 IMPORTANT INFORMATION  
4 ON REVERSE SIDE

5 IMPORTANT INFORMATION  
6 FOR YOUR PROTECTION

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

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

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

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

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

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

31 \* \* \* \* \*

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

1 records of the county where the property is located a notice which  
2 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 if the mortgagee  
8 or purchaser acts in good faith and for a valuable consideration  
9 acquires an interest in the property prior to the commencement of an  
10 improvement as defined in RCW 60.04.011(5) (a) or (b) without notice of  
11 the professional services being provided. The notice described in this  
12 subsection shall be substantially in the following form:

13 NOTICE OF FURNISHING  
14 PROFESSIONAL SERVICES

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

18 [Legal Description  
19 is mandatory]

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

23 .....  
24 (Signature)

25 .....  
26 (Name of Claimant)

27 .....  
28 (Street Address)

29 .....  
30 (City, State, Zip Code)

31 .....  
32 (Phone Number)

33 (6) A lien authorized by this chapter shall not be enforced unless

1 the lien claimant has complied with the applicable provisions of this  
2 section.

3 (7) The definitions in this subsection apply throughout this  
4 section unless the context clearly requires otherwise.

5 (a) "Commercial property" includes residential property that is not  
6 owned by a residential homeowner.

7 (b) "Residential homeowner" means the owner or potential owner that  
8 occupies or will occupy a single-family residence at the completion of  
9 the new construction, repair, alteration, or remodel of the single-  
10 family residence or appurtenant garage as his or her residence.

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