
SECOND SUBSTITUTE SENATE BILL 5773

State of Washington

59th Legislature

2005 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Fraser, Fairley, Kohl-Welles, Rockefeller, Kline and Pridemore)

READ FIRST TIME 03/08/05.

1 AN ACT Relating to protecting homeowners who hire contractors to
2 remodel or build their homes; amending RCW 60.04.021, 60.04.091,
3 60.04.250, 18.27.020, 60.04.011, 60.04.031, 18.27.030, and 18.27.040;
4 adding new sections to chapter 60.04 RCW; creating a new section;
5 prescribing penalties; and providing an effective date.

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

7 NEW SECTION. **Sec. 1.** The legislature finds that the vast majority
8 of contractors and subcontractors engaged in the business of
9 constructing or remodeling owner-occupied single-family homes are both
10 technically proficient in their trade and able to manage their business
11 dealings in accordance with the highest standards. The legislature
12 also finds, however, that in those relatively few, but all-too-
13 frequent, instances where prime contractors on such construction or
14 remodeling projects intentionally or unintentionally mismanage payments
15 received from homeowners that are intended for subcontractors,
16 suppliers, and others, existing provisions are inadequate to protect
17 homeowners. Additionally, the toll on an individual homeowner's
18 personal economic and emotional condition that such financial
19 mismanagement by this small fraction of prime contractors is not

1 adequately balanced against the responsibilities, obligations, and
2 possible penalties that contractors bear for such mismanagement.
3 Consequently, the legislature finds that it is necessary to (1) clearly
4 establish that prime contractors have a duty to properly manage funds
5 received from or on behalf of homeowners that are intended for
6 suppliers, subcontractors, and others, and to hold those who fail in
7 this duty personally responsible for such financial mismanagement; (2)
8 increase awareness by homeowners to the potential for liens against
9 their residence if contractors fail to pay suppliers and subcontractors
10 as promised; (3) clarify the right of homeowners to contract for the
11 prime contractor to maintain deposits and other similar payments in a
12 trust account for the homeowner, when the homeowner elects to do so;
13 and (4) increase opportunities for homeowners to become better educated
14 about ways to protect themselves from financial mismanagement by those
15 few contractors who are unable or unwilling to meet the financial
16 management standards set by the vast majority of residential
17 contractors in this state.

18 Recognizing the independence of the federal bankruptcy courts, it
19 is, nonetheless, the intent of the legislature that liabilities of
20 contractors and subcontractors arising from mismanagement of funds
21 received from or for the benefit of homeowners should not be
22 dischargeable in bankruptcy. If the mismanagement rises to the level
23 of criminal conduct, nothing in this act is intended to interfere with
24 criminal prosecution.

25 NEW SECTION. **Sec. 2.** A new section is added to chapter 60.04 RCW
26 to read as follows:

27 (1) For the purposes of this section, RCW 60.04.021, 60.04.250, and
28 section 6 of this act:

29 (a) "Prime residential contractor" means (i) a prime contractor as
30 defined in RCW 60.04.011, that is engaged in the business of
31 constructing, repairing, altering, or remodeling a single-family
32 residence of a homeowner; (ii) the prime contractor's principals,
33 partners, officers, directors, vice principals, authorized purchasing
34 agents, and management employees who have managerial, supervisory,
35 physical, or actual control over the accounting or disbursement of
36 funds received by the prime residential contractor from or on behalf of
37 residential homeowners; and (iii) if different from those persons

1 identified in (a)(ii) of this subsection, the six persons who received
2 or are entitled to receive the most compensation from the prime
3 residential contractor, regardless of whether the compensation is
4 provided as salary, wages, profits, or otherwise, during the term of
5 the contractor's registration;

6 (b) "Residential subcontractor" means (i) a subcontractor, as
7 defined in RCW 60.04.011, retained by a prime residential contractor to
8 assist in the constructing, repairing, altering, or remodeling of a
9 single-family residence of a homeowner; (ii) the residential
10 subcontractor's principals, partners, officers, directors, vice
11 principals, authorized purchasing agents, and management employees who
12 have managerial, supervisory, physical, or actual control over the
13 accounting or disbursement of funds received by the residential
14 subcontractor from or on behalf of residential homeowners; and (iii) if
15 different from those persons identified in (b)(ii) of this subsection,
16 the six persons who received or are entitled to receive the most
17 compensation from the residential subcontractor, regardless of whether
18 the compensation is provided as salary, wages, profits, or otherwise,
19 during the term of the contractor's registration.

20 (2)(a)(i) A prime residential contractor has the duty to act in the
21 best interest of a residential homeowner in the receipt, management,
22 and disbursement of all amounts paid by or on behalf of the homeowner
23 to the prime residential contractor for labor, professional services,
24 materials, or equipment supplied by a potential lien claimant. A prime
25 residential contractor shall defend the homeowner against all such lien
26 claims for which the homeowner paid the prime residential contractor.

27 (ii) Residential subcontractors have the duty to act in the best
28 interest of residential homeowners in the receipt, management, and
29 disbursement of all amounts paid to the subcontractor by, on behalf of,
30 or for the benefit of, the homeowner or the prime residential
31 contractor for labor, professional services, materials, or equipment
32 supplied by a potential lien claimant. A residential subcontractor
33 shall defend the homeowner and the prime residential contractor against
34 all such liens for which the prime residential contractor paid the
35 subcontractor.

36 (b) All residential contractors, including a prime residential
37 contractor and a residential subcontractor, shall maintain accurate and
38 complete accounting records and books adequate to identify all moneys

1 received from or on behalf of a residential homeowner and the use or
2 application of such moneys for the payment of the contract price for
3 labor, professional services, materials, or equipment supplied by any
4 entity having a potential lien claim right against the residential
5 homeowner.

6 (3)(a) Except as provided in (b) of this subsection, all funds paid
7 to a prime residential contractor by or on behalf of a residential
8 homeowner for application toward the contract price for labor,
9 professional services, materials, or equipment supplied by a potential
10 lien claimant other than the prime residential contractor shall not be
11 used by the prime residential contractor for any other purpose unless
12 all amounts owed on the potential lien claimant's contract price have
13 been paid in full.

14 (b) All funds paid to a prime residential contractor by or on
15 behalf of a residential homeowner shall be presumed to be for
16 application toward the contract price for labor, professional services,
17 materials, or equipment supplied by potential lien claimants other than
18 the prime residential contractor unless, before accepting payment from
19 a residential homeowner, a prime residential contractor provides
20 written notice to the homeowner identifying:

21 (i) The potential lien claimants, if any, to which payment is owed,
22 or to which the prime residential contractor intends to apply part or
23 all of the homeowner's payment; and

24 (ii) Which of such potential lien claimants, if any, the prime
25 residential contractor does not intend to fully pay from the
26 homeowner's payment, and the reason for less than full payment.

27 (c) Except as provided in (d) of this subsection, all funds paid to
28 a residential subcontractor by a prime residential contractor for the
29 benefit of, or on behalf of, a residential homeowner for application
30 toward the contract price for labor, professional services, materials,
31 or equipment supplied by a potential lien claimant other than the
32 residential subcontractor shall not be used by the residential
33 subcontractor for any other purpose unless all amounts owed on the
34 potential lien claimant's contract price have been paid in full.

35 (d) All funds paid to a residential subcontractor for the benefit
36 of, or on behalf of, a residential homeowner shall be presumed to be
37 for application toward the contract price for labor, professional
38 services, materials, or equipment supplied by potential lien claimants

1 other than the residential subcontractor unless, before accepting
2 payment from a prime residential contractor, the residential
3 subcontractor provides written notice to the prime residential
4 contractor identifying:

5 (i) The potential lien claimants, if any, to which payment is owed,
6 or to which the residential subcontractor intends to apply part or all
7 of the prime residential contractor's payment; and

8 (ii) Which of such potential lien claimants, if any, the
9 residential subcontractor does not intend to fully pay from the prime
10 residential contractor's payment, and the reason for less than full
11 payment.

12 (4) A prime residential contractor shall be personally liable for
13 the full amount of any lien claim recorded pursuant to RCW 60.04.091
14 if:

15 (a) The prime residential contractor fails to show, by clear and
16 convincing evidence, that funds paid to the prime residential
17 contractor by or on behalf of a residential homeowner for application
18 toward the contract price for labor, professional services, materials,
19 or equipment supplied by a potential lien claimant other than the prime
20 residential contractor were actually paid to a potential lien claimant;

21 (b) The prime residential contractor had or should have had
22 knowledge of such use of funds, unless the prime residential contractor
23 shows, by a preponderance of the evidence in defending against the
24 claimed lien, that he or she actually did not know and had no
25 reasonable opportunity to know of such use of funds; and

26 (c) A notice of claim of lien is recorded, pursuant to RCW
27 60.04.091, against the homeowner by a potential lien claimant to which
28 payment was due when the prime residential contractor received payment
29 from the homeowner for the services, materials, or equipment supplied
30 by the lien claimant.

31 (5) A residential subcontractor shall be personally liable for the
32 full amount of any lien claim recorded pursuant to RCW 60.04.091 if:

33 (a) The residential subcontractor fails to show, by clear and
34 convincing evidence, that funds paid to the residential subcontractor
35 by a prime residential contractor for application toward the contract
36 price for labor, professional services, materials, or equipment
37 supplied by a potential lien claimant other than the residential
38 subcontractor were actually paid to a potential lien claimant;

1 (b) The residential subcontractor has or should have had knowledge
2 of such use of funds, unless the residential subcontractor shows, by a
3 preponderance of the evidence in defending against the claimed lien,
4 that he or she actually did not know and had no reasonable opportunity
5 to know of such use of funds; and

6 (c) A notice of claim of lien is recorded, pursuant to RCW
7 60.04.091, against the homeowner by a potential lien claimant to which
8 payment was due when the residential subcontractor received payment
9 from the prime residential contractor for the services, materials, or
10 equipment supplied by the lien claimant.

11 (6) For the purposes of RCW 60.04.021, 60.04.250, and section 4 of
12 this act, "department" means the department of labor and industries.

13 **Sec. 3.** RCW 60.04.021 and 1991 c 281 s 2 are each amended to read
14 as follows:

15 (1) Except as provided in subsections (2) and (3) of this section
16 and RCW 60.04.031, any person furnishing labor, professional services,
17 materials, or equipment for the improvement of real property shall have
18 a lien upon the improvement for the contract price of labor,
19 professional services, materials, or equipment furnished at the
20 instance of the owner, or the agent or construction agent of the owner.

21 (2)(a) With respect to labor, professional services, materials, or
22 equipment for the improvement of an owner-occupied single-family
23 residence where the aggregate lien claims relating to transactions
24 constituting violations of section 2 of this act exceed the amount of
25 the prime residential contractor's or residential subcontractor's bond
26 that is not available to a homeowner, any person furnishing labor,
27 professional services, materials, or equipment for the improvement of
28 an owner-occupied single-family residence shall have a lien:

29 (i) In the amount of the contract price of labor, professional
30 services, materials, or equipment furnished at the instance of the
31 owner, or the agent or construction agent of the owner, upon any real
32 property owned by the prime residential contractor; and

33 (ii) Upon the improvement for no more than one-half of such
34 contract price.

35 (b) No judgment foreclosing a lien against improvement to an owner-
36 occupied single-family residence pursuant to this subsection shall be
37 entered unless: The court hearing a foreclosure or other collection

1 action involving the prime residential contractor or residential
2 subcontractor finds that the lien claimant seeking the judgment
3 foreclosure has made reasonable efforts to recover its claim from the
4 prime contractor or subcontractor, including the six persons who
5 received or are entitled to receive the most compensation from the
6 contractor, regardless of whether the compensation is provided as
7 salary, wages, profits, or otherwise, during the term of the
8 contractor's registration, and any other parties liable therefor,
9 personally or otherwise.

10 (c) A lien claimant shall provide to the department a certified
11 copy of any judgment entered in an action commenced under this section
12 if the judgment is entered against any party that was a registered or
13 licensed contractor or subcontractor. The department shall establish
14 by rule and charge a reasonable fee to cover the costs of the
15 processing of documents submitted to the department under this section,
16 which the court shall include in the award of costs to a prevailing
17 party.

18 (3) If a potential lien claimant knew or should have known that a
19 prime residential contractor had been the prime residential contractor
20 or construction agent on a single-family residential improvement
21 project with respect to which:

22 (a) A residential homeowner paid the prime residential contractor
23 for goods or services supplied by the potential lien claimant;

24 (b) The prime residential contractor failed to pay the potential
25 lien claimant's contract price for such goods or services; and

26 (c) The potential lien claimant recorded or otherwise pursued a
27 collection action or claim of lien against the homeowner in the
28 previous three years;

29 the potential lien claimant shall have no lien right upon the
30 improvement for labor, professional services, materials, or equipment
31 furnished on behalf of the homeowner at the instance of the prime
32 residential contractor or construction agent employed by a prime
33 residential contractor unless, before supplying any service, materials,
34 or equipment that may be subject to a lien under this chapter, the
35 potential lien claimant has provided written notice to the homeowner of
36 all circumstances surrounding the filing, pursuit, and resolution of
37 such claim, and the homeowner, in writing, affirmatively instructs the

1 potential lien claimant to supply the requested service, materials, or
2 equipment.

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

5 (1) Any potential lien claimant may give notice as provided in
6 subsections (2) and (3) of this section if the potential lien claimant
7 has not received a payment from a prime residential contractor: (a)
8 Within fourteen days after the date required by their contract,
9 invoice, or purchase order; or (b) if no due date is specified in the
10 contract, invoice, or purchase order, within forty-two days after the
11 goods or services specified in the contract, invoice, or purchase order
12 have been provided or delivered.

13 (2) The notice shall be signed by the potential lien claimant or
14 some person authorized to act on his or her behalf.

15 (3) The notice shall be in writing and shall be mailed or delivered
16 to the residential homeowner with a copy mailed or given to the prime
17 residential contractor within fourteen days after the date provided for
18 in subsection (1) of this section. The notice shall be given by:

19 (a) Mailing the notice to the residential homeowner and prime
20 residential contractor using any mail service by which a record of the
21 date of mailing is authenticated by the United States post office; or

22 (b) Delivering or serving the notice personally and obtaining
23 evidence of delivery in the form of a receipt or other acknowledgment
24 signed by the residential homeowner and prime residential contractor or
25 an affidavit of service.

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

27 (a) The person, firm, trustee, or corporation filing the notice has
28 furnished labor, professional services, materials, or equipment for
29 which a lien is given by this chapter;

30 (b) The name of the prime residential contractor ordering the same;

31 (c) A common or street address of the real property being improved
32 or the legal description of the real property;

33 (d) The name, business address, and telephone number of the lien
34 claimant; and

35 (e) The sums due and to become due, for which a potential lien
36 claimant may claim a lien under this chapter.

1 The notice may contain additional information but shall be in
2 substantially the following form:

3 NOTICE TO RESIDENTIAL HOMEOWNER OF LATE PAYMENT

4 (Authorized by RCW)

5 TO:

6 (Name of Homeowner)

7

8 (Street Address)

9

10 (City) (State) (Zip)

11 AND TO:

12 (Prime Residential Contractor)

13 (Name of Laborer, Professional, Materials, or Equipment Supplier)

14 whose business address is, did at the property located
15 at

16 (Check appropriate box) () perform labor () furnish professional
17 services () provide materials () supply equipment as follows:

18
19
20

21 which was ordered by

22 (Name of Person)

23 whose address was stated to be

24

25 The amount owing to the undersigned according to
26 contract or purchase order for labor, supplies, or equipment
27 (as abovementioned) is the sum of Dollars
28 (\$). Said sums became due and owing as of

29

30 (State Date)

31,

32 You are hereby notified that said amount owing is currently past
33 due by not less than fourteen days.

34 IMPORTANT

1 Failure to rectify this payment deficiency may subject the residential
2 homeowner to a lien pursuant to RCW 60.04.021.

3 (5) If the potential lien claimant presents to the department
4 evidence that the lien claimant has commenced a lien or other
5 collection action against the contractor pursuant to RCW 60.04.021(2),
6 and the homeowner presents to the department, under penalty of perjury,
7 the original or a true and accurate copy of the notice provided to the
8 homeowner pursuant to this section, the department shall notify the
9 prime residential contractor. Within five business days of receipt of
10 such notice from the department, the contractor shall provide to the
11 department a surety bond or other good and sufficient security with the
12 department in the amount of claimed deficient payment, or written
13 documentation that the contractor informed the residential homeowner of
14 the deficient payment pursuant to section 2(3)(b)(ii) of this act.

15 (6) The department shall suspend the registration of any prime
16 residential contractor while sufficient security as required under
17 subsection (5) of this section is not filed. The department shall
18 establish by rule and charge a reasonable fee to cover the costs of
19 processing documents submitted to the department under this section.

20 (7) For the purposes of this section, the notice is received when
21 any of the following occur: The day of actual receipt of the notice by
22 personal service, or registered or certified mail; or three days after
23 mailing by registered or certified mail, excluding Saturdays, Sundays,
24 or legal holidays.

25 **Sec. 5.** RCW 60.04.091 and 1992 c 126 s 7 are each amended to read
26 as follows:

27 Except as provided under subsection (3) of this section, every
28 person claiming a lien under RCW 60.04.021 shall file for recording, in
29 the county where the subject property is located, a notice of claim of
30 lien not later than ninety days after the person has ceased to furnish
31 labor, professional services, materials, or equipment or the last date
32 on which employee benefit contributions were due. (~~The notice of~~
33 ~~claim of lien~~.)

34 (1) The notice of claim of lien shall state in substance and
35 effect:

36 (a) The name, (~~phone~~) telephone number, and address of the
37 claimant;

1 (b) The first ~~((and))~~ date on which the claimant began to perform
2 labor, provide professional services, or supply material or equipment
3 or the first date on which employee benefits became due;

4 (c) The last date on which the labor, professional services,
5 materials, or equipment was furnished or employee benefit contributions
6 were due;

7 ~~((+e))~~ (d) The name of the person indebted to the claimant;

8 ~~((+d))~~ (e) The street address, legal description, or other
9 description reasonably calculated to identify, for a person familiar
10 with the area, the location of the real property to be charged with the
11 lien;

12 ~~((+e))~~ (f) The name of the owner or reputed owner of the property,
13 if known, and, if not known, that fact shall be stated; ~~((and~~

14 ~~(+f))~~ (g) The principal amount for which the lien is claimed,
15 excluding any interest, late fees, costs, attorneys' fees, or similar
16 charges; and

17 (h) Whether the claimant is the assignee of the claim.

18 (2) The notice of claim of lien shall be signed by the claimant or
19 some person authorized to act on his or her behalf who shall
20 affirmatively state they have read or heard and understand the notice
21 of claim of lien ~~((and))~~, believe the ~~((notice of claim of lien))~~
22 contents to be true and correct, and the lien is not frivolous and is
23 not clearly excessive, under penalty of perjury, and shall be
24 acknowledged as set forth in the form below, or pursuant to chapter
25 64.08 RCW. If the lien has been assigned, the name of the assignee
26 shall be stated. Where an action to foreclose the lien has been
27 commenced such notice of claim of lien may be amended as pleadings may
28 be by order of the court insofar as the interests of third parties are
29 not adversely affected by such amendment. A claim of lien
30 substantially in the following form shall be sufficient:

31 CLAIM OF LIEN

32, claimant, vs, name of person indebted
33 to claimant:

34 Notice is hereby given that the person named below claims a
35 lien pursuant to chapter ~~((64.04))~~ 60.04 RCW. In support of
36 this lien the following information is submitted:

37 1. NAME OF LIEN CLAIMANT:

1 TELEPHONE NUMBER:

2 ADDRESS:

3 2. DATE ON WHICH THE CLAIMANT BEGAN TO PERFORM LABOR,
4 PROVIDE PROFESSIONAL SERVICES, SUPPLY MATERIAL OR EQUIPMENT OR
5 THE DATE ON WHICH EMPLOYEE BENEFIT CONTRIBUTIONS BECAME DUE:

6 3. NAME OF PERSON INDEBTED TO THE CLAIMANT:
7

8 4. DESCRIPTION OF THE PROPERTY AGAINST WHICH A LIEN IS
9 CLAIMED (Street address, legal description or other information
10 that will reasonably describe the property):
11
12
13

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

16 6. THE LAST DATE ON WHICH LABOR WAS PERFORMED;
17 PROFESSIONAL SERVICES WERE FURNISHED; CONTRIBUTIONS TO AN
18 EMPLOYEE BENEFIT PLAN WERE DUE; OR MATERIAL, OR EQUIPMENT WAS
19 FURNISHED:
20

21 7. PRINCIPAL AMOUNT FOR WHICH THE LIEN IS CLAIMED IS:

22 8. IF THE CLAIMANT IS THE ASSIGNEE OF THIS CLAIM SO
23 STATE HERE:
24

25
26 , Claimant
27
28
29 (Phone number, address, city, and
30 state of claimant)

31 STATE OF WASHINGTON, COUNTY OF
32, ss.

33, being sworn, says: I am the claimant (or attorney of
34 the claimant, or administrator, representative, or agent of the

1 trustees of an employee benefit plan) above named; I have read or heard
2 and understand the foregoing claim, read and know the contents thereof,
3 and believe the same to be true and correct and that the claim of lien
4 is not frivolous and is made with reasonable cause, and is not clearly
5 excessive under penalty of perjury.

6
7 Subscribed and sworn to before me this day of
8

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

18 (4) The time period during which a potential lien claimant has
19 commenced and is maintaining a lien or other collection action against
20 the prime residential contractor, pursuant to RCW 60.04.021(2), shall
21 not be part of the period limited for recording the claim of lien
22 against the homeowner.

23 (5) A lien claimant that, for any reason, includes any interest,
24 late fee, cost, attorneys' fees, or similar charges as part of the
25 principal amount for which the lien is claimed shall be deemed to have
26 waived any right under contract or otherwise to such charges, and shall
27 also forfeit any right the claimant may have to attorneys' fees and
28 costs against the owner under RCW 60.04.181.

29 **Sec. 6.** RCW 60.04.250 and 1990 c 81 s 1 are each amended to read
30 as follows:

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

33 (1) Construction lien laws and available safeguards against real
34 property lien claims. The material shall include methods of protection
35 against lien claims, including obtaining lien release documents,
36 performance bonds, joint payee checks, the opportunity to require

1 contractor disclosure of all potential lien claimants as a condition of
2 payment, and lender supervision under RCW 60.04.200 and 60.04.210. The
3 material shall also include sources of further information, including
4 the department of labor and industries and the office of the attorney
5 general.

6 (2) The basics of lien law relating to owner-occupied residential
7 improvements and new construction projects, including a list of
8 available safeguards against real property lien claims, which the
9 homeowner must consider, reject, or select. Before any building permit
10 may be issued for the construction of a new owner-occupied
11 single-family residence or for the improvement to an owner-occupied
12 single-family residence for an amount in excess of one thousand
13 dollars, if the construction will involve the services of a prime
14 contractor, the permit issuing agency shall not issue any permit until
15 the homeowner has personally, and not through an agent, acknowledged
16 receipt of the document. When the homeowner completes the document by
17 making selections, as indicated in the document, and submits it to the
18 agency, the permit issuing agency shall maintain a copy of the
19 completed document in the file of the permit issuing agency relating to
20 the homeowner's permit application. The document shall be in
21 substantially the following form and shall also include information
22 describing the scope and limits of state contractor bonding
23 requirements, the provisions of this act, and the availability of
24 further information, including the department of labor and industries
25 and the office of the attorney general.

26 Dear Homeowner:

27 You must complete the items below and select from the options below
28 what protection, if any, you want against potential lien claims on your
29 property as a result of the construction work for which you are
30 contracting. If your contractor fails to pay subcontractors,
31 suppliers, or laborers or neglects to make other legally required
32 payments, those who are owed money can file a lien against your
33 property for payment, even if you have paid your contractor in full.
34 Anyone filing a valid lien claim may force the sale of your property to
35 recover the unpaid amount. This is true if you have hired a contractor
36 to build a new home or are buying a newly built home. It is also true
37 when you remodel or improve your property.

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

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

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

17 If you are dealing with a lending institution, ask your loan
18 officer what precautions the lending institution takes to verify that
19 subcontractors and material suppliers are being paid when mortgage
20 money is paid to your contractor. You may want to request lender
21 supervision if your lending institution is providing interim or
22 construction financing.

23 If you receive a notice to enforce a lien, take the notice
24 seriously. Let your contractor know you have received the notice.
25 Find out what arrangements are being made to pay the sender of the
26 notice.

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

32 Complete the following information, select below how you want to
33 protect yourself from possible lien claims on your property, and inform
34 your contractor of your selections or discuss your selections with your
35 contractor.

36 I, (owner's name),
37 am agreeing to have (contractor's name)
38 perform the following construction work (basic description)

1 at (location of your property using an address, legal description
2 or approximate address)

3 in the amount of \$ including all federal, state,
4 and local taxes, and this amount may be adjusted only if authorized by
5 me in writing.

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

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

10 will only issue checks to the contractor and
11 subcontractors in the amounts equal to the amounts for which lien
12 releases that release all lien rights to those amounts, as provided by
13 RCW 60.04.071, have been provided to me by each lien claimant
14 requesting payment.

15 want the contractor to post a bond to assure both
16 performance of this construction work and payment to all subcontractors
17 and suppliers in the amount of (select one) . . . the total contract
18 amount . . . in the amount of \$ (Note: Your contractor
19 may add the cost of this bond to your contract price.)

20 will be using as an escrow agent
21 to disburse construction funds and to protect my interests. (NOTE:
22 Before making this selection, find out whether the escrow agent you
23 plan to use will protect you against liens when disbursing payments.
24 If you are interested in using this alternative, consult your
25 attorney.)

26 want this contractor to set up a trust account for
27 all funds I pay to this contractor, and the trust funds must be
28 disbursed in accordance with our construction agreement to
29 subcontractors and suppliers.

30 DO NOT want any of the above protections from
31 potential lien claims against my property as a result of this
32 construction work.

33 In addition to the above selection, I choose ONE of the following:
34 . . . WANT . . . DO NOT WANT the prime residential contractor to
35 disclose all potential lien claimants as a condition of payment.
36 (NOTE: A lien claimant must, under RCW 60.04.091, mail by certified or
37 registered mail or by personal service a copy of the claim of lien to
38 the owner within fourteen days of the time the lien is recorded. While

1 an action is ongoing, the law, RCW 60.04.151, allows an owner to
2 withhold from this prime residential contractor the amount of money for
3 which a claim is recorded by a subcontractor, supplier, or laborer.)

4 More information about contractors is available by visiting the
5 department of labor and industries on the Internet at
6 www.LNI.wa.gov/SCS/contractors/ or by calling the contractor
7 registration hotline at 1-800-647-0982. You may also call your local
8 department of labor and industries office. See listings under
9 "Washington state of" in the government section or the white pages of
10 the telephone book.

11 Signed by (property owner):
12 Date signed:

13 **Sec. 7.** RCW 18.27.020 and 1997 c 314 s 3 are each amended to read
14 as follows:

15 (1) Every contractor shall register with the department.

16 (2) It is a gross misdemeanor for any contractor to:

17 (a) Advertise, offer to do work, submit a bid, or perform any work
18 as a contractor without being registered as required by this chapter;

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

22 (c) Use a false or expired registration number in purchasing or
23 offering to purchase an advertisement for which a contractor
24 registration number is required; or

25 (d) Transfer a valid registration to an unregistered contractor or
26 allow an unregistered contractor to work under a registration issued to
27 another contractor.

28 (3) It is not unlawful for a general contractor to employ an
29 unregistered contractor who was registered at the time he or she
30 entered into a contract with the general contractor, unless the general
31 contractor or his or her representative has been notified in writing by
32 the department of labor and industries that the contractor has become
33 unregistered.

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

36 (5) A person is guilty of a separate gross misdemeanor for each day
37 worked if, after the person receives a citation from the department,
38 the person works while unregistered, or while his or her registration

1 is suspended or revoked, or works under a registration issued to
2 another contractor. A person is guilty of a separate gross misdemeanor
3 for each worksite on which he or she violates subsection (2) of this
4 section. Nothing in this subsection applies to a registered
5 contractor.

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

14 **Sec. 8.** RCW 60.04.011 and 1992 c 126 s 1 are each amended to read
15 as follows:

16 Unless the context requires otherwise, the definitions in this
17 section apply throughout this chapter.

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

23 (2) "Contract price" means the amount, including overhead and
24 profit, agreed upon by the contracting parties, or if no amount is
25 agreed upon, then the customary and reasonable charge therefor, but in
26 no case shall "contract price" include any amount payable under the
27 contract, or otherwise, in the event of nonpayment or late payment.

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

30 (4) "Furnishing labor, professional services, materials, or
31 equipment" means the performance of any labor or professional services,
32 the contribution owed to any employee benefit plan on account of any
33 labor, the provision of any supplies or materials, and the renting,
34 leasing, or otherwise supplying of equipment for the improvement of
35 real property.

36 (5) "Improvement" means: (a) Constructing, altering, repairing,
37 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-occupied" means a single-family residence occupied by
26 the owner as his or her principal residence.

27 (10) "Payment bond" means a surety bond issued by a surety licensed
28 to issue surety bonds in the state of Washington that confers upon
29 potential claimants the rights of third party beneficiaries.

30 (11) "Potential lien claimant" means any person or entity entitled
31 to assert lien rights under this chapter who has otherwise complied
32 with the provisions of this chapter and is registered or licensed if
33 required to be licensed or registered by the provisions of the laws of
34 the state of Washington.

35 (12) "Prime contractor" includes all contractors, general
36 contractors, and specialty contractors, as defined by chapter 18.27 or
37 19.28 RCW, or who are otherwise required to be registered or licensed
38 by law, who contract directly with a property owner or their common law

1 agent to assume primary responsibility for the creation of an
2 improvement to real property, and includes property owners or their
3 common law agents who are contractors, general contractors, or
4 specialty contractors as defined in chapter 18.27 or 19.28 RCW, or who
5 are otherwise required to be registered or licensed by law, who offer
6 to sell their property without occupying or using the structures,
7 projects, developments, or improvements for more than one year.

8 (13) "Professional services" means surveying, establishing or
9 marking the boundaries of, preparing maps, plans, or specifications
10 for, or inspecting, testing, or otherwise performing any other
11 architectural or engineering services for the improvement of real
12 property.

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

17 (15) "Residential homeowner" or "homeowner" means an individual
18 person or persons owning or leasing real property: (a) Upon which one
19 single-family residence is to be built and in which the owner or lessee
20 intends to reside when construction is completed; or (b) upon which
21 there exists one single-family residence to which improvements are to
22 be made and in which the owner or lessee intends to reside upon
23 completion of the improvements. Solely for the purposes of section 2
24 of this act and RCW 60.04.021, "residential homeowner" or "homeowner"
25 also means an individual person or person who has entered into a
26 contract with a contractor, builder, or developer to purchase and
27 occupy a single-family residence at the completion of the new
28 construction, repair, alteration, or remodel of the single-family
29 residence or garage appurtenant to the residence.

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

31 ((+16+)) (17) "Subcontractor" means a general contractor or
32 specialty contractor as defined by chapter 18.27 or 19.28 RCW, or who
33 is otherwise required to be registered or licensed by law, who
34 contracts for the improvement of real property with someone other than
35 the owner of the property or their common law agent.

36 **Sec. 9.** RCW 60.04.031 and 1992 c 126 s 2 are each amended to read
37 as follows:

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

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

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

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

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

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

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

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

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

36 (a) Who contract directly with the (~~(owner occupier or their)~~)
37 owner or the owner's common law agent shall not be required to send a

1 written notice of the right to claim a lien and shall have a lien for
2 the full amount due under their contract, as provided in RCW 60.04.021;
3 or

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

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

20 NOTICE TO OWNER

21 IMPORTANT: READ BOTH SIDES OF THIS NOTICE
22 CAREFULLY.

23 PROTECT YOURSELF FROM PAYING TWICE

24 To: Date:

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

26 From:

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

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

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

1 OWNER/OCCUPIER OF EXISTING
2 RESIDENTIAL PROPERTY AND/OR
3 NEW RESIDENTIAL PROPERTY
4

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

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

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

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

32 Sender:
33 Address:
34 Telephone:

35 Brief description of professional services, materials, or equipment
36 provided or to be provided:

1 IMPORTANT INFORMATION
2 ON REVERSE SIDE

3 IMPORTANT INFORMATION
4 FOR YOUR PROTECTION

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

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

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

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

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

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

29 * * * * *

30 (5) Every potential lien claimant providing professional services
31 where no improvement as defined in RCW 60.04.011(5) (a) or (b) has been
32 commenced, and the professional services provided are not visible from
33 an inspection of the real property may record in the real property
34 records of the county where the property is located a notice which
35 shall contain the professional service provider's name, address,

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

11 NOTICE OF FURNISHING
12 PROFESSIONAL SERVICES

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

16 [Legal Description
17 is mandatory]

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

21
22 (Signature)

23
24 (Name of Claimant)

25
26 (Street Address)

27
28 (City, State, Zip Code)

29
30 (Phone Number)

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

1 **Sec. 10.** RCW 18.27.030 and 2001 c 159 s 2 are each amended to read
2 as follows:

3 (1) An applicant for registration as a contractor shall submit an
4 application under oath upon a form to be prescribed by the director and
5 which shall include the following information pertaining to the
6 applicant:

7 (a) Employer social security number.

8 (b) Unified business identifier number, if required by the
9 department of revenue.

10 (c) Evidence of workers' compensation coverage for the applicant's
11 employees working in Washington, as follows:

12 (i) The applicant's industrial insurance account number issued by
13 the department;

14 (ii) The applicant's self-insurer number issued by the department;
15 or

16 (iii) For applicants domiciled in a state or province of Canada
17 subject to an agreement entered into under RCW 51.12.120(7), as
18 permitted by the agreement, filing a certificate of coverage issued by
19 the agency that administers the workers' compensation law in the
20 applicant's state or province of domicile certifying that the applicant
21 has secured the payment of compensation under the other state's or
22 province's workers' compensation law.

23 (d) Employment security department number.

24 (e) State excise tax registration number.

25 (f) Unified business identifier (UBI) account number may be
26 substituted for the information required by (c) of this subsection if
27 the applicant will not employ employees in Washington, and by (d) and
28 (e) of this subsection.

29 (g) Type of contracting activity, whether a general or a specialty
30 contractor and if the latter, the type of specialty, and whether the
31 contractor engages or intends to engage in the new construction,
32 repair, alteration, or remodel of the single-family residence or
33 appurtenant garage of any residential homeowner, as defined in RCW
34 60.04.011.

35 (h)(i) The name and address of each partner if the applicant is a
36 firm or partnership, or the name and address of the owner if the
37 applicant is an individual proprietorship, or the name and address of

1 the corporate officers and statutory agent, if any, if the applicant is
2 a corporation or the name and address of all members of other business
3 entities.

4 (ii) The name and address of the six persons who received or are
5 entitled to receive the most compensation from the prime residential
6 contractor, regardless of whether the compensation is provided as
7 salary, wages, profits, or otherwise, during the term of the
8 contractor's registration; and, if different, each principal, partner,
9 officer, director, vice principal, authorized purchasing agent, and
10 management employee who has physical or actual control over the
11 accounting or disbursement of funds received by the contractor from
12 residential homeowners if the applicant is a contractor engaging in the
13 new construction, repair, alteration, or remodel of the single-family
14 residence or appurtenant garage of any residential homeowner, as
15 defined in RCW 60.04.011. An applicant shall update information
16 required under this section no less frequently than once every six
17 months if there is a change in the persons required to be identified
18 under this section.

19 (iii) A business engaging in the new construction, repair,
20 alteration, or remodel of the single-family residence or appurtenant
21 garage of any residential homeowner, as defined in RCW 60.04.011, shall
22 not be required to provide the names and other information specified in
23 (h)(ii) of this subsection if the business increases the amount of the
24 surety bond filed with the department pursuant to RCW 18.27.040(1) to
25 two hundred fifty thousand dollars.

26 (iv) The information contained in such application is a matter of
27 public record and open to public inspection.

28 (2) The department may verify the workers' compensation coverage
29 information provided by the applicant under subsection (1)(c) of this
30 section, including but not limited to information regarding the
31 coverage of an individual employee of the applicant. If coverage is
32 provided under the laws of another state, the department may notify the
33 other state that the applicant is employing employees in Washington.

34 (3)(a) The department shall deny an application for registration
35 if: (i) The applicant has been previously performing work subject to
36 this chapter as a sole proprietor, partnership, corporation, or other
37 entity and the department has notice that the applicant has an
38 unsatisfied final judgment against him or her in an action based on

1 this chapter or the applicant owes the department money for penalties
2 assessed or fees due under this chapter as a result of a final
3 judgment; (ii) the applicant was a principal or officer of a
4 partnership, corporation, or other entity that either has an
5 unsatisfied final judgment against it in an action that was incurred
6 for work performed subject to this chapter or owes the department money
7 for penalties assessed or fees due under this chapter as a result of a
8 final judgment; or (iii) the applicant does not have a valid unified
9 business identifier number, if required by the department of revenue.

10 (b) The department shall suspend an active registration if (i) the
11 department has notice that the registrant is a sole proprietor or a
12 principal or officer of a registered contractor that has an unsatisfied
13 final judgment against it for work within the scope of this chapter; or
14 (ii) the applicant does not maintain a valid unified business
15 identifier number, if required by the department of revenue.

16 (4) The department shall not deny an application or suspend a
17 registration because of an unsatisfied final judgment if the
18 applicant's or registrant's unsatisfied final judgment was determined
19 by the director to be the result of the fraud or negligence of another
20 party.

21 **Sec. 11.** RCW 18.27.040 and 2001 c 159 s 3 are each amended to read
22 as follows:

23 (1) Each applicant shall file with the department a surety bond
24 issued by a surety insurer who meets the requirements of chapter 48.28
25 RCW in the sum of twelve thousand dollars if the applicant is a general
26 contractor and six thousand dollars if the applicant is a specialty
27 contractor. If no valid bond is already on file with the department at
28 the time the application is filed, a bond must accompany the
29 registration application. The bond shall have the state of Washington
30 named as obligee with good and sufficient surety in a form to be
31 approved by the department. The bond shall be continuous and may be
32 canceled by the surety upon the surety giving written notice to the
33 director. A cancellation or revocation of the bond or withdrawal of
34 the surety from the bond automatically suspends the registration issued
35 to the registrant until a new bond or reinstatement notice has been
36 filed and approved as provided in this section. The bond shall be
37 conditioned that the applicant will pay all persons performing labor,

1 including employee benefits, for the contractor, will pay all taxes and
2 contributions due to the state of Washington, and will pay all persons
3 furnishing labor or material or renting or supplying equipment to the
4 contractor and will pay all amounts that may be adjudged against the
5 contractor by reason of breach of contract including negligent or
6 improper work in the conduct of the contracting business. A change in
7 the name of a business or a change in the type of business entity shall
8 not impair a bond for the purposes of this section so long as one of
9 the original applicants for such bond maintains partial ownership in
10 the business covered by the bond.

11 (2) At the time of initial registration or renewal, the contractor
12 shall provide a bond or other security deposit as required by this
13 chapter and comply with all of the other provisions of this chapter
14 before the department shall issue or renew the contractor's certificate
15 of registration. Any contractor registered as of July 1, 2001, who
16 maintains that registration in accordance with this chapter is in
17 compliance with this chapter until the next renewal of the contractor's
18 certificate of registration.

19 (3) Any person, firm, or corporation having a claim against the
20 contractor for any of the items referred to in this section may bring
21 suit upon the bond or deposit in the superior court of the county in
22 which the work was done or of any county in which jurisdiction of the
23 contractor may be had. The surety issuing the bond shall be named as
24 a party to any suit upon the bond. Action upon the bond or deposit
25 brought by a residential homeowner for breach of contract by a party to
26 the construction contract shall be commenced by filing the summons and
27 complaint with the clerk of the appropriate superior court within two
28 years from the date the claimed contract work was substantially
29 completed or abandoned. Action upon the bond or deposit brought by any
30 other authorized party shall be commenced by filing the summons and
31 complaint with the clerk of the appropriate superior court within one
32 year from the date the claimed labor was performed and benefits
33 accrued, taxes and contributions owing the state of Washington became
34 due, materials and equipment were furnished, or the claimed contract
35 work was substantially completed or abandoned. Service of process in
36 an action against the contractor, the contractor's bond, or the deposit
37 shall be exclusively by service upon the department. Three copies of
38 the summons and complaint and a fee adopted by rule of not less than

1 twenty dollars to cover the costs shall be served by registered or
2 certified mail, or other delivery service requiring notice of receipt,
3 upon the department at the time suit is started and the department
4 shall maintain a record, available for public inspection, of all suits
5 so commenced. Service is not complete until the department receives
6 the fee and three copies of the summons and complaint. The service
7 shall constitute service on the registrant and the surety for suit upon
8 the bond or deposit and the department shall transmit the summons and
9 complaint or a copy thereof to the registrant at the address listed in
10 the registrant's application and to the surety within two days after it
11 shall have been received.

12 (4) The surety upon the bond shall not be liable in an aggregate
13 amount in excess of the amount named in the bond nor for any monetary
14 penalty assessed pursuant to this chapter for an infraction. The
15 liability of the surety shall not cumulate where the bond has been
16 renewed, continued, reinstated, reissued or otherwise extended. The
17 surety upon the bond may, upon notice to the department and the
18 parties, tender to the clerk of the court having jurisdiction of the
19 action an amount equal to the claims thereunder or the amount of the
20 bond less the amount of judgments, if any, previously satisfied
21 therefrom and to the extent of such tender the surety upon the bond
22 shall be exonerated but if the actions commenced and pending at any one
23 time exceed the amount of the bond then unimpaired, claims shall be
24 satisfied from the bond in the following order:

25 (a) Employee labor and claims of laborers, including employee
26 benefits;

27 (b) Claims for breach of contract by a party to the construction
28 contract;

29 (c) Registered or licensed subcontractors, material, and equipment;

30 (d) Taxes and contributions due the state of Washington;

31 (e) Any court costs, interest, and (~~attorney's~~ {attorneys'})
32 attorneys' fees plaintiff may be entitled to recover. The surety is
33 not liable for any amount in excess of the penal limit of its bond.

34 A payment made by the surety in good faith exonerates the bond to
35 the extent of any payment made by the surety.

36 (5) The total amount paid from a bond or deposit required of a
37 general contractor by this section to claimants other than residential
38 homeowners must not exceed one-half of the bond amount. The total

1 amount paid from a bond or deposit required of a specialty contractor
2 by this section to claimants other than residential homeowners must not
3 exceed one-half of the bond amount or four thousand dollars, whichever
4 is greater.

5 (6) The prevailing party in an action filed under this section
6 against the contractor and contractor's bond or deposit, for breach of
7 contract by a party to a construction contract, is entitled to costs,
8 interest, and reasonable attorneys' fees. The surety upon the bond is
9 not liable in an aggregate amount in excess of the amount named in the
10 bond nor for any monetary penalty assessed pursuant to this chapter for
11 an infraction.

12 (7) If a final judgment impairs the liability of the surety upon
13 the bond so furnished that there is not in effect a bond in the full
14 amount prescribed in this section, the registration of the contractor
15 is automatically suspended until the bond liability in the required
16 amount unimpaired by unsatisfied judgment claims is furnished.

17 (8) In lieu of the surety bond required by this section the
18 contractor may file with the department a deposit consisting of cash or
19 other security acceptable to the department.

20 (9) Any person having filed and served a summons and complaint as
21 required by this section having an unsatisfied final judgment against
22 the registrant for any items referred to in this section may execute
23 upon the security held by the department by serving a certified copy of
24 the unsatisfied final judgment by registered or certified mail upon the
25 department within one year of the date of entry of such judgment. Upon
26 the receipt of service of such certified copy the department shall pay
27 or order paid from the deposit, through the registry of the superior
28 court which rendered judgment, towards the amount of the unsatisfied
29 judgment. The priority of payment by the department shall be the order
30 of receipt by the department, but the department shall have no
31 liability for payment in excess of the amount of the deposit.

32 (10) The director (~~(may)~~) shall require an applicant applying to
33 renew or reinstate a registration or applying for a new registration to
34 file a bond of (~~up to three~~) at least two times, but not more than
35 five times the normally required amount, if the director determines
36 that:

37 (a) An applicant, or a previous registration of a corporate
38 officer, owner, or partner of a current applicant, has had in the past

1 five years a total of six final judgments in actions under this chapter
2 involving a residential single-family dwelling on two or more different
3 structures; or

4 (b) The applicant engages in the new construction, repair,
5 alteration, or remodel of the single-family residence or appurtenant
6 garage of any residential homeowner, as defined in RCW 60.04.011, and
7 the applicant or any of the applicant's principals, partners, officers,
8 directors, vice principals, authorized purchasing agents, or management
9 employees who have physical or actual control over the accounting or
10 disbursement of funds received by the contractor from residential
11 homeowners have been party to collection action or lien action
12 instituted pursuant to RCW 60.04.021(2)(a)(i), where the claims against
13 parties other than the residential homeowner were insufficient to
14 satisfy the lien.

15 (11) The director may adopt rules necessary for the proper
16 administration of the security.

17 NEW SECTION. Sec. 12. This act takes effect July 1, 2006.

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