
SUBSTITUTE SENATE BILL 6740

State of Washington

59th Legislature

2006 Regular Session

By Senate Committee on Labor, Commerce, Research & Development
(originally sponsored by Senators Fraser, Kohl-Welles, Fairley,
Keiser and Franklin)

READ FIRST TIME 02/03/06.

1 AN ACT Relating to protecting homeowners who hire contractors to
2 remodel or build their homes; amending RCW 60.04.091, 60.04.250,
3 60.04.031, 60.04.011, 18.27.010, 18.27.020, 18.27.030, 18.27.040,
4 18.27.080, 18.27.200, and 18.27.340; adding new sections to chapter
5 18.27 RCW; creating a new section; prescribing penalties; and providing
6 an effective date.

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

8 NEW SECTION. **Sec. 1.** The legislature finds that the vast majority
9 of contractors engaged in the business of constructing or remodeling
10 owner-occupied single-family homes are both technically proficient in
11 their trade and able to manage their business dealings in accordance
12 with the highest standards. The legislature also finds, however, that
13 in those relatively few, but all-too-frequent, instances where prime
14 contractors on such construction or remodeling projects intentionally,
15 negligently, or unintentionally mismanage payments received from
16 homeowners that are intended for subcontractors, suppliers, and others,
17 existing provisions are inadequate to protect homeowners.
18 Additionally, the toll on an individual homeowner's personal economic
19 and emotional condition that such financial mismanagement by this small

1 fraction of prime contractors is not adequately balanced against the
2 responsibilities, obligations, and possible penalties that contractors
3 bear for such mismanagement. Consequently, the legislature finds that
4 it is necessary to (1) clearly establish when prime contractors are
5 personally responsible for mismanagement of funds received from or on
6 behalf of homeowners that are intended for suppliers, subcontractors,
7 and others; (2) increase awareness by homeowners to the potential for
8 liens against their residence if contractors fail to pay suppliers and
9 subcontractors as promised; and (3) increase opportunities for
10 homeowners to become better educated about ways to protect themselves
11 from financial mismanagement by those few contractors who are unable or
12 unwilling to meet the financial management standards set by the vast
13 majority of residential contractors in this state.

14 The legislature recognizes the independence of the federal
15 bankruptcy courts, but nonetheless encourages such courts, when
16 addressing whether or not to discharge liabilities of contractors
17 arising under this act due to the mismanagement of funds received from
18 or for the benefit of homeowners, to adopt a policy disfavoring the
19 discharge of such liabilities in bankruptcy. If the mismanagement
20 rises to the level of criminal conduct, nothing in this act is intended
21 to interfere with criminal prosecution.

22 NEW SECTION. **Sec. 2.** A new section is added to chapter 18.27 RCW
23 to read as follows:

24 (1) For the purposes of determining whether the bond required of a
25 prime residential contractor should be increased under RCW
26 18.27.040(10), the department shall consider whether:

27 (a) The prime residential contractor and, if applicable, any
28 persons financially responsible for the prime residential contractor
29 engaged or participated in any of the activities described in
30 subsection (2) of this section while retained by a residential
31 homeowner; and

32 (b) A lien claimant or potential lien claimant that had supplied
33 goods or services to the residential construction or remodel project
34 performed by the prime residential contractor for the homeowner entered
35 into any agreement or was party to a judgment requiring the homeowner
36 to pay to the claimant some or all of a debt that the homeowner had
37 previously paid to the contractor.

1 (2) A prime residential contractor and, if applicable, any persons
2 financially responsible for the prime residential contractor may be
3 subjected to the increased bond requirement under RCW 18.27.040(10) if
4 the prime residential contractor:

5 (a) Is not properly registered, insured, and bonded pursuant to
6 this chapter or chapter 19.28 RCW at the time the prime residential
7 contractor: (i) Incurs any expense or obligation for or on behalf of
8 the homeowner from any other potential lien claimant; or (ii) requests
9 or receives any funds from the homeowner;

10 (b) Requests or accepts funds from the residential homeowner in an
11 amount exceeding one-half of the amount of the contractor's bond on
12 file with the department of labor and industries under RCW 18.27.040 or
13 19.28.041(3) and the amount requested or accepted exceeds the amount
14 owed or due to all other potential lien claimants at the time the funds
15 are requested or accepted;

16 (c) Requests or accepts any funds from the residential homeowner
17 after the prime residential contractor incurs expenses or obligations
18 for or on behalf of the homeowner from any other potential lien
19 claimant, but before providing the homeowner a billing statement,
20 invoice, or other written notice described in subsection (3) of this
21 section; or

22 (d)(i) Requests or accepts any funds from the homeowner after the
23 contractor incurs expenses or obligations for or on behalf of the
24 homeowner from any other potential lien claimant;

25 (ii) Makes the request for and accepts funds from the homeowner at
26 the same time or after the prime residential contractor provides the
27 homeowner with a billing statement, invoice, or other written notice as
28 described in subsection (3) of this section; and

29 (iii) Purposefully fails to (A) identify a potential lien claimant
30 on such written notice pursuant to subsection (3)(a) of this section;
31 or (B) identify the potential lien claimants to which the payment due
32 and amount owed has not been fully satisfied as of the date of the
33 notice pursuant to subsection (3)(b) of this section; or (C) apply the
34 requested homeowner's payment to the potential lien claimant or
35 claimants as indicated on such written notice under subsection (3)(c)
36 or (d) of this section.

37 (3) The written notice provided by this section shall identify:

1 (a) The other potential lien claimants, if any, from which goods or
2 services have been ordered or obtained by the prime residential
3 contractor for or on behalf of the homeowner, and for which the payment
4 due and amount owed has been fully satisfied as the date of the notice;

5 (b) The other potential lien claimants, if any, from which goods or
6 services have been ordered or obtained by the prime residential
7 contractor for or on behalf of the homeowner, and for which the payment
8 due and amount owed has not been fully satisfied as of the date of the
9 notice;

10 (c) The other potential lien claimants, if any, identified pursuant
11 to (b) of this subsection to which the prime residential contractor
12 intends to pay all amounts owed from the homeowner's payment; and

13 (d) The potential lien claimants, if any, identified pursuant to
14 (b) of this subsection to which the prime residential contractor does
15 not intend to pay all amounts owed from the homeowner's payment, and
16 the reason for less than full payment.

17 NEW SECTION. **Sec. 3.** A new section is added to chapter 18.27 RCW
18 to read as follows:

19 (1) The department shall not increase the bond required to be
20 provided by a registered contractor under RCW 18.27.040(10) if the
21 person who engaged in the activities described in section 2 of this act
22 shows, by clear and convincing evidence in defending against a claimed
23 lien or other collection action, that:

24 (a) He or she is a person financially responsible for the prime
25 residential contractor who actually did not know and, in the exercise
26 of due diligence incumbent to the person's position as a financially
27 responsible party, had no reasonable opportunity to know of the
28 registration status, activities, or transactions of the contractor that
29 gave rise to the liability;

30 (b) The prime residential contractor or an entity other than the
31 prime residential contractor paid the lien claimant the full contract
32 price for the labor, professional services, materials, or equipment
33 incurred on behalf of the homeowner by the prime residential contractor
34 and supplied by a lien claimant;

35 (c) The failure to either identify a potential lien claimant or
36 apply a homeowner's payment as provided in section 2(2)(d)(iii) of this

1 act was due to an inadvertent error or a reasonable mistake, and was
2 not a substantial cause of the filing of the lien claim; or

3 (d) The prime residential contractor: (i) Did not engage in any
4 activity described in section 2(2) (a) through (c) of this act; (ii)
5 substantially complied with the notice provisions of section 2(2)(d) of
6 this act; and (iii) did not pay the amount claimed by the lien claimant
7 solely because of a dispute between the prime residential contractor or
8 the homeowner and the lien claimant over the quality or quantity of
9 work performed or goods supplied, the legitimacy or accuracy of the
10 amount billed, or similar issues.

11 (2)(a) A person is guilty of a gross misdemeanor if the person (i)
12 engages or participates in an activity described in section 2 of this
13 act; (ii) enters into an agreement or is party to a judgment where a
14 residential homeowner is required to pay some or all of such claimed
15 debt; and (iii) fails to file a certified copy of such judgment or
16 agreement with the department of labor and industries, and pay the
17 filing fee established by rule by the department, within thirty days of
18 the entry of such judgment or agreement.

19 (b) The clerk of the court entering a judgment in a lien action
20 commenced pursuant to RCW 60.04.021 shall mail a copy of the judgment
21 to the department of labor and industries, by certified mail, if (i) a
22 residential homeowner, a prime residential contractor, or any person
23 financially responsible for the prime residential contractor are
24 parties, and (ii) the residential homeowner is required under the
25 judgment to pay any part of the claimed lien.

26 **Sec. 4.** RCW 60.04.091 and 1992 c 126 s 7 are each amended to read
27 as follows:

28 Every person claiming a lien under RCW 60.04.021 shall file for
29 recording, in the county where the subject property is located, a
30 notice of claim of lien not later than ninety days after the person has
31 ceased to furnish labor, professional services, materials, or equipment
32 or the last date on which employee benefit contributions were due.

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

35 (a) The name, (~~(phone)~~) telephone number, and address of the
36 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 , Claimant
26
27
28 (Phone number, address, city, and
29 state of claimant)

30 STATE OF WASHINGTON, COUNTY OF
31 , ss.

32 , being sworn, says: I am the claimant (or attorney of
33 the claimant, or administrator, representative, or agent of the
34 trustees of an employee benefit plan) above named; I have read or heard

1 and understand the foregoing claim, read and know the contents thereof,
2 and believe the same to be true and correct and that the claim of lien
3 is not frivolous and is made with reasonable cause, and is not clearly
4 excessive under penalty of perjury.

5
6 Subscribed and sworn to before me this day of
7

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

17 (4) A lien claimant that, for any reason, includes any interest,
18 late fee, cost, attorneys' fees, or similar charges as part of the
19 principal amount for which the lien is claimed shall be deemed to have
20 waived any right under contract or otherwise to such charges, and shall
21 also forfeit any right the claimant may have to attorneys' fees and
22 costs against the owner under RCW 60.04.181.

23 **Sec. 5.** RCW 60.04.250 and 1990 c 81 s 1 are each amended to read
24 as follows:

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

27 (1) Construction lien laws and available safeguards against real
28 property lien claims. The material shall include methods of protection
29 against lien claims, including obtaining lien release documents,
30 performance bonds, joint payee checks, the opportunity to require
31 contractor disclosure of all potential lien claimants as a condition of
32 payment, and lender supervision under (~~RCW 60.04.200 and 60.04.210~~)
33 this chapter. The material shall also include sources of further
34 information, including the department of labor and industries and the
35 office of the attorney general.

1 (2) The basics of lien law relating to owner-occupied residential
2 improvements and new construction projects, including a list of
3 available safeguards against real property lien claims. Before any
4 building permit may be issued for (a) the construction of a new owner-
5 occupied single-family residence; or (b) the improvement to an owner-
6 occupied single-family residence for an amount in excess of one
7 thousand dollars, if the construction will involve the services of a
8 prime residential contractor, the permit-issuing agency shall not issue
9 any permit until the homeowner has acknowledged receipt of the document
10 personally, or through an agent who is not the prime residential
11 contractor or any employee, owner, or agent of the prime residential
12 contractor. The permit-issuing agency shall maintain a copy of the
13 acknowledgment of receipt of the document in the file of the permit-
14 issuing agency relating to the homeowner's permit application. The
15 document shall be in substantially the following form and shall also
16 include information describing the scope and limits of state contractor
17 bonding requirements, the provisions of this act, and the availability
18 of further information, including the department of labor and
19 industries and the office of the attorney general.

20 Dear Homeowner:

21 Before any permit can be issued, you must file with this agency the
22 attached document acknowledging that you have received and read this
23 form. You should also review the items below and carefully consider
24 what protection, if any, you want against potential lien claims on your
25 property as a result of the construction work for which you are
26 contracting. If your contractor fails to pay subcontractors,
27 suppliers, or laborers or neglects to make other legally required
28 payments, those who are owed money can file a lien against your
29 property for payment, even if you have paid your contractor in full.
30 Anyone filing a valid lien claim may force the sale of your property to
31 recover the unpaid amount. This is true if you have hired a contractor
32 to build a new home or are buying a newly built home. It is also true
33 when you remodel or improve your property.

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

1 If you enter into a contract to buy a newly built home, you may not
2 receive a notice of a lien based on a claim by a contractor or material
3 handler. Be aware that a lien may be claimed even though you have not
4 received a notice. Before making final payment on the project, obtain
5 a completed lien release form from each contractor and material
6 supplier. A sample of this release of lien form is available from the
7 department of labor and industries, contractor registration section.

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

10 If you are dealing with a lending institution, ask your loan
11 officer what precautions the lending institution takes to verify that
12 subcontractors and material suppliers are being paid when mortgage
13 money is paid to your contractor. You may want to request lender
14 supervision if your lending institution is providing interim or
15 construction financing.

16 If you receive a notice to enforce a lien, take the notice
17 seriously. Let your contractor know you have received the notice.
18 Find out what arrangements are being made to pay the sender of the
19 notice.

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

25 Below is a list of some alternatives about how you may want to
26 protect yourself from possible lien claims on your property, and inform
27 your contractor of your selections or discuss your selections with your
28 contractor (select one):

29 issue checks made payable jointly, naming the
30 contractor and the subcontractor or supplier as payees.

31 issue checks to the contractor and subcontractors
32 in the amounts equal to the amounts for which lien releases that
33 release all lien rights to those amounts, as provided by RCW 60.04.071,
34 have been provided to me by each lien claimant requesting payment.

35 require the contractor to post a bond to assure
36 both performance of this construction work and payment to all
37 subcontractors and suppliers in the amount of either . . . the total

1 contract amount . . . in the amount of \$ (Note: Your
2 contractor may add the cost of this bond to your contract price.)
3 use an escrow agent to disburse construction
4 funds and to protect my interests. (NOTE: Before making this
5 selection, find out whether the escrow agent you plan to use will
6 protect you against liens when disbursing payments. If you are
7 interested in using this alternative, consult your attorney.)
8 insist that the contractor set up a trust account
9 for all funds paid to this contractor, and the trust funds must be
10 disbursed in accordance with our construction agreement to
11 subcontractors and suppliers.
12 None of the above protections from potential lien
13 claims against my property as a result of this construction work.
14 In addition to the above selection, consider whether to insist that
15 the prime residential contractor is to disclose all potential lien
16 claimants as a condition of payment. (NOTE: A lien claimant must,
17 under RCW 60.04.091(2), mail by certified or registered mail or by
18 personal service a copy of the claim of lien to the owner within
19 fourteen days of the time the lien is recorded. While an action is
20 ongoing, the law, RCW 60.04.151, allows an owner to withhold from this
21 prime residential contractor the amount of money for which a claim is
22 recorded by a subcontractor, supplier, or laborer.)
23 More information about contractors is available by visiting the
24 department of labor and industries on the internet at
25 www.LNI.wa.gov/SCS/contractors/ or by calling the contractor
26 registration hotline at 1-800-647-0982. You may also call your local
27 department of labor and industries office. See listings under
28 "Washington, state of" in the government section or the white pages of
29 the telephone book.

30 **Sec. 6.** RCW 60.04.031 and 1992 c 126 s 2 are each amended to read
31 as follows:

32 (1) Except as otherwise provided in this section, every person
33 furnishing professional services, materials, or equipment for the
34 improvement of real property shall give the owner or reputed owner
35 notice in writing of the right to claim a lien. If the prime
36 contractor is in compliance with the requirements of RCW 19.27.095,
37 60.04.230, and 60.04.261, this notice shall also be given to the prime

1 contractor as described in this subsection unless the potential lien
2 claimant has contracted directly with the prime contractor. The notice
3 may be given at any time but only protects the right to claim a lien
4 for professional services, materials, or equipment supplied after the
5 date which is sixty days before:

6 (a) Mailing the notice by certified or registered mail to the owner
7 or reputed owner; or

8 (b) Delivering or serving the notice personally upon the owner or
9 reputed owner and obtaining evidence of delivery in the form of a
10 receipt or other (~~(acknowledgement)~~) acknowledgment signed by the owner
11 or reputed owner or an affidavit of service.

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

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

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

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

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

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

30 (~~(+a)~~) (i) Who contract directly with the (~~(owner occupier or~~
31 ~~their)~~) residential homeowner or the homeowner's common law agent shall
32 not be required to send a written notice of the right to claim a lien
33 and shall have a lien for the full amount due under their contract, as
34 provided in RCW 60.04.021; or

35 (~~(+b)~~) (ii) Who do not contract directly with the (~~(owner occupier~~
36 ~~or their)~~) residential homeowner or the homeowner's common law agent
37 shall give notice of the right to claim a lien to the (~~(owner-~~
38 ~~occupier)~~) homeowner.

1 (b) Claims of liens of persons furnishing professional services,
 2 materials, or equipment who do not contract directly with the ((owner-
 3 occupier)) homeowner or their common law agent ((may only be satisfied
 4 from)) for the repair, alteration, or remodel of the homeowner's
 5 residence shall be dismissed if:

6 (i) The amounts ((not-yet)) paid to the prime residential
 7 contractor by the owner at the time the notice described in this
 8 section is received equals or otherwise satisfies all amounts owed by
 9 the homeowner to all potential lien claimants, including the prime
 10 residential contractor, regardless of whether amounts ((not-yet)) paid
 11 to the prime residential contractor are due; and

12 (ii) The homeowner notifies the potential lien claimant in writing
 13 that the lien is subject to dismissal pursuant to this subsection, and
 14 such notice is received by the potential lien claimant within thirty
 15 days of receipt of the notice provided by (a)(ii) of this subsection.

16 (c) For the purposes of this subsection "received" means actual
 17 receipt of notice by personal service, or registered or certified mail,
 18 or three days after mailing by registered or certified mail, excluding
 19 Saturdays, Sundays, or legal holidays.

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

24 NOTICE TO OWNER

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

27 PROTECT YOURSELF FROM PAYING TWICE

28 To: Date:

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

30 _

31 From:

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

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

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

6 OWNER/OCCUPIER OF EXISTING
7 RESIDENTIAL PROPERTY AND/OR
8 NEW RESIDENTIAL PROPERTY

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

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

25 COMMERCIAL (~~AND/OR NEW~~
26 ~~RESIDENTIAL~~)) PROPERTY

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

36 Sender:

1 Address:

2 Telephone:

3 Brief description of professional services, materials, or equipment
4 provided or to be provided:

5 IMPORTANT INFORMATION
6 ON REVERSE SIDE

7 IMPORTANT INFORMATION
8 FOR YOUR PROTECTION

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

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

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

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

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

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

33 * * * * *

1 (5) Every potential lien claimant providing professional services
2 where no improvement as defined in RCW 60.04.011(5) (a) or (b) has been
3 commenced, and the professional services provided are not visible from
4 an inspection of the real property may record in the real property
5 records of the county where the property is located a notice which
6 shall contain the professional service provider's name, address,
7 telephone number, legal description of the property, the owner or
8 reputed owner's name, and the general nature of the professional
9 services provided. If such notice is not recorded, the lien claimed
10 shall be subordinate to the interest of any subsequent mortgagee and
11 invalid as to the interest of any subsequent purchaser if the mortgagee
12 or purchaser acts in good faith and for a valuable consideration
13 acquires an interest in the property prior to the commencement of an
14 improvement as defined in RCW 60.04.011(5) (a) or (b) without notice of
15 the professional services being provided. The notice described in this
16 subsection shall be substantially in the following form:

17 NOTICE OF FURNISHING
18 PROFESSIONAL SERVICES

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

22 [Legal Description
23 is mandatory]

24 The general nature of the professional services provided is . . .
25 The owner or reputed owner of the real property is
26

27
28
29 (Signature)

30
31 (Name of Claimant)

32
33 (Street Address)

34

1 (City, State, Zip Code)

2

3 (Phone Number)

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

7 **Sec. 7.** RCW 60.04.011 and 1992 c 126 s 1 are each amended to read
8 as follows:

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

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

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

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

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

29 (5) "Improvement" means: (a) Constructing, altering, repairing,
30 remodeling, demolishing, clearing, grading, or filling in, of, to, or
31 upon any real property or street or road in front of or adjoining the
32 same; (b) planting of trees, vines, shrubs, plants, hedges, or lawns,
33 or providing other landscaping materials on any real property; and (c)
34 providing professional services upon real property or in preparation
35 for or in conjunction with the intended activities in (a) or (b) of
36 this subsection.

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

4 (a) Funds to acquire real property;

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

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

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

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

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

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

19 (9) "Owner-occupied" means a single-family residence occupied by
20 the owner as his or her principal residence.

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

24 (11) "Potential lien claimant" means any person or entity entitled
25 to assert lien rights under this chapter who has otherwise complied
26 with the provisions of this chapter and is registered or licensed if
27 required to be licensed or registered by the provisions of the laws of
28 the state of Washington.

29 (12) "Prime contractor" includes all contractors, general
30 contractors, and specialty contractors, as defined by chapter 18.27 or
31 19.28 RCW, or who are otherwise required to be registered or licensed
32 by law, who contract directly with a property owner or their common law
33 agent to assume primary responsibility for the creation of an
34 improvement to real property, and includes property owners or their
35 common law agents who are contractors, general contractors, or
36 specialty contractors as defined in chapter 18.27 or 19.28 RCW, or who
37 are otherwise required to be registered or licensed by law, who offer

1 to sell their property without occupying or using the structures,
2 projects, developments, or improvements for more than one year.

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

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

12 (15) "Residential homeowner" or "homeowner" means the same as the
13 term is defined by RCW 18.27.010.

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

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

20 **Sec. 8.** RCW 18.27.010 and 2001 c 159 s 1 are each amended to read
21 as follows:

22 Unless the context clearly requires otherwise, the definitions in
23 this section apply throughout this chapter.

24 (1)(a) "Contractor" means any person, firm, or corporation who or
25 which, in the pursuit of an independent business undertakes to, or
26 offers to undertake, or submits a bid to, construct, alter, repair, add
27 to, subtract from, provide construction consultation or management
28 services for, develop, improve, move, wreck or demolish, for another,
29 any building, highway, road, railroad, excavation or other structure,
30 project, development, or improvement attached to real estate or to do
31 any part thereof including the installation of doors, windows,
32 carpeting or other floor covering, kitchen and bathroom cabinetry,
33 fixtures, and built-in appliances, the erection of scaffolding or other
34 structures or works in connection therewith or who installs or repairs
35 roofing or siding, or who provides tree removal or trimming services;
36 or, who, to do similar work upon his or her own property, employs

1 members of more than one trade upon a single job or project or under a
2 single building permit except as otherwise provided herein.

3 (b) "Contractor" includes any person, firm, corporation, or other
4 entity covered by this subsection, whether or not registered as
5 required under this chapter.

6 (c) A "contractor" is presumed to be a developer and prime
7 residential contractor in business for another, and is not eligible for
8 the exemption provided in RCW 18.27.090 (11) or (12), when the
9 contractor owns and constructs, alters, repairs, or remodels one or
10 more residential structures, and offers for sale or lease (i) more than
11 two such structures in any twenty-four month period, or (ii) any such
12 structure without occupying or using it for more than one year.

13 (d) Solely for the purposes of RCW 18.27.200 (2) and (3) and
14 18.27.340(3)(b), "contractor" includes any party that, in the pursuit
15 of an independent business retains, for or on behalf of a residential
16 homeowner, the services of a general contractor or specialty contractor
17 to alter, repair, or improve an existing residential structure owned
18 and occupied by the homeowner that has been damaged by an accident,
19 fire, or weather-related or other natural event.

20 (2) "Department" means the department of labor and industries.

21 (3) "Director" means the director of the department of labor and
22 industries or designated representative employed by the department.

23 (4) "General contractor" means a contractor whose business
24 operations ~~((require))~~ involve the use or supervision of more than
25 ~~((two unrelated))~~ one building ~~((trades or crafts))~~ trade, craft, or
26 contractor whose work the general contractor ~~((shall))~~ superintends or
27 ~~((do))~~ does in whole or in part. "General contractor" ~~((shall))~~ does
28 not include an individual who does all work personally without
29 employees or other "specialty contractors" as defined in this section.
30 The terms "general contractor," "developer," and "builder" are
31 synonymous.

32 (5) "Other potential lien claimant" means a potential lien
33 claimant, as defined in RCW 60.04.011, other than a prime residential
34 contractor.

35 (6) "Partnership" means a business formed under Title 25 RCW.

36 ~~((+6))~~ (7) "Prime residential contractor" means a prime
37 contractor, as defined in RCW 60.04.011, that is engaged in the

1 business of constructing, altering, repairing, or remodeling single-
2 family homes for residential homeowners.

3 (8) "Prime residential contractor's financially responsible
4 parties" or "persons financially responsible for a prime residential
5 contractor" means (a) all persons having an ownership interest of more
6 than five percent of the prime residential contractor business; (b) all
7 partners, officers, directors, principals, or vice-principals of the
8 prime residential contractor; and (c) the person, if different from
9 those persons identified in (a) or (b) of this subsection, who received
10 or is entitled to receive the most compensation from the prime
11 residential contractor, regardless of whether the compensation is
12 provided as salary, wages, profits, or otherwise, during the term of
13 the contractor's registration.

14 (9) "Registration cancellation" means a written notice from the
15 department that a contractor's action is in violation of this chapter
16 and that the contractor's registration has been revoked.

17 ~~((+7))~~ (10) "Registration suspension" means a written notice from
18 the department that a contractor's action is a violation of this
19 chapter and that the contractor's registration has been suspended for
20 a specified time, or until the contractor shows evidence of compliance
21 with this chapter.

22 ~~((+8))~~ (11) "Residential homeowner" for the purposes of this
23 chapter and chapter 64.04 RCW means an individual person or persons
24 owning or leasing real property:

25 (a) Upon which one single-family residence is to be built and in
26 which the owner or lessee intends to reside upon completion of any
27 construction; or

28 (b) Upon which there is a single-family residence to which
29 improvements are to be made and in which the owner or lessee intends to
30 reside upon completion of any construction.

31 ~~((+9))~~ (12) "Specialty contractor" means a contractor whose
32 operations do not (a) require or involve the use of any unrelated
33 building trade, craft, or contractor; nor (b) fall within the
34 definition of "general contractor".

35 ~~((+10))~~ (13) "Unregistered contractor" means a person, firm,
36 corporation, or other entity doing work as a contractor without being
37 registered in compliance with this chapter. "Unregistered contractor"
38 includes contractors whose registration is expired, revoked, or

1 suspended. "Unregistered contractor" does not include a contractor who
2 has maintained a valid bond and the insurance or assigned account
3 required by RCW 18.27.050, and whose registration has lapsed for thirty
4 or fewer days.

5 ~~((+11+))~~ (14) "Unsatisfied final judgment" means a judgment that
6 has not been satisfied either through payment, court approved
7 settlement, discharge in bankruptcy, or assignment under RCW 19.72.070.

8 ~~((+12+))~~ (15) "Verification" means the receipt and duplication by
9 the city, town, or county of a contractor registration card that is
10 current on its face, checking the department's contractor registration
11 data base, or calling the department to confirm that the contractor is
12 registered.

13 **Sec. 9.** 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; ~~((+))~~

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; or

28 (e) Subcontract work to or employ an unregistered contractor.

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

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

1 (5) A person is guilty of a separate gross misdemeanor for each day
2 worked if, after the person receives a citation from the department,
3 the person works while unregistered, or while his or her registration
4 is suspended or revoked, or works under a registration issued to
5 another contractor. A person is guilty of a separate gross misdemeanor
6 for each worksite on which he or she violates subsection (2) of this
7 section. Nothing in this subsection applies to a registered
8 contractor.

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

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

19 (1) An applicant for registration as a contractor shall submit an
20 application under oath upon a form to be prescribed by the director and
21 which shall include the following information pertaining to the
22 applicant:

23 (a) Employer social security number.

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

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

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

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

32 (iii) For applicants domiciled in a state or province of Canada
33 subject to an agreement entered into under RCW 51.12.120(7), as
34 permitted by the agreement, filing a certificate of coverage issued by
35 the agency that administers the workers' compensation law in the
36 applicant's state or province of domicile certifying that the applicant

1 has secured the payment of compensation under the other state's or
2 province's workers' compensation law.

3 (d) Employment security department number.

4 (e) State excise tax registration number.

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

9 (g) Type of contracting activity, whether a general or a specialty
10 contractor and if the latter, the type of specialty, and whether the
11 contractor engages or intends to engage in the new construction,
12 repair, alteration, or remodel of the single-family residence or
13 appurtenant garage of any residential homeowner.

14 (h) The name and address of each partner if the applicant is a firm
15 or partnership, or the name and address of the owner if the applicant
16 is an individual proprietorship, or the name and address of the
17 corporate officers and statutory agent, if any, if the applicant is a
18 corporation or the name and address of all members of other business
19 entities.

20 (i) If the applicant is a prime residential contractor, (i) the
21 name and address of the person who received or is entitled to receive
22 the most compensation from the contractor, regardless of whether the
23 compensation is provided as salary, wages, profits, or otherwise,
24 during the term of the contractor's registration; and, if different,
25 each person financially responsible for the prime residential
26 contractor, as defined by RCW 18.27.010; and (ii) whether (A) any
27 person so identified has in the previous twenty-four months engaged or
28 participated in any of the activities described in section 2(2) of this
29 act while retained by a residential homeowner; and (B) a lien claimant
30 or potential lien claimant that had supplied goods or services to the
31 residential construction or remodel project performed by the prime
32 residential contractor for the homeowner entered into any agreement or
33 was party to a judgment requiring the homeowner to pay to the claimant
34 some or all of a debt that the homeowner had previously paid to the
35 contractor. An applicant shall update information required under this
36 subsection (1)(i) no later than thirty days after there is a change in
37 the persons required to be identified under this subsection (1)(i).

1 (j) The information contained in such application is a matter of
2 public record and open to public inspection.

3 (2) The department may verify the workers' compensation coverage
4 information provided by the applicant under subsection (1)(c) of this
5 section, including but not limited to information regarding the
6 coverage of an individual employee of the applicant. If coverage is
7 provided under the laws of another state, the department may notify the
8 other state that the applicant is employing employees in Washington.

9 (3)(a) The department shall deny an application for registration
10 if: (i) The applicant has been previously performing work subject to
11 this chapter as a sole proprietor, partnership, corporation, or other
12 entity and the department has notice that the applicant has an
13 unsatisfied final judgment against him or her in an action based on
14 this chapter or the applicant owes the department money for penalties
15 assessed or fees due under this chapter as a result of a final
16 judgment; (ii) the applicant was a principal or officer of a
17 partnership, corporation, or other entity that either has an
18 unsatisfied final judgment against it in an action that was incurred
19 for work performed subject to this chapter or owes the department money
20 for penalties assessed or fees due under this chapter as a result of a
21 final judgment; or (iii) the applicant does not have a valid unified
22 business identifier number, if required by the department of revenue.

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

30 (4) The department shall not deny an application or suspend a
31 registration because of an unsatisfied final judgment if the
32 applicant's or registrant's unsatisfied final judgment was determined
33 by the director to be the result of the fraud or negligence of another
34 party.

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

37 (1) Each applicant shall file with the department a surety bond

1 issued by a surety insurer who meets the requirements of chapter 48.28
2 RCW in the sum of twelve thousand dollars if the applicant is a general
3 contractor and six thousand dollars if the applicant is a specialty
4 contractor. If no valid bond is already on file with the department at
5 the time the application is filed, a bond must accompany the
6 registration application. The bond shall have the state of Washington
7 named as obligee with good and sufficient surety in a form to be
8 approved by the department. The bond shall be continuous and may be
9 canceled by the surety upon the surety giving written notice to the
10 director. A cancellation or revocation of the bond or withdrawal of
11 the surety from the bond automatically suspends the registration issued
12 to the registrant until a new bond or reinstatement notice has been
13 filed and approved as provided in this section. The bond shall be
14 conditioned that the applicant will pay all persons performing labor,
15 including employee benefits, for the contractor, will pay all taxes and
16 contributions due to the state of Washington, and will pay all persons
17 furnishing labor or material or renting or supplying equipment to the
18 contractor and will pay all amounts that may be adjudged against the
19 contractor by reason of breach of contract including negligent or
20 improper work in the conduct of the contracting business. A change in
21 the name of a business or a change in the type of business entity shall
22 not impair a bond for the purposes of this section so long as one of
23 the original applicants for such bond maintains partial ownership in
24 the business covered by the bond.

25 (2) At the time of initial registration or renewal, the contractor
26 shall provide a bond or other security deposit as required by this
27 chapter and comply with all of the other provisions of this chapter
28 before the department shall issue or renew the contractor's certificate
29 of registration. Any contractor registered as of July 1, 2001, who
30 maintains that registration in accordance with this chapter is in
31 compliance with this chapter until the next renewal of the contractor's
32 certificate of registration.

33 (3) Any person, firm, or corporation having a claim against the
34 contractor for any of the items referred to in this section may bring
35 suit upon the bond or deposit in the superior court of the county in
36 which the work was done or of any county in which jurisdiction of the
37 contractor may be had. The surety issuing the bond shall be named as
38 a party to any suit upon the bond. Action upon the bond or deposit

1 brought by a residential homeowner for breach of contract by a party to
2 the construction contract shall be commenced by filing the summons and
3 complaint with the clerk of the appropriate superior court within two
4 years from the date the claimed contract work was substantially
5 completed or abandoned. Action upon the bond or deposit brought by any
6 other authorized party shall be commenced by filing the summons and
7 complaint with the clerk of the appropriate superior court within one
8 year from the date the claimed labor was performed and benefits
9 accrued, taxes and contributions owing the state of Washington became
10 due, materials and equipment were furnished, or the claimed contract
11 work was substantially completed or abandoned. Service of process in
12 an action against the contractor, the contractor's bond, or the deposit
13 shall be exclusively by service upon the department. Three copies of
14 the summons and complaint and a fee adopted by rule of not less than
15 twenty dollars to cover the costs shall be served by registered or
16 certified mail, or other delivery service requiring notice of receipt,
17 upon the department at the time suit is started and the department
18 shall maintain a record, available for public inspection, of all suits
19 so commenced. Service is not complete until the department receives
20 the fee and three copies of the summons and complaint. The service
21 shall constitute service on the registrant and the surety for suit upon
22 the bond or deposit and the department shall transmit the summons and
23 complaint or a copy thereof to the registrant at the address listed in
24 the registrant's application and to the surety within two days after it
25 shall have been received.

26 (4) The surety upon the bond shall not be liable in an aggregate
27 amount in excess of the amount named in the bond nor for any monetary
28 penalty assessed pursuant to this chapter for an infraction. The
29 liability of the surety shall not cumulate where the bond has been
30 renewed, continued, reinstated, reissued or otherwise extended. The
31 surety upon the bond may, upon notice to the department and the
32 parties, tender to the clerk of the court having jurisdiction of the
33 action an amount equal to the claims thereunder or the amount of the
34 bond less the amount of judgments, if any, previously satisfied
35 therefrom and to the extent of such tender the surety upon the bond
36 shall be exonerated but if the actions commenced and pending at any one
37 time exceed the amount of the bond then unimpaired, claims shall be
38 satisfied from the bond in the following order:

1 (a) Employee labor and claims of laborers, including employee
2 benefits;

3 (b) Claims for breach of contract by a party to the construction
4 contract;

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

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

7 (e) Any court costs, interest, and (~~attorney's~~[attorneys'])
8 attorneys' fees plaintiff may be entitled to recover. The surety is
9 not liable for any amount in excess of the penal limit of its bond.

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

12 (5) The total amount paid from a bond or deposit required of a
13 general contractor by this section to claimants other than residential
14 homeowners must not exceed one-half of the bond amount. The total
15 amount paid from a bond or deposit required of a specialty contractor
16 by this section to claimants other than residential homeowners must not
17 exceed one-half of the bond amount or four thousand dollars, whichever
18 is greater.

19 (6) The prevailing party in an action filed under this section
20 against the contractor and contractor's bond or deposit, for breach of
21 contract by a party to ((a)) the construction contract involving a
22 residential homeowner, is entitled to costs, interest, and reasonable
23 attorneys' fees. The surety upon the bond is not liable in an
24 aggregate amount in excess of the amount named in the bond nor for any
25 monetary penalty assessed pursuant to this chapter for an infraction.

26 (7) If a final judgment impairs the liability of the surety upon
27 the bond so furnished that there is not in effect a bond in the full
28 amount prescribed in this section, the registration of the contractor
29 is automatically suspended until the bond liability in the required
30 amount unimpaired by unsatisfied judgment claims is furnished.

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

34 (9) Any person having filed and served a summons and complaint as
35 required by this section having an unsatisfied final judgment against
36 the registrant for any items referred to in this section may execute
37 upon the security held by the department by serving a certified copy of
38 the unsatisfied final judgment by registered or certified mail upon the

1 department within one year of the date of entry of such judgment. Upon
2 the receipt of service of such certified copy the department shall pay
3 or order paid from the deposit, through the registry of the superior
4 court which rendered judgment, towards the amount of the unsatisfied
5 judgment. The priority of payment by the department shall be the order
6 of receipt by the department, but the department shall have no
7 liability for payment in excess of the amount of the deposit.

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

13 (a) An applicant, or a previous registration of a corporate
14 officer, owner, or partner of a current applicant, has had in the past
15 five years a total of six final judgments in actions under this chapter
16 involving a residential single-family dwelling on two or more different
17 structures; or

18 (b) The applicant is a prime residential contractor, and in the
19 twenty-four months preceding the application or renewal: (i) The
20 contractor or any of the prime residential contractor's financially
21 responsible parties has or have been engaged or participated in any of
22 the activities described in section 2(2) of this act while retained by
23 a residential homeowner; and

24 (ii) A lien claimant or potential lien claimant that had supplied
25 goods or services to the residential construction or remodel project
26 performed by the prime residential contractor for the homeowner entered
27 into any agreement or was party to a judgment requiring the homeowner
28 to pay to the claimant some or all of a debt that the homeowner had
29 previously paid to the contractor; or

30 (c) The applicant is a prime residential contractor, and the
31 department is notified by a residential homeowner that the contractor
32 retained by the homeowner or any of the prime residential contractor's
33 financially responsible parties is currently engaging or participated
34 in any of the activities described in section 2(2) of this act, and the
35 prime residential contractor fails to rebut the homeowner's assertion
36 by clear and convincing evidence.

37 (11) The director may adopt rules necessary for the proper

1 administration of the security, including such rules relating to
2 procedures and fees reasonably necessary to administer the filing and
3 notification requirements of section 3(2)(a)(iii) of this act.

4 **Sec. 12.** RCW 18.27.080 and 1988 c 285 s 2 are each amended to read
5 as follows:

6 (1) No person engaged in the business or acting in the capacity of
7 a contractor may: (a) Bring or maintain any action in any court of
8 this state for the collection of compensation for the performance of
9 any work or for breach of any contract for which registration is
10 required under this chapter; or (b) commence any action to compel
11 another to comply with an arbitration or similar provision in the
12 contractor's contract, or to enforce any such arbitration ruling;
13 without alleging and proving that he was a duly registered contractor
14 and held a current and valid certificate of registration at the time he
15 contracted for the performance of such work or entered into such
16 contract.

17 (2) For the purposes of this section, the court shall not find a
18 contractor in substantial compliance with the registration requirements
19 of this chapter unless: ((+1)) (a) The department has on file the
20 information required by RCW 18.27.030; ((+2)) (b) the contractor has
21 a current bond or other security as required by RCW 18.27.040; and
22 ((+3)) (c) the contractor has current insurance as required by RCW
23 18.27.050. In determining under this section whether a contractor is
24 in substantial compliance with the registration requirements of this
25 chapter, the court shall take into consideration the length of time
26 during which the contractor did not hold a valid certificate of
27 registration.

28 **Sec. 13.** RCW 18.27.200 and 2002 c 82 s 6 are each amended to read
29 as follows:

30 (1) It is a violation of this chapter and an infraction for any
31 contractor to:

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

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

1 (c) Transfer a valid registration to an unregistered contractor or
2 allow an unregistered contractor to work under a registration issued to
3 another contractor; or

4 (d) If the contractor is a contractor as defined in RCW 18.106.010,
5 violate RCW 18.106.320.

6 (2) It is a violation of this chapter and an infraction for any
7 contractor to employ an unregistered contractor. It is not a violation
8 for a contractor to employ an unregistered contractor who was
9 registered at the time he or she entered into a contract with the
10 general contractor, unless the contractor or his or her representative
11 has been notified in writing by the department that the contractor has
12 become unregistered.

13 (3) Each day that a contractor works without being registered as
14 required by this chapter, works while the contractor's registration is
15 suspended or revoked, employs an unregistered contractor, or works
16 under a registration issued to another contractor is a separate
17 infraction. Each worksite at which a contractor works without being
18 registered as required by this chapter, works while the contractor's
19 registration is suspended or revoked, or works under a registration
20 issued to another contractor is a separate infraction.

21 **Sec. 14.** RCW 18.27.340 and 1997 c 314 s 17 are each amended to
22 read as follows:

23 (1) Except as otherwise provided in subsection (3) of this section,
24 a contractor found to have committed an infraction under RCW 18.27.200
25 shall be assessed a monetary penalty of not less than two hundred
26 dollars and not more than five thousand dollars.

27 (2) The director may waive collection in favor of payment of
28 restitution to a consumer complainant.

29 (3) A contractor found to have committed an infraction under RCW
30 18.27.200 for:

31 (a) Failure to register; or

32 (b) Employing an unregistered contractor,

33 shall be assessed a fine of not less than one thousand dollars, nor
34 more than five thousand dollars. The director may reduce the penalty
35 for failure to register, but in no case below five hundred dollars, if
36 the person becomes registered within ten days of receiving a notice of
37 infraction and the notice of infraction is for a first offense. The

1 director may reduce the penalty for employing an unregistered
2 contractor, but in no case may reduce the penalty below seven hundred
3 fifty dollars, if the notice of infraction is for a first offense for
4 employing an unregistered contractor.

5 (4) Monetary penalties collected under this chapter shall be
6 deposited in the general fund.

7 NEW SECTION. **Sec. 15.** This act takes effect July 1, 2007.

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