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HOUSE BILL 2375

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State of Washington

63rd Legislature

2014 Regular Session

By Representatives Pike and Takko

Read first time 01/16/14. Referred to Committee on Business & Financial Services.

1 AN ACT Relating to allowing appraisers to place a lien on property  
2 for unpaid balances for services rendered; amending RCW 60.04.011,  
3 60.04.031, 60.04.051, and 60.04.255; and adding a new section to  
4 chapter 60.04 RCW.

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

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

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

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

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

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

1 (4) "Furnishing labor, professional services, materials, or  
2 equipment" means the performance of any labor or professional services,  
3 the contribution owed to any employee benefit plan on account of any  
4 labor, the provision of any supplies or materials, and the renting,  
5 leasing, or otherwise supplying of equipment for the improvement of  
6 real property.

7 (5) "Improvement" means: (a) Constructing, altering, repairing,  
8 remodeling, demolishing, clearing, grading, or filling in, of, to, or  
9 upon any real property or street or road in front of or adjoining the  
10 same; (b) planting of trees, vines, shrubs, plants, hedges, or lawns,  
11 or providing other landscaping materials on any real property; and (c)  
12 providing professional services upon real property or in preparation  
13 for or in conjunction with the intended activities in (a) or (b) of  
14 this subsection.

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

18 (a) Funds to acquire real property;

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

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

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

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

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

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

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

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

1 (11) "Potential lien claimant" means any person or entity entitled  
2 to assert lien rights under this chapter who has otherwise complied  
3 with the provisions of this chapter and is registered or licensed if  
4 required to be licensed or registered by the provisions of the laws of  
5 the state of Washington.

6 (12) "Prime contractor" includes all contractors, general  
7 contractors, and specialty contractors, as defined by chapter 18.27 or  
8 19.28 RCW, or who are otherwise required to be registered or licensed  
9 by law, who contract directly with a property owner or their common law  
10 agent to assume primary responsibility for the creation of an  
11 improvement to real property, and includes property owners or their  
12 common law agents who are contractors, general contractors, or  
13 specialty contractors as defined in chapter 18.27 or 19.28 RCW, or who  
14 are otherwise required to be registered or licensed by law, who offer  
15 to sell their property without occupying or using the structures,  
16 projects, developments, or improvements for more than one year.

17 (13) "Professional services" means surveying, establishing or  
18 marking the boundaries of, preparing maps, plans, appraisals, reports,  
19 or specifications for, or inspecting, appraising, testing, or otherwise  
20 performing any other architectural, appraisal, inspection, or  
21 engineering services for the improvement of real property.

22 (14) "Real property lender" means a bank, savings bank, savings and  
23 loan association, credit union, mortgage company, appraisal management  
24 company, or other corporation, association, partnership, trust, or  
25 individual that makes loans secured by real property located in the  
26 state of Washington.

27 (15) "Site" means the real property which is or is to be improved.

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

33 **Sec. 2.** RCW 60.04.031 and 1992 c 126 s 2 are each amended to read  
34 as follows:

35 (1) Except as otherwise provided in this section, every person  
36 furnishing professional services, materials, or equipment for the  
37 improvement of real property shall give the owner or reputed owner

1 notice in writing of the right to claim a lien. If the prime  
2 contractor is in compliance with the requirements of RCW 19.27.095,  
3 60.04.230, and 60.04.261, this notice shall also be given to the prime  
4 contractor as described in this subsection unless the potential lien  
5 claimant has contracted directly with the prime contractor. The notice  
6 may be given at any time but only protects the right to claim a lien  
7 for professional services, materials, or equipment supplied after the  
8 date which is sixty days before:

9 (a) Mailing the notice by certified or registered mail to the owner  
10 or reputed owner; or

11 (b) Delivering or serving the notice personally upon the owner or  
12 reputed owner and obtaining evidence of delivery in the form of a  
13 receipt or other acknowledgment signed by the owner or reputed owner or  
14 an affidavit of service.

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

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

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

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

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

28 (3) Persons who furnish professional services, materials, or  
29 equipment in connection with the repair, alteration, financing,  
30 valuation, or remodel of an existing owner-occupied single-family  
31 residence or appurtenant garage:

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

36 (b) Who do not contract directly with the owner-occupier or their  
37 common law agent shall give notice of the right to claim a lien to the  
38 owner-occupier. Liens of persons furnishing professional services,

1 materials, or equipment who do not contract directly with the owner-  
2 occupier or their common law agent may only be satisfied from amounts  
3 not yet paid to the prime contractor by the owner at the time the  
4 notice described in this section is received, regardless of whether  
5 amounts not yet paid to the prime contractor are due. For the purposes  
6 of this subsection "received" means actual receipt of notice by  
7 personal service, or registered or certified mail, or three days after  
8 mailing by registered or certified mail, excluding Saturdays, Sundays,  
9 or legal holidays.

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

14 NOTICE TO OWNER

15 IMPORTANT: READ BOTH SIDES OF THIS NOTICE  
16 CAREFULLY.

17 PROTECT YOURSELF FROM PAYING TWICE

18 To: ..... Date: .....  
19 Re: (description of property: Street address or general location.)  
20 From: . . . . .

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

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

28 OWNER/OCCUPIER OF EXISTING  
29 RESIDENTIAL PROPERTY

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

1 The law limits the amount that a lien claimant can claim against your  
2 property. Claims may only be made against that portion of the contract  
3 price you have not yet paid to your prime contractor or lender as of  
4 the time this notice was given to you or three days after this notice  
5 was mailed to you. Review the back of this notice for more information  
6 and ways to avoid lien claims.

7 COMMERCIAL AND/OR NEW  
8 RESIDENTIAL PROPERTY

9 We have or will be providing professional services, materials, or  
10 equipment for the improvement of your commercial or new residential  
11 project. In the event you or your contractor fail to pay us, we may  
12 file a lien against your property. A lien may be claimed for all  
13 professional services, materials, or equipment furnished after a date  
14 that is sixty days before this notice was given to you or mailed to  
15 you, unless the improvement to your property is the construction of a  
16 new single-family residence, then ten days before this notice was given  
17 to you or mailed to you.

18 Sender: . . . . .  
19 Address: . . . . .  
20 Telephone: . . . . .

21 Brief description of professional services, materials, or equipment  
22 provided or to be provided: . . . . .

23 IMPORTANT INFORMATION  
24 ON REVERSE SIDE

25 IMPORTANT INFORMATION  
26 FOR YOUR PROTECTION

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

32 LEARN more about the lien laws and the meaning of this notice by  
33 discussing them with your contractor, suppliers, Department of Labor  
34 and Industries, the firm sending you this notice, your lender, or your  
35 attorney.

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

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

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

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

16 \* \* \* \* \*

17 (5) Every potential lien claimant providing professional services  
18 where no improvement as defined in RCW 60.04.011(5) (a) or (b) has been  
19 commenced, and the professional services provided are not visible from  
20 an inspection of the real property may record in the real property  
21 records of the county where the property is located a notice which  
22 shall contain the professional service provider's name, address,  
23 telephone number, legal description of the property, the owner or  
24 reputed owner's name, and the general nature of the professional  
25 services provided. If such notice is not recorded, the lien claimed  
26 shall be subordinate to the interest of any subsequent mortgagee and  
27 invalid as to the interest of any subsequent purchaser if the mortgagee  
28 or purchaser acts in good faith and for a valuable consideration  
29 acquires an interest in the property prior to the commencement of an  
30 improvement as defined in RCW 60.04.011(5) (a) or (b) without notice of  
31 the professional services being provided. The notice described in this  
32 subsection shall be substantially in the following form:

33 NOTICE OF FURNISHING  
34 PROFESSIONAL SERVICES

35 That on the \_\_\_\_\_ (day) day of \_\_\_\_\_ (month and year), \_\_\_\_\_ (name of

1 provider) began providing professional services upon or for the  
2 improvement of real property legally described as follows:

3 [Legal Description  
4 is mandatory]

5 The general nature of the professional services provided is . . .  
6 The owner or reputed owner of the real property is . . . . .  
7 . . . . .

8 .....

9 (Signature)

10 .....

11 (Name of Claimant)

12 .....

13 (Street Address)

14 .....

15 (City, State, Zip Code)

16 .....

17 (Phone Number)

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

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

23 A lender, mortgage broker, or appraisal management company required  
24 to be registered under chapter 18.310 or 19.146 RCW or Title 30 RCW or  
25 otherwise required to be registered or licensed by law, is the lender  
26 agent of the owner for the purposes of establishing the lien created by  
27 this chapter only if so registered or licensed. Persons dealing with  
28 lenders, mortgage brokers or appraisal management companies may rely,  
29 for the purposes of this section, upon a certificate of registration  
30 issued pursuant to chapter 18.310 or 19.146 RCW or Title 30 RCW, or  
31 other certificate or license issued pursuant to law, covering the  
32 period when the labor, professional services, material, or equipment is  
33 furnished, and the lien rights are not lost by suspension or revocation

1 of registration or license without their knowledge. Lien rights under  
2 this chapter are not lost or denied by virtue of the absence,  
3 suspension, or revocation of registration or license with respect to  
4 any contractor or subcontractor not in immediate contractual privity  
5 with the lien claimant.

6 **Sec. 4.** RCW 60.04.051 and 1992 c 126 s 5 are each amended to read  
7 as follows:

8 The lot, tract, or parcel of land which is improved is subject to  
9 a lien to the extent of the interest of the owner at whose instance,  
10 directly or through a common law or construction agent or lending  
11 agent, the labor, professional services, equipment, or materials were  
12 furnished, as the court deems appropriate for satisfaction of the lien.  
13 If, for any reason, the title or interest in the land upon which the  
14 improvement is situated cannot be subjected to the lien, the court in  
15 order to satisfy the lien may order the sale and removal of the  
16 improvement from the land which is subject to the lien.

17 **Sec. 5.** RCW 60.04.255 and 1988 c 270 s 2 are each amended to read  
18 as follows:

19 (1) Every real property lender shall provide a copy of the  
20 informational material described in RCW 60.04.250 to all persons  
21 obtaining loans, the proceeds of which are to be used for residential  
22 construction or residential repair or remodeling or refinancing.

23 (2) Every contractor shall provide a copy of the informational  
24 material described in RCW 60.04.250 to customers required to receive  
25 contractor disclosure notice under RCW 18.27.114.

26 (3) No cause of action may lie against the state, a real property  
27 lender, or a contractor arising from the provisions of RCW 60.04.250  
28 and this section.

29 (4) For the purpose of this section, "real property lender" means  
30 a bank, savings bank, savings and loan association, credit union,  
31 mortgage company, or other corporation, association, partnership, or  
32 individual that makes loans secured by real property in this state.

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