


CCBA Nuts & Bolts on Construction Law: Washington Lien and Bond Claims


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Before attending law school, Paige Spratt worked for The Boeing Company as a Construction Manager. After law school, Paige went to work for a construction law firm in Seattle, Washington, focusing on construction disputes and claims. Currently, at Immix Law Group, Paige works both as a transactional attorney and litigator. She finds that her courtroom experience is valuable when advising clients on deals and contract terms. Paige has experience in a variety of cases, including construction contract disputes, lien foreclosures, tort claims, fraud, consumer protection, public contracting, Uniform Commercial Code issues, employment disputes, and corporate dissolutions to name a few. She has participated in complex disputes for large and small business owners and helped finalize multi-million dollar transactions. For a complete bio on Paige, please visit: <http://immixlaw.com/paige-spratt/>.

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Construction Law: Washington Lien and Bond Claims


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Washington Lien Law (RCW 60.04, et al.)



Washington Lien Law

“[A]ny person furnishing labor, professional services, materials, or equipment **for the improvement of real property** shall have a lien upon the improvement for the contract price of labor, professional services, materials, or equipment furnished at the instance of the owner, or the agent or construction agent of the owner.” RCW 60.04.021

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Washington Liens – Policy/Purpose

To promote the development of undeveloped property by giving workers a legal interest in the developed land until paid.

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Washington Liens - Interpretation

“Mechanic’s liens are creatures of statute, in derogation of the common law. They therefore must be strictly construed to determine **whether a lien attaches**. But, if we determine that a party’s lien is covered by chapter 60.04 RCW, then we liberally construe the statute to provide security for **all parties intended to be protected** by its provisions.” *Top Line Builders, Inc. v. Bovenkamp*, 179 Wn. App. 794, 812 (2014) (internal citations omitted); *see also* RCW 60.04.900.

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Creating a Construction Lien

Who has the right to a claim of lien?

- Contractors
- Laborers
- Materialmen (material suppliers)
- Equipment suppliers
- Subcontractors
- Professional Service Providers

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Creating a Construction Lien

What work gives rise to a claim of lien?

- Improvement means (60.04.011(5))
 - (a) Constructing, altering, repairing, remodeling, demolishing, clearing, grading, or filling in, of, to, or upon any real property or street or road in front of or adjoining the same;
 - (b) planting of trees, vines, shrubs, plants, hedges, or lawns, or providing other landscaping materials on any real property; and
 - (c) providing professional services upon real property or in preparation for or in conjunction with the intended activities in (a) or (b) of this subsection.

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Creating a Construction Lien

Condominium Improvements (RCW 64.32.070):

- Work performed on a condominium before the declaration creating the condominium is filed creates a lien as against the entire condominium. Work performed after the condominium declaration is filed creates a lien only as to the unit(s) where work was performed. Work performed on common areas (ordered by the association), creates a lien for the proportional share of expenses as to each unit.

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Creating a Construction Lien

Who can direct the work?

- Construction agent (RCW 60.04.011(1)):
 - Registered or licensed contractor
 - Registered or licensed subcontractor
 - Architect
 - Engineer
 - Other persons "having charge of any improvement to real property"

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Creating a Construction Lien

Who can direct the work?

- Unregistered/Unlicensed Contractors (RCW 60.04.041)
 - A contractor is only responsible for verifying the registration of the contractor with which it is in direct privity (and can be verified by the State).

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Creating a Construction Lien

How is a Claim of Lien Created?

- Every person entitled to a claim of lien must take certain steps to ensure that the lien is enforceable – called “**perfecting**” the lien.
- Certain second or third-tier subcontractors may be required to perform additional steps to perfect their claim of lien.
- There are also additional requirements for residential construction, which lien claimants must perform to ensure that their lien is perfected.

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Creating a Construction Lien

Basic Steps to Perfecting a Lien (RCW 60.04.091)

- Claim of Lien
 - Must be recorded no later than **90 (calendar) days** after claimant's last day of work, or completion or abandonment of the project, whichever is earlier.
 - Attaches to the property from the first day that work was performed.

[NOTE: Oregon is 75 days.]

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Creating a Construction Lien

Basic Steps to Perfecting a Lien (RCW 60.04.091)

- Claim of Lien
 - Must be served or sent via certified mail with return receipt to the Owner within 14 days of the lien filing.

[NOTE: Oregon is 20 days; Oregon also requires a "Notice of Intent to Foreclose" 10 days before the claimant can foreclose on the Claim of Lien – Practice Pointer: Include the "Notice of Intent to Foreclose" in the same notice as the claim of lien.]

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Creating a Construction Lien

Basic Steps to Perfecting a Lien (RCW 60.04.091)

- Contents of the Claim of Lien
 - Claimant name, address, and phone number
 - First and last day of claimant's work
 - Name of person indebted
 - Name of property owner
 - Street address or legal description of the property
 - The principal amount of lien claim

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Creating a Construction Lien

Basic Steps to Perfecting a Lien (RCW 60.04.091)

- Execution
 - "Shall be signed by the claimant or some person authorized to act on his or her behalf who shall affirmatively state they have read the notice of claim of lien and believe the notice of claim of lien to be true and correct under penalty of perjury, and shall be acknowledged pursuant to chapter 64.08 RCW."

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Creating a Construction Lien

Additional Steps for Sub-Tier Subcontractors, Professionals, and Suppliers:

- **"Notice to Owner"** (Preclaim Notice) (RCW 60.04.031)
 - Professionals, material suppliers, and equipment suppliers must provide "Notice to Owner" on all projects.
 - The purpose of the Notice is to inform the Owner of the project of the persons/entities working on the project even though not present on the project site.

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Creating a Construction Lien

Additional Steps for Lower-Tier Subs, Professionals, and Suppliers:

- Who is not required to give Notice to Owner:
 - Persons who contract directly with the owner or owner's common law agent.
 - Laborers whose lien is based solely upon providing labor.
 - First-tier subcontractors who contract directly with the prime contractor.
 - **Exclusion:** First-tier subcontractors who contract directly with the prime contractor in connection with improvements of an existing owner-occupied single family residence.

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Creating a Construction Lien

"Notice to Owner"

- When required:
 - Commercial Project = 60 days
 - Residential Project = 10 days
- Who served?
 - Serve both the owner and general contractor via certified or registered mail with return receipt

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Creating a Construction Lien

"Notice to Customer" (RCW 18.27.114)

- Must be provided by the prime contractor to the owner on a project *before* the start of construction, where the project is
 - Four or fewer residential units and the contract price is greater than \$1,000
 - Commercial project where the bid/contract price is between \$1,000 and \$60,000

[NOTE: In Oregon, GCs are required to give several forms.]

Practice Pointer: Include directly in the construction contract.

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Foreclosing on a Construction Lien

Lien Foreclosure Lawsuit (RCW 60.04.171)

- Must be commenced within **eight months** of the date of recording the Claim of Lien in the jurisdiction where the real property is located.
 - *[NOTE: In Oregon, the foreclosure suit must be commenced within 120 days.]*
- Failure to foreclose invalidates the claim of lien.
- Failure to prosecute the foreclosure to judgment within two years may result in dismissal of the lien foreclosure case.

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Foreclosing on a Construction Lien

Priority of the Lien (RCW 60.04.181)

- Not all liens are equal – the type of lien is ranked as follows:
 - Labor;
 - Employee benefit plans;
 - Furnishing material, supplies, or equipment;
 - Subcontractors; and
 - Prime contractors and professional services.
- Proceeds are applied by rank and pro rata in each class. Any mortgage/deed of trust recorded after start of claimants' work will be "second in line."

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Foreclosing on a Construction Lien

Amount of the Lien

- Contract price
 - Includes contractual attorneys' fees and interest
 - If no contract, then reasonable value of the work performed
- The prevailing party is entitled to their reasonable attorneys' fees, recording fees, title report costs, etc. in pursuing and prosecuting the lien (RCW 60.04.181).

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Foreclosing on a Construction Lien

Bonding "Around" the Lien (RCW 60.04.161)

- Owner/Prime can bond around the lien by obtaining a surety bond under the following requirements:
 - If disputed amount is over \$10,000, then 150% of lien amount.
 - If disputed amount is under \$10,000, then \$5,000 or twice the amount of the lien.
- The lien attaches to the bond and releases the property.
- Foreclosure proceeds as normal; however, the surety *must* be added as a party to the lien foreclosure action.

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Foreclosing on a Construction Lien

Amendments to Lien (RCW 60.04.091(2))



"Where an action to foreclose the lien has been commenced such notice of claim of lien may be amended as pleadings may be by order of the court insofar as the interests of third parties are **not adversely affected by such amendment.**"

[NOTE: In Oregon, amendments are not expressly allowed by statute.] **Practice Pointer: Before filing a claim of lien, verify that your client will not perform any additional work.**

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Property Owners' Claims Against Contractors






Property Owners' Claims Against Contractors

Claiming a Frivolous Lien (RCW 60.04.081)

- Party can request a show cause hearing where applicant must show that lien is frivolous and "made without reasonable cause" or is "clearly excessive."
- If lien claimant fails to show, the lien will be released.
- High standard for "Frivolousness"
 - "presents no debatable issue and is so devoid of merit that it has no possibility of success."
- Prevailing party may get reasonable attorneys' fees and costs.

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Property Owners' Claims Against Contractors

Claim Against Contractor Registration Bond (RCW 18.27.040)

- Contractors are required to obtain registration bonds
 - General contractors = \$12,000
 - Subcontractors = \$6,000
- Persons contracting with the contractor can sue against the contractor's registration bond
- SOL
 - Homeowners = 2 years
 - Everyone else = 1 year


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Property Owners' Claims Against Contractors

Claim Against Contractor Registration Bond (RCW 18.27.040)

- Recovery Limitations
 - Residential homeowners entitled to recover entire bond amount
 - Other claimants are entitled to ½ of the bond amount or \$4,000 if subcontractor or specialty contractor
 - Claimants entitled to attorneys' fees up to amount of bond




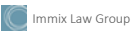


Property Owners' Claims Against Contractors

Claim Against Contractor Registration Bond (RCW 18.27.040)

- Service Requirements
 - Service on the bonding company and the contractor must be made on the Department of Labor & Industries by serving three copies of the summons and complaint by certified and/or registered mail (RCW 18.27.040(3)) with the filing fee.
 - You should also serve the contractor and all other named defendants personally so that the breach of contract claim and other claims are properly served.





Washington Public Contracts: Retainage and Bond Claims

Public Contracts: Retainage Claims

Retainage Claims (RCW 60.28.011)

- “‘Contract retainage’ means an amount reserved by a public body from the moneys earned by a person under a public improvement contract.”
- Usually five percent (5%).
- Prime contractor can submit a bond in lieu of retainage.
- All persons supplying labor, materials, equipment, services entitled to claim.
- Exception: Temporary labor supplier not entitled to claim against retention because not “subcontractor.” *Better Financial Solutions, Inc. v. Caicos Corp.*, 117 Wn. App. 899 (2003).

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Public Contracts: Retainage Claims

Preclaim Notice of Retainage Claim (RCW 60.28.011)

- Sub-tier subcontractors and suppliers must give preclaim notice to the public agency within 60 days of furnishing labor, material, supplies, or equipment to the project.
- Relates back 60 days from the date of the notice.
- Must be delivered to contracting agency.

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Public Contracts: Retainage Claims

Notice of Retainage Claim (RCW 60.28.011)

- All claimants must provide a Notice of Claim within 45 days after “completion of the contract work” (essentially “project completion”).
- The Notice must be delivered to contracting agency.
 - Hand delivered or certified mail with return receipt.
- Must file the foreclosure suit within 4 months after providing the Notice of Claim.

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Public Contracts: Bond Claims

Bond Claims – Washington’s Little Miller Act (RCW 39.08.010)

On Washington Public Works projects in excess of \$25,000, general contractors must post a payment bond usually in the amount of the contract price.

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Public Contracts: Bond Claims

Preclaim Notice of Bond Claim (RCW 39.08.010)

- Lower-tier subcontractors and material suppliers must give preclaim notice to the prime contractor within 10 days after starting work.

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Public Contracts: Bond Claims

Notice of Bond Claim (RCW 39.08.010)

- All claimants must provide a Notice of Claim within 30 days after “acceptance of the work” (different than retention claim).
 - “Acceptance” is an affirmative act by the public works owner.
- The Notice must be delivered to public works owner.
 - Hand delivered or certified mail with return receipt.
- No deadline provided in the statute – foreclose by general statute of limitations.
 - 3 years for oral contracts; 6 years for written contracts.

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Public Contracts: Bond & Retainage Claims

- **Practice Pointer:** Coordinate the filing of the retention and bond Preclaim Notice and Notice of Claim to ensure that the contractor's claims are protected.
- File the Bond & Retainage Preclaim Notice within 10 days after starting work.
- File the Bond & Retainage Notice of Claim within 30 days from project completion.

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Public Contracts: Prompt Pay Act

Washington's Prompt Pay Act

- Prime contractors are entitled to payment within 30 days after the public agency's receipt of the invoice.
- If the public agency intends to withhold payment (all or in part), the agency must notify the contractor in writing within 8 days of receipt stating:
 - Why payment (all or part) is being withheld
 - Actions required by contractor in order to receive payment

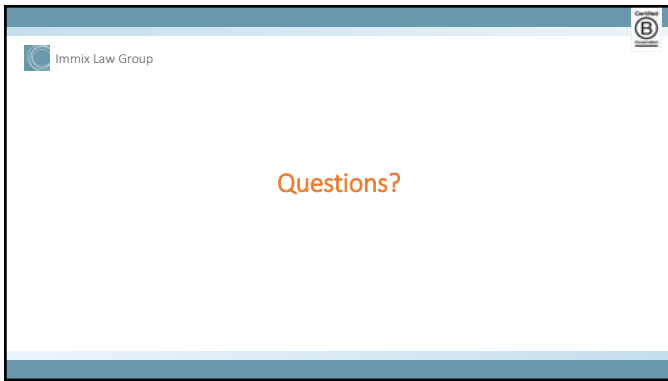
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Public Contracts: Prompt Pay Act

Washington's Prompt Pay Act (cont'd)

- Public agency can withhold up to 150% of the disputed amount
- Failure to comply entitles the contractor to 1% interest per month until paid
- Subcontractors must be paid within 10 days of prime contractor's receipt of payment

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**SUMMARY OF THE REQUIREMENTS TO BE MET BY A LIEN CLAIMANT
ON A WASHINGTON PRIVATE CONSTRUCTION PROJECT***

NOTICE TO CUSTOMER	<p>FROM: Prime Contractor working on four or fewer residential units when the contract price is \$1,000 or more, or on a commercial building when the contract price is \$1,000 or more, but less than \$60,000.</p> <p>TO: Owner.</p> <p>WHEN: Before starting construction.</p>
NOTICE OF FURNISHING PROFESSIONAL SERVICES	<p>FROM: Provider of professional services.</p> <p>TO: County Recorder.</p> <p>WHEN: As soon as professional services are commenced.</p>
PRECLAIM NOTICE (for all projects except repair and remodeling of owner-occupied single-family residence)	<p>FROM: Provider of professional services, materials or equipment, <u>except</u> that the following need not provide the notice: (1) a provider that contracts directly with the owner or the owner's actual agent, or (2) a first tier subcontractor.</p> <p>TO: Owner and usually also prime contractor.</p> <p>WHEN: <u>New single family residence</u>: within ten days of first supplying professional services, materials or equipment; <u>All other projects</u>: within 60 days of first supplying professional services, materials or equipment.</p>
PRECLAIM NOTICE (for repair and remodeling of owner-occupied single-family residence)	<p>FROM: Provider of professional services, materials or equipment to anyone other than the owner.</p> <p>TO: Owner and usually also prime contractor.</p> <p>WHEN: Immediately after agreeing to furnish professional services, materials or equipment.</p>
NOTICE TO REAL PROPERTY LENDER (only applicable where there is not a payment bond of at least 50% of the amount of construction financing)	<p>FROM: Potential lien claimant to whom payment is five or more days overdue.</p> <p>TO: Construction lender, owner, and prime contractor.</p> <p>WHEN: Within 35 days of date payment is due.</p>
CLAIM OF LIEN	<p>FROM: Unpaid claimant.</p> <p>TO: County Recorder.</p> <p>WHEN: Not later than 90 days after the last furnishing of labor, professional services, materials or equipment or the last date on which employee benefit contributions were due.</p>
COPY OF CLAIM OF LIEN	<p>FROM: Unpaid claimant.</p> <p>TO: Owner.</p> <p>WHEN: Within 14 days of date claim of lien is filed for recording.</p>
DEADLINE FOR FILING A LAWSUIT	Within eight months of recording claim of lien.

* This summary is intended to generally set forth the requirements applicable to most lien claimants. The remainder of the chapter should be consulted for a more detailed discussion

CLAIM OF LIEN SIGNED BY ATTORNEY

Return Address:

Document Title:

Claim of Lien

Reference Number:

Grantor:

Grantee:

Legal Description:

Assessor's Property Tax Parcel No.:

CLAIM OF LIEN

_____, claimant, vs. _____, name of persons indebted to claimant.

Notice is hereby given that the person named below claims a lien pursuant to Chapter 60.04 RCW. In support of this lien, the following information is submitted:

1. NAME OF LIEN CLAIMANT: _____
TELEPHONE NUMBER: _____
ADDRESS: _____

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

3. NAME OF PERSON INDEBTED TO THE CLAIMANT: _____

4. DESCRIPTION OF THE PROPERTY AGAINST WHICH A LIEN IS CLAIMED: All fee, leasehold, and other interests of _____ and any other owner, person, or entity in the property commonly known as _____ located at _____, _____, _____ County, Washington _____, the legal description of which is believed to be as follows:

[Legal Description - and/or - The legal description of the underlying real property is described on the attached Exhibit A.]

5. NAME OF THE OWNER OR REPUTED OWNER (if not known, state "unknown"):

6. THE LAST DATE ON WHICH LABOR WAS PERFORMED; PROFESSIONAL SERVICES WERE FURNISHED; CONTRIBUTIONS TO AN EMPLOYEE BENEFIT PLAN WERE DUE; OR MATERIAL OR EQUIPMENT WAS FURNISHED: _____

7. PRINCIPAL AMOUNT FOR WHICH THE LIEN IS CLAIMED IS: \$ _____

8. IF THE CLAIMANT IS THE ASSIGNEE OF THIS CLAIM, SO STATE HERE: ____

_____, Claimant

() ____ - ____

By: _____ /s/ _____

Print Name: _____

Its: Attorney

STATE OF WASHINGTON)
: SS
COUNTY OF _____)

_____, being sworn, says: I am the attorney of the claimant above named; I have read or heard the foregoing claim, read and know the contents thereof, and believe the same to be true and correct and that the claim of lien is not frivolous and is made with reasonable cause, and is not clearly excessive under penalty of perjury.

Print Name: _____

SUBSCRIBED and SWORN to before me this ____ day of _____, 201__.

STATE OF WASHINGTON)
: SS
COUNTY OF _____)

[Seal or Stamp]

Print Name: _____

Notary Public in and for the State of Washington,
residing at _____

My Commission Expires: _____

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that [he/she] signed this instrument, on oath stated that [he/she] was authorized to execute this instrument, and acknowledged it as the attorney of _____, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

NOTICE TO OWNER
IMPORTANT: READ BOTH SIDES OF THIS NOTICE CAREFULLY
PROTECT YOURSELF FROM PAYING TWICE

To: _____

Date: _____

Re: _____
(Description of property: street address or general location)

From: _____

AT THE REQUEST OF: _____
Name of person ordering their professional services, materials, or equipment.

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

OWNER/OCCUPIER OF EXISTING RESIDENTIAL PROPERTY

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

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

COMMERCIAL AND/OR NEW RESIDENTIAL PROPERTY

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

Sender: _____

Address: _____

Telephone: _____

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

Important Information for your Protection

- This notice is sent to inform you that we have or will provide professional services, materials or equipment for the repair, remodel, or alteration of your property. We expect to be paid by the person who ordered our services, but if we are not paid, we have the right to enforce our claim by filing a construction lien against your property.
- **LEARN** more about the lien laws and the meaning of this notice by discussing them with our contractor, suppliers, Department of Labor and Industries, the firm sending you this notice, your lender, or your attorney.
- **COMMON METHODS TO AVOID CONSTRUCTION LIENS:**
There are several methods available to protect your property from construction liens. The following are two of the more commonly used methods.
 - **DUAL PAYCHECKS** (Joint Checks): When paying your contractor for services or materials, you may make checks payable jointly to the contractor and the firms furnishing you this notice.
 - **LIEN RELEASES:** You may require your contractor to provide lien releases signed by all the suppliers and subcontractors from whom you have received this notice. If they cannot obtain lien releases because you have not paid them, you may use the dual payee check method to protect yourself.
- **You should take appropriate steps to protect your property from liens.**
- **Your prime contractor and your construction lender are required by law to give you written information about lien claims. If you have not received it, ask them for it.**



MODEL DISCLOSURE STATEMENT NOTICE TO CUSTOMER

This contractor is registered with the state of Washington, registration no. _____, and has posted with the state a bond or deposit of _____ for the purpose of satisfying claims against the contractor for breach of contract including negligent or improper work in the conduct of the contractor's business. The expiration date of this contractor's registration is _____.

THIS BOND OR DEPOSIT MIGHT NOT BE SUFFICIENT TO COVER A CLAIM THAT MIGHT ARISE FROM THE WORK DONE UNDER YOUR CONTRACT.

This bond or deposit is not for your exclusive use because it covers all work performed by this contractor. The bond or deposit is intended to pay valid claims up to _____ that you and other customers, suppliers, subcontractors, or taxing authorities may have.

FOR GREATER PROTECTION YOU MAY WITHHOLD A PERCENTAGE OF YOUR CONTRACT.

You may withhold a contractually defined percentage of your construction contract as retainage for a stated period of time to provide protection to you and help insure that your project will be completed as required by your contract.

YOUR PROPERTY MAY BE LIENED.

If a supplier of materials used in your construction project or an employee or subcontractor of your contractor or subcontractors is not paid, your property may be liened to force payment and you could pay twice for the same work.

FOR ADDITIONAL PROTECTION YOU MAY REQUEST THE CONTRACTOR TO PROVIDE YOU WITH ORIGINAL "LIEN RELEASE" DOCUMENTS FROM EACH SUPPLIER OR SUBCONTRACTOR AT YOUR PROJECT.

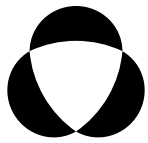
The contractor is required to provide you with further information about lien release document if you request it. General information is also available from the state Department of Labor and Industries.

I have received a copy of this disclosure statement.

Dated this _____ day of _____ of the year _____.

Signature of Customer

The contractor must retain a signed copy of the disclosure statement in his or her files for a minimum of three years, and produce a signed or electronic signature copy of the disclosure statement to the department upon request.



Facts About Construction Liens

What you should know about contracts

If your contractor fails to pay subcontractors, suppliers or laborers or neglects to make other legally required payments, those who are owed money can look to your property for payment, **even if you have paid your contractor in full.** This is true if you have hired a contractor to build a new home or are buying a newly built home.

It is also true when you remodel or improve your property, although the amount of your liability may be limited to the amount you owe the prime contractor at the time a lien is filed.

Under Washington laws, those who work on your property or provide materials and are not paid have a right to enforce their claim for payment against your property. This claim is known as a construction lien.

People who supply materials or labor ordered by your contractor are permitted by law to file a lien only if they do so within 90 days of cessation of performance or delivery of materials. The time frame is spelled out in RCW 60.04.091.

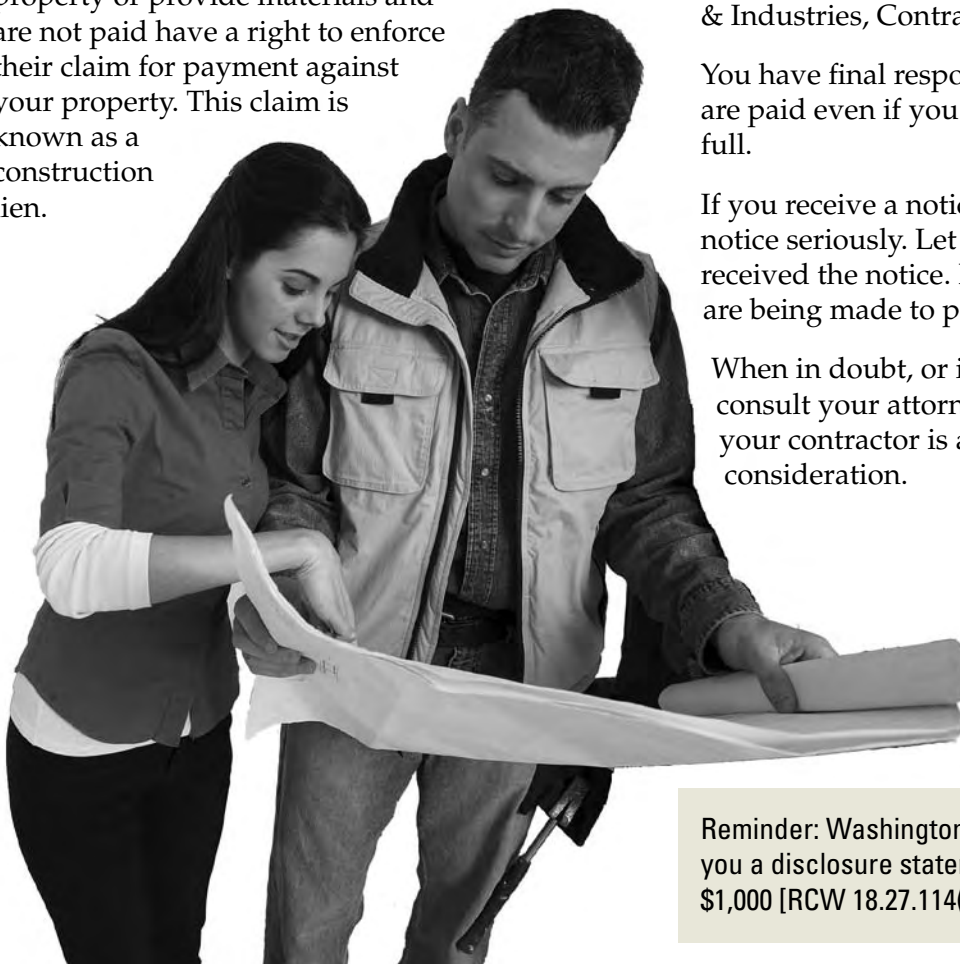
If you enter into a contract to buy a newly built home, you may not receive a notice of a lien based on a claim by a contractor or material handler. Be aware that a lien may be claimed even though you have not received a notice.

Before making final payment on the project, request a completed lien release form from each contractor and material supplier. A sample of this release of lien form is available from the Department of Labor & Industries, Contractor Registration Section.

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

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

When in doubt, or if you need more details, consult your attorney. When and how to pay your contractor is a decision that requires serious consideration.



Reminder: Washington laws require contractors to give you a disclosure statement if your contract exceeds \$1,000 [RCW 18.27.114(A) or (B)].

How to protect your investment

If you are dealing with a lending institution, ask your loan officer what precautions the lending institution takes to verify that subcontractors and material suppliers are being paid when mortgage money is paid to your contractor.

Request lender supervision when dealing with a lending institution that provides interim or construction financing.

Ask the prime contractor to disclose all potential lien claimants as a condition of payment. A lien claimant must mail (by certified or registered mail or by personal service) a copy of the claim of lien to the owner within 14 days of the time the lien is recorded [RCW 60.04.091(2)]. While an action is ongoing, an owner may withhold from this prime contractor the amount of money for which a claim is recorded by a subcontractor, supplier or laborer [RCW 60.04.151].

It is recommended that your check be made payable jointly, naming the contractor and the subcontractor or supplier as payees.


Upon payment and acceptance of the amount due, the owner has the right to an executed release of all lien rights by lien claimants [RCW 60.04.071].

Consider using an escrow agent to protect your interests. Find out whether your escrow agent will protect you against liens when disbursing payments. If you are interested in this alternative, consult your attorney.

Request that your contractor post a performance bond in the amount of the project cost. That will give you recourse in the event the contractor fails to complete the building agreement.

Please note:

This notice was prepared by the Department of Labor & Industries, Specialty Compliance Services Division, for reproduction by lending institutions and contractors for distribution to their clients. It explains the basics of the construction lien law to help you protect yourself. This information is not a reflection upon the abilities or credit of your contractor.

 **On the Web:** Find more information about hiring a contractor at:

www.Lni.wa.gov/TradesLicensing/Contractors/HireCon

For more information

Contractor Registration Hotline:
1-800-647-0982

You may also call your local L&I office. See listings under "Washington State of" in the government section or the white pages of the telephone book.

Other formats for persons with disabilities are available on request. Call 1-800-647-0982. TDD users, call 360-902-5797. L&I is an equal opportunity employer.

**NOTICE OF CLAIM AGAINST
BOND AND RETAINED PERCENTAGE**

RCW 39.08.030, RCW 60.28.010

**VIA CERTIFIED MAIL –
RETURN RECEIPT REQUESTED**

TO: **[Public Owner]**
[Public Owner's Address]
Project: [Project Name & Address]

NOTICE IS HEREBY GIVEN that the undersigned, [Claimant] [Claimant's Address], has a claim in the amount of ----- and 00/100 Dollars (\$XX) (not including attorneys' fees or costs), together with interest at twelve percent (12%), against [Public Owner] ("Owner") pursuant to RCW 60.28 and the payment bond taken from [Prime Contractor] ("Contractor"), [Prime Contractor's Address], as principal, and [Surety Company] ("Surety"), [Surety's Address], as surety, Bond No. _____, pursuant to RCW 39.08, for [describe services, material, supplies, labor furnished] provided on the Project.

This Notice of Claim Against Bond and Retained Percentage supersedes and replaces previous Notices.

DATED: This ____ day of _____, 201__.

[Claimant]

By: _____

Its: _____

[Claimant's Address]

[Contractor's Registration No., if applicable]

(Copies furnished to General Contractor and General Contractor's Bonding Company)

**PRECLAIM NOTICE TO CONTRACTOR BY
SUBCONTRACTORS, MATERIALMEN. OR SUPPLIERS FOR
CLAIM AGAINST BOND AND RETAINED PERCENTAGE**

**VIA CERTIFIED OR REGISTERED MAIL-
RETURN RECEIPT REQUESTED**

TO: [Name of General Contractor]
[Address]

YOU ARE HEREBY NOTIFIED that the undersigned, _____ at the request of _____, commenced to deliver or furnish materials, supplies, and/or equipment for the use in the construction, alteration, and/or repair of that certain project known as _____ [project name] which is located at _____ [address or description]. If the undersigned is not paid for these materials, supplies, and/or equipment, it will file a claim against you and your bond and/or retainage, pursuant to RCW 39.08 and/or 60.28, *et seq.*, for payment of any sum that is due and owing to the undersigned

DATED: This __ day of _____, 201__.

[Name of Claimant]

By: _____

Its: _____

Address: _____

[Contractor's Registration No., if applicable]

(Mail via certified mail, return receipt requested, or hand deliver and obtain receipt.)

RCW 18.27.040

Bond or other security required — Actions against — Suspension of registration upon impairment.

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

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

(3) Any person, firm, or corporation having a claim against the contractor for any of the items referred to in this section may bring suit against the contractor and the bond or deposit in the superior court of the county in which the work was done or of any county in which jurisdiction of the contractor may be had. The surety issuing the bond shall be named as a party to any suit upon the bond. Action upon the bond or deposit brought by a residential homeowner for breach of contract by a party to the construction contract shall be commenced by filing the summons and complaint with the clerk of the appropriate superior court within two years from the date the claimed contract work was substantially completed or abandoned, whichever occurred first. Action upon the bond or deposit brought by any other authorized party shall be commenced by filing the summons and complaint with the clerk of the appropriate superior court within one year from the date the claimed labor was performed and benefits accrued, taxes and contributions owing the state of Washington became due, materials and equipment were furnished, or the claimed contract work was substantially completed or abandoned, whichever occurred first. Service of process in an action filed under this chapter against the contractor and the contractor's bond or the deposit shall be exclusively by service upon the department. Three

copies of the summons and complaint and a fee adopted by rule of not less than fifty dollars to cover the costs shall be served by registered or certified mail, or other delivery service requiring notice of receipt, upon the department at the time suit is started and the department shall maintain a record, available for public inspection, of all suits so commenced. Service is not complete until the department receives the fee and three copies of the summons and complaint. The service shall constitute service and confer personal jurisdiction on the contractor and the surety for suit on claimant's claim against the contractor and the bond or deposit and the department shall transmit the summons and complaint or a copy thereof to the contractor at the address listed in the contractor's application and to the surety within two days after it shall have been received.

(4) The surety upon the bond shall not be liable in an aggregate amount in excess of the amount named in the bond nor for any monetary penalty assessed pursuant to this chapter for an infraction. The liability of the surety shall not cumulate where the bond has been renewed, continued, reinstated, reissued or otherwise extended. The surety upon the bond may, upon notice to the department and the parties, tender to the clerk of the court having jurisdiction of the action an amount equal to the claims thereunder or the amount of the bond less the amount of judgments, if any, previously satisfied therefrom and to the extent of such tender the surety upon the bond shall be exonerated but if the actions commenced and pending and provided to the department as required in subsection (3) of this section, at any one time exceed the amount of the bond then unimpaired, claims shall be satisfied from the bond in the following order:

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

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

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

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

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

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

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

(6) The prevailing party in an action filed under this section against the contractor and contractor's bond or deposit, for breach of contract by a party to the construction contract involving a residential homeowner, is entitled to costs, interest, and reasonable attorneys' fees. The surety upon the bond or deposit is not liable in an aggregate amount in excess of the amount

named in the bond or deposit nor for any monetary penalty assessed pursuant to this chapter for an infraction.

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

(8) In lieu of the surety bond required by this section the contractor may file with the department an assigned savings account, upon forms provided by the department.

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

(10) Within ten days after resolution of the case, a certified copy of the final judgment and order, or any settlement documents where a case is not disposed of by a court trial, a certified copy of the dispositive settlement documents must be provided to the department by the prevailing party. Failure to provide a copy of the final judgment and order or the dispositive settlement documents to the department within ten days of entry of such an order constitutes a violation of this chapter and a penalty adopted by rule of not less than two hundred fifty dollars may be assessed against the prevailing party.

(11) The director may require an applicant applying to renew or reinstate a registration or applying for a new registration to file a bond of up to three times the normally required amount, if the director determines that an applicant, or a previous registration of a corporate officer, owner, or partner of a current applicant, has had in the past five years a total of three final judgments in actions under this chapter involving a residential single-family dwelling on two or more different structures.

(12) The director may adopt rules necessary for the proper administration of the security.

RCW 18.27.114

Disclosure statement required — Prerequisite to lien claim.

(1) Any contractor agreeing to perform any contracting project: (a) For the repair, alteration, or construction of four or fewer residential units or accessory structures on such residential property when the bid or contract price totals one thousand dollars or more; or (b) for the repair, alteration, or construction of a commercial building when the bid or contract price totals one thousand dollars or more but less than sixty thousand dollars, must provide the customer with

the following disclosure statement in substantially the following form using lower case and upper case twelve-point and bold type where appropriate, prior to starting work on the project:

"NOTICE TO CUSTOMER

This contractor is registered with the state of Washington, registration no. . . . , and has posted with the state a bond or deposit of for the purpose of satisfying claims against the contractor for breach of contract including negligent or improper work in the conduct of the contractor's business. The expiration date of this contractor's registration is

THIS BOND OR DEPOSIT MIGHT NOT BE SUFFICIENT TO COVER A CLAIM THAT MIGHT ARISE FROM THE WORK DONE UNDER YOUR CONTRACT.

This bond or deposit is not for your exclusive use because it covers all work performed by this contractor. The bond or deposit is intended to pay valid claims up to that you and other customers, suppliers, subcontractors, or taxing authorities may have.

FOR GREATER PROTECTION YOU MAY WITHHOLD A PERCENTAGE OF YOUR CONTRACT.

You may withhold a contractually defined percentage of your construction contract as retainage for a stated period of time to provide protection to you and help insure that your project will be completed as required by your contract.

YOUR PROPERTY MAY BE LIENED.

If a supplier of materials used in your construction project or an employee or subcontractor of your contractor or subcontractors is not paid, your property may be liened to force payment and you could pay twice for the same work.

FOR ADDITIONAL PROTECTION, YOU MAY REQUEST THE CONTRACTOR TO PROVIDE YOU WITH ORIGINAL "LIEN RELEASE" DOCUMENTS FROM EACH SUPPLIER OR SUBCONTRACTOR ON YOUR PROJECT.

The contractor is required to provide you with further information about lien release documents if you request it. General information is also available from the state Department of Labor and Industries.

I have received a copy of this disclosure statement.

.....

(Signature of customer)

"

(2) The contractor must retain a signed copy of the disclosure statement in his or her files for a minimum of three years, and produce a signed or electronic signature copy of the disclosure statement to the department upon request.

(3) A contractor subject to this section shall notify any consumer to whom notice is required under subsection (1) of this section if the contractor's registration has expired or is revoked or suspended by the department prior to completion or other termination of the contract with the consumer.

(4) No contractor subject to this section may bring or maintain any lien claim under chapter 60.04 RCW based on any contract to which this section applies without alleging and proving that the contractor has provided the customer with a copy of the disclosure statement as required in subsection (1) of this section.

(5) This section does not apply to contracts authorized under chapter 39.04 RCW or to contractors contracting with other contractors.

(6) Failure to comply with this section shall constitute an infraction under the provisions of this chapter.

(7) The department shall produce model disclosure statements, and public service announcements detailing the information needed to assist contractors and contractors' customers to comply under this section. As necessary, the department shall periodically update these education materials.

RCW 39.08.010

Bond required — Conditions — Retention of contract amount in lieu of bond.

(1)(a) Whenever any board, council, commission, trustees, or body acting for the state or any county or municipality or any public body must contract with any person or corporation to do any work for the state, county, or municipality, or other public body, city, town, or district, such board, council, commission, trustees, or body must require the person or persons with whom such contract is made to make, execute, and deliver to such board, council, commission, trustees, or body a good and sufficient bond, with a surety company as surety, conditioned that such person or persons must:

(i) Faithfully perform all the provisions of such contract;

(ii) Pay all laborers, mechanics, and subcontractors and material suppliers, and all persons who supply such person or persons, or subcontractors, with provisions and supplies for the carrying on of such work; and

(iii) Pay the taxes, increases, and penalties incurred on the project under Titles 50, 51, and 82 RCW on: (A) Projects referred to in RCW 60.28.011(1)(b); and/or (B) projects for which the bond is conditioned on the payment of such taxes, increases, and penalties.

(b) The bond, in cases of cities and towns, must be filed with the clerk or comptroller thereof, and any person or persons performing such services or furnishing material to any subcontractor has the same right under the provisions of such bond as if such work, services, or material was furnished to the original contractor.

(2) The provisions of RCW 39.08.010 through 39.08.030 do not apply to any money loaned or advanced to any such contractor, subcontractor, or other person in the performance of any such work.

(3) On contracts of thirty-five thousand dollars or less, at the option of the contractor the respective public entity may, in lieu of the bond, retain fifty percent of the contract amount for a period of thirty days after date of final acceptance, or until receipt of all necessary releases from the department of revenue, the employment security department, and the department of labor and industries and settlement of any liens filed under chapter 60.28 RCW, whichever is later.

(4) For contracts of one hundred thousand dollars or less, the public entity may accept a full payment and performance bond from an individual surety or sureties.

(5) The surety must agree to be bound by the laws of the state of Washington and subjected to the jurisdiction of the state of Washington.

RCW 60.04.011

Definitions.

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

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

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

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

(4) "Furnishing labor, professional services, materials, or equipment" means the performance of any labor or professional services, the contribution owed to any employee benefit plan on account of any labor, the provision of any supplies or materials, and the renting, leasing, or

otherwise supplying of equipment for the improvement of real property.

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

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

(a) Funds to acquire real property;

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

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

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

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

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

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

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

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

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

(12) "Prime contractor" includes all contractors, general contractors, and specialty

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

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

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

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

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

60.04.021

Lien authorized.

Except as provided in RCW 60.04.031, any person furnishing labor, professional services, materials, or equipment for the improvement of real property shall have a lien upon the improvement for the contract price of labor, professional services, materials, or equipment furnished at the instance of the owner, or the agent or construction agent of the owner.

60.04.031

Notices — Exceptions.

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

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

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

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

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

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

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

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

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

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

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

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

NOTICE TO OWNER

IMPORTANT: READ BOTH SIDES OF THIS NOTICE CAREFULLY.

PROTECT YOURSELF FROM PAYING TWICE

To:

Date:

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

From:

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

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

OWNER/OCCUPIER OF EXISTING

RESIDENTIAL PROPERTY

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

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

COMMERCIAL AND/OR NEW

RESIDENTIAL PROPERTY

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

Sender:

Address:

Telephone:

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

IMPORTANT INFORMATION

ON REVERSE SIDE

IMPORTANT INFORMATION

FOR YOUR PROTECTION

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

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

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

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

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

YOU SHOULD TAKE APPROPRIATE STEPS TO PROTECT YOUR PROPERTY FROM LIENS.

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

* * * * *

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

NOTICE OF FURNISHING

PROFESSIONAL SERVICES

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

[Legal Description is mandatory]

The general nature of the professional services provided is

The owner or reputed owner of the real property is

.....

.....

(Signature)

.....

(Name of Claimant)

.....

(Street Address)

.....

(City, State, Zip Code)

.....

(Phone Number)

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

60.04.041

Contractor registration.

A contractor or subcontractor required to be registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW, or otherwise required to be registered or licensed by law, shall be deemed the construction agent of the owner for the purposes of establishing the lien created by this chapter only if so registered or licensed. Persons dealing with contractors or subcontractors may rely, for the purposes of this section, upon a certificate of registration issued pursuant to chapter 18.27 RCW or license issued pursuant to chapter 19.28 RCW, or other certificate or license issued pursuant to law, covering the period when the labor, professional services, material, or equipment shall be furnished, and the lien rights shall not be lost by suspension or revocation of registration or license without their knowledge. No lien rights described in this

chapter shall be lost or denied by virtue of the absence, suspension, or revocation of such registration or license with respect to any contractor or subcontractor not in immediate contractual privity with the lien claimant.

60.04.081

Frivolous claim — Procedure.

(1) Any owner of real property subject to a recorded claim of lien under this chapter, or contractor, subcontractor, lender, or lien claimant who believes the claim of lien to be frivolous and made without reasonable cause, or clearly excessive may apply by motion to the superior court for the county where the property, or some part thereof is located, for an order directing the lien claimant to appear before the court at a time no earlier than six nor later than fifteen days following the date of service of the application and order on the lien claimant, and show cause, if any he or she has, why the relief requested should not be granted. The motion shall state the grounds upon which relief is asked, and shall be supported by the affidavit of the applicant or his or her attorney setting forth a concise statement of the facts upon which the motion is based.

(2) The order shall clearly state that if the lien claimant fails to appear at the time and place noted the lien shall be released, with prejudice, and that the lien claimant shall be ordered to pay the costs requested by the applicant including reasonable attorneys' fees.

(3) If no action to foreclose the lien claim has been filed, the clerk of the court shall assign a cause number to the application and obtain from the applicant a filing fee pursuant to RCW 36.18.016. If an action has been filed to foreclose the lien claim, the application shall be made a part of that action.

(4) If, following a hearing on the matter, the court determines that the lien is frivolous and made without reasonable cause, or clearly excessive, the court shall issue an order releasing the lien if frivolous and made without reasonable cause, or reducing the lien if clearly excessive, and awarding costs and reasonable attorneys' fees to the applicant to be paid by the lien claimant. If the court determines that the lien is not frivolous and was made with reasonable cause, and is not clearly excessive, the court shall issue an order so stating and awarding costs and reasonable attorneys' fees to the lien claimant to be paid by the applicant.

(5) Proceedings under this section shall not affect other rights and remedies available to the parties under this chapter or otherwise.

60.04.091

Recording — Time — Contents of lien.

Every person claiming a lien under RCW 60.04.021 shall file for recording, in the county where the subject property is located, a notice of claim of lien not later than ninety days after the person

has ceased to furnish labor, professional services, materials, or equipment or the last date on which employee benefit contributions were due. The notice of claim of lien:

(1) Shall state in substance and effect:

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

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

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

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

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

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

(2) Shall be signed by the claimant or some person authorized to act on his or her behalf who shall affirmatively state they have read the notice of claim of lien and believe the notice of claim of lien to be true and correct under penalty of perjury, and shall be acknowledged pursuant to chapter 64.08 RCW. If the lien has been assigned, the name of the assignee shall be stated.

Where an action to foreclose the lien has been commenced such notice of claim of lien may be amended as pleadings may be by order of the court insofar as the interests of third parties are not adversely affected by such amendment. A claim of lien substantially in the following form shall be sufficient:

CLAIM OF LIEN

....., claimant, vs , name of person indebted to claimant:

Notice is hereby given that the person named below claims a lien pursuant to

*chapter 64.04 RCW. In support of this lien the following information is submitted:

1. NAME OF LIEN CLAIMANT:

TELEPHONE NUMBER:

ADDRESS:

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

3. NAME OF PERSON INDEBTED TO THE CLAIMANT:

.....

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

.....

.....

.....

.....

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

.....

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

.....

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

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

.....

.....

....., Claimant

.....

.....

(Phone number, address, city,

and

state of claimant)

STATE OF WASHINGTON, COUNTY OF

....., SS.

....., being sworn, says: I am the claimant (or attorney of the claimant, or administrator, representative, or agent of the trustees of an employee benefit plan) above named; I have read or heard the foregoing claim, read and know the contents thereof, and believe the same to be true and correct and that the claim of lien is not frivolous and is made with reasonable cause, and is not clearly excessive under penalty of perjury.

.....

Subscribed and sworn to before me this day of

.....

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

60.04.161

Bond in lieu of claim.

Any owner of real property subject to a recorded claim of lien under this chapter, or contractor, subcontractor, lender, or lien claimant who disputes the correctness or validity of the claim of lien may record, either before or after the commencement of an action to enforce the lien, in the office of the county recorder or auditor in the county where the claim of lien was recorded, a bond issued by a surety company authorized to issue surety bonds in the state. The surety shall be listed in the latest federal department of the treasury list of surety companies acceptable on federal bonds, published in the Federal Register, as authorized to issue bonds on United States government projects with an underwriting limitation, including applicable reinsurance, equal to or greater than the amount of the bond to be recorded. The bond shall contain a description of the claim of lien and real property involved, and be in an amount equal to the greater of five thousand dollars or two times the amount of the lien claimed if it is ten thousand dollars or less, and in an amount equal to or greater than one and one-half times the amount of the lien if it is in

excess of ten thousand dollars. If the claim of lien affects more than one parcel of real property and is segregated to each parcel, the bond may be segregated the same as in the claim of lien. A separate bond shall be required for each claim of lien made by separate claimants. However, a single bond may be used to guarantee payment of amounts claimed by more than one claim of lien by a single claimant so long as the amount of the bond meets the requirements of this section as applied to the aggregate sum of all claims by such claimant. The condition of the bond shall be to guarantee payment of any judgment upon the lien in favor of the lien claimant entered in any action to recover the amount claimed in a claim of lien, or on the claim asserted in the claim of lien. The effect of recording a bond shall be to release the real property described in the notice of claim of lien from the lien and any action brought to recover the amount claimed. Unless otherwise prohibited by law, if no action is commenced to recover on a lien within the time specified in RCW 60.04.141, the surety shall be discharged from liability under the bond. If an action is timely commenced, then on payment of any judgment entered in the action or on payment of the full amount of the bond to the holder of the judgment, whichever is less, the surety shall be discharged from liability under the bond.

Nothing in this section shall in any way prohibit or limit the use of other methods, devised by the affected parties to secure the obligation underlying a claim of lien and to obtain a release of real property from a claim of lien.

60.04.181

Rank of lien — Application of proceeds — Attorneys' fees.

(1) In every case in which different construction liens are claimed against the same property, the court shall declare the rank of such lien or class of liens, which liens shall be in the following order:

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

(2) The proceeds of the sale of property must be applied to each lien or class of liens in order of its rank and, in an action brought to foreclose a lien, pro rata among each claimant in each separate priority class. A personal judgment may be rendered against any party personally liable for any debt for which the lien is claimed. If the lien is established, the judgment shall provide

for the enforcement thereof upon the property liable as in the case of foreclosure of judgment liens. The amount realized by such enforcement of the lien shall be credited upon the proper personal judgment. The deficiency, if any, remaining unsatisfied, shall stand as a personal judgment, and may be collected by execution against any party liable therefor.

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

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

60.04.900

Liberal construction — 1991 c 281.

RCW 19.27.095, 60.04.230, and 60.04.011 through 60.04.226 and 60.04.261 are to be liberally construed to provide security for all parties intended to be protected by their provisions.

RCW 60.28.011

Retained percentage — Public transportation projects — Labor and material lien created — Bond in lieu of retained funds — Termination before completion — Chapter deemed exclusive — Release of ferry contract payments — Projects of farmers home administration — General contractor/construction manager procedure — Definitions.

(1)(a) Except as provided in (b) of this subsection, public improvement contracts must provide, and public bodies must reserve, a contract retainage not to exceed five percent of the moneys earned by the contractor as a trust fund for the protection and payment of: (i) The claims of any person arising under the contract; and (ii) the state with respect to taxes, increases, and penalties imposed pursuant to Titles 50, 51, and 82 RCW which may be due from such contractor.

(b) Public improvement contracts funded in whole or in part by federal transportation funds must rely upon the contract bond as referred to in chapter 39.08 RCW for the protection and payment of: (i) The claims of any person or persons arising under the contract to the extent such claims are provided for in RCW 39.08.010; and (ii) the state with respect to taxes, increases, and penalties incurred on the public improvement project under Titles 50, 51, and 82 RCW which may be due. The contract bond must remain in full force and effect until, at a minimum, all claims filed in compliance with chapter 39.08 RCW are resolved.

(2) Every person performing labor or furnishing supplies toward the completion of a public improvement contract has a lien upon moneys reserved by a public body under the provisions of a public improvement contract. However, the notice of the lien of the claimant must be given within forty-five days of completion of the contract work, and in the manner provided in RCW 39.08.030.

(3) The contractor at any time may request the contract retainage be reduced to one hundred percent of the value of the work remaining on the project.

(a) After completion of all contract work other than landscaping, the contractor may request that the public body release and pay in full the amounts retained during the performance of the contract, and sixty days thereafter the public body must release and pay in full the amounts retained (other than continuing retention of five percent of the moneys earned for landscaping) subject to the provisions of chapters 39.12 and 60.28 RCW.

(b) Sixty days after completion of all contract work the public body must release and pay in full the amounts retained during the performance of the contract subject to the provisions of chapters 39.12 and 60.28 RCW.

(4) The moneys reserved by a public body under the provisions of a public improvement contract, at the option of the contractor, must be:

(a) Retained in a fund by the public body;

(b) Deposited by the public body in an interest bearing account in a bank, mutual savings bank, or savings and loan association. Interest on moneys reserved by a public body under the provision of a public improvement contract must be paid to the contractor;

(c) Placed in escrow with a bank or trust company by the public body. When the moneys reserved are placed in escrow, the public body must issue a check representing the sum of the moneys reserved payable to the bank or trust company and the contractor jointly. This check must be converted into bonds and securities chosen by the contractor and approved by the public body and the bonds and securities must be held in escrow. Interest on the bonds and securities must be paid to the contractor as the interest accrues.

(5) The contractor or subcontractor may withhold payment of not more than five percent from the moneys earned by any subcontractor or sub-subcontractor or supplier contracted with by the contractor to provide labor, materials, or equipment to the public project. Whenever the contractor or subcontractor reserves funds earned by a subcontractor or sub-subcontractor or

supplier, the contractor or subcontractor must pay interest to the subcontractor or sub-contractor or supplier at a rate equal to that received by the contractor or subcontractor from reserved funds.

(6) A contractor may submit a bond for all or any portion of the contract retainage in a form acceptable to the public body and from a bonding company meeting standards established by the public body. The public body must accept a bond meeting these requirements unless the public body can demonstrate good cause for refusing to accept it. This bond and any proceeds therefrom are subject to all claims and liens and in the same manner and priority as set forth for retained percentages in this chapter. The public body must release the bonded portion of the retained funds to the contractor within thirty days of accepting the bond from the contractor. Whenever a public body accepts a bond in lieu of retained funds from a contractor, the contractor must accept like bonds from any subcontractors or suppliers from which the contractor has retained funds. The contractor must then release the funds retained from the subcontractor or supplier to the subcontractor or supplier within thirty days of accepting the bond from the subcontractor or supplier.

(7) If the public body administering a contract, after a substantial portion of the work has been completed, finds that an unreasonable delay will occur in the completion of the remaining portion of the contract for any reason not the result of a breach thereof, it may, if the contractor agrees, delete from the contract the remaining work and accept as final the improvement at the stage of completion then attained and make payment in proportion to the amount of the work accomplished and in this case any amounts retained and accumulated under this section must be held for a period of sixty days following the completion. In the event that the work is terminated before final completion as provided in this section, the public body may thereafter enter into a new contract with the same contractor to perform the remaining work or improvement for an amount equal to or less than the cost of the remaining work as was provided for in the original contract without advertisement or bid. The provisions of this chapter are exclusive and supersede all provisions and regulations in conflict herewith.

(8) Whenever the department of transportation has contracted for the construction of two or more ferry vessels, sixty days after completion of all contract work on each ferry vessel, the department must release and pay in full the amounts retained in connection with the construction of the vessel subject to the provisions of RCW 60.28.021 and chapter 39.12 RCW. However, the department of transportation may at its discretion condition the release of funds retained in connection with the completed ferry upon the contractor delivering a good and sufficient bond with two or more sureties, or with a surety company, in the amount of the retained funds to be released to the contractor, conditioned that no taxes may be certified or claims filed for work on the ferry after a period of sixty days following completion of the ferry; and if taxes are certified or claims filed, recovery may be had on the bond by the department of revenue, the employment

security department, the department of labor and industries, and the material suppliers and laborers filing claims.

(9) Except as provided in subsection (1) of this section, reservation by a public body for any purpose from the moneys earned by a contractor by fulfilling its responsibilities under public improvement contracts is prohibited.

(10) Contracts on projects funded in whole or in part by farmers home administration and subject to farmers home administration regulations are not subject to subsections (1) through (9) of this section.

(11) This subsection applies only to a public body that has contracted for the construction of a facility using the general contractor/construction manager procedure, as defined under RCW 39.10.210. If the work performed by a subcontractor on the project has been completed within the first half of the time provided in the general contractor/construction manager contract for completing the work, the public body may accept the completion of the subcontract. The public body must give public notice of this acceptance. After a forty-five day period for giving notice of liens, and compliance with the retainage release procedures in RCW 60.28.021, the public body may release that portion of the retained funds associated with the subcontract. Claims against the retained funds after the forty-five day period are not valid.

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

(a) "Contract retainage" means an amount reserved by a public body from the moneys earned by a person under a public improvement contract.

(b) "Person" means a person or persons, mechanic, subcontractor, or material person who performs labor or provides materials for a public improvement contract, and any other person who supplies the person with provisions or supplies for the carrying on of a public improvement contract.

(c) "Public body" means the state, or a county, city, town, district, board, or other public body.

(d) "Public improvement contract" means a contract for public improvements or work, other than for professional services, or a work order as defined in RCW 39.10.210.

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RCW 64.32.070**Liens or encumbrances — Enforcement — Satisfaction.**

(1) Subsequent to recording the declaration as provided in this chapter, and while the property remains subject to this chapter, no lien shall thereafter arise or be effective against the property. During such period, liens or encumbrances shall arise or be created only against each apartment and the percentage of undivided interest in the common areas and facilities and appurtenant to such apartment in the same manner and under the same conditions in every respect as liens or encumbrances may arise or be created upon or against any other separate parcel of real property subject to individual ownership: PROVIDED, That no labor performed or materials furnished with the consent of or at the request of the owner of any apartment, or such owner's agent, contractor, or subcontractor, shall be the basis for the filing of a lien against any other apartment or any other property of any other apartment owner not expressly consenting to or requesting the same, except that such express consent shall be deemed to be given by any apartment owner in the case of emergency repairs. Labor performed or materials furnished for the common areas and facilities, if authorized by the association of apartment owners, the manager or board of directors shall be deemed to be performed or furnished with the express consent of each apartment owner and shall be the basis for the filing of a lien against each of the apartments and shall be subject to the provisions of subsection (2) of this section.

(2) In the event a lien against two or more apartments becomes effective, the apartment owners of the separate apartments may remove their apartment and the percentage of undivided interest in the common areas and facilities appurtenant to such apartment from the lien by payment of the fractional or proportional amounts attributable to each of the apartments affected. Such individual payments shall be computed by reference to the percentages appearing on the declaration. Subsequent to any such payment, discharge, or satisfaction, the apartment and the percentage of undivided interest in the common areas and facilities appurtenant thereto shall thereafter be free and clear of the liens so paid, satisfied, or discharged. Such partial payment, satisfaction, or discharge shall not prevent the lienor from proceeding to enforce his or her rights against any apartment and the percentage of undivided interest in the common areas and facilities appurtenant thereto not so paid, satisfied, or discharged.