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SENATE BILL 6036

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State of Washington                      60th Legislature                      2007 Regular Session

By Senators Fraser, Franklin, Weinstein, Kohl-Welles and Hargrove

Read first time 02/14/2007.                      Referred to Committee on Labor,  
Commerce, Research & Development.

1            AN ACT Relating to construction liens; amending RCW 60.04.031,  
2            60.04.091, and 18.27.010; and adding new sections to chapter 60.04 RCW.

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

4            NEW SECTION.    **Sec. 1.**    A new section is added to chapter 60.04 RCW  
5            to read as follows:

6            Any contract entered into between any person furnishing labor,  
7            professional services, materials, or equipment and the owner to  
8            construct, alter, repair, or remodel residential property must contain  
9            the following provisions:

10            (1) That subcontractors must provide the same notice the owner  
11            receives from material suppliers under RCW 60.04.031;

12            (2) That each time the owner makes a payment to the prime  
13            contractor, the prime contractor shall provide to the owner within five  
14            days of payments to subcontractors, suppliers, and laborers notice  
15            detailing what subcontractors, suppliers, and laborers were paid, how  
16            much, and for what work. The prime contractor shall also include with  
17            the notice copies of cancelled checks to the subcontractors, suppliers,  
18            or laborers or other evidence that the subcontractors, suppliers, and  
19            laborers were paid; and

1 (3) That failure to follow any provision in the contract waives the  
2 lien rights the prime contractor may have against the owner's property  
3 and constitutes a breach of contract relieving the owner of any further  
4 obligations under the contract.

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

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

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

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

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

30 (2) Notices of a right to claim a lien shall not be required of(~~(+~~

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

33 ~~(b))~~) laborers whose claim of lien is based solely on performing  
34 labor(~~(+ or~~

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

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

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

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

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

25 NOTICE TO OWNER

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

28 PROTECT YOURSELF FROM PAYING TWICE

29 To: ..... Date: .....

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

31 From: . . . . .

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

34 THIS IS NOT A LIEN: This notice is sent to you to tell you who is  
35 providing professional services, materials, or equipment for the

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

4 OWNER/OCCUPIER OF EXISTING  
5 RESIDENTIAL PROPERTY

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

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

17 COMMERCIAL AND/OR NEW  
18 RESIDENTIAL PROPERTY

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

28 Sender: . . . . .  
29 Address: . . . . .  
30 Telephone: . . . . .

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

33 IMPORTANT INFORMATION  
34 ON REVERSE SIDE

35 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) This notice shall be signed by the owner as proof that he or she has received it. Failure to obtain the owner's signature on the notice waives the right of the contractor to claim a lien against the owner's property and relieves the owner of any further obligations under the contract. The contractor shall keep the signed notice for three years.

(6) 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

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

14 NOTICE OF FURNISHING  
15 PROFESSIONAL SERVICES

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

19 [Legal Description  
20 is mandatory]

21 The general nature of the professional services provided is . . .  
22 The owner or reputed owner of the real property is . . . . .  
23 . . . . .

24 .....

(Signature)

26 .....

(Name of Claimant)

28 .....

(Street Address)

30 .....

(City, State, Zip Code)

32 .....

(Phone Number)

33 .....



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

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

6 1. NAME OF LIEN CLAIMANT: . . . . .  
7 TELEPHONE NUMBER: . . . . .  
8 ADDRESS: . . . . .

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

12 3. NAME OF PERSON INDEBTED TO THE CLAIMANT:  
13 . . . . .

14 4. DESCRIPTION OF THE PROPERTY AGAINST WHICH A LIEN IS  
15 CLAIMED (Street address, legal description or other information  
16 that will reasonably describe the property): . . . . .  
17 . . . . .  
18 . . . . .  
19 . . . . .

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

22 6. THE LAST DATE ON WHICH LABOR WAS PERFORMED;  
23 PROFESSIONAL SERVICES WERE FURNISHED; CONTRIBUTIONS TO AN  
24 EMPLOYEE BENEFIT PLAN WERE DUE; OR MATERIAL, OR EQUIPMENT WAS  
25 FURNISHED: . . . . .  
26 . . . . .

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

28 8. IF THE CLAIMANT IS THE ASSIGNEE OF THIS CLAIM SO  
29 STATE HERE: . . . . .  
30 . . . . .

31 ..... , Claimant  
32 .....  
33 .....



(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.

**Sec. 4.** RCW 18.27.010 and 2001 c 159 s 1 are each amended to read  
as follows:

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

(1) "Contractor" means any person, firm, or corporation who or  
which, in the pursuit of an independent business undertakes to, or  
offers to undertake, or submits a bid to, construct, alter, repair, add  
to, subtract from, improve, move, wreck or demolish, for another, any  
building, highway, road, railroad, excavation or other structure,  
project, development, or improvement attached to real estate or to do  
any part thereof including the installation of carpeting or other floor  
covering, the erection of scaffolding or other structures or works in

1 connection therewith or who installs or repairs roofing or siding; or,  
2 who, to do similar work upon his or her own property, employs members  
3 of more than one trade upon a single job or project or under a single  
4 building permit except as otherwise provided herein. "Contractor"  
5 includes any person, firm, corporation, or other entity covered by this  
6 subsection, whether or not registered as required under this chapter.

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

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

10 (4) "General contractor" means a contractor whose business  
11 operations require the use of more than two unrelated building trades  
12 or crafts whose work the contractor shall superintend or do in whole or  
13 in part. "General contractor" shall not include an individual who does  
14 all work personally without employees or other "specialty contractors"  
15 as defined in this section. The terms "general contractor" and  
16 "builder" are synonymous.

17 (5) "Partnership" means a business formed under Title 25 RCW.

18 (6) "Prime residential contractor" means a prime contractor, as  
19 defined in RCW 60.04.011, who is engaged in the business of  
20 constructing, altering, repairing, or remodeling residences.

21 (7) "Registration cancellation" means a written notice from the  
22 department that a contractor's action is in violation of this chapter  
23 and that the contractor's registration has been revoked.

24 ((+7)) (8) "Registration suspension" means a written notice from  
25 the department that a contractor's action is a violation of this  
26 chapter and that the contractor's registration has been suspended for  
27 a specified time, or until the contractor shows evidence of compliance  
28 with this chapter.

29 ((+8)) (9) "Residential homeowner" means an individual person or  
30 persons owning or leasing real property:

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

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

37 ((+9)) (10) "Specialty contractor" means a contractor whose  
38 operations do not fall within the definition of "general contractor".

