
BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: H-3202.1/14

ATTY/TYPIST: LL:eab

BRIEF DESCRIPTION: Allowing appraisers to place a lien on property for unpaid balances for services rendered.

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

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

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

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, appraisals, reports, or specifications for, or inspecting, appraising, testing, or otherwise performing any other architectural, appraisal, inspection, 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, appraisal management 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.

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

(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, financing, valuation, 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 or financing 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 or lender 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)

.....

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

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

A lender, mortgage broker, or appraisal management company required to be registered under chapter 18.310 or 19.146 RCW or Title 30 RCW or otherwise required to be registered or licensed by law, is the lender agent of the owner for the purposes of establishing the lien created by this chapter only if so registered or licensed. Persons dealing with lenders, mortgage brokers or appraisal management companies may rely, for the purposes of this section, upon a certificate of registration issued pursuant to chapter 18.310 or 19.146 RCW or Title 30 RCW, or other certificate or license issued pursuant to law, covering the period when the labor, professional services, material, or equipment is furnished, and the lien rights are not lost by suspension or revocation of registration or license without their knowledge. Lien rights under this chapter are not lost or denied by virtue of the absence, suspension, or revocation of registration or license with respect to any contractor or subcontractor not in immediate contractual privity with the lien claimant.

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

The lot, tract, or parcel of land which is improved is subject to a lien to the extent of the interest of the owner at whose instance, directly or through a common law or construction agent or lending agent, the labor, professional services, equipment, or materials were furnished, as the court deems appropriate for satisfaction of the lien. If, for any reason, the title or interest in the land upon

which the improvement is situated cannot be subjected to the lien, the court in order to satisfy the lien may order the sale and removal of the improvement from the land which is subject to the lien.

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

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

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

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

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

BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: H-3317.1/14

ATTY/TYPIST: AL:lel

BRIEF DESCRIPTION: Creating an inactive certification, license, or registration status for real estate appraisers.

AN ACT Relating to creating an inactive certification, license, or registration status for real estate appraisers; amending RCW 18.140.160; and adding a new section to chapter 18.140 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 18.140 RCW to read as follows:

(1) A holder of a valid certification, license, or registration may place his or her certification, license, or registration on inactive status. The holder of an inactive certification, license, or registration may not act as a state-certified real estate appraiser, state-licensed real estate appraiser, or state-registered appraiser trainee in this state without first activating the certification, license, or registration. The director shall establish rules governing inactive certifications, licenses, or registrations, and their maintenance and reactivation.

(2) The director shall establish an inactive renewal fee. Failure to renew an inactive certification, license, or registration results in cancellation of the certification, license, or registration.

(3) An inactive certification, license, or registration may be placed on an active status upon compliance with the rules established by the director.

(4) No holder of an inactive certification, license, or registration may maintain his or her certification, license, or registration on inactive status for a period exceeding two years.

(5) The provisions relating to the denial, suspension, and revocation of active certifications, licenses, and registrations and the discipline of its holder apply to inactive certifications, licenses, and registrations and their holders.

Sec. 2. RCW 18.140.160 and 2007 c 256 s 1 are each amended to read as follows:

In addition to the unprofessional conduct described in RCW 18.235.130, the director may take disciplinary action for the following conduct, acts, or conditions:

(1) Failing to meet the minimum qualifications for state certification, licensure, or registration established by or pursuant to this chapter;

(2) Paying money other than the fees provided for by this chapter to any employee of the director or the commission to procure state certification, licensure, or registration under this chapter;

(3) Continuing to act as a state-certified real estate appraiser, state-licensed real estate appraiser, or state-registered appraiser trainee when his or her certificate, license, or registration is on an expired or inactive status;

(4) Violating any provision of this chapter or any lawful rule made by the director pursuant thereto;

(5) Issuing an appraisal report on any real property in which the appraiser has an interest unless his or her interest is clearly stated in the appraisal report;

(6) Being affiliated as an employer, independent contractor, or supervisory appraiser of a state-certified real estate appraiser, state-licensed real estate appraiser, or state-registered appraiser trainee whose certification, license, or registration is currently in a suspended or revoked status;

(7) Failure or refusal without good cause to exercise reasonable diligence in performing an appraisal practice under this chapter, including preparing an oral or written report to communicate information concerning an appraisal practice; and

(8) Negligence or incompetence in performing an appraisal practice under this chapter, including preparing an oral or written report to communicate information concerning an appraisal practice.