
Private Works Lien Claims

Washington Lien Law
RCW 60.04

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This document is being provided for information only. The information herein is a summary of current laws as of 2023; however, Washington laws are constantly changing and being interpreted by our Courts - the information herein may not be up to date. The attorneys at Carney Badley Spellman can help. Please feel free to contact John R. Welch at (800) 962-5497 with any questions you may have.

SCOPE OF LIEN RIGHTS

Under Washington's private lien statute, **any person furnishing labor, professional services, materials or equipment for the improvement of real property has 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.

The statute defines an owner's "construction agents" to include: registered or licensed contractors; registered or licensed subcontractors; architects; engineers; or other persons "having charge of any improvement to real property."

If you are a subcontractor or materialman, **you must be certain the contractor or subcontractor to whom you are furnishing labor or materials is a registered or licensed contractor.** You may properly rely on a *current* certificate of registration or license unless you have actual knowledge that the license has been suspended or revoked. A quick way to check a contractor's status is to call the Department of Labor and Industries at 1-800-647-0982 or visit the Department's web site at <https://secure.lni.wa.gov/verify/>

Your own registration is equally important. Under RCW 18.27.080, no person engaged in any manner in the construction business may assert a claim in a Washington court for breach of contract or otherwise attempt to collect unpaid contract revenues unless he or she (or the business) is properly registered under RCW Chapter 18.27.

You should also consider the owner's interest in the real property as well as the nature of the work being provided. For example, if the owner is a tenant, your lien rights may attach only to the leasehold interest unless the lease requires the tenant to make the improvements. Also, if your work relates directly to the installation of personal property that is not considered a fixture and thus not part of the real estate, you will have no lien rights for such work.

NOTICE AND FILING

PRE-CLAIM NOTICE

RCW 60.04.031

When

Subject to some limited exceptions, **every person furnishing professional services, materials, or equipment** for the improvement of real property **must** give the owner or reputed owner, **and** the prime contractor, notice in writing of the right to claim a lien in order to preserve the lien rights. **The notice should be given within sixty (60) days after first providing the materials or equipment on the project.** However, in the case of construction regarding a **single family residence, the deadline is ten (10) days.**

A lien **relates back only sixty (60) days prior to the Pre-Claim Notice** (ten days prior to the Pre-Claim Notice on owner-occupied remodel or repair projects). For example, if you give your Pre-Claim Notice one hundred (100) days into the job, you cannot claim a lien for any materials, equipment or professional services provided during the first forty (40) days of the job. To assure protection for all materials, equipment or professional services provided, give your Pre-Claim Notice when you start the job.

How

You give notice by:

- (a) mailing the notice by certified or registered mail; or
- (b) serving the notice personally and obtaining evidence of service in the form of a receipt or other acknowledgment signed by the owner or reputed owner.

Mailing of the notice to the proper addressee by certified mail complies with the statute, irrespective of whether it is actually received.

Contents

The Pre-Claim Notice must contain the following:

- (a) name of the person, firm or corporation giving the notice;
- (b) name of the person, firm or corporation receiving the notice;
- (c) location of the project;
- (d) name of the construction agent requesting the materials or supplies;

- (e) description of the materials or supplies furnished; and
- (f) a statement that if the person furnishing the materials or supplies is not paid, a lien may be filed against the owner's interests.

You do **not** need to give a Pre-Claim Notice if:

- (a) you contract directly with the owner or the owner's common law agent;¹
- (b) you are a laborer whose claim of lien is based solely on performing labor; or
- (c) you are a subcontractor who contracts directly with the prime contractor on commercial construction and new single-family residential construction.

A subcontractor contracting directly with a prime contractor on a repair or remodel of an existing owner-occupied single family residence must still give a Pre-Claim Notice to the owner of the property.

You should, as a matter of course, give such notice promptly upon beginning to furnish materials, equipment or professional services to any project. A properly drafted notice will make clear you are simply complying with the statutory requirements necessary to preserve your lien rights.

A sample of the Pre-Claim Notice is attached to these materials as Exhibit A.

TEN-DAY PERIOD FOR PRE-CLAIM NOTICE ON RESIDENTIAL PROJECTS

If the project is a single-family residence, the Pre-Claim Notice protects **only** your right to claim a lien for professional services, materials or equipment supplied starting from ten (10) days before the notice is mailed by certified or registered mail or the notice is personally served upon the owner or reputed owner. In other words, if you provided services, equipment or materials on May 1, but did not send the notice until May 15, you cannot claim a lien for services, equipment or materials supplied before May 5.

Because the rules regarding pre-claim notice are somewhat complicated, **We recommend that whenever you are not contracting directly with the property owner, you provide the owner and prime contractor with a pre-lien notice either before or immediately after commencing to supply materials, equipment or professional services. You should also keep a copy of the notice and a record of how the notice was provided.**

¹ Note that reference is to a common law agent and not a construction agent.

**RECORDING OF
PRE-CLAIM NOTICE
WHEN PROVIDING
PROFESSIONAL
SERVICES**

If you provide professional services to a project where the construction has not yet started, and the services are not visible from an inspection of the real property, **you should record your Pre-Claim Notice with the county auditor** where the property is located. Failure to do so will result in your right to claim a lien being subordinated to the interest of a subsequent mortgagee or purchaser acting in good faith.

A sample Pre-Claim Notice for providers of professional services is attached to these materials as Exhibit B.

**RECORDING THE
LIEN**

RCW 60.04.091

To assert your claim of lien, **you must file** a notice of Claim of Lien **within ninety (90) days** after last furnishing labor or materials to the project. This notice must be filed for recording with the county auditor in the county where the construction site is located.

The notice of Claim of Lien should contain the following information:

- (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 were furnished;
- (c) the name of the person indebted to the claimant;
- (d) the street address, legal description or other description 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;
- (f) the principal amount for which the lien is claimed; and
- (g) verification and signature of the claimant or his agent - i.e., notarized statement to the effect that they have read the Claim of Lien and believe the Claim of Lien to be true and correct.

A sample Claim of Lien is attached to these materials as Exhibit C.

**PROVIDING NOTICE
TO OWNER**

The lien claimant must provide notice of the Claim of Lien to the owner or reputed owner by certified or registered mail or by personal service within fourteen (14) days of the time the claim is recorded. Failure to give

notice to owner results in the lien claimant losing the right to collect attorneys' fees or costs.

Separate residential units are treated individually for lien purposes regardless of whether your work on those units was performed under a single contract. Thus, **a separate lien will be needed for each unit**, and the **ninety-day period for filing starts on the last day of work** (providing equipment or material) **on each residential unit**.

Furthermore, where a single Claim of Lien is recorded against two or more separate pieces of property owned by the same person or owned by two or more persons who contracted for the services, material, or equipment, the **lien notice must designate the amount due on each piece of property**. Failure to do so will result in subordination of the lien to other liens.

Liens on condominium projects must comply with the requirements of Washington's Condominium Act.

DURATION OF LIEN
RCW 60.04.141

You **must** bring an action to foreclose your lien within **eight (8) months** from the **date of recording** the notice of Claim of Lien. That action is commenced by filing a Summons and Complaint in the superior court of the county where the property is located. If the Summons and Complaint are filed prior to the expiration of the eight-month period, you then have ninety (90) days to achieve personal service upon the owner of the subject property.

The owner must be personally served with the foreclosure suit.

RECOVERY

PRIORITY

Even if you successfully foreclose the mechanic's lien, you may not fully recover that which is owed to you. Your lien is simply a claim against the owner's interest in the real property. It may or may not have value, depending upon the nature of the owner's interest in the property, the owner's equity, the nature of any security interest granted in the property prior to construction and the priority of your lien in relationship to other lien claimants.

In the foreclosure proceeding, the priority of your lien will be determined in relation to the other lien claimants claiming a lien under RCW 60.04 *et seq.* The court will rank the liens 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 labor and materials; and
- (e) liens for prime contractors, or for professional services.

The proceeds from the sale of the real property will be applied to each lien, or class of liens in its order of rank, and pro rata among each claimant in each separate class. The "stop notice" provisions of Washington law provide a mechanism by which the mechanic's lien claimant can establish priority to construction loan funds. These procedures are discussed in the following sections of these materials.

If the owner has equity in the real property, your lien claim will be an effective remedy and will ultimately lead to your primary objective -- payment. Its immediate, usual effect is to cause the owner to withhold the amount of the lien from the next payment to the prime contractor. Second, your lien is a recorded encumbrance upon the property that will affect the property's marketability. It therefore can temporarily prevent the closing of the owner's arrangements to take out financing. Thus, if the project remains more or less solvent, there may be considerable incentive for the owner to see that you are paid and your claim removed.

ATTORNEYS' FEES

At its discretion, the court may award reasonable attorneys' fees to the prevailing party in a lien foreclosure action. In the past, only the lien claimant would be entitled to fees; however, the current law allows the owner to obtain an award of attorneys' fees against the lien claimant if the owner is determined to be the prevailing party in the lien foreclosure action.

**LIMITATION ON
RESIDENTIAL
OWNER'S
LIABILITY**

For remodel or repair projects involving owner-occupied single family dwellings, the owner's liability for a lien claim is limited to the amount not yet paid to the prime contractor. For example, if the subcontractor claims a lien for \$50,000, but the prime has been paid all but \$25,000 of the contract amount, the owner's liability is limited to \$25,000.

NOTICE TO LENDERS

DESCRIPTION AND COVERAGE

RCW 60.04.221

Construction lenders typically have a security interest in the property that will have a priority over liens filed by unpaid contractors, subcontractors and materialmen. The Notice to Lender provisions of the lien laws provide the possibility, under specific circumstances, that a lien claimant defeats a lender's priority.

Any lien claimant who has not received a payment within five (5) days after the date required by its contract may provide a stop notice to the lender. The notice to lender must be provided within thirty-five (35) days of the date payment was due.

Upon receipt of the notice, the lender is required to withhold from the next and subsequent draws the amount claimed to be due in the notice. Alternatively, the lender may obtain from the prime contractor or borrower a payment bond for the benefit of the potential lien claimant in an amount sufficient to cover the amount stated in the potential lien claimant's notice. Note that the Notice to Lender provisions apply only to a lender providing interim construction financing on a project where there is **not** a payment bond for at least 50 percent of the total construction cost.

NOTICE

A Notice to Lender is filed with the lender at the office administering the interim or construction financing. The notice must contain the following information:

- (a) the person, firm, trustee, or corporation filing the notice;
- (b) the name of the prime contractor, common law agent or construction agent ordering the same;
- (c) a common or street address of the real property being improved or the legal description of the real property; and
- (d) the name, business address and telephone number of the lien claimant.

A copy must also be furnished to the owner and prime contractor.

A sample Notice to Lender is attached to these materials as Exhibit D.

**EFFECT OF NOTICE
TO LENDER**

Upon receipt of the stop notice, the lender must withhold funds from the general contractor. If the lender fails to withhold the money, then the mortgage, deed of trust or other encumbrance securing the lender will be subordinated to your lien in the amount of funds wrongfully disbursed, but only to a maximum amount equal to the amount stated in the notice, plus costs fixed by the court, including reasonable attorneys' fees.

NOTICE TO CUSTOMERS AND JOB POSTING

RESIDENTIAL DISCLOSURE STATEMENT RCW 18.27.114

A **Disclosure Statement is required prior to starting work** for any construction, repair or alteration of residential property of four or fewer units where the bid or contract price totals \$1,000 or more, **or** the construction, repair or alteration of commercial property where the bid contract price is between \$1,000 and \$60,000.

No contractor may bring or maintain any private lien foreclosure action without first having shown that, **prior to starting work on the project**, he provided a Disclosure Statement.

The contractor is required to obtain the customer's signature acknowledging receipt of the Disclosure Statement and must retain a signed copy for at least three years. **It is prudent to incorporate the Disclosure Statement into your contracts.**

A sample Notice to Customer is attached as Exhibit E.

INFORMATION ON PROJECT

The prime contractor must post and make available specific information regarding its identity, the property, the project owner, and the lender or payment bond.² Specifically, such information shall include the following:

- (a) the legal description or the tax parcel number assigned pursuant to RCW 84.40.160, and the street address if available, and may include any other identification of the construction site by the prime contractor;
- (b) the property owner's name, address, and phone number;
- (c) the prime contractor's business name, address, phone number and current state contractor registration number; and
- (d) either:

² RCW 60.04.230 and RCW 19.27.095

- (i) the name, address and phone number of the office of the lender administering the interim construction financing, if any; or
- (ii) the name and address of the firm that has issued a payment bond, if any, on behalf of the prime contractor for the protection of the owner, if the bond is for an amount not less than 50 percent of the total amount of the construction project.

This information must be set forth on the building permit document issued to the owner and on the inspection record card, which must be posted at the construction site.

If the prime contractor fails to comply with this section, it may be subject to a penalty of up to \$5,000, payable to the county where the project is located.

Private Works Lien Rights

Washington Lien Law
RCW 60.04

TABLE OF EXHIBITS

Exhibit A	Pre-Claim Notice, General
Exhibit B	Pre-Claim Notice for providers of professional services
Exhibit C	Claim of Lien
Exhibit D	Notice to Lender
Exhibit E	Notice to Customer

EXHIBIT A

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 fails 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.

EXHIBIT B
NOTICE OF
FURNISHING PROFESSIONAL SERVICES

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

LEGAL DESCRIPTION:

The general nature of the professional services is:

_____.

The owner or reputed owner of the real property is:

_____.

(Signature)

(Name of Claimant)

Street Address

City, State, Zip Code

Phone Number

EXHIBIT C

CLAIM OF LIEN ON PRIVATE PROPERTY

_____, *Claimant*,
v.

(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 became due: _____

- 3) Name of persons indebted to the claimant: _____

- 4) Description of property against which a lien is claimed:

LEGAL DESCRIPTION: _____

STREET ADDRESS: _____

ASSESSOR'S PROPERTY
TAX PARCEL ACC. NO: _____

- 5) Name of owner or reputed owner: _____

- 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) Principle amount of the sum of the liens claimed is _____
(\$ _____) plus costs, attorney's fees and pre- and post-lien interest.

- 8) If the claimant is the assignee of this claim, so state here: _____.

EXHIBIT D

NOTICE TO REAL PROPERTY LENDER

(Authorized by RCW 60.04.221)

TO: _____
(Name of Lender)

(Administrative Office-Street Address)

(City, State, Zip)

AND TO: _____
(Owner)

AND TO: _____
(Prime Contractor - If Different Than Owner)

_____ (Name of laborer, Professional, Materials or Equipment Supplier) whose business address is _____, did at the property located at _____

(Check appropriate box) perform labor furnish professional services provide materials supply equipment as follows: _____

which was ordered by _____ (name of person), whose address was stated to be _____

The amount owing to the undersigned according to contract or purchase order for labor, supplies, or equipment (as above mentioned) is the sum of _____ Dollars (\$_____). Said sums became due and owing as of _____ (state date).

You are hereby required to withhold from any future draws on existing construction financing which has been made on the subject property (to the extent there remain undisbursed funds) the sum of \$_____.

IMPORTANT

Failure to comply with the requirements of this Notice may subject the lender to a whole or partial compromise of any priority lien interest it may have pursuant to RCW 60.04.226.

Dated: _____.

Claimant

By _____

Its _____

(Address and Phone)

EXHIBIT E

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)