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## WASHINGTON LIEN LAW SUMMARY

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(As of 06/09)

### QUESTIONS

### PRIVATE WORKS

(60.04.021 et seq.)

### PUBLIC WORKS

(60.28.011 et seq., 39.04.240 et seq., and 39.08.010 et seq.)

What work is covered?

Construction, alteration or repair, remodel, develop, demolish, etc. on real property, street or road; planting or removing trees, shrubs, etc. on real property; installation of cabinets or similar items; or providing professional services upon real property in preparation for or in conjunction with the above. Removing wet soil and replacing it with new material to create a stable foundation constitutes an improvement to real property. [18.27.010; 60.04.011, Henfin Const., L.L.C. v. Keystone Const., 136 Wash. App. 268, 145 P.3d 402 (2006)] Note that management and coordination services performed by a property developer for a real estate corporation are not covered, as they are not operative services such as those performed by a foreman or superintendent. Administrative tasks that do not improve the subject property and are not performed at the site are not covered, and such services are not "labor," where they are not part of a larger, lienable, labor and materials contract between an owner and a general contractor. [Pacific Industries, Inc. v. Singh, 120 Wash.App. 1, 86 P.3d 778, (2003); reconsideration denied.] NOTE ALSO that where the general contractor

All public contracts, except that contracts for less than \$300,000 may be exempted from the bonding and retainage requirements. [60.28.011 et seq., 39.08.010 et seq., 39.04.155] NOTE that highway construction contracts administered by the department of transportation, with an estimated price of \$250 million or more, may have bonds of less than the full contract price, as long as the bonds are at least \$250 million. [39.08]

authorizes a subcontractor to perform work, including by a change order beyond the scope of the contract or subcontractor, and without permission from or a signature by the owner, the subcontractor will still be allowed to claim a lien against the property. The contractor is the owner's construction agent, thereby exposing the owner's property to liens. [Henifin Const., L.L.C. v. Keystone Const., 145 P.3d 402, (Wash.App. Div. 1 2006)]

Who may have a lien?

Contractors, subs, furnisher of labor, professional services, materials, or equipment to owner, registered or licensed general, registered or licensed sub, architect, engineer, or other agent having control of the project. Note that developers, tree removal services, cabinet installers and consultants acting as general contractors are among those considered contractors. In addition, anyone who offers to sell their property without occupying or using the building, etc., for more than one year from the date the building, etc. was substantially completed or abandoned, is considered a contractor. A person who superintends or consults on contracting work; a person who performs the activities of a contractor for the purpose of selling or leasing improved property the person has owned for less than 12 months, and a person who performs the activities of a contractor on one's own property for the purpose of selling, demolishing or leasing the property are all now considered contractors. [60.04.021; 18.27.090]

NOTE that it is now a gross misdemeanor for a contractor to subcontract to or use an unregistered subcontractor. [18.27.020(2)(e)]

**BOND:** Subs, employee trust funds and furnishers of labor or materials to general or sub. Supplier to supplier has no rights against bond. [Farwest Steel v. Mainline Metal, 48 Wash. App 719, 741 P.2d. 58 (1987); cert. denied, 109 Wash.2d 1009 (1987)]. NOTE, HOWEVER, that despite the language of the statute, courts have ruled that ERISA preempts this statute, and trust funds cannot bring a claim against the bond. [Puget Sound Electrical Workers Health & Welfare Trust Fund v. Merit Co., 123 Wn.2d 565, 572-73, 870 P.2d 960 (1994); International Brotherhood of Electrical Workers, Local Union No. 46 v. Trig Electric Construction Co., 142 Wn.2d 431, 13 P.3d 622 (2000), cert. denied, 532 U.S. 1002 (2001); and Leo Finnegan Const. Co., Inc. v. Northwest Plumbing & Pipefitting Industry Health Welfare & Vacation Trust, Not Reported in P.3d, 2008 WL 2811319 (Wash.App. Div. 2, 2008)] A business that supplies temporary workers to a sub does not have bond rights, at least not where the supplier of workers has limited involvement, supervision, and responsibility on the project. [39.08.010; Better Financial Solutions, Inc. v. Caicos Corp., 73 P.3d 424, 117 Wash.App. 899 (2003); reconsideration denied]

**RETAINAGE:** Everyone performing labor or supplying materials to general or sub. Suppliers to suppliers are not covered. [Farwest Steel v. Mainline Metal, 48 Wash. App 719, 741 P.2d. 58 (1987); cert. denied, 109 Wash.2d 1009 (1987)] Note also that a business that supplies temporary workers to a sub does not have a claim against the retainage. [60.28.011; Cushman at

§48.03[A]; Better Financial Solutions, Inc. v. Transtech Electric, Inc., 112 Wash.App. 697, 51 P.3d (2002), *review denied*, 149 Wash.2d 1010, 69 P.3d 874 (2003)]

What is the lien against?

The improvement and the land upon which it is situated. As to stop notices on funds held by lender, see "Special Notes" section, below. NOTE that where a project is a private project on public land, the lien will attach only to the improvement, and not to the realty. [60.04.021; Estate of Haselwood v. Bremerton Ice Arena, Inc., --- P.3d ----, 2009 WL 1803272, (Wash.2009)]

-Contractor's payment bond. [39.08.010] NOTE that highway construction contracts administered by the department of transportation, with an estimated price of \$250 million or more, may have bonds of less than the full contract price, as long as the bonds are at least \$250 million.

[39.08.030]

-Retained percentage of funds due the contractor. [60.28.011]

NOTE that where a project is a private project on public land, the lien will attach only to the improvement, and not to the realty. [Estate of Haselwood v. Bremerton Ice Arena, Inc., --- P.3d ----, 2009 WL 1803272, (Wash.2009)]

Who must give the Notice to Customer?

The General Contractor must give the Notice to Customer in the situations outlined below. This notice is different from the Notice to Owner, which everyone who has a contract with someone *other than the owner* must give. The Notice to Owner is discussed in subsequent sections. The General Contractor must give the Notice to Customer in the following situations:

1. When the work involves the repair, alteration or construction of a commercial building costing more than \$1,000 but less than \$60,000.
2. When the work involves the alteration or construction of four or fewer residential units, where bid or price is greater than \$1,000.

NOTE that in these situations, the general contractor is required to give the Notice To Customer BEFORE starting construction. See FORM E. If the form is not given, the contractor is not allowed to bring or maintain a lien foreclosure. The Notice to Customer is not required to be given by contractors contracting with other contractors. NOTE ALSO that the contractor must keep a signed copy of the disclosure statement in his or her files for at least 3 years, and produce a signed or

Not applicable.

electronic signature copy of it to the DLI, if so requested. [18.27.114]

Who must give Notice of Intent (now called Notice to Owner) or preliminary notice?

The Notice to Owner is given by those who do *not* have a contract with the owner. General Contractors are required to give the Owner the Notice to Customer, which is discussed in the section immediately preceding this one. Potential claimants are required to give the Notice to Owner or Notice to Customer in the following circumstances:

**NOTICE TO OWNER:** Repair, remodel or alteration of existing owner-occupied single-family residence: All providers of professional services, materials or equipment who do not contract directly with the owner-occupier. **Subcontractors who provide ONLY labor do not need to give notice, but subcontractors who provide labor AND either materials, equipment or professional services need to give the preliminary notice in order to have lien rights. If no notice is given, a subcontractor who provides both labor and materials will still have lien rights for his or her labor, but not for the materials. Professional services are defined in the code as 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.** [60.04.031; 60.04.011; Northlake Concrete Products, Inc. v. Wylie, 34 Wash.App. 810, 663 P.2d 1380 (1983); Pacific Erectors, Inc. v. Gall Landau Young Const. Co., Inc., 62 Wash.App. 158, 813 P.2d 1243 (1991), *reconsideration denied, review denied* 118 Wash.2d 1015, 827 P.2d 1011]

2. All other projects: Every person furnishing professional services, labor, materials or equipment, except those contracting directly with owner, laborers claiming solely for labor, and **licensed or registered subcontractors contracting directly with prime contractor.** There is a special notice to be given by those providing professional services where the improvement itself has not been

**PAYMENT BOND:** Anyone supplying materials to a subcontractor, including those supplying both labor and materials. Subcontractors who contract directly with the prime contractor do not need to provide a preliminary notice, regardless of whether they are providing labor, materials or both. Sub-subcontractors who supply only labor do not need to provide a preliminary notice. [39.08.065; LRS Electric Controls, Inc. v. Hamre Const., Inc., 153 Wash.2d. 731, 107 P.3d 721 (2005)] Note that where a sub or sub-sub supplies heavy equipment with operators, they MAY be deemed to only be laborers, and no preliminary notice would be required, but it is safest to send the notice anyway. The equipment must not be actually incorporated into or become part of the structure. It is also best if the claimant's bills do not typically itemize the equipment separately from the operators. [Campbell Crane & Rigging Services, Inc. v. Dynamic Intern. AK, Inc., 186 P.3d 1193 (Wash.App. Div. 2,2008)]  
**RETAINAGE:** Every claimant. [60.28.015; LRS Electric Controls, Inc. v. Hamre Const., 153 Wash.2d. 731, 107 P.3d 721 (2005)]

commenced, and the professional services provided are not apparent from a visual inspection of the property. This notice (for providers of professional services) is not required, but if it is not given the claimant will not have priority against anyone who acquires an interest in the property before the improvement begins. [60.04.031]

**NOTICE TO CUSTOMER:**

Repair, alteration or construction of a commercial building costing more than \$1,000 but less than \$60,000, OR for a project involving the alteration or construction of four or fewer residential units, where bid or price is greater than \$1,000: All contractors contracting with the owner. [18.27.114]

To whom is the preliminary notice given?

**NOTICE TO OWNER:**

Owner-occupied existing single-family residence:

- Owner-occupier
- Strongly recommended to give notice to prime contractor, though it is not required. [60.04.031]

All other projects: Send notice to owner and prime contractor. [60.04.031]

NOTE - If prime has not posted required jobsite information, you need not send notice to prime, but we recommend it.

NOTE - Where claimant renders professional services where no improvement has been commenced, and which is not visible from an inspection of the real property, the claimant must record WITH THE COUNTY RECORDER a specific notice set out in the statute. If the notice is not recorded, the lien is subordinate to subsequent mortgagee and to subsequent purchaser. [60.04.031]

**NOTICE TO CUSTOMER:**

Repair, alteration or construction of a commercial building costing more than \$1,000 but less than \$60,000, OR for a project involving the alteration or construction of four or fewer residential units, where bid or price is greater than \$1,000: Owner. Note that this notice does not need to be given by a contractor contracting with a contractor. [18.27.114]

**PAYMENT BOND:** Contractor. [39.08.065]

**RETAINAGE:** Contractor. [60.28.015]

When must preliminary notice be given?

**NOTICE TO OWNER:**

Repair or remodel of an owner-occupied existing single-family residence or garage:

At any time, but NOTE that these liens are limited to the amount not yet paid to the prime contractor by the owner at the time the preliminary notice is received, regardless of whether amounts not yet paid to the prime contractor are due. The statute also does not state how long the notice relates back; therefore we STRONGLY advise that notices be sent out with first delivery. It is possible, however, that the notice will relate back 60 days. NOTE that in this subsection, a notice is received upon actual receipt by personal delivery or certified or registered mail, OR three days after mailing by registered or certified mail, excluding weekends and holidays. [60.04.031]

New single-family residential construction:

Notice may be given any time, but only relates back ten days from the date it is mailed or personally delivered. [60.04.031]

All other projects: Any time, but only relates back sixty days before notice is either mailed to owner by certified or registered mail or personally delivered upon owner. NOTE that while statute states that notice relates back based on the date of *mailing*, the court has nonetheless interpreted the calculation to be based on the date of *receipt*. [60.04.031; CHG Intern., Inc. v. Platt Elec. Supply 23 Wash.App. 425, 597 P.2d 412 (1979)]

As to professional services rendered to property before commencement, it is best to record the notice as soon as possible.

**NOTICE TO CUSTOMER:**

Repair, alteration or construction of a commercial building costing more than \$1,000 but less than \$60,000, OR for a project involving the alteration or construction of four or fewer residential units, where bid or price is greater than \$1,000: Notice must be received BEFORE starting construction. [18.27.114]

**PAYMENT BOND:** Notice must be delivered or mailed within 10 days after first delivery. NOTE, HOWEVER, that written notice given to contractor more than 10 days after materials are first delivered is effective as to materials subsequently delivered, at least where the materials are delivered on order, as opposed to being purchased under a specific contract for a fixed quantity at a given price. [39.08.065; Cascade Lumber & Shingle Co. v. Wright, 99 Wash. 421, 169 P. 833 (1918)]

**RETAINAGE:** While the statute is not absolutely clear, it is best to ensure that the notice is *received* within 60 days after first delivery. If received later, it relates back 60 days. [60.28.015]

Contents of preliminary notice?

**NOTICE TO OWNER:**

SEE ATTACHED FORM A. Note that this notice is to be in upper and lower case ten-point type, "where appropriate". AS TO

**PAYMENT BOND:**

-That supplier has begun supplying materials to the job  
-Name of sub ordering materials or to whom

PROVIDERS OF PROFESSIONAL SERVICES PRIOR TO THE IMPROVEMENT, SEE FORM F, BELOW. [60.04.031]  
**NOTICE TO CUSTOMER:**  
SEE ATTACHED FORM E. [18.27.114]

the materials were furnished  
-That contractor and its bond will be held liable for payment of the materials supplied. (39.08.065)

**RETAINAGE:**

-Name of supplier and that supplier is or has furnished materials to project  
-Name of sub ordering materials  
-That a lien against retained percentage may be claimed for all materials furnished by supplier. [60.28.015]

How must preliminary notice be given?

For the Notice to Owner, Registered or certified mail or personal service. [60.04.031]  
For the Notice to Customer, Form E, no method of delivery is specified.

**BOND AND RETAINAGE:** Registered or certified mail or personal service. [60.28.015]

Who must give final notice?

All claimants. [60.04.091]

All claimants on bond or retainage. [39.08.030, 60.28.011]

To whom is final notice given?

County auditor of county where property is located AND copy to owner after recording. [60.04.091]

Public body letting the contract. [39.08.030, 60.28.011]

When is final notice given?

Within 90 days after claimant's last delivery or last date on which employee benefit contributions were due. NOTE that a copy of the notice must also be sent to the owner by certified or registered mail, or personally served within FOURTEEN (14) days of filing the claim. **Failure to do so forfeits any right to attorneys' fees and costs against the owner.** [60.04.091]

NOTE that where work on a contract is performed after a period of inactivity, even a small amount of work or materials will act to extend the lien filing date, so long as the work or materials are supplied at the request of the owner for the purpose of completing the original contract, and not for the purpose of merely extending the filing deadline, and not pursuant to some separate contract. (Intermountain Elec., Inc. v. G-A-T Bros. Constr., Inc., 115 Wn.App. 384, 62 P.3d 548 (2003); DKS Const. Management, Inc. v. Baker Boyer Bancorp, 118 Wash.App. 1076, Not Reported in P.3d, (Wash.App. Div. 3,2003), opinion not published.)  
NOTE that the claimant can file more than

**BOND:** Within 30 days after completion and acceptance of the project. [39.08.030]  
**RETAINAGE:** Within 45 days after completion of the contract work. **NOTE, HOWEVER,** that where the project is conducted under the general contractor/- construction manager procedure, the project may be divided in half, and where the sub or supplier's work is completed in the first half of the project, the public body may accept the completion of the subcontract and give public notice of its acceptance. In such a case, the claimant must give its notice **within 45 days of acceptance of the completion of the subcontract.** If it is given later, such as within 45 days after completion of the entire contract, the claim will be invalid. **Thus it is very important to know whether the project is operating under the general contractor/- construction manager procedure, and the sooner the notice is given, the better.** [60.28.011]

one lien if necessary, as long as each lien is timely filed. The subsequent lien, as long as it is timely, can include amounts that were included in the earlier lien, even if that lien has expired, although of course double recovery is forbidden. Geo Exchange Systems, LLC v. Cam, 115 Wash App. 625 (2003).

NOTE that for separate residential units the time commences to run upon the last delivery, etc. to each unit. [60.04.091]

How is final notice given?

Filed with county auditor, AND given to the owner by certified or registered mail, or personally served within FOURTEEN (14) days of filing the claim. **Failure to do so forfeits any right to attorneys' fees and costs against the owner.** [60.04.091]

**BOND AND RETAINAGE:**

Presented to and filed with the public body. Per Cushman, registered or certified mail, return receipt requested, is sufficient. [39.08.030; Cushman at §48.03[A]]

Contents of final notice?

-Name, phone number and address of claimant  
-Dates first and last deliveries made or work performed, benefits became due, etc.  
-Name of party indebted to claimant  
-Street address or legal description of property  
-Name of owner or reputed owner  
-Principal amount of claim, and NOTE that if lien covers two or more separate pieces of property owned by the same person(s), lien must designate amount due on each piece. (Note that where the lien pertains to the repair or remodel of an owner-occupied existing single-family residence or garage, and the claimant does not contract directly with the owner-occupier or his/her agent, the claimant's lien is ultimately limited to the amount not yet paid to the prime contractor at the time the prelien was given. [60.04.031])  
-Signed by claimant or authorized agent who affirmatively states that they've read the notice of claim of lien and believe it to be true and correct under penalty of perjury. Signature shall also be acknowledged. An authorized agent of the claimant, such as a lien service, may sign the lien. SEE ATTACHED FORM B. [60.04.091, 60.04.131; (Williams v. Athletic Field, Inc., 193 P.2d 426 (Wash.App. Div. 2, 2006))]

**BOND AND RETAINAGE:**

Notice including name of claimant, identification of public body, amount of claim, name of principal and surety, description of project, brief description of work, services or materials provided, and signature of claimant. To apply to retainage, must state that the claimant is making a claim against the retainage as well. See FORM D below. [39.08.030]

Time to start suit?

Within 8 months after filing lien. The owner must be named and must be served within ninety days of filing action. If other claimants who have filed liens are not included in the action, their interests are not foreclosed or affected unless they are joined as parties. THIS MEANS that if a mortgagee bank is not included AND TIMELY SERVED, the lien claim will not affect the mortgage or have any priority over it. (NOTE that the statute no longer renders the suit invalid if other lien claimants are not named -- it just doesn't affect their interests.) If another suit has been filed, a claimant shall seek to join it rather than start another suit. The claimant joining another suit must still file its complaint within 8 months of filing its lien (this time may be extended somewhat while its application to join the existing lawsuit is pending). [60.04.171; Bob Pearson Const., Inc. v. First Community Bank of Washington, 111 Wash.App. 174, 43 P.3d 1261 (2002); Van Wolvelaere v. Weathervane Window Co., 177 P.3d 750 (Wash.App. Div.1,2008)]  
**NOTE** that a plaintiff shall not dismiss a lien foreclosure to the prejudice of another party to the suit who claims a lien. [60.04.141] **NOTE ALSO** that if credit is given and the terms thereof are stated in the claim of lien, then the deadline for foreclosing the lien is eight calendar months after the credit expires. [60.04.141] **NOTE ALSO** that a lien must be foreclosed within 8 months after it is filed, but if a claimant files a subsequent lien that is still timely, it may be foreclosed within 8 months of filing it, and it may include amounts that had been included in the earlier lien, although of course double recovery is forbidden. Geo Exchange Systems, LLC v. Cam, 115 Wash App. 625 (2003). **NOTE ALSO** that where a lien release bond is filed, the bond is only obligated to pay sums covered by a lien foreclosure judgment. If judgment is only entered on a breach of contract action, then the lien release bond is not obligated to cover it. [DBM Consulting Engineers, Inc. v. U.S. Fidelity and Guar. Co., 170 P.3d

**BOND: Always set deadline within 1 year of last performance or actual delivery date.** Within 6 years after filing notice of claim, however no attorney's fees are allowed if suit is brought within 30 days after filing notice of claim. **If, however, the bond itself specifies a shorter period, that may control, thus if there is any kind of issue it is essential to obtain a copy of the bond itself.** (Re: 6 year deadline, see 117 Wn.2d 511)

**RETAINAGE:** Within 4 months after filing the notice of claim. Notice may be refiled every four months to keep the claim alive. If, however, the notice is not refiled and no action is timely taken on the claim, it cannot be revived by filing a claim at a later date, more than four months after filing or refiled the notice. If the claimant files another claim on the same project (more than four months after the initial filing or a refiled), it cannot include the same debt. (NOTE that this is different from the situation with a lien claim on a private project.) [60.28.030; Airefco, Inc. v. Yelm Community Schools No. 2, 52 Wash.App. 230, 758 P.2d 996, *review denied*, 111 Wash.2d 1029 (1988); Shope Enterprises, Inc. v. Kent School Dist., 41 Wash.App. 128, 702 P.2d 499 (1985)]

592 (Wash.App. Div. 1, 2007)]

Items Recoverable

Principal, interest, costs and attorney fees. REMEMBER that in order to obtain attorney's fees, the claimant must have given the owner notice of the claim within 14 days after filing it. IN ADDITION, to obtain fees upon appeal, the claimant must devote a section of its opening brief to the issue of attorney's fees. [Estate of Haselwood v. Bremerton Ice Arena, Inc., - -- P.3d ----, 2009 WL 1803272, (Wash.2009)]]  
NOTE that where a lien is rejected because the claimant has not registered under the contractor's registration statutes, the owner is entitled to recover attorney's fees. [Lopez v. Courville, Not Reported in P.3d, 145 Wash.App. 1016 (Wash.App. Div. 3, 2008)]  
NOTE that costs including the cost of recording the claim of lien, the costs of the title report, bond costs, and necessary costs incurred by the attorney are also recoverable, and have the priority of the class of lien to which they are related. [60.04.181]  
NOTE ALSO that if a lien is paid but the owner must sue to compel release, the owner may recover fees and damages.  
NOTE that fees for secretarial work are not recoverable as part of "reasonable attorney's fees." [North Coast Elec. Co. v. Selig, Not Reported in P.3d, 136 Wash.App.1032 (Wash. App. Div. 1, 2007)]

**PAYMENT BOND:** Principal, interest, costs, and, as long as suit brought more than 30 days after notice filed, attorney's fees. NOTE, however, that where a sub or supplier is claiming against the bond, interest will be paid at the statutory rate, not at the rate agreed to by the claimant and general or sub. NOTE ALSO that, while the *award* of attorney's fees is not discretionary, the *amount* awarded is. [39.08.030; U.S. Filter Distribution Group Inc. v. Katspan, Inc., 72 P.3d 1103, 117 Wash.App. 744 (Div. 1, 2003); Diamaco, Inc. v. Mettler, 135 Wash.App. 927, 145 P.3d 399 (2006)]  
**RETAINAGE:** Principal, interest, costs and attorney's fees. NOTE, however, that only claimants can recover attorney's fees; a general contractor that defends against a claim is not entitled to them. NOTE ALSO that, while the *award* of attorney's fees is not discretionary, the *amount* awarded is. [60.28.015, 60.28.030; Better Financial Solutions, Inc. v. Caicos Corp., 73 P.3d 424, 117 Wash.App. 899 (2003); reconsideration denied); Diamaco, Inc. v. Mettler, 145 P.3d 399, 135 Wash.App. 572 (2006)]

Are claims assignable?

Yes. [60.04.091, 60.04.121]

**PAYMENT BOND:** Yes.  
**RETAINAGE:** No specific provision.

Can lien rights be waived?

No specific provision, however "acts of coercion or attempted coercion, including threats to withhold future contracts, made by a contractor or developer to discourage a contractor, subcontractor, or material or equipment supplier from giving an owner the notice of right to claim a lien" or to discourage a claimant from actually filing a lien, are forbidden and in violation of the Consumer Protection Act. [60.04.035]

**PAYMENT BOND:** No specific provision.  
**RETAINAGE:** A contract provision providing for the waiver of retainage rights is void as against public policy. (39.04.900)

NOTE that the right to serve an offer of settlement cannot be waived in a public works contract. [39.04.240]

How are the claims ranked?

- 1) Laborers
  - 2) Contributions owing to employee benefit funds
  - 3) Furnishers of materials, supplies or equipment
  - 4) Subcontractors
  - 5) Prime contractors and furnishers of professional services. [60.04.181]
- NOTE that for purposes of priority against a deed of trust or a mortgage, a lien claim will relate back to the date of first performance of labor or services, or the first delivery of materials or equipment, regardless of whether the lien is against the improvement or the real property, or both. [60.04.061; Estate of Haselwood v. Bremerton Ice Arena, Inc., --- P.3d ----, 2009 WL 1803272, (Wash.2009)]
- NOTE: A personal judgment may be rendered against any party personally liable for any debt for which the lien is claimed. [60.04.181]

**BOND:** No specific provisions, thus presumed pro rata.

**RETAINAGE (FOR CONTRACTS OVER \$20,000):** (1) wages owed to contractor's employees who have not been paid the prevailing wage; (2) B&O taxes and other excise taxes under RCW Chapter 82; (3) all unemployment compensation and industrial insurance taxes owed under RCW Chapters 50 & 51; (4) other claimants; and (5) all other taxes, increases and penalties due and owing from the contractor. [60.28.040]

Special Notes

- A claimant dealing with a contractor or sub will only have lien rights if that contractor or sub is registered or licensed. A claimant's right to lien is established as long as the party with whom the claimant is in privity is registered or licensed. In other words, if a supplier supplies a registered or licensed sub, but the sub is dealing with an unlicensed and unregistered prime, then apparently the sub does not have lien rights, but its supplier does. [60.04.041]
- When an owner, contractor, lender or other claimant believes a lien claim is frivolous, or clearly excessive, he or she may bring a show cause action to challenge the lien. The loser of such a challenge must pay the other side's costs and attorney's fees. [60.04.081; Steadfast Const., Inc. v. Apter, Not Reported in P.3d, 2008 WL 4053443 (Wash.App. Div. 1 2008)] Note that a lien will be declared invalid as excessive only if there is bad faith or an intent to defraud, and the party resisting the lien has the burden of establishing bad faith or an intent to defraud. [Structurals Northwest, Ltd. v. Fifth & Park Place, Inc., 33 Wn.App. 710, 715, 658 P.2d 679 (1983)]
- Where construction is of two or more

Effective July 22, 2007, There is now a requirement that anyone entering into a public works contract demonstrate that they satisfy certain responsibility criteria. In addition, a general contractor must verify that each of the contractor's subs satisfies the criteria, and each sub must verify that all of his or her subs also satisfy the criteria. This verification requirement and the responsibility criteria must now be included in all public works contracts. [ 39.04, 39.06, WA Legis. 133 (2007)]

separate residential units, the time to file a lien begins to run on each unit separately, as of the date of last delivery to each unit. [60.04.101]

-Where a lien covers two or more pieces of property owned by same person, the claimant must designate the amount due on each parcel, or lose priority. [60.04.131]

-The taking of a promissory note does not discharge the lien unless it is expressly received as payment and so specifies therein. [60.04.191]

AS TO STOP NOTICES: ("Notice to Lender – Withholding of Funds")

The following rules apply where there is not a payment bond of at least fifty percent of the financing amount:

When is notice given: If claimant is unpaid within 5 days after date required by contract, claimant may file notice within 35 days after date payment was due.

To whom is notice given: To lender at office administering the financing, to the owner and to the general.

How is notice given: Registered or certified mail, or personally delivered, in which case proof of delivery must be obtained (i.e., receipt or signed acknowledgment, or affidavit of service.)

Contents of Notice: Statement that claimant has furnished materials, labor, services or equipment for which a right of lien is given by statute; name of general contractor, sub, or person ordering materials, etc.; street address or legal description of project; description of materials furnished; name, address and telephone number of lien claimant. Must be signed by claimant or person authorized to act on claimant's behalf, under penalty of perjury. SEE FORM C, and 60.04.221.

Giving this notice causes the lender to withhold sums due up to the amount undisbursed as of the date the lender receives the notice. In the alternative, the lender may obtain a payment bond for the claimant's benefit from the prime contractor or the borrower. Lender cannot release the funds except by the written agreement of claimant, owner and prime, or by court order. Failure to comply subordinates

lender's mortgage to lien claimant to the extent of the smaller of the lien claim or the amount wrongfully disbursed. If claimant's notice is unjust, excessive or premature, claimant will be liable for damages and attorney's fees of anyone injured thereby, and sub or prime can bring show cause to challenge it. NOTE that the lending institution is now required to withhold the full amount due to claimant, up to the amount undisbursed, rather than a percentage thereof as under the previous laws. NOTE ALSO that the statutory provisions are to be LIBERALLY construed to provide security for all parties intended to be protected thereby. [60.04.221]

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