

Re: Construction Liens

Dear Client:

During these difficult economic times it is more important than ever that you protect your right to recover the amounts owed to you or your business. One of the most important rights you have is the ability to record a lien to secure the amounts owed to you for work, services, supplies or equipment that you have provided for the improvement of real property. Unfortunately, there are many procedural traps, which you must be aware of in order to protect right to record a lien.

For example, not only must you give an owner the Notice of Right to Claim a Lien under RCW 60.04.031, but you must also provide and retain a Notice to Customer as mandated by RCW 18.27.114. With limited exceptions, which you should discuss with your attorney, you will need to provide both notices before you are permitted to record a lien.

Each of these notices is discussed below and form notices are enclosed for your review and use.

#### NOTICE OF RIGHT TO CLAIM LIEN

Every person or contractor furnishing professional services, materials, or equipment for the improvement of real property is entitled to claim a lien for recovery of the monies owed. However, unless you fall within a limited set of exceptions which are briefly discussed below, you must first provide the owner or reputed owner of the property a Notice of Right to Claim a Lien. The notice shall also be given to the prime contractor unless you contracted directly with the prime contractor.

The notice should be given prior to commencing any work or supplying any materials. However, the notice can be given at any time but only protects the right to claim a lien for services, material or equipment supplied 60 days before the notice was provided or 10 days before the notice was provided in the case of new construction of a single family residence.

The notice must be mailed by certified or registered mail or personally delivered to the owner or reputed owner. You must obtain a receipt or other acknowledgement of the owner's receipt of the notice.

A Notice of Right to Claim a Lien is not required if you (1) contracted directly with the owner or the owner's common law agent; (2) are a laborer whose claim of lien is based solely upon performing labor; or (3) are a subcontractor who contracted for the improvement of real property directly with the prime contractor.

Further, if you furnish professional services, materials or equipment in connection with the repair, alteration, or remodel of an existing owner occupied single family residence or garage or contract directly with the owner, occupier or their common law agent, you do not need to provide a Notice of Right to Claim a Lien.

Although there are a number of exceptions to the requirement of providing a Notice of Right to Claim a Lien, it is the recommended practice to always provide the Notice of Right to Claim a Lien to the owner and prime contractor prior to commencing work.

The Notice of Right to Claim a Lien must be in the form attached using lowercase and uppercase lettering and at least ten point type throughout. Consequently, the Notice may not be hidden in a contract – the Notice should be a stand alone document on standard letter size paper.

If you have not been paid for supplies, material, services or equipment, then you should record the claim of lien within 90 days of the last date of supplying the materials, services, equipment, etc. The Notice must be recorded in the county in which the property is located and suit to foreclose the lien must be commenced within eight months.

#### NOTICE TO CUSTOMER

Although there are exceptions as to when you must provide the Notice of Right to Claim a Lien, you must always provide the Notice to Customer prior to being able to record a lien. Pursuant to the statute, any contractor agreeing to perform any repair, alteration or construction of four or fewer residential units or accessory structures on residential property when the bid or contract price totals \$1,000.00 or more or for the repair, alteration or construction of a commercial building when the bid or contract price totals \$1,000.00 or more but less than \$60,000.00, must provide the Notice to Customer.

The contractor must provide the Notice to Customer in the form attached hereto. The Notice to Customer must use lowercase and uppercase twelve point type and bold type where appropriate.

The Notice to Customer must be provided prior to commencing the work. Further, the contractor must retain a signed copy of the Notice to Customer in the contractor's files for a minimum of three years.

Failure to provide the Notice to Customer will prevent you from bringing or maintaining any lien claim under RCW 60.04.

#### NOTICE OF CONSTRUCTION DEFECT CLAIM

While not related to your right to claim a lien it is advisable that you also provide your customers with a Notice of Construction Defect Claim under RCW 64.50.050.

This is a relatively new provision, which provides a method for owners to bring construction defect claims to the attention of the contractor, and allows the contractor to take action to inspect, remedy or compromise the claim before suit is filed. This is a very beneficial process for contractors.

If the Notice is provided to the owner, then the owner must provide you with a written notice of claim setting forth in reasonable detail the general nature of the defects. You will then have 21 days to respond and agree to an inspection, offer to compromise, offer to remedy, or deny the claim. No suit may be brought by the homeowner until you have had the opportunity to respond to the owner.

The Notice of Construction Defect Claim should be included in all of your contracts as this will provide greater protection for you and prevent owners from filing suit prior to your ability to review and settle the complaint.