

LIENS ON REAL PROPERTY

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1. INTRODUCTION

This article will give an overview of common liens against Washington properties. It will address the following liens:

1. Construction liens against private projects (mechanic's liens);
2. Claims against Washington state public works projects (retainage and bond);
3. Claims against Federal public works projects (Miller Act);
4. Tax liens (state and federal);
5. Judgment liens; and
6. Condominium liens.

This article will strive to cover the following topics for each lien: (A) who can claim the lien; (B) what must be done to achieve attachment and perfection; and (C) what must be done in order to foreclose.

This article is not intended to provide a comprehensive presentation of all liens under Washington law. Nor can it claim to be an exhaustive collection of all cases or theories relevant to those liens it does cover. Instead, the goal of article is to present a practical overview of what, in this author's experience, are a common lien issues facing today's real estate attorneys.

2. CONSTRUCTION LIENS AGAINST PRIVATE PROJECTS (MECHANIC'S LIENS)

Construction liens against private real property are commonly referred to as mechanic's liens, or in some cases materialmen's liens. Mechanic's liens are creatures of statute. They have no basis in common law or equity. Washington's mechanic's lien statute is codified at Chapter 60.04 RCW.

Since the mechanic's lien statute is in derogation of common law, it is strictly construed. At least as far determining whether a lien has attached to a particular piece of

property. The mechanic's lien statute sets up a number of notice, claim and foreclosure requirements, which must be strictly complied with in order to sustain a mechanic's lien claim.¹

Once those requirements have been satisfied, however, the statute is broadly construed to protect those that come within its protection.²

2.1. PERSONS ELIGIBLE TO CLAIM A MECHANIC'S LIEN

The mechanic's lien statute lists four categories of persons entitled to claim a lien:

any person furnishing [1] labor, [2] professional services, [3] materials, or [4] equipment for the *improvement of real property* shall have a lien upon the improvement ...^[3]

The phrase "improvement of real property" is an important delineation. "Improvement" is broadly defined as:

(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.

These definitions show two things: First, in order to claim a mechanic's lien, one must have done something to actually improve the real property in question; second, whether a person can claim a mechanic's lien is not determined by what that person calls

¹ *E.g., Dean v. McFarland*, 81 Wn.2d 215, 219-20, 500 P.2d 1244 (1972) ("A lien of the type involved here is a creature of statute and is in derogation of the common law. As such, it must be strictly construed to determine whether a lien attaches. The statutory operation is not to be extended for the benefit of those who do not clearly come within the terms of the statute.").

² RCW 60.04.900; *Kinnebrew v. CM Trucking & Const., Inc.*, 102 Wn. App. 226, 231, 6 P.3d 1235 (2000) ("Lien statutes should be liberally construed to protect those within the scope of the statute.")

³ RCW 60.04.021 (emphasis added).

itself (contractor, architect, surveyor, etc.), but by what that person actually *did* to improve the real property in question.

A claim based on materials may have an additional requirement. Under cases applying the former mechanic's lien statute, materialmen had to show that their materials became fixtures in order to claim a lien.⁴ Materials become fixtures when they are permanently annexed to the real property, such that their use becomes consistent with the use of the realty. These cases are most likely still good law even though the mechanic's lien statute underwent revisions in the early 1990s.

2.2. PROPERTY SUBJECT TO LIEN

The natural assumption is that a mechanic's lien attaches to the real property where the work was performed. That is not necessarily the case, however. The mechanic's lien statute does *not* say that the lien is against the real property. It says the lien is against "the *improvement*".⁵

That is the first step in any attachment analysis under the mechanic's lien statute. From there, the question becomes whether the lien also extends to some other interest, such as the fee interest or a leasehold interest. The answer to that question depends on who requested the work, equipment or materials that form the basis for the lien claim.

2.2.1. Fee Interest

If the work, equipment or materials is requested by the owner, the lien attaches not only to the "improvement" but also to the owner's fee interest.⁶ That is the case regardless of whether the owner requests the work directly or indirectly through an agent.

If the lien attaches to the fee interest, it generally attaches to the entire interest. The homestead exemption does not apply, for example.⁷

⁴ *Westinghouse Electric Supply Co. v. Hawthorne*, 21 Wn.2d 74, 150 P.2d 55 (1944).

⁵ RCW 60.04.021 (emphasis added).

⁶ RCW 60.04.051.

⁷ RCW 6.13.080(1).

However, there is one possible limitation to this. Courts have discretion to limit or expand the attachment based on the practicalities of the situation. The lien attaches to an owner's fee interest "as the court deems appropriate for satisfaction of the lien."⁸

Northlake Concrete Products, Inc. v. Wylie illustrates this.⁹ The lien claim in that case was based in part on work done on an adjacent property; installing a sewer line in a public street.¹⁰ The court held that, even though this work did not take place on the owner's property, it was part of the lien because it directly benefitted the owner's property. The practicalities trumped strict construction.

2.2.2. Tenants

If the work, equipment or materials is requested by a tenant, the lien attaches to the "improvement" and to the tenant's leasehold interest. Practically speaking, a lien against a leasehold interest has little economic value. In most cases, the lien will constitute a default under the lease and the landlord will have terminated the leasehold long before the lien can be foreclosed on.

But the mechanic's lien statute accounts for that practical reality. It allows a court to order the removal and sale of the "improvement" in lieu of a foreclosure sale.¹¹ A contractor who installs, say, partition walls as part of tenant improvements can come in and remove them. While perhaps not the most practical solution, it does offer substantial leverage, especially when the tenant has defaulted and the landlord wants to lease the premises to a new tenant with the improvements intact.

In some situations, the lien will go beyond the leasehold interest and also attach to the underlying fee interest. To accomplish this, the lien claimant has to establish that the owner is the one who indirectly requested the improvements.

⁸ RCW 60.04.051.

⁹ 34 Wn. App. 810, 663 P.2d 1380 (1983).

¹⁰ *Id.* at 817 ("The question remains as to whether work performed off the property on a sewer connection which is attached to a house and which directly benefits the property is lienable under RCW 60.04.010.").

¹¹ RCW 60.04.051.

For example, if the lease not only gives the tenant the *option* to improve the premises, but actually *requires* specific improvements, the lien may reach the fee interest as well.¹² The landlord would in effect be requesting the improvement with the tenant acting as its agent.

This raises two practice points:

- (1) Practitioners representing lien claimants should carefully review leases to determine whether tenant improvements were required by the landlord as opposed to merely allowed; and
- (2) Practitioners representing landlords should probably remove language from leases that could be construed as requiring the tenant to undertake certain improvements.

2.2.3. Condominiums

The extent to which a lien attaches to condominium property depends on who requested the work, when the work was performed, and when the condominium was declared.

For work requested by an individual unit owner, the lien attaches to that owner's unit.¹³ If the claimant does work on multiple units, the lien is against all those units but the time for recording a Claim of Lien (*infra* at 2.4) starts to run when work stopped on each unit.¹⁴

For work requested by the condominium association on common areas, the lien is a proportional lien against all units.¹⁵ Each unit owner can secure a release of its unit by paying the proportional amount due against that particular unit.¹⁶

¹² *Markley v. General Fire Equipment Co.*, 17 Wn. App. 480, 563 P.2d 1316 (1977)

¹³ RCW 60.04.101.

¹⁴ RCW 60.04.101.

¹⁵ RCW 64.34.368.

¹⁶ RCW 64.34.368(3).

Work that predates the condominium declaration will create a blanket lien against the entire property. Once the condominium declaration is recorded, the lien will automatically be converted to a proportional lien against the units.¹⁷

2.2.4. Community Property

Community real estate is subject to mechanic's liens based on work requested by either or both of the members of the community.¹⁸

2.2.5. Tenants-in-Common

Work requested by one tenant-in-common creates a lien against that tenant's undivided interest, but not necessarily the entire property.¹⁹

2.3. PRE-CLAIM NOTICES AND REQUIREMENTS

As noted above, the mechanic's lien statute is in derogation of common law and therefore strictly construed as far as determining whether a claimant has met the statutory requirements to claim a lien. This presents traps for the unwary since the pre-claim requirements differ depending on what the claimant did and the nature of the project.

Attached as Appendix A is an overview of the formal requirements to claim a lien against a private construction project in Washington.

2.3.1. Contractor's Registration

This pre-claim requirement is not found in the mechanic's lien statute, but in the Contractors Registration Act, Chapter 18.27 RCW. Contractor's registration comes into play in two ways:

First, anyone doing the work of a "contractor" must be registered as such with the Department of Labor & Industries in order to claim a mechanic's lien.²⁰ This has become

¹⁷ *Rainier Pac. Supply, Inc. v. Gray*, 30 Wn. App. 340, 633 P.2d 1355 (1981).

¹⁸ RCW 26.16.040.

¹⁹ *Patrick v. Bonthius*, 13 Wn.2d 210, 124 P.2d 550 (1942).

²⁰ RCW 18.27.080.

more of an issue recently with the expanded definition of "contractor" that took effect in 2007.²¹

Second, persons that contract with an unregistered contractor may lose their lien rights. As noted above, the lien attaches to the underlying fee if the work was requested by an agent of the owner.²² That agent can be either a common law agent or what is known as a "construction agent"—a statutory term defined essentially as a licensed contractor.²³ So a licensed subcontractor who contracts with an *unregistered* general contractor has no lien rights (at least not beyond the "improvement") even if that subcontractor otherwise would be eligible to claim a lien.

However, this does not mean that every contractor in the chain leading to the owner has to be registered. All that is required is that the contractor the lien claimant is in privity with be registered. In other words, lien claimants have to verify that the party they contract with is properly registered; they do not have to verify that everyone in the chain leading up to the owner is registered.²⁴

2.3.2. Notice to Customer

The Notice to Customer is a form notice required by the mechanic's lien statute. A copy is attached as Appendix B, and a fill-in PDF version can be downloaded from the Department of Labor & Industries' website.²⁵

The Notice to Customer is required by prime contractors.²⁶ A "prime contractor" is one in direct privity with the owner or the owner's common law agent. It does not

²¹ RCW 18.27.010(1). *See also* RCW 18.27.090(11)-(12) (limiting exemptions to registration requirements to no longer apply to owners working on their own property for the purpose of sale or leasing).

²² RCW 60.04.051.

²³ RCW 60.04.011(1), .041, .051.

²⁴ RCW 60.04.041.

²⁵ <http://www.lni.wa.gov/formpub/Detail.asp?DocID=1878>.

²⁶ RCW 18.27.114.

matter for this purpose whether the contractor is licensed as a general contractor or as a specialty contractor.²⁷

The Notice to Customer is required on some, but not all projects. It must be given before work starts on the following types of projects:

Residential: If the project involves 4 or fewer units with a contract price of \$1,000 or more.

Commercial: If the project has a contract price of \$1,000 to \$60,000.

2.3.3. Notice to Owner

The Notice to Owner is another form notice required by the mechanic's lien statute.²⁸ A copy of this notice is attached as Appendix C.

This notice is required by many, but not all claimants. Generally speaking, whether the Notice to Owner has to be given depends on what the lien claimant did, with whom the lien claimant contracted, and the nature of the project.

2.3.3.1. General Rule

Every person furnishing professional services, materials or equipment (*but not labor*) must give a Notice to Owner to the owner and the prime contractor.²⁹ The notice can be given any time, but only covers services, materials or equipment going back 60 days before it was given.³⁰

That time period is shorter on *new* construction of a single-family homes. On those projects, the notice only goes back 10 days.³¹

2.3.3.2. Exceptions

The Notice to Owner is not required of the following lien claimants:³²

²⁷ RCW 60.04.011(12).

²⁸ Chapter 60.04 RCW.

²⁹ RCW 60.04.031.

³⁰ RCW 60.04.031(1).

³¹ RCW 60.04.031(1).

- Prime contractors;
- First-tier subcontractors; and
- Persons who only furnish labor.

2.3.3.3. *Owner-Occupied, Single-Family Homes*

In the case of repair or remodel of an owner-occupied, single-family home, the Notice to Owner must be given by anyone providing professional services, materials or equipment to anyone other than the owner.³³ This does not apply to prime contractors or laborers. In other words, on these projects, first-tier subcontractors must give the Notice to Owner.³⁴

On these types of projects, if a lien claimant has to give the Notice to Owner, that lien can only be satisfied from amounts not yet paid to the prime contractor when the owner receives that claimant's Notice to Owner.³⁵

2.3.4. Notice of Furnishing Professional Services

This is an optional form notice set out in the mechanic's lien statute. A copy is attached as Appendix D.

Providers of "professional services" may record a Notice of Furnishing Professional Services with the recorder's office in the county where the property is located.³⁶ Surveyors, architects and engineers fall into this category.³⁷

Technically speaking, the Notice of Furnishing Professional Services is not a requirement to claim a mechanic's lien. Surveyors, architects and engineers can still claim a lien without it as long as they comply with the Notice to Owner requirements.

³² RCW 60.04.031(2).

³³ RCW 60.04.031(3).

³⁴ RCW 60.04.031(3) & (a).

³⁵ RCW 60.04.031(3)(b).

³⁶ RCW 60.04.031(5).

³⁷ RCW 60.04.011(13).

However, failure to give a Notice of Furnishing Professional Services may affect priority. A professional services lien is junior to a subsequent mortgage or deed of trust if: (A) a Notice of Furnishing Professional Services was not given; (B) the mortgage or deed of trust was recorded before construction began; and (C) the lender did not have actual notice of the professional services.

Similarly, failure to give a Notice of Furnishing Professional Services may render the lien invalid as to subsequent buyers. A professional services lien is invalid as to a subsequent buyer if: (A) a Notice of Furnishing Professional Services was not given; (B) the buyer acquired title before construction began; and (C) the buyer did not have actual notice of the professional services.

McAndrews Group, Ltd., Inc. v. Ehmke illustrates how this might work.³⁸ *McAndrews* was a priority dispute between a surveyor and lender, in which the surveyor's work pre-dated the deed of trust. The outcome hinged on the lender's notice (element (C) above). The surveyor had marked the property boundaries by three-foot tall witness posts, had spray painted an orange triangle with the words "TMG Control Point No. 100" on the driveway, and had driven a steel nail into the middle of the driveway. This, *McAndrews* concluded, raised an issue of fact as to whether the lender had actual notice of the surveyor's work. Summary judgment for the lender was therefore reversed.

McAndrews suggests lenders have to physically inspect the property, or at least conduct a drive-by, in order to meet element (C) above. If that is the case, *McAndrews* could present a problem from a practical standpoint. In this author's experience, few lenders have the time or resources necessary to visit properties offered as collateral before approving loan applications. This means lenders run the risk of being junior to a professional services lien even when there is no Notice of Furnishing Professional Services.

³⁸ 121 Wn. App. 759, 90 P.3d 1123 (2004).

2.3.5. Notice to Real Property Lender

The Notice to Real Property Lender is another form notice set out in the mechanic's lien statute. It has historically been referred to as a "stop notice". A copy is attached as Appendix E.³⁹

The Notice to Real Property Lender is a way for potential lien claimants to stop lenders from disbursing loan proceeds to the owner and/or prime contractor. But there is a 30-day window in which to do so. The notice becomes available once a payment is 5 days overdue, and must be given within 35 days of the due date.⁴⁰

As the name implies, the Notice to Real Property Lender is given to the lender, but a copy must also be given to the owner and prime contractor.⁴¹ Once given, the construction lender must withhold from future draws the amounts claimed due in the Notice to Real Property Lender. If it does not, the lien claim takes priority over the lender's mortgage or deed of trust to the extent of money wrongfully disbursed.⁴²

The Notice to Real Property Lender does not apply if there is a payment bond covering at least 50% of the construction financing.⁴³

2.4. CLAIM OF LIEN

Assuming all applicable requirements have been met, a lien claimant can then file a Claim of Lien to assert its lien rights.

2.4.1. Required Content

The Claim of Lien must contain the following information:

- (1) The name and contact information of the lien claimant;
- (2) The first and last day of work;

³⁹ RCW 60.04.221(4).

⁴⁰ RCW 60.04.221(1).

⁴¹ RCW 60.04.221.

⁴² RCW 60.04.221(7).

⁴³ RCW 60.04.221.

- (3) The name of the person indebted to the lien claimant;
- (4) A description of the property (street address is sufficient, legal description is advisable, but not necessary);
- (5) The name of the owner or reputed owner; and
- (6) The principal amount of the lien.

The mechanic's lien statute provides a form to use, a copy of which is attached as Appendix F.

2.4.2. Time to Record and Serve

The Claim of Lien must be filed for recording within 90 days of the last day of furnishing labor, professional services, materials or equipment. It must be signed and notarized under penalty of perjury by the lien claimant or some person authorized to do so on its behalf. The place to record is the county where the property is located.⁴⁴

Once the Claim of Lien has been recorded, a lien claimant should take care to send a copy to the owner within 14 days. Failure to do so does not affect the validity of the lien itself, but it does take away the right to recover attorney fees under the mechanic's lien statute.⁴⁵

A Claim of Lien can be amended to add additional work, or successive lien claims can be filed, as long as it is done within the 90-day period following completion of work.⁴⁶ After the 90-day period, lien claims can be amended in the same manner as pleadings during a foreclosure lawsuit, but only to the extent that third parties are not adversely affected.⁴⁷

⁴⁴ RCW 60.04.091.

⁴⁵ RCW 60.04.091(2).

⁴⁶ *Geo Exchange Systems, LLC v. Cam*, 115 Wn. App. 625, 632, 65 P.3d 11 (2003) (discussing *Lindley v. McGlaufflin*, 58 Wash. 636, 109 P. 118 (1910)).

⁴⁷ RCW 60.04.091(2).

2.5. FORECLOSURE

Liens are foreclosed judicially in the superior court where the property is located. The process is that prescribed for judicial foreclosures of mortgages. If there is a pending lien foreclosure against the property in question, other lien claimants must join that action rather than starting their own.⁴⁸

2.5.1. Parties

The owner of the property is a *necessary* party.⁴⁹ Any other person who claims an interest in the property is a *proper* party (*e.g.*, lender, tenant, other lien claimants). If a lien claimant wants to assert priority over a *proper* party, that party must be named as a defendant in the foreclosure lawsuit.⁵⁰

2.5.2. Time to File

An action to foreclose must be filed within eight calendar months of recording the Claim of Lien.⁵¹ This is a statute of limitations.⁵² The right to recover on the lien expires if an action is not filed within eight months. After that, the claimant is limited to its contractual remedies against whatever party it is in privity with.

2.5.3. Time to Serve

The summons and complaint must be served on the owner within 90 days of filing the action.⁵³ In order to preserve priority over *proper* parties, they must be served within 90 days of filing against them.⁵⁴

⁴⁸ RCW 60.04.171.

⁴⁹ RCW 60.04.171 ("the owner shall be joined as a party").

⁵⁰ RCW 60.04.171 ("The interest in real property of any person who, prior to the commencement of the action, has a recorded interest in the property, or part thereof, shall not be foreclosed or affected unless they are joined as a party.")

⁵¹ RCW 60.04.141.

⁵² *Curtis Lumber Co. v. Sortor*, 83 Wn.2d 764, 767, 522 P.2d 822 (1974).

⁵³ RCW 60.04.141.

2.5.4. Outcome

The outcome of a successful lien foreclosure is a decree ordering the property subject to the lien be sold by the sheriff and the proceeds applied to pay the lien.⁵⁵ A personal judgment may also be rendered against any party personally liable for the monies owed.⁵⁶

2.5.5. Priority

2.5.5.1. As against Mortgages, Etc.

A mechanic's lien's priority against mortgages and other recorded interests is not determined by the date of recording for the Claim of Lien. Instead, it is determined by the first date of work.⁵⁷

2.5.5.2. As against Other Lien Claims

Priority among several lien claims against the same property is determined not determined by the first date of work, but by statutory rank.⁵⁸ Mechanic's liens are ranked as follows:

- (1) Liens for performing labor;
- (2) Liens for contributions owed to employee benefit plans;
- (3) Liens for persons furnishing materials, supplies or equipment;
- (4) Liens for subcontractors (both labor and materials);
- (5) Liens for prime contractors or for professional services.

The basic theory behind this ranking system is that those closest to the owner are ranked lowest since their access to the owner means they have greater ability to protect themselves and ensure they get paid. If there is more than one lien of the same rank, they

⁵⁴ *Bob Pearson Constr., Inc. v. First Community Bank*, 111 Wn. App. 174, 43 P.3d 1261 (2002).

⁵⁵ RCW 60.04.171.

⁵⁶ RCW 60.04.181.

⁵⁷ RCW 60.04.061.

⁵⁸ RCW 60.04.181.

share pro rata until paid in full or until the proceeds from the property sale are exhausted.⁵⁹

The ranking system is altered if there is an intervening mortgage, deed of trust or other recorded interest. In that case, the liens that pre-date the intervening interest have the highest priority and are ranked according to the above schedule. The intervening interest is given second priority. And the lowest priority is given to the liens that post-date the intervening interest, which are ranked according to the above schedule.⁶⁰

2.6. AMOUNT OF LIEN

The amount of the lien is the "contract price", which is a statutorily-defined term.⁶¹ The "contract price" is either the price agreed on by the contracting parties or, if no price was agreed on, the customary and reasonable charge.⁶²

The amount may include prejudgment interest if the claim is liquidated.⁶³ However, it is important to recognize that interest starts to accrue when the Claim of Lien was recorded, not when the work was done or invoiced.⁶⁴

The rate of interest is an interesting issue. Presumably, since the lien claim is a statutory claim, the statutory interest rate of 12% applies.⁶⁵ But in this author's experience many lien claimants insist on a higher rate of interest, often 18%, based finance charges called for in their contracts, invoices, or other form documents. Research has not revealed any cases addressing this issue, but it is doubtful courts will award more than the statutory interest rate since finance charges typically are not considered part of the "price".

⁵⁹ RCW 60.04.181(2).

⁶⁰ RCW 60.04.061, .181(1).

⁶¹ RCW 60.04.021.

⁶² RCW 60.04.011(2).

⁶³ *Irwin Concrete, Inc. v. Sun Coast Properties, Inc.*, 33 Wn. App. 190, 653 P.2d 1331 (1982).

⁶⁴ *Rosellini v. Banchemo*, 83 Wn.2d 268, 517 P.2d 955 (1974).

⁶⁵ RCW 19.52.010.

2.7. FRIVOLOUS CLAIMS

The mechanic's lien statute provides for a summary procedure to get rid of frivolous liens, or reduce liens that are clearly excessive. The owner or any interested party can make a motion in the superior court where the property is located for an order to show cause requiring the lien claimant to show why the lien is not frivolous or clearly excessive.⁶⁶ This can be done as part of an ongoing foreclosure lawsuit, or as a separate mini-lawsuit if no action to foreclose has been filed.⁶⁷

If, following a hearing, the court determines that the lien is frivolous, the court will issue an order releasing the frivolous lien. If the court determines that the lien is clearly excessive, the court will issue an order reducing the amount of the lien. In either case, the lien claimant is liable for the moving party's costs and attorney fees. Conversely, if the lien claimant is successful—that is, if the lien is neither frivolous nor excessive—the moving party is liable for the lien claimant's costs and fees.⁶⁸

These proceedings are in the nature of a trial by affidavit.⁶⁹ The decision is based on written submissions. There is no live testimony.

In theory, the burden of proof is supposed to be shifting. First, the moving party must present affidavits or declarations explaining why the lien is frivolous or excessive. Then the burden shifts to the lien claimant to present a *prima facie* case for its lien. The burden then shifts back to the moving party to prove that the lien was frivolous or excessive when filed.⁷⁰

From a practical standpoint, however, the burden of proof rests squarely on the moving party—at least as far as declaring a lien frivolous. Courts are very reluctant to

⁶⁶ RCW 60.04.081.

⁶⁷ RCW 60.04.081(3).

⁶⁸ RCW 60.04.081(4).

⁶⁹ *Andries v. Covey*, 128 Wn. App. 546, 113 P.3d 483 (2005).

⁷⁰ *Williams v. Athletic Field, Inc.*, 142 Wn. App. 753, 139 P.3d 426 (2006).

declare liens frivolous. A lien is not frivolous merely because it is invalid; it has to be so invalid as to be "beyond legitimate dispute".⁷¹

One of the few, if not the only, published cases holding that a lien claim was frivolous is *Intermountain Elec., Inc. v. G-A-T Bros. Construction, Inc.*⁷² There, the lien claimant filed a second lien arguing that the presence of a trailer on the jobsite extended the 90-day recording period. The problem was that, by the time that second lien was filed, the trial court had already rejected that argument; it had ruled that the presence of the jobsite trailer did not extend the recording period. In other words, the lien claimant knew, or at least should have know, that its second lien had no chance of being timely, which rendered its second lien claim frivolous.

That is high burden to meet in many cases. Even when a lien seems doubtful, the risk-reward analysis leads many owners and contractors to forego this summary procedure, and the risks associated with it. They instead focus on other ways to relieve the property of the lien claim, such as posting a release of lien bond.

2.8. RELEASE OF LIEN BOND

The owner or any other interested party may post a release of lien bond to release the underlying real property from the lien claim. If the Claim of Lien is for \$10,000 or less, the amount of the lien bond must be the greater of \$5,000 or two times the lien amount. If the Claim of Lien is for more than \$10,000 the amount of the lien bond must be one-and-a-half times the lien amount. The statute also allows the parties to work out some other arrangement to provide alternate security or collateral for the lien claim.⁷³

It should be noted that the lien claimant has no choice in the matter. The owner (or any other interested party, such as a lender) has the absolute right to post a release of lien bond. From a collections stand point, this might not matter since the lien bond is

⁷¹ *Intermountain Elec., Inc. v. G-A-T Bros. Constr., Inc.*, 115 Wn. App. 384, 62 P.3d 548 (2003).

⁷² 115 Wn. App. 384, 62 P.3d 548 (2003).

⁷³ RCW 60.04.161.

supposed to cover the entire lien and more. But from a practical standpoint, this might take away much of the lien claimant's negotiating leverage, especially if the owner is looking to sell the newly-developed property to third parties.

2.9. BANKRUPTCY

Bankruptcy and lien claims often go hand-in-hand. After all, lien claims tend to cluster on problem projects, not successful ones. The relevant bankruptcy here is the owner's bankruptcy. A general contractor's bankruptcy can present problems of its own for a lien claimant, but those are beyond the scope of this article.

The most immediate impact of an owner's bankruptcy is that it tolls the 8-month period of limitation to file a foreclosure lawsuit. That much is clear from the mechanic's lien statute.⁷⁴ What is less than clear, however, is how long the tolling event lasts. The mechanic's lien statute does not say.

Generally speaking, a tolling event extends a limitations period for an amount equal to that of the tolling event. If the tolling event is two years, the statute of limitations is extended for two years.

That is probably not how an owner's bankruptcy will affect the 8-month limitations period. Instead, the answer is probably found in the Bankruptcy Code, specifically 11 U.S.C. § 108(c). Under that statute, a lien foreclosure action has to be started within the later of: (1) expiration of the 8-month period; or (2) thirty days after the automatic stay is lifted.

There is an element of uncertainty on this point. Research has not revealed any cases analyzing how the current mechanic's lien statute relates to the Bankruptcy Code. There is a case analyzing how § 108(c) works in conjunction with the prior version of the mechanic's lien statute, *In re Hunters Run Limited Partnership*. There, the Ninth Circuit

⁷⁴ RCW 60.04.141 ("This is a period of limitation, which shall be tolled by the filing of any petition seeking protection under Title Eleven, United Statutes Code by an owner of any property subject to the lien established by this chapter.").

Court of Appeals held that "section 108(c) applies to toll the enforcement period of [then] RCW 60.04.100."⁷⁵ This language is rather broad and suggests bankruptcy acts like a regular tolling event.

The Ninth Circuit has since retreated from its broad language in *Hunters Run*:

The majority of jurisdictions have interpreted section 108(c)(1) as *not* tolling a state statute of limitation in the normal fashion.

By its terms, section 108(c) does not toll any applicable statute of limitations period. Instead, the statute of limitations continues to run. If the limitations period expires while the bankruptcy stay is in effect, then section 108(c) provides creditors with an extra thirty days to pursue a claim once the creditor receives notice that the bankruptcy stay has been lifted.

...

Two different federal circuit courts, using broad language, have declared section 108(c) "tolls" a statute of limitations during a bankruptcy. *See ... In re Hunters Run Ltd. Partnership*, 875 F.2d 1425, 1429 (9th Cir. 1989) (*Hunters Run*).

... [T]he broad language in *Hunters Run* ... has subsequently been criticized in those federal circuits. ...

The Ninth Circuit has stepped back from its broad language in *Hunters Run*.^[76]

However, the core of *Hunters Run* is most likely still good law. Meaning, §108(c) of the Bankruptcy Code applies to lien foreclosures.

Until this question is answered definitively, the safe approach would be to assume that the 8-month period of limitation in RCW 60.04.141 continues to run during a

⁷⁵ 875 F.2d 1425, 1428 (9th Cir. 1989).

⁷⁶ *Hazel v. Van Beek*, 135 Wn.2d 45, 64-66, 954 P.2d 1301 (1998) (emphasis added) (citations omitted).

bankruptcy stay and, if it expires while the stay is in effect, the lien claimant has 30 days after the stay is lifted to file suit.

3. CLAIMS AGAINST WASHINGTON STATE PUBLIC WORKS PROJECTS

The fundamental difference between private projects and public works projects is that public property is not subject to mechanic's liens. Instead, Washington law sets up two statutory schemes to ensure that subcontractors, suppliers and laborers get paid:

- The retainage statute, Chapter 60.28 RCW; and
- The payment bond statute, Chapter 39.08 RCW.

Each have traps for the unwary, although perhaps not as many as the mechanic's lien statute. Attached as Appendix G is an overview of the claim requirements on Washington state public works projects.

A point of limitation is in order. The retainage statute was revised in 1992. New sections⁷⁷ were adopted in place of old ones⁷⁸ dating back to 1921. The old sections were not repealed; they still apply to contracts entered into before September 1, 1992 (the effective date of the new sections).⁷⁹ Other sections predating the 1992 revision⁸⁰ were not changed. This article only address the new sections and the ones that were not changed in the 1992 revision.

3.1. LIEN CLAIMS AGAINST THE RETAINAGE

When public owners enter into public improvement contracts, they must retain up to 5% of the contract price until the project is completed.⁸¹ The retainage is a trust fund

⁷⁷ RCW 60.28.011, .021 and .051.

⁷⁸ RCW 60.28.010, .020 and .050.

⁷⁹ 1992 Laws ch. 223 § 7(1).

⁸⁰ RCW 60.28.015, 60.28.030, 60.28.040, 60.28.060, and 60.28.080.

⁸¹ This does not apply to contracts for professional services. RCW 60.28.011(12)(d).

to protect potential claimants on the project and the state with respect to taxes owed by the contractor.⁸² The money is withheld from each progress payment so that the fund continues to grow as the project moves along. Generally, the funds are deposited in interest-bearing accounts, although the contractor can elect to have the money put into escrow or simply held by the owner instead.⁸³

The general contractor can in turn withhold money from payments to its subcontractors or suppliers. Likewise, first-tier subcontractors may withhold money from payments to its second-tier subcontractors and suppliers. The maximum amount that can be withheld by general contractors and first-tier subcontractors is 5%, and interest accrues at the same rate as that received from the public owner.⁸⁴

The general contractor can submit a bond for all or any portion of the retainage to have it released early. The public body must accept such a bond, and the bonded portion of the retainage must be released to the contractor within 30 days of acceptance. If the general contractor posts a bond, it must accept the same kinds of bonds from its subcontractors and suppliers.⁸⁵

3.1.1. Persons Eligible to Make a Lien Claim against the Retainage

Every person "performing labor or furnishing supplies" toward the completion of public works projects can claim a lien against the retainage.⁸⁶

"Supplies" includes both materials and equipment.⁸⁷ "Labor" has traditionally been understood to include not only the laborers themselves, but also trustees of

⁸² RCW 60.28.011.

⁸³ RCW 60.28.011(4).

⁸⁴ RCW 60.28.011(5).

⁸⁵ RCW 60.28.011(6).

⁸⁶ RCW 60.28.011.

⁸⁷ *J. D. English Steel Co. v. Tacoma School Dist. No. 10*, 57 Wn.2d 502, 358 P.2d 319 (1961) (steel and materials supplied by to subcontractor); *Ledingham v. City of Blaine*, 105 Wash. 253, 177 P. 783 (1919)

employment benefit plans, although ERISA may have preempted this.⁸⁸ But "labor" does not include suppliers of temporary labor where the supplier does not actually do the work.⁸⁹

It is important to recognize that the retainage statute does not protect the general contractor (and neither does the bond statute). Compare that to the mechanic's lien statute, under which every contractor can claim a lien, including the general/prime contractor. Not so on public works projects. The only remedy for a general contractor on a public works project is to file an action against the owner for breach of contract.

3.1.2. Preliminary Notice

Some, but not all, claimants must give a preliminary notice in order to preserve their lien rights. A sample notice is attached as Appendix H. This applies to claimants who provide materials, supplies or equipment *to a first-tier subcontractor*.

The statute is less than clear on this point. RCW 60.28.015 starts out:

Every person ... furnishing materials, supplies, or equipment to be used in [public works projects] shall give to the contractor of the work a notice in writing, which notice shall cover the material, supplies, or equipment furnished

(Emphasis added.) This suggests all claimants must give a preliminary notice. But hidden in the description of what must be included in the preliminary notice is the following passage:

... stating in substance and effect that such person ... is and/or has furnished materials and supplies, or equipment

(team of horses). See also RCW 60.28.015 (requiring those who provide "materials, supplies, or equipment" to provide a preliminary notice).

⁸⁸ See *Puget Sound Electrical Workers Health and Health Trust Fund v. Merit Co.*, 123 Wn.2d 565, 870 P.2d 960 (1994); *Ironworkers Dist. Council of the Pacific Northwest v. Woodland Park Zoo Planning & Development*, 87 Wn. App. 676, 942 P.2d 1054 (1997).

⁸⁹ *Better Financial Solutions, Inc. v. Caicos Corp.*, 117 Wash. App. 899, 73 P.3d 424 (2003).

for use thereon, with the name of the subcontractor ordering the same

(Emphasis added.)

The preliminary notice goes back 60 days. Meaning, it covers the materials, supplies, or equipment furnished or leased during the 60 days leading up to the date the preliminary notice was given, as well as all subsequent materials, supplies, or equipment furnished by that person.

The preliminary notice must be given to the general contractor by certified mail or personal service.

3.1.3. Notice of Claim

All claimants must submit a notice of claim to the public owner within 45 days of "completion of the contract work".⁹⁰ Similar notice is required for an action on the contractor's bond, but that notice must be given within 30 days of "acceptance".⁹¹

The notice must be in writing, signed by the person or corporation giving the notice.⁹² A sample form is attached as Appendix I.

3.1.4. Taxes

Taxes due to the Department of Revenue become a lien against the retainage prior to all other liens, except employees who have not been paid prevailing wages. Other taxes also become a lien against the retainage, but that lien is junior to all other statutory lien claims.⁹³

⁹⁰ RCW 60.28.011(2).

⁹¹ The concept of "completion" is different from the concept of "acceptance" under the bond statute. Acceptance is an affirmative act by the public owner. "Completion" refers to the completion of the entire project, not just the scope of work under the claimant's contract.

⁹² RCW 60.28.011(2); RCW 39.08.030.

⁹³ RCW 60.28.040. This only applies to contracts for \$20,000 or more.

Once the project is complete, the public owner must notify the Department of Revenue if the contract price exceeds \$35,000. No payments can be made from the retainage until the Department of Revenue certifies that all taxes related to that contract have been paid or can be collected without recourse to the retainage.⁹⁴ Once the certification is received, the retainage is released to the general contractor.⁹⁵

If there are taxes due and/or lien claims against the retainage, the public owner must retain an amount equal to the unpaid taxes and unpaid claims, plus an amount sufficient to cover the costs and attorney fees incurred in foreclosing those liens. The balance of the retainage is then released to the general contractor.⁹⁶

3.2. CLAIMS AGAINST THE BOND

As noted above, retainage is not the only protection for those who do work on public works projects. They are also protected by the payment bond posted by the general contractor.

A claim against the payment bond is not a lien claim in the true sense of that concept. Payment bond claimants do not have a lien against a res (like real property or a trust fund). Instead of a decree ordering that certain property be sold and the proceeds be used to pay the claimant, a payment bond claim results in a judgment against the surety on the bond is posted on behalf of the general contractor. The collateral is the surety's financial strength instead of a res.

As a practical matter, however, this makes little difference. Bond and retainage claims are typically analyzed and prosecuted together.

⁹⁴ RCW 60.28.051.

⁹⁵ RCW 60.28.021. Although, the public owner can retain amounts to cover claims it has against the general contractor.

⁹⁶ RCW 60.28.021.

3.2.1. Persons Eligible to Make a Claim against the Bond

Persons entitled to file a claim against the general contractor's payment bond are "laborers, mechanics, and subcontractors and materialmen and all persons who supply ... provisions and supplies for the carrying on of such work."⁹⁷ This category is broader than the corresponding category of eligible claimants on federal projects (*see* discussion of Miller Act *infra* at 4).

As with the retainage statute, the bond statute does not protect the general contractor. *See supra* at 3.1.1.

3.2.2. Preliminary Notice

Much like the retainage statute, some but not all lien claimants must give a preliminary notice in order to preserve their lien rights. A sample notice is attached as Appendix H.

This applies to claimants who deliver "materials, supplies or provisions":

Notice to contractor condition to suit on bond when supplies are furnished to subcontractor. Every person, firm or corporation furnishing materials, supplies or provisions to be used in the construction, performance, carrying on, prosecution or doing of any work for the ... public body, shall, not later than ten days after the date of the first delivery of such materials, supplies, or provisions to any subcontractor ... deliver or mail to the contractor a notice in writing stating in substance and effect that such person, firm or corporation has commenced to deliver materials, supplies or provisions for use thereon^[98]

"Materials" are defined as "articles which either actually have been incorporated into and become part of the building or have been delivered on the site for incorporation

⁹⁷ RCW 39.08.010.

⁹⁸ RCW 39.08.065 (emphasis added).

into the finished structure."⁹⁹ "Supplies" and "provisions" are things that are entirely consumed in the project.¹⁰⁰

It is not always easy to decide whether a preliminary notice is required, especially in the case of equipment. Some "equipment" is used to carry out the work (tools, tractors, trucks, etc.), while some "equipment" is actually installed in the project (HVAC, water pumps, electrical equipment, etc.). The latter requires a preliminary notice, the former does not.

*National Concrete Cutting, Inc. v. Northwest GM Contractors*¹⁰¹ and *LRS Electric Controls, Inc. v. Hamre Construction, Inc.*¹⁰² illustrate this distinction. The claimant in *National Concrete* used equipment to perform its work (concrete saws). The claimant in *LRS Electric* installed HVAC equipment in the project. The claimant in *LRS Electric* was required to give a preliminary notice since its HVAC equipment was installed at and became part of the project. The claimant in *National Concrete* was not required to give a preliminary notice since its concrete saws were "merely incidental" to the work it performed.

The preliminary notice goes back 10 days. It covers "materials, supplies or provisions" furnished during the 10 days leading up to the date the preliminary notice was given, as well as subsequent "materials supplies or provisions" furnished by that person. Contrast that with the preliminary notice under the retainage statute, which goes back 60 days.

⁹⁹ *National Concrete Cutting, Inc. v. Northwest GM Contractors, Inc.*, 107 Wn. App. 657, 661, 27 P.3d 1239 (2001).

¹⁰⁰ See *United States Fidelity & Guar. Co. v. Feenaughty Machinery Co.*, 197 Wash. 569, 576, 85 P.2d 1085 (1939).

¹⁰¹ 107 Wn. App. 657, 27 P.3d 1239 (2001).

¹⁰² 153 Wn.2d 731, 107 P.3d 721 (2005).

3.2.3. Notice of Claim

All claimants must submit a notice of claim to the public owner within 30 days of "acceptance" (an affirmative act by the public body).¹⁰³ Similar notice is required for an action against the retainage, but that notice must be given within 45 days of "completion of the contract work".¹⁰⁴

The notice must be in writing, signed by the person or corporation giving the notice.¹⁰⁵ A sample notice is attached as Appendix I.

3.3. ENFORCEMENT OF RETAINAGE AND BOND CLAIMS

3.3.1. Foreclosure against the Retainage

A lien claim against the retainage must be foreclosed within 4 months of filing the Notice of Claim.¹⁰⁶ The claim can be renewed for successive 4-month periods, up until 45 days after completion of the project.

The foreclosure action is filed in the superior court where the notice of claim was filed. The public owner is not required to make a detailed answer to the complaint; it only needs to certify to the court the name of the contractor; the work contracted to be done; the date of the contract; the date of completion and final acceptance of the work; the amount retained; the amount of taxes certified due or to become due to the state; and all claims filed with it showing for each the dates of filing, the names of claimants, and amounts claimed. Such a certification serves to arrest payment of so much of the retainage as is required to discharge taxes and the filed claims.¹⁰⁷

¹⁰³ RCW 39.08.030.

¹⁰⁴ RCW 60.28.011(2).

¹⁰⁵ RCW 60.28.011(2); RCW 39.08.030.

¹⁰⁶ RCW 60.28.030.

¹⁰⁷ RCW 60.28.030.

3.3.2. Action against the Bond

A bond claim is enforced by bringing suit in superior court against the contractor its surety. If the action is solely against the bond, the owner is not a necessary or proper party since the owner is not liable on the bond.¹⁰⁸

There is no specific statute of limitations for bond claims. Unless the bond provides otherwise, the contractual statute of limitations applies (six years if the contract is written and three years if the contract is verbal).¹⁰⁹ As a practical matter, however, the statute of limitations for a bond claim is the same as that for a claim against the retainage since the two often are prosecuted jointly.

3.3.3. Attorney Fees

Both the retainage statute and the bond statute provide for attorney fees to a successful claimant.¹¹⁰ But care must be taken to wait; the ability to recover fees can be lost if the lawsuit is filed within 30 days of giving the Notice of Claim.¹¹¹

In addition, fees may be recoverable under the settlement offer statutes, RCW 4.84.250 through 4.84.280. These apply in a modified fashion to actions "arising out of a public works contract in which the state or a municipality, or other public body that contracts for public works, is a party".¹¹²

The settlement offer statutes have been modified in two ways as applied to public works contracts:

- (1) The \$10,000 limit under by the settlement offer statutes does not apply;
and

¹⁰⁸ *Spokane & I. Lumber Co. v. Boyd*, 28 Wash. 90, 68 P. 337 (1902).

¹⁰⁹ RCW 4.16.040(1), .080(3).

¹¹⁰ RCW 60.28.030; RCW 39.08.030(1).

¹¹¹ RCW 39.08.030(1).

¹¹² RCW 39.04.240.

- (2) The time limits have been changed; an offer must be served on an adverse party not less than 30 days and not more than 120 days after the summons and complaint have been filed and served.

4. CLAIMS AGAINST FEDERAL PUBLIC WORKS PROJECTS (MILLER ACT)

On federal projects, workers and suppliers are protected by the Miller Act, 40 U.S.C. §§ 3131 – 3134. While technically not liens, Miller Act claims share many of the same characteristics as mechanic's lien claims and lien claims against retainage (limited pool of claimants, notice of claim, and enforcement/foreclosure). Therefore, this article will briefly address the Miller Act as well.

4.1. ELIGIBLE CLAIMANTS

The Miller Act is not as broad as the state retainage and bond statutes. It only protects those who supply labor, materials or equipment to a prime contractor or to a first-tier subcontractor.¹¹³

Put differently, the Miller Act protects:

- First-tier subcontractors;
- Suppliers to first-tier subcontractors; and
- Second-tier subcontractors.

The Miller Act does not protect:

- Suppliers to second-tier subcontractors (or lower); or
- Third-tier subcontractors (or lower).

¹¹³ 40 U.S.C. § 3133.

4.2. NOTICE OF CLAIM

Claimants who contract directly with the prime contractor are not required to give a Notice of Claim.¹¹⁴ But claimants who contract with a (first-tier) subcontractor must give a Notice of Claim within 90 days of last performance or delivery.¹¹⁵ Put differently, second-tier subcontractors and suppliers to first-tier subcontractors must give a Notice of Claim.

The preliminary notice must include the amount claimed and the name of the party requesting the materials and/or labor.¹¹⁶ A sample form is attached as Appendix J.

4.3. ENFORCEMENT

Enforcing a Miller Act claim involves filing suit in the United States District Court for the district where the project took place. The lawsuit is brought in the name of the United States for the use of the person bringing the action.¹¹⁷ The lawsuit must be brought no earlier than 90 days and no later than 1 year after the last date of work/delivery.¹¹⁸

5. TAX LIENS

5.1. STATE, COUNTY AND MUNICIPAL PROPERTY TAX LIENS

In Washington State, all real and personal property is subject to tax unless specifically exempted by law.¹¹⁹ (This article will only address property tax applied to real property.)

¹¹⁴ 40 U.S.C. § 3133(b)(1).

¹¹⁵ 40 U.S.C. § 3133(b)(2).

¹¹⁶ 40 U.S.C. § 3133(b)(2).

¹¹⁷ 40 U.S.C. § 3131(b)(3).

¹¹⁸ 40 U.S.C. § 3131(b)(1), (4).

¹¹⁹ Wash. Const. art. VII, § 1.

According to the Department of Revenue, property tax accounts for 30% of total state and local taxes.¹²⁰ It is the most important source of revenue for public schools, fire protection, libraries, and parks and recreation districts. The various taxing districts determine the amount needed, after which the county assessor calculates the tax rate necessary to raise that money. The amount of property tax due on a particular piece of property is based on the combination of tax rates and the assessed value of the property.¹²¹

Taxes assessed on real property automatically become a lien against that property when levied.¹²² The lien attaches on January 1 of the year in question, and continues until paid. (By its silence, the statute suggests that nothing more is needed to perfect the lien.)

Tax liens have priority over just about every other interest in the property. That includes mortgages, deeds of trust, and liens that were recorded before the tax lien arose. Lenders may protect against this by requiring a reserve or escrow account be set up to pay taxes, having the tax statements sent to themselves, and/or by paying the taxes directly and adding that amount to the amount owed.

After three years' of delinquency, the county prosecutor files a Certificate of Delinquency for all taxes owed plus interest and costs.¹²³ This has the same effect as a *lis pendens*.¹²⁴

The foreclosure is carried out by the county treasurer by filing the Certificate of Delinquency in the superior court, with the legal assistance of the prosecuting attorney.¹²⁵

¹²⁰ <http://dor.wa.gov/content/FindTaxesAndRates/PropertyTax>. See also Homeowner's Guide to Property Taxes available at http://dor.wa.gov/docs/Pubs/Prop_Tax/HomeOwn.pdf.

¹²¹ <http://dor.wa.gov/content/FindTaxesAndRates/PropertyTax>.

¹²² RCW 84.60.010, .020.

¹²³ RCW 84.64.050. For a detailed discussion of tax foreclosures in Washington, see Randall Thomsen, *Washington State Property Tax Foreclosures: Quererere Dat Sapere Quoe Sunt Legitima Vere*, 32 GONZ. L. REV. 123 (1996-97).

¹²⁴ RCW 84.64.050(4).

Notice and summons is given to the owner and any person claiming an interest in the property.¹²⁶

The foreclosure proceedings are summary in nature. The court examines the treasurer's application for judgment and any defenses offered, and issues a decision without further pleadings—although, the court has discretion to continue the matter in the interest of "substantial justice".¹²⁷

Assuming defenses are either non-existent or insufficient, the court will issue an order authorizing the treasurer to sell the property.¹²⁸ The treasurer then sells the property at auction to the highest bidder.¹²⁹ Notice of the sale must be posted in three public places in the county, one of which is the treasurer's office, for ten consecutive days.¹³⁰ The acceptable minimum bid is the total amount of taxes, interest, and costs set out in the judgment.¹³¹ Any excess funds are refunded to the record owner, less payment of all recorded water-sewer district liens.¹³²

At the conclusion of the sale, the treasurer issues a tax deed to the successful bidder.¹³³ The tax deed is prima facie evidence that the tax foreclosure was proper.¹³⁴ It also acts as judicial estoppel, preventing a challenge based on defenses that existed before

¹²⁵ RCW 84.64.050.

¹²⁶ RCW 84.64.050.

¹²⁷ RCW 84.64.080.

¹²⁸ RCW 84.64.080.

¹²⁹ RCW 84.64.080.

¹³⁰ RCW 84.64.080.

¹³¹ RCW 84.64.080.

¹³² RCW 84.64.080. No excess is refunded when the county obtains title at the sale and then resells the property. *King County v. Odman*, 8 Wn.2d 32, 37-38, 111 P.2d 228, 230 (1941).

¹³³ RCW 84.64.080.

¹³⁴ RCW 84.64.180.

judgment was entered—with two notable exceptions: that the tax has been paid, or that the property was not liable for the tax.¹³⁵

5.2. FEDERAL TAX LIENS

Federal tax liens are governed by the Internal Revenue Code, which supersedes state law in this area. Unpaid taxes automatically become a lien on all the taxpayer's property.¹³⁶ The lien attaches when taxes are assessed and continues until taxes are paid.¹³⁷

As against mortgages (and deeds of trust), mechanic's liens, or judgment liens, the priority of a federal tax lien is determined by when a notice of the lien was filed with the recorder's office.¹³⁸ This is a difference between federal tax liens and state tax liens.

5. JUDGMENT LIENS

This section will address liens created by judgments entered in state courts (superior and district) and in federal courts. It will address attachment and perfection of judgment liens, then their duration, and will end with a discussion of foreign judgments.

5.1. ATTACHMENT AND PERFECTION

The attachment and perfection of judgment liens depends on what court entered the judgment, where the property is located, and whether the property is homestead property. The following discussion is broken down by type of court (superior, district, federal) followed by a further breakdown based on whether the court and property are in the same county or different counties.

¹³⁵ RCW 84.64.180.

¹³⁶ 26 U.S.C. § 6321.

¹³⁷ 26 U.S.C. § 6322.

¹³⁸ 26 U.S.C. § 6323(a), (f); RCW 60.68.015(2).

5.1.1. Washington State Superior Court

5.1.1.1. Same County

The entry of a superior court judgment automatically gives rise to a lien against real property owned by the defendant in the same county where the judgment was entered.¹³⁹ But if the property is also a homestead property, a certified copy of the judgment must be recorded with the recorder's office.¹⁴⁰

5.1.1.2. Different County

To obtain a judgment lien based on a superior court judgment against property in a county other than the county where the judgment was entered, a certified *abstract*¹⁴¹ of the judgment must be filed in the superior court where the property is located.¹⁴² If the property is a homestead property, a certified copy of the judgment must be obtained from the court that entered the judgment and recorded in the county where the property is located.¹⁴³ There is no need to file an abstract with the superior court where the property is located to create a lien on homestead property in a county other than the county where the judgment was entered.¹⁴⁴

5.1.2. Washington State District Court

5.1.2.1. Same County

To obtain a lien based on a district court judgment against property in the same county where the judgment was entered, a certified *transcript*¹⁴⁵ of the district court

¹³⁹ RCW 4.56.200(1); RCW 6.01.020.

¹⁴⁰ RCW 6.13.090.

¹⁴¹ An abstract of judgment contains (1) the name of the judgment creditor, (2) the name of the judgment debtor, (3) the date of the judgment and (4) the amount of the judgment. RCW 4.64.090.

¹⁴² RCW 4.56.200(2).

¹⁴³ RCW 6.13.090.

¹⁴⁴ *Matter of Deal*, 85 Wn. App. 580, 584, 933 P.2d 1084 (1997).

¹⁴⁵ A transcript of the docket " shall contain an exact copy of the district court judgment from the docket." RCW 4.64.110.

docket must be filed with the superior court clerk.¹⁴⁶ If the property is a homestead property, one must record a certified *abstract* of the superior court judgment (not the district court docket).¹⁴⁷

5.1.2.2. Different County

To obtain a judgment lien based on a district court judgment against property in a county other than the county where the judgment was entered, one must: (1) file a *transcript* of the district court docket with the superior court in the county where the judgment was entered; (2) obtain a certified *abstract of judgment* from that superior court; and then (3) file that *abstract* with the superior court where the property is located.¹⁴⁸ If the property is a homestead property, one must: (1) file a certified *transcript* of the district court docket in the superior court in the same county as the district court;¹⁴⁹ and then (2) record a certified *abstract* of the superior court judgment in the county where the property is located.¹⁵⁰

5.1.3. United States District Court

5.1.3.1. Same County

The entry of a U.S. district court judgment automatically gives rise to a lien against real property owned by the defendant in the same county where the judgment was entered.¹⁵¹ But if the property is also a homestead property, a certified copy of the judgment must be recorded with the recorder's office.¹⁵²

¹⁴⁶ RCW 4.56.200(3).

¹⁴⁷ RCW 6.13.090.

¹⁴⁸ RCW 4.56.200(4).

¹⁴⁹ RCW 4.56.200(3).

¹⁵⁰ RCW 6.13.090.

¹⁵¹ RCW 4.56.200(1).

¹⁵² RCW 6.13.090.

5.1.3.2. *Different County*

To obtain a judgment lien based on a U.S. District court judgment against property in a county other than the county where the judgment was entered, a certified *abstract of judgment* must be filed in the superior court where the property is located.¹⁵³ If the property is homestead property, a certified copy of the judgment must be obtained from the court that entered the judgment and recorded in the county where the property is located.¹⁵⁴

5.2. DURATION

Generally, judgment liens expire after 10 years.¹⁵⁵ This can be extended for an additional 10 years upon application by the judgment creditor filed within 90 days before expiration of the initial 10-year period.¹⁵⁶ This does not alter the perfection or priority of the judgment lien.¹⁵⁷

5.3. FOREIGN JUDGMENTS

Washington has adopted the Uniform Enforcement of Foreign Judgments Act. It sets up two alternative ways to enforce or execute on a judgment in Washington. Either: (A) the foreign judgment is registered in Washington; or (B) a separate lawsuit is filed in Washington enforce the foreign judgment.¹⁵⁸

Once registered, a foreign judgment is treated the same as a Washington judgment. It is subject to the same procedures and defenses as Washington judgments, and may be enforced, extended, or satisfied in like manner.¹⁵⁹ But the duration of a

¹⁵³ RCW 4.56.200(2).

¹⁵⁴ RCW 6.13.090.

¹⁵⁵ RCW 4.56.210; RCW 6.17.020(1). Judgment liens for child support expire 10 years after the 18th birthday of the youngest child named in the child support order. RCW 4.56.210(2).

¹⁵⁶ RCW 6.17.020(3).

¹⁵⁷ RCW 6.17.020(6).

¹⁵⁸ RCW 6.36.035(3)(a); 6.36.160.

¹⁵⁹ RCW 6.36.025.

registered foreign judgment is ultimately determined by the duration of the underlying judgment.¹⁶⁰

6. CONDOMINIUMS

This section will discuss liens involving condominiums, both liens by condominium associations (assessment liens) and liens against condominium property.

6.1. CONDOMINIUM ASSESSMENT LIENS

6.1.1. Attachment and Perfection

Condominium associations have a lien against any unit for unpaid assessments.¹⁶¹ This lien arises automatically once assessments become delinquent. The amount of the lien is determined by the amount of "assessments" due, which is broadly defined to include not only regular and special assessments for common expenses, but also late fees, interest, and costs of collection, including attorney fees.¹⁶²

It is common practice for condominium associations to record a claim of lien with the recorder's office once unpaid assessments reach a certain magnitude. Such notices are not legally required, and do not determine the priority of the assessment lien.¹⁶³ Instead, the lien attaches and has the general priority as of when the assessment is due.¹⁶⁴ Strictly speaking, a claim of assessment lien has no legal effect at all, but simply serves to give notice to others who, for practical reasons, otherwise might not know of the unpaid assessments or the lien.

¹⁶⁰ *TCAP Corp. v. Gervin*, ___ Wn.2d ___, ___ P.3d ___ 2008 WL 2333085 (June 5, 2008).

¹⁶¹ RCW 64.34.364.

¹⁶² RCW 64.34.020(3).

¹⁶³ RCW 64.34.364(7).

¹⁶⁴ RCW 64.34.364(1).

6.1.2. Relation to other Liens

Generally speaking, assessment liens are prior to all other liens against the unit. There are two general exceptions: (a) liens that were recorded before the condominium declaration was recorded; and (b) property tax liens.¹⁶⁵ Mortgages are governed by special rules discussed immediately below.

6.1.3. Relation to Mortgages

Assessment liens enjoy limited super-priority over mortgages. Generally speaking, mortgages are senior to assessment liens as long as the mortgage is recorded before assessments become delinquent.¹⁶⁶ But even then, assessment liens are prior to mortgages to the extent of 6-months of "assessments for common expenses".¹⁶⁷

There is one important exception to this super-priority. It does not apply if the condominium association forecloses on its assessment lien *non-judicially*.¹⁶⁸ In other words, if the condominium association starts a foreclosure action, the super-priority applies. If the condominium association starts the process leading to a trustee's sale, it does not.

In most judicial foreclosures, all the association can hope for as against mortgage companies is to establish their super-priority. As a matter of practice, lenders will ensure there are no unpaid assessments as part of their underwriting procedures. But mistakes do happen, which cause mortgages to be approved without confirming there are no unpaid assessments. In those cases, the entire assessment lien is senior to the mortgage.

¹⁶⁵ RCW 64.34.364(2).

¹⁶⁶ RCW 64.34.364(2).

¹⁶⁷ RCW 64.34.364(3). The reference to "assessments for common expenses" suggests this superior priority does not apply to all amounts that otherwise would qualify as "assessments", such as late fees, interest, and costs of collection. Theoretically, this can be reduced to 3 months if the mortgage holder gives certain notices to the association, but in the experience of this author, mortgage holders do not exercise this option. RCW 64.34.364(4); RCW 64.34.020(18).

¹⁶⁸ RCW 64.34.364(5).

Although rare, these situations happen frequently enough that practitioners should not assume mortgages are senior to (the entire) assessment lien, but confirm such as part of reviewing the litigation guarantee before filing suit.

6.1.4. Foreclosure (Judicial/Non-judicial)

Assessment liens can be foreclosed judicially in all cases. They can be foreclosed non-judicially if:¹⁶⁹

- (A) the declaration contains a grant of the condominium to a trustee qualified under the deed of trust act, Chapter 61, 24 RCW;
- (B) the declaration contains a power of sale;
- (C) the units are not used for agriculture or farming; and
- (D) the power of sale takes effect on a unit owner's failure to pay assessments.

The statute of limitations is three years. Both the assessment lien and the owner's personal liability are extinguished unless an action to foreclose/collect is started within that time period.¹⁷⁰

If the owner rents out the unit, the association is entitled to have a receiver appointed to collect the rents. If rent is not paid, the receiver can take possession of the unit and rent it out.¹⁷¹

6.2. LIENS AGAINST THE CONDOMINIUM

A judgment against a condominium association becomes a lien against all the units in the condominium and their interest in the common elements. The judgment is filed in the name of the condominium association and when so filed, is notice of the lien against the units.¹⁷²

¹⁶⁹ RCW 64.34.364(9).

¹⁷⁰ RCW 64.34.364(8).

¹⁷¹ RCW 64.34.364(10).

¹⁷² RCW 64.34.368.

For mechanic's liens, see supra at 2.2.3.

7. APPENDIXES

- A. Overview of Lien Claims on a Washington Private Project
- B. Notice to Customer
- C. Notice to Owner
- D. Notice of Furnishing Professional Services
- E. Notice to Real Property Lender
- F. Claim of Lien
- G. Overview of Lien Claims on a Washington Public Project
- H. Materialman's or Supplier's Notice to Contractor
- I. Notice of Claim of Lien against Bond and Retained Percentage
- J. Miller Act Notice of Claim

APPENDIX A

LIEN CLAIMS ON A WASHINGTON PRIVATE PROJECT

<p>NOTICE TO CUSTOMER</p>	<p>FROM: Prime contractor working on 4 or fewer residential units when the contract price is \$1,000 or more, or on a commercial building when the contract price is \$1,000 - \$60,000</p> <p>TO: Owner</p> <p>WHEN: Before starting construction</p>
<p>NOTICE OF FURNISHING PROFESSIONAL SERVICES</p>	<p>FROM: Provider of professional services</p> <p>TO: County recorder</p> <p>WHEN: As soon as professional services are commenced</p>
<p>NOTICE TO OWNER (for all projects except repair and remodel of owner-occupied, single-family residences)</p>	<p>FROM: Provider of professional services, materials or equipment, <u>except</u> that the following need not provide notice: (1) a provider that contracts directly with the owner or the owner's common law agent; (2) a first-tier subcontractor; or (3) laborers whose claim of lien is based solely on performing labor</p> <p>TO: Owner and usually also prime contractor</p> <p>WHEN: <u>New Single-Family Residence:</u> Within 10 days of first supplying professional services, materials, or equipment; <u>All Other Projects:</u> Within 60 days of first supplying professional services, materials, or equipment</p>
<p>NOTICE TO OWNER (for repair and remodeling of owner-occupied, single-family residences)</p>	<p>FROM: Provider of professional services, materials or equipment to anyone other than the owner</p> <p>TO: Owner and usually also prime contractor</p> <p>WHEN: Immediately after agreeing to furnish professional services, materials or equipment</p>
<p>NOTICE TO REAL PROPERTY LENDER (only applies when there is not a payment bond of at least 50% of the construction financing)</p>	<p>FROM: Potential lien claimant to whom payment is 5 or more days overdue</p> <p>TO: Construction lender, owner and prime contractor</p> <p>WHEN: Within 35 days of date payment is due</p>
<p>CLAIM OF LIEN</p>	<p>FROM: Unpaid claimant</p> <p>TO: County recorder and owner</p> <p>WHEN: <u>County recorder:</u> No later than 90 days after the last furnishing of labor, professional services, materials or equipment <u>Owner:</u> Within 14 days of recording</p>
<p>LAWSUIT</p>	<p>Within 8 months of recording Claim of Lien</p>

APPENDIX B

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)

APPENDIX C

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 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

APPENDIX C

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.

APPENDIX D

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)

.....

(Phone Number)

APPENDIX E

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)

APPENDIX E

.....,

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 Dollars (\$.).

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.

DATE:

By:

Its:

APPENDIX F

CLAIM OF LIEN

....., claimant, vs, name of person 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 PERSON INDEBTED TO THE CLAIMANT:

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

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

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. PRINCIPAL AMOUNT FOR WHICH THE LIEN IS CLAIMED IS:

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

(Phone number, address, city,
and state of claimant)
.....
.....

APPENDIX F

STATE OF WASHINGTON)
) ss.
COUNTY OF)

THIS IS TO CERTIFY that on the day of, 20 before me, a Notary Public in and for the State of Washington, duly commissioned and sworn, came , personally known or having presented satisfactory evidence to be the individual described in and who executed the within instrument, and acknowledged that he/she signed the same as his/her free and voluntary act and deed for the uses and purposes therein mentioned.

WITNESS MY HAND and official seal the day and year in this certificate first above written.

Print Name: _____
Notary Public in and for the
State of Washington, residing at

Expiration Date: _____

APPENDIX G

LIEN CLAIMS ON A WASHINGTON PUBLIC PROJECT

	RETAINAGE	BOND
PRELIMINARY NOTICE	<p>FROM: Provider of materials, supplies, or equipment to subcontractor</p> <p>TO: Prime contractor</p> <p>WHEN: Within <u>60</u> days of first delivery</p>	<p>FROM: Provider of materials, supplies, or provisions to a subcontractor</p> <p>TO: Prime contractor</p> <p>WHEN: Within <u>10</u> days of first deliver</p>
NOTICE OF CLAIM	<p>FROM: Unpaid claimant</p> <p>TO: Public body</p> <p>WHEN: Within <u>45</u> days of completion of the <u>contract work</u></p>	<p>FROM: Unpaid claimant</p> <p>TO: Public body</p> <p>WHEN: Within <u>30</u> days of project <u>acceptance</u> by public body</p>
LAWSUIT	<p>Within 4 months of filing Notice of Claim or last renewal</p>	<p>It is suggested that suit be commenced no later than 3 years from the date of filing the Notice of Claim, but no later than the time specified by the bond.</p> <p>It is often best to sue on the bond and retainage together, within 4 months of filing or renewing the Notice of Claim.</p>

APPENDIX H

MATERIALMAN'S OR SUPPLIER'S NOTICE TO CONTRACTOR

[Date]

TO: _____

[Name and address of Contractor]

YOU ARE HEREBY NOTIFIED that _____ [Claimant], at
the request of _____ [Subcontractor ordering materials, supplies, provisions or equipment],
has on _____ [Date], commenced furnishing materials, supplies,
provision or equipment to be used on the performance of the following public works:

[Describe contract, nature of construction, and location of work]

NOTICE IS FURTHER GIVEN that the prime contractor, its bond, and retained
percentage will be held for the payment of materials, supplies, provisions, or equipment furnished
and hereinafter to be furnished.

CLAIMANT

By: _____
[Signature of Claimant or agent]

Address: _____

Via certified or registered mail to, or personal service on, general contractor

APPENDIX I

NOTICE OF CLAIM OF LIEN AGAINST BOND AND RETAINED PERCENTAGE

[Date]

TO: _____

[Name and address of Public Body]

NOTICE IS HEREBY GIVEN that the undersigned _____ [Claimant] _____, has a claim in the sum of \$ _____, together with interest at _____ from and after _____ against the bond taken from _____ [Prime Contractor] _____, as the principal, and _____ [Surety] _____, as the surety, Bond No. _____, and against the retained percentage held by _____ [Public Body] _____ for the work performed on and/or materials supplied to the following public works:

[Describe work performed/materials supplied, identity of project, and location]

CLAIMANT

By: _____
[Signature of Claimant or agent]

Address: _____

cc: *General Contractor*, (via certified mail, return receipt requested)
Surety, (via certified mail, return receipt requested)

APPENDIX J

MILLER ACT NOTICE OF CLAIM

[Date]

TO: _____

[Name and address of Prime Contractor]

This notice is given pursuant to the Miller Act, 40 U.S.C. §§ 3131 – 3134, and serves as notice that the undersigned _____ [Claimant] _____, has performed labor and/or has furnished materials or supplies in the amount of \$ _____ required in prosecution of the work provided for in your contract with the United States. That contract, designated as [contract no.] is for the construction of:

[Describe project and location]

The undersigned performed labor and/or supplied materials or supplies pursuant to a contract with _____ [Subcontractor] _____. In consideration therefor, there became due, owing and payable to the undersigned the sum of \$ _____. The undersigned has been paid an aggregate sum of \$ _____, leaving due, owing and payable the balance of \$ _____, plus interest.

Demand is hereby made upon you for the payment of this indebtedness in the amount of \$ _____, together with lawful interest. Unless the amount due and owing is promptly paid, suit will be instituted against you and your surety upon the bond.

CLAIMANT

By: _____

[Signature of Claimant or agent]

cc: Surety