

any single family residence or garage such notice must be given not later than ten days after the date of the first delivery of such materials or supplies. No materialmen's lien shall be enforced unless the provisions of this section have been complied with: *Provided*, That in the event the notice required by this section is not given within the time specified by this section, any lien or claim of lien shall be enforceable only for materials and supplies delivered subsequent to such notice being given to the owner or reputed owner, and such lien or claim of lien shall be secondary to any lien or claim of lien established where such notice was given within the time limits prescribed by this section.

Notice lien
may be
claimed.

Note: See also section 2, chapter 279, Laws of 1959.

Passed the Senate February 4, 1959.

Passed the House March 9, 1959.

Approved by the Governor March 24, 1959.

CHAPTER 279.

[S. B. 64.]

MECHANICS' AND MATERIALMEN'S LIENS

AN ACT relating to mechanics' and materialmen's liens; amending section 1, chapter 24, Laws of 1893 as last amended by section 1, chapter 116, Laws of 1905, and RCW 60.04.010; amending section 1, chapter 45, Laws of 1909 as last amended by section 1, chapter 214, Laws of 1957, and RCW 60.04.020; amending section 3, chapter 24, Laws of 1893 as last amended by section 1, chapter 230, Laws of 1929, and RCW 60.04.040; amending section 4, chapter 24, Laws of 1893 and RCW 60.04.050; amending section 5, chapter 24, Laws of 1893 as last amended by section 1 (5a), chapter 217, Laws of 1949, and RCW 60.04.060; amending section 1 (5b), chapter 217, Laws of 1949 and RCW 60.04.064; amending section 1 (5c), chapter 217, Laws of 1949 and RCW 60.04.067; amending section 8, chapter 24, Laws of 1893 and RCW 60.04.090; amending section 10, chapter 24, Laws of 1893 and RCW 60.04.110; amending section 12, chapter 24, Laws of 1893 and RCW 60.04.130; amending

section 14, chapter 24, Laws of 1893 and RCW 60.04.140; and amending section 13, chapter 24, Laws of 1893 and RCW 60.04.180.

Be it enacted by the Legislature of the State of Washington:

RCW 60.04.010 amended.

SECTION 1. Section 1, chapter 24, Laws of 1893 as last amended by section 1, chapter 116, Laws of 1905, and RCW 60.04.010 are each amended to read as follows:

Lien authorized—Bond by railroad company.

Every person performing labor upon, furnishing material, or renting, leasing or otherwise supplying equipment, to be used in the construction, alteration or repair of any mining claim, building, wharf, bridge, ditch, dyke, flume, tunnel, well, fence, machinery, railroad, street railway, wagon road, aqueduct to create hydraulic power or any other structure or who performs labor in any mine or mining claim or stone quarry, has a lien upon the same for the labor performed, material furnished, or equipment supplied by each, respectively, whether performed, furnished, or supplied at the instance of the owner of the property subject to the lien or his agent; and every contractor, subcontractor, architect, builder or person having charge, of the construction, alteration or repair of any property subject to the lien as aforesaid, shall be held to be the agent of the owner for the purposes of the establishment of the lien created by this chapter: *Provided*, That whenever any railroad company shall contract with any person for the construction of its road, or any part thereof, such railroad company shall take from the person with whom such contract is made a good and sufficient bond, conditioned that such person shall pay all laborers, mechanics, materialmen, and equipment suppliers, and persons who supply such contractors with provisions, all just dues to such persons or to any person to whom any part of such work is given, incurred in carrying on such

work, which bond shall be filed by such railroad company in the office of the county auditor in each county in which any part of such work is situated. And if any such railroad company shall fail to take such bond, such railroad company shall be liable to the persons herein mentioned to the full extent of all such debts so contracted by such contractor.

SEC. 2. Section 1, chapter 45, Laws of 1909 as last amended by section 1, chapter 214, Laws of 1957, and RCW 60.04.020 are each amended to read as follows:

RCW 60.04.020 amended.

Every person, firm or corporation furnishing materials or supplies or renting, leasing or otherwise supplying equipment, to be used in the construction, alteration or repair of any mining claim, building, wharf, bridge, ditch, dyke, flume, tunnel, well, fence, machinery, railroad, street railway, wagon road, aqueduct to create hydraulic power, or any other building, or any other structure, or mining claim or stone quarry, shall, not later than sixty days after the date of the first delivery of such materials or supplies or equipment to any contractor or agent, give to the owner or reputed owner of the property on, upon or about which such materials or supplies or equipment were used, a notice in writing, stating in substance and effect that such person, firm or corporation has furnished materials and supplies, or equipment for use thereon, with the name of the contractor or agent ordering the same, and that a lien may be claimed for all materials and supplies, or equipment furnished by such person, firm or corporation for use thereon, which notice shall be given by mailing the same by registered or certified mail in an envelope addressed to the owner or reputed owner at his place of residence or reputed residence: *Provided, however,* That with respect to materials or supplies or equipment used in construction, alteration or repair of any single family residence or

Notice that materialmen's lien may be claimed.

garage such notice must be given not later than ten days after the date of the first delivery of such materials or supplies or equipment. No materialmen's lien shall be enforced unless the provisions of this section have been complied with.

Note: See also section 1, chapter 278, Laws of 1959.

RCW 60.04.040
amended.

SEC. 3. Section 3, chapter 24, Laws of 1893 as last amended by section 1, chapter 230, Laws of 1929, and RCW 60.04.040 are each amended to read as follows:

Lien for im-
proving real
property.

Any person who, at the request of the owner of any real property, his agent, contractor or subcontractor, clears, grades, fills in or otherwise improves the same, or any street or road in front of, or adjoining the same, and every person who, at the request of the owner of any real property, his agents, contractor, or subcontractor, rents, leases, or otherwise supplies equipment, or furnishes materials, including blasting powder, dynamite, caps and fuses, for clearing, grading, filling in, or otherwise improving any real property or any street or road in front of or adjoining the same, has a lien upon such real property for the labor performed, the materials furnished, or the equipment supplied for such purposes.

RCW 60.04.050
amended.

SEC. 4. Section 4, chapter 24, Laws of 1893 and RCW 60.04.050 are each amended to read as follows:

Priority of
lien.

The liens created by this chapter are preferred to any lien, mortgage or other incumbrance which may attach subsequently to the time of the commencement of the performance of the labor, the furnishing of the materials, or the supplying of the equipment for which the right of lien is given by this chapter, and are also preferred to any lien, mortgage or other incumbrance which may have attached previously to that time, and which was not filed or recorded so as to create constructive

notice of the same prior to that time, and of which the lien claimant had no notice.

SEC. 5. Section 5, chapter 24, Laws of 1893 as last amended by section 1 (5a), chapter 217, Laws of 1949, and RCW 60.04.060 are each amended to read as follows:

RCW 60.04.060
amended.

No lien created by this chapter shall exist, and no action to enforce the same shall be maintained, unless within ninety days from the date of the cessation of the performance of such labor, the furnishing of such materials, or the supplying of such equipment, a claim for such lien shall be filed for record as hereinafter provided, in the office of the county auditor of the county in which the property, or some part thereof to be affected thereby, is situated. Such claim shall state, as nearly as may be, the time of the commencement and cessation of performing the labor, furnishing the material, or supplying the equipment, the name of the person who performed the labor, furnished the material, or supplied the equipment, the name of the person by whom the laborer was employed (if known) or to whom the material was furnished, or equipment supplied, a description of the property to be charged with the lien sufficient for identification, the name of the owner, or reputed owner if known, and if not known, that fact shall be mentioned, the amount for which the lien is claimed, and shall be signed by the claimant, or by some person in his behalf, and be verified by the oath of the claimant, or some person in his behalf, to the effect that the affiant believes the claim to be just; in case the claim shall have been assigned the name of the assignee shall be stated; and such claim of lien may be amended in case of action brought to foreclose the same, by order of the court, as pleadings may be, in so far as the interests of third parties shall not be affected by such amendment. A claim for lien sub-

Claim—Con-
tents—Form
—Filing—
Joinder.

Claim—
Form—
Joinder.

stantially in the following form shall be sufficient:

....., claimant, vs.

Notice is hereby given that on the day (date of commencement of performing labor or furnishing material or supplying equipment)..... at the request of commenced to perform labor (or to furnish material or supply equipment to be used) upon (here describe property subject to the lien) of which property the owner, or reputed owner, is (or if the owner or reputed owner is not known, insert the word "unknown"), the performance of which labor (or the furnishing of which material or supply of which equipment) ceased on the day of; that said labor performed (or material furnished or equipment supplied) was of the value of dollars, for which labor (or material) (or equipment) the undersigned claims a lien upon the property herein described for the sum ofdollars. (In case the claim has been assigned, add the words "and is assignee of said claim," or claims, if several are united.)

....., Claimant.

State of Washington, County of....., ss.

....., being sworn, says: I am the claimant (or attorney of the claimant) above named; I have heard the foregoing claim read and know the contents thereof, and believe the same to be just.

.....
Subscribed and sworn to before me this day of

.....
Any number of claimants may join in the same claim for the purpose of filing the same and enforcing their liens, but in such case the amount claimed by each original lienor, respectively, shall be stated: *Provided*, It shall not be necessary to insert in the

notice of claim of lien provided for by this chapter any itemized statement or bill of particulars of such claim.

SEC. 6. Section 1 (5b), chapter 217, Laws of 1949 and RCW 60.04.064 are each amended to read as follows:

RCW 60.04.064 amended.

The owner may within ten days after there has been a cessation of the performance of such labor, the furnishing of such material, or the supplying of such equipment thereon for a period of thirty days, file for record in the office of the county auditor, in the county where the property is situated, a notice setting forth the date on which cessation of the performance of such labor, the furnishing of such materials, or the supplying of such equipment occurred together with his name, address and the nature of his title, a legal description of the property and a statement that a copy of this notice was delivered or mailed to the general contractor, if any. The notice must be verified by the owner or by some person in his behalf. Where the ownership of the property is in several persons any one or more of the several owners may execute and file such notice, but the notice must state the names, addresses and nature of title of all of such owners. Such notice shall be conclusive evidence of the cessation of the performance of such labor, the furnishing of such materials, or the supplying of such equipment on or before the date of cessation as stated in said notice, unless controverted by claimant's claim of lien which must be recorded within sixty days from the date of recording of such notice by the owner. This provision shall not extend the time for filing lien claims as provided by RCW 60.04.060.

Owner may record notice to lien claimants.

SEC. 7. Section 1 (5c), chapter 217, Laws of 1949 and RCW 60.04.067 are each amended to read as follows:

RCW 60.04.067 amended.

Where such labor is performed, such materials

Separate residential units—Time for filing claim commences— Definition.

are furnished, or such equipment is supplied in the construction of two or more separate residential units the time for filing claims of lien against each separate residential unit shall commence to run upon the cessation of the performance of such labor, the furnishing of such materials, or the supplying of such equipment on each such residential unit as provided in this chapter. A separate residential unit is defined as consisting of one residential structure together with any garages or other outbuildings appurtenant thereto.

RCW 60.04.090 amended.

SEC. 8. Section 8, chapter 24, Laws of 1893 and RCW 60.04.090 are each amended to read as follows:

Claims to designate property charged.

In every case in which one claim is filed against two or more separate pieces of property owned by the same person, or owned by two or more persons who jointly contracted for the labor, material, or equipment for which the lien is claimed, the person filing such claim must designate in the claim the amount due him on each piece of property, otherwise the lien of such claim is postponed to other liens. The lien of such claim does not extend beyond the amount designated as against other creditors having liens upon either of such pieces of property.

RCW 60.04.110 amended.

SEC. 9. Section 10, chapter 24, Laws of 1893 and RCW 60.04.110 are each amended to read as follows:

Adjustment between owner and contractor.

The contractor shall be entitled to recover upon the claim filed by him only such amount as may be due him according to the terms of his contract, after deducting all claims of other parties for labor performed, materials furnished, and equipment supplied; and in all cases where a claim shall be filed under this chapter for labor performed, materials furnished, or equipment supplied to any contractor, he shall defend any action brought thereupon at his own expense; and during the pendency of such action, the owner may withhold from the contractor the amount of money for which the claim is filed;

and in case of judgment against the owner or his property, upon the lien, the owner shall be entitled to deduct from any amount due or to become due by him to the contractor, the amount of the judgment and costs, and if the amount of such judgment and costs shall exceed the amount due by him to the contractor or if the owner shall have settled with the contractors in full, he shall be entitled to recover back from the contractor the amount, including costs for which the lien is established in excess of any sum that may remain due from him to the contractor.

SEC. 10. Section 12, chapter 24, Laws of 1893 and RCW 60.04.130 are each amended to read as follows:

RCW 60.04.130 amended.

In every case in which different liens are claimed against the same property, the court, in the judgment, must declare the rank of such lien or class of liens, which shall be in the following order:

Rank of lien—
Application of
proceeds—
Attorney's
fees.

- (1) All persons performing labor.
- (2) All persons furnishing material or supplying equipment.
- (3) The subcontractors.
- (4) The original contractors.

The proceeds of the sale of the property must be applied to each lien or class of liens in the order of its rank; and personal judgment may be rendered in an action brought to foreclose a lien, against any party personally liable for any debt for which the lien is claimed, and if the lien be established, the judgment shall provide for the enforcement thereof upon the property liable as in case of foreclosure of mortgages; and the amount realized by such enforcement of the lien shall be credited upon the proper personal judgment, and the deficiency, if any remaining unsatisfied, shall stand as a personal judgment, and may be collected by execution against the party liable therefor. The court may allow, as part of the costs of the action, the moneys paid for filing

or recording the claim, and a reasonable attorney's fee in the superior and supreme courts.

RCW 60.04.140 amended.

SEC. 11. Section 14, chapter 24, Laws of 1893 and RCW 60.04.140 are each amended to read as follows:

Lien not discharged by taking note.

The taking of a promissory note or other evidence of indebtedness for any labor performed, material furnished, or equipment supplied for which lien is created by law, shall not discharge the lien therefor, unless expressly received as payment and so specified therein.

RCW 60.04.180 amended.

SEC. 12. Section 13, chapter 24, Laws of 1893 and RCW 60.04.180 are each amended to read as follows:

Personal action preserved.

Nothing contained in this chapter shall be construed to impair or affect the right of any person to whom any debt may be due for labor performed, material furnished, or equipment supplied to maintain a personal action to recover such debt against the person liable therefor.

Passed the Senate February 6, 1959.

Passed the House March 6, 1959.

Approved by the Governor March 24, 1959.