

HOW TO FILE A LIEN

What Is a Lien?

A construction lien is an effective way to secure payment for the labor and/or materials you put into a person's property. In almost all cases, it is less expensive and time consuming than suing for breach of contract. When you file a lien, you have the right to require the County Sheriff to sell the property you put work into and collect the amount owing from the sale proceeds.

Because of this right to sell and collect, most lending institutions or other prospective purchasers will avoid any property that has a lien filed against it. Who would want to invest in a piece of property if someone else has the right to sell and take some of the money first? Thus, when you file a lien, you are in a much better position to secure payment from the unwilling owner because he or she will have a difficult time selling the property with a lien clouding the title.

The filing of a lien does not guarantee payment, but it does prevent the owner from conveying the property without paying the lien or posting a bond. If you have not filed a lien (or do not meet the requirements to file a lien) but you do have a contract with the owner for the work you performed, then you can always proceed to court.

Generally, a lien is a single piece of paper filed with the county recording office. However, Washington has some rules regarding who can file a lien and what the lien must contain.

Who Can File a Lien?

Not just anyone can walk into the recording office and file a lien. Clouding someone's title and potentially forcing foreclosure is serious business, so Washington law imposes some requirements that you need to be aware of **before you start work** on the property.

1. You must be properly registered (bonded and insured) if the law requires you to do so.
2. The general contractor or subcontractor you are dealing with must be registered. This **does not** apply if you are dealing directly with the property owner.
3. The property owner must be the person ordering the work, not a tenant or contract purchaser. (It is hard to justify tying up the owner's property if the owner didn't even know you were doing work on it.)
4. You must provide the **notice** required by law to the tenant or owner.

More About the Notice

The notice serves as a "heads-up" to your customer about your right to file a lien and what a lien entails. With limited exceptions, this notice is required even if you don't expect to file a lien.

Because filing a lien is such a powerful tool, the law says the owner must be aware that if he or she doesn't pay bills, or if his or her contractor doesn't pay the subs or suppliers, a lien can be filed against the property. The notice is most important in the latter situation—the homeowner usually pays the general and assumes those payments are making their way down the chain to the subs and suppliers. Notice language generally advises the homeowner on how to avoid liens by writing checks to more than one party, obtaining lien waivers upon payment, or using an escrow agent.

There are three types of notice documents, two of which are used by general contractors and the other by subcontractors and suppliers. BIAW has a chart, available on this website, detailing the notice process and which forms you need. General contractors should focus on the first row, subs and suppliers on the second.

The most notable exception to notice requirements is if you are contracting directly with the property owner. However, the safest approach is to provide notice for all construction projects before you start work and include lien provisions in your underlying contracts.

Filing Your Lien

Assuming that you can file a lien and have properly filed notice, there is one last step to secure your claim. The Claim of Lien announces to the public that you remain unpaid for labor or materials and you have the right to force a sale of the owner's property in order to receive payment. To make this announcement, you must fill out the Claim of Lien within ninety (90) days of the last date you were performing labor or providing materials on the owner's property.

From the moment you fill out this lien form and record it in the county where the property is located, the lien will show up on any title report obtained on the property. Because no one will buy or lend against the property with an encumbrance on the title, the owner will have to pay you or set aside an amount of no less than one and one half times the amount of the dollar amount claimed before he or she can sell or refinance the property.

Not only do you need to file the Claim of Lien with the county auditor, you must also send a copy of the form to the owner by certified or registered mail within fourteen (14) days of the time that the lien is filed for recording. Your lien will survive for eight months after recording, unless before the eight months is up, you choose to bring a lawsuit to foreclose on the lien or file a Release of Lien or Conditional Release of Lien.