

Idaho and Washington Construction Liens: A Comparative Overview

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Travis Colburn & Rita Kutsin



Construction Law Section

Speaker Introductions



Travis Colburn
206-459-9976

travis.colburn@acslawyers.com



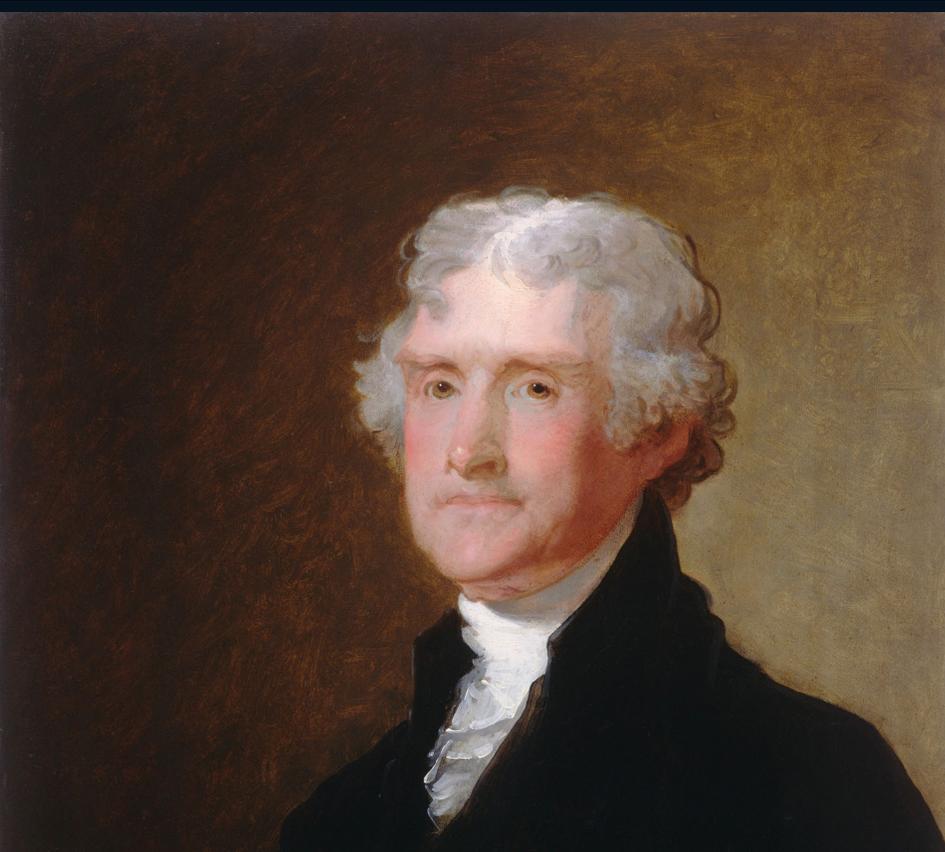
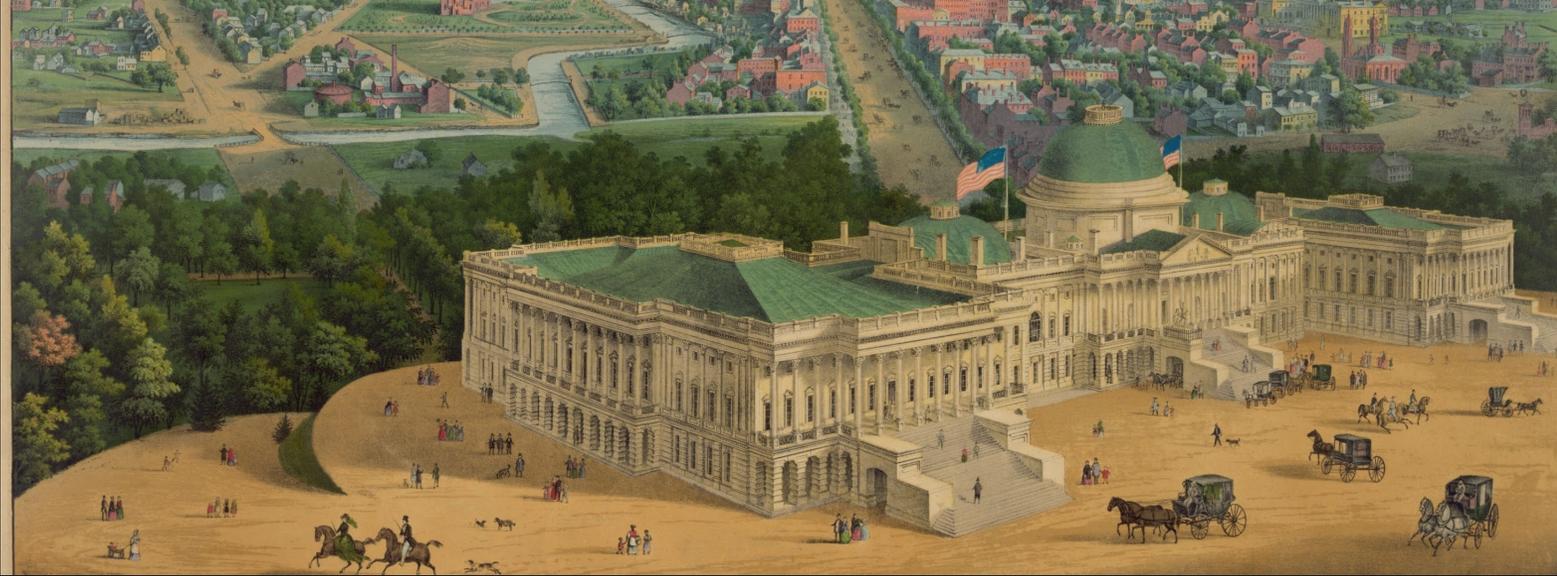
Margarita 'Rita' Kutsin
206-388-1890

margarita.kutsin@acslawyers.com

Introduction

- Overview of construction/mechanics' lien topics including construction, notice, priority, waiver, etc.
- For each topic:
 - Washington (Rita)
 - Idaho (Travis)
- **Goal:** a side-by-side comparison of statutory requirements and common practice issues.
- Construction/Mechanics' Liens “present an extraordinarily varied approach, in substance, and in language, to the issues involved in mechanics' lien legislation. **In fact, variation among the states may be greater in this area than in any other statutory area.**” *Uniform Construction Lien Act, Prefatory Note, reprinted in 7 Uniform Laws Annotated, Pt II p 382.*

Lien Origins



- Early U.S. lien statutes developed in Maryland (1791) to support construction of the new national capital.
- **The problem:** land was available, but capital and credit were limited—builders needed security to extend labor and materials.
- **What a lien is:** a statutory encumbrance on improved real property securing payment for covered work/materials/services.
- **Purpose:** provide payment security to those who improve real property.

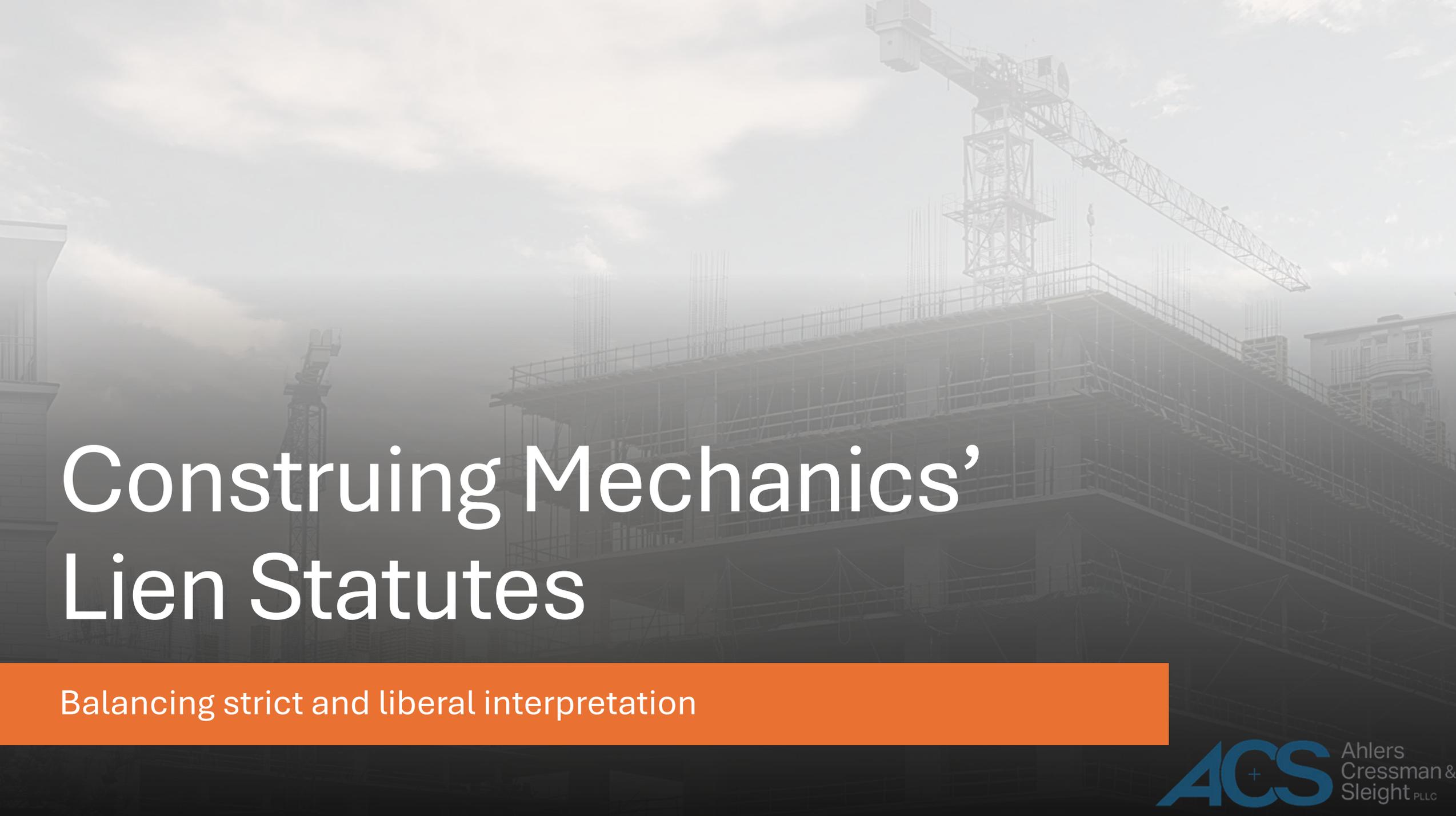
Lien Statutes

Washington

- Title 60 “Liens”
- Chapter 60.04 RCW – “Mechanics’ and materialmen’s liens”

Idaho

- Title 45 – Liens, Mortgages, and Pledges
- Chapter 5 – “Liens of Mechanics and materialmen”



Construing Mechanics' Lien Statutes

Balancing strict and liberal interpretation

Construction of Lien Statutes - Washington

- RCW 60.04.900:

“RCW 19.27.095, 60.04.230, and 60.04.011 through 60.04.226 and 60.04.261 are to be liberally construed to provide security for all parties intended to be protected by their provisions.
- *Williams v. Athletic Field, Inc.*, 172 Wn.2d 683, 696, 261 P.3d 109 (2011):
 - Held: “[T]he appropriate way to view the competing canons of strict and liberal construction is found in our early cases. The strict construction rule, at its origin, was invoked to determine **whether persons or services came within the statute's protection.**”

Construction of Lien Statutes - Idaho

- Lien statutes protect/compensate those who furnish labor or materials and are liberally construed in their favor.
- *But* Liberal construction cannot create lien rights the legislature did not grant.
- “Substantial compliance” standard for perfection of a claim of lien.
- Idaho distinguishes between lien-claim requirements (more flexibility) and enforcement requirements (less flexibility).
- A mechanic's lien is wholly the creature of statute; they are to be construed liberally, with a view to effecting their object and doing substantial justice, taking the statute as we find it. *Utah Implement-Vehicle Co. v. Bowman*, 209 F. 942, 944 (D. Idaho 1913).



Who has the right to lien?

Lienable work and services performed on a project.

Who may lien - Idaho

I.C. §45-501 – Right to Lien

- Every Person
 - ✓ Performing labor upon or furnishing materials (includes supplying, renting, or leasing equipment, materials or fixtures) to be used in
 - ✓ construction, alteration or repair (building development or improvement)
 - ✓ Buildings, bridges, tunnels, or “any other structure”
- Includes every person “supplying, renting or leasing equipment, materials, or fixtures”
- Includes professional engineers, licensed surveyors, and others that provide professional services that they are legally authorized to perform, i.e., licensed.
- What about construction management?

Who may lien - Washington

- RCW 60.04.021 “Lien Authorized”:
 - ✓ Any person
 - ✓ Furnishing labor, professional services, materials, or equipment
 - ✓ For the improvement of real property
- Many of these terms are defined in RCW 60.04.011.
- What about “construction management”?
 - *Pac. Indus., Inc. v. Singh*, 120 Wn. App. 1, 86 P.3d 778 (2003).
 - *Blue Diamond Grp., Inc. v. KB Seattle 1, Inc.*, 163 Wn. App. 449, 266 P.3d 881 (2011).



Scope of a Lien

What kinds of costs may typically be included in a lien?

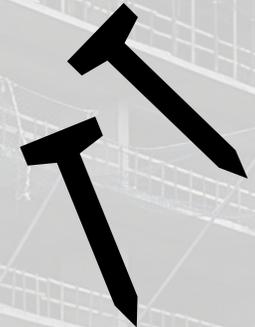
Scope of a Lien – Washington

- RCW 60.04.021 “Lien Authorized” for:
 - the contract price
 - of labor, professional services, materials, or equipment
 - furnished at the instance of the owner, or the agent or construction agent of the owner.
 - Many of these terms are defined in RCW 60.04.011
- Materials may be lienable if delivered to the site.
- Overhead and profit may be lienable if part of the contract price.



Scope of a Lien - Idaho

- Lien may include: **Per the terms of the contract**, amounts due for work, labor, professional services, or material furnished at the insistence of the owner or the owner's agent. Idaho Code § 54-511.
 - Lien claimant must show (and prove) that the labor or materials were incorporated into the land or building that is the subject of the claim. *Elec. Wholesale Supply Co., Inc. v. Nielson*, 136 Idaho 814, 821, 41 P.3d 242 (2001).
- Lien attaches on the date materials were delivered, lease, rented, and/or materials or services were commenced.
- Owner's agent includes:
 - Contractors, subcontractors, architects, builders, or any person having charge of the construction.
- Property subject to lien is land upon which construction services are performed or the tenant interests.
 - In lessor/lessee context, land is not subject to lien unless the owner ratifies or consents to the work done and the furnishing of labor and materials. See *Bunt v. Roberts*, 76 Idaho 158, 161, 279 P.2d 629 (1955).
 - If lease specifically requires improvements or requests work to be done, then landlord's interest in the real property may be subject to the lien. See *Christensen v. Idaho Land Developers, Inc.*, 104 Idaho 458, 660 P.2d 70 (1983).



A grayscale photograph of a multi-story building under construction. The structure is heavily encased in scaffolding. Several tower cranes are visible against a cloudy sky. The image is semi-transparent, serving as a background for the text.

Notice

Procedures and requirements for pre-lien notice.

Notice - Idaho

- “Substantial compliance” with statute required. See *Chief Indus., Inc. v. Schwendiman*, 99 Idaho 682, 685, 587 P.2d 823 (1978).
- **Residential:**
 - GC Initial Disclosure (>\$2,000; before contract).
 - GC Second Disclosure (before closing or final payment).
- **Other Construction**
 - No notice requirement.

Notice - Washington

Pre-claim notice:

- RCW 60.04.031
- Generally required for “every person furnishing professional services, materials, or equipment.” RCW 60.04.031(1)
- Notice “may be given at any time” but “only protects” lien rights for items supplied after: 60 days before notice (or 10 days for new single-family construction). RCW 60.04.031(1).
- “Notices ... shall not be required of”: (a) persons contracting directly with owner/agent; (b) laborers whose lien is based solely on performing labor; (c) subs contracting directly with prime (with noted exception). RCW 60.04.031(2).
- “A lien ... shall not be enforced unless” claimant complied with applicable provisions of this section. RCW 60.04.031(6).
- *Velazquez Framing, LLC v. Cascadia Homes, Inc.*, 2 Wn.3d 552, 540 P.3d 1170 (2024)



Perfection

Procedures and requirements for recording a claim of lien.



Perfection – Washington

- RCW 60.04.091
- Record in county where property located within 90 days after claimant “ceased to furnish” labor/services/materials/equipment.
- Required contents (in general): claimant info; first/last furnishing dates; debtor; property ID; owner/reputed owner; principal amount.
- Signed/verified + acknowledged. RCW 60.04.091(2).
- Notice to owner/reputed owner within 14 days for recovery of attorneys’ fees and costs under RCW 60.04.181.
- Deadline for perfection is mandatory (period of limitation): late recording defeats lien; no equitable waiver.
- Timing issues:
 - Warranty work does not extend deadline. *Brashear Electric, Inc. v. Norcal Properties, LLC*, 16 Wn. App. 2d 741, 482 P.3d 955 (2021).
 - Leaving a trailer on-site ≠ “furnishing” to extend. *Intermountain Elec., Inc. v. G-A-T Bros. Const., Inc.*, 115 Wn. App. 384, 62 P.3d 548 (2003).



Perfection - Idaho

- **Perfect the lien:**
 - Idaho Code § 45-507 : Claim statute.
 - Record claim in county where property sits within 90 days after claimant completes its labor/services or furnishing materials.
 - Delivery or mail to owner within 5 days.
 - No tacking, i.e., second, separate contract does not extent the 90 day timeframe. See *Valley Lumber & Mfg. Co. v. Driessel*, 13 Idaho 662, 93 P. 765 (1907).
 - Must not be trivial work. See *Craig H. Hisaw, Inc. v. Bishop*, 95 Idaho 145, 147, 504 P.2d 818 (1972).
 - Lien claimant must show materials and/or labor were reasonably necessary to complete construction according to the terms of the contract. See *Pierson v. Sewell*, 97 Idaho 38, 42, 539 P.2d 590 (1975).
- **Claim must include:** amount (net credits/offsets), owner, hiring party, property description. See Idaho Code § 45-507.
 - Must be verified by “sworn statement” of lien claimant. See *First Fed. Sav. Bank of Twin Falls v. Riedesel Eng'g, Inc.*, 154 Idaho 626, 632, 301 P.3d 632 (2012)
- **Lien duration: 6 months. Idaho Code §45-510. Must file suit within this timeframe.**



Bonding

Bonding in lieu of lien

Lien Release Bond - Idaho

- **A mechanic's lien of record upon real property may be released upon the posting of surety bond. Idaho Code § 45-518.**
- **Form of lien release bond must be substantially in the form required by statute. Idaho Code § 45-519.**
 - 1 ½ times the lien claim amount.
- **Petition for the release of a mechanic's lien by posting a surety bond must be filed in the district court where the property is located setting forth statutory requirements. Idaho Code § 45-520.**
- **Hearing. Idaho Code § 45-521.**
 - Must introduce evidence of receipt for payment of the premium.
 - Order must refer to the property that is the subject of the lien and the lien itself, and must recite that the lien is released.
 - Upon entry of the order, the property is release from the lien.
- **No appeal from the entry of an order. Idaho Code § 45-521.**
- **Then, action is against debtor and the surety on the bond. Idaho Code § 45-522.**
 - Conditioned on validity of the underlying lien.
 - Award of up to the penal sum of the bond and consists of the amount found to be due to the lien claimant, the costs of preparing and filing the lien claim, attorneys' fees, and interest at 7%.
 - A lien claimant's action against a surety is limited to what It would have recovered in a lien foreclosure action against the property. *See American Bank v. Wadsworth Golf Constr. Co. of the Southwest*, 155 Idaho 186, 307 P.3d 1212 (2013) (holding that lien claimant's right to recovery is limited to that amount a court may adjudge to have been secured by his lien against the property in a lien foreclosure action and agreeing the lien release bond merely acts as substitute security for the real property and does not otherwise affect the rights of the interested parties).
 - Priority remains a factor , i.e., if a party would have recovered nothing in the lien foreclosure action against the property, it cannot improve its position upon the posting of a lien release bond.

Lien Release Bond - Washington

- Recording bond releases the property from the lien; claim shifts to bond security.
- RCW 60.04.161
 - Owner/contractor/sub/lender/lien claimant may post;
 - Surety must be WA-authorized + Treasury-listed
 - Amount required: Greater of \$5,000, 2× lien (\leq \$10k), or 1.5× lien ($>$ \$10k)
- Judgment on lien (not just on breach of contract action) still required for foreclosure against surety.



Foreclosure

Deadlines and necessary parties

Foreclosure - Washington

- RCW 60.04.141 – Foreclosure filed within 8 months of recording lien, serve owner within 90 days of filing
- Necessary parties – Generally, owner shall be joined in lien foreclosure action (RCW 60.04.171)
 - Owner may not be necessary party where a lien release bond has been recorded (*Inland Empire*).
- Recorded interest - Any person with a recorded interest before suit is not bound unless joined (RCW 60.04.171)
- If a foreclosure action against a property is pending, a second action against that property shall not be filed; seek joinder if not already a party.
- Costs/fees: recording costs, title report costs, bond costs, and reasonable attorneys' fees/necessary expenses may be awarded under RCW 60.04.181(3).

Foreclosure - Idaho

- **Must foreclose on the recorded claim of lien within six months of recording. Idaho Code § 45-510.**
 - **Or, six months after a payment is made on account or an extension of credit with expiration date, provided such is endorsed on the record of the lien. Idaho Code § 45-510.**
 - **Six-month period is construed as a time limitation on liability and the right to enforce. *Sims v. ACI Northwest, Inc.*, 157 Idaho 906, 342 P.3d 618 (2015).**
- **Jurisdiction is district court. Idaho Code § 1-705.**
- **Venue is in the county where the real property is situated. Idaho Code § 5-401.**
- **A mechanic's lien is lost as to any interest in property not named [as a Party] in a foreclosure action. *ParkWest Homes, LLC v. Barnson*, 154 Idaho 678, 685, 302 P.3d 18 (2013).**
 - **Must name the trustee who holds any deed of trust.**
 - **Must name owner or owners. See *Willes v. Palmer*, 78 Idaho 104, 298 P.2d 972 (1956).**
- **In any suit brought to foreclose a [...] lien upon real property [...], the plaintiff [...] *may make* as party defendant in the same cause of action, any person having, claiming or appearing to have or to claim any title, estate, or interest in or to any part of the real or personal property involved therein, and the court shall, in addition to granting relief in the foreclosure action, determine the title, estate or interest of all parties thereto in the same manner and to the same extent and effect as in the action to quiet title. Idaho Code § 45-1302.**
- **Title report advised; name all parties with an interest in the real property.**
Other persons claiming liens may join action; when separate actions are filed, the court may consolidate them. Idaho Code § 45-513.



Priority

Lien Priority and Rank of Lien issues.

Priority - Idaho

- In any foreclosure/judgment involving multiple liens on the same property, the court must declare the rank of each lien or lien class. (Idaho Code § 45-512.)
- Statutory ranking (Idaho Code § 45-512):
 1. Laborers (other than contractors/subcontractors)
 2. Materialmen / equipment suppliers (other than subcontractors)
 3. Subcontractors
 4. Original contractor
 5. Professional engineers & licensed surveyors
- In the case where the proceeds of sale are insufficient to pay all lienholders, *pro rata* distribution.

Priority - Washington

- **RCW 60.04.061 (“relation back”)**: a construction lien is senior to any lien, mortgage, deed of trust, or other encumbrance that attaches after (or is unrecorded at) the lien claimant’s commencement of labor/professional services or first delivery of materials/equipment.
- **RCW 60.04.181 (ranking among construction liens)**: when multiple construction liens compete, the court ranks them:
 - Labor
 - Employee benefit contributions
 - Materials / supplies / equipment
 - Subcontractors (incl. their labor and materials)
 - Prime contractors / professional services
- **Distribution**: sale proceeds are applied by rank, then pro rata within each class.



Waiver

Circumstances pertaining to waivers of lien rights.

Waiver – Washington

Statutory:

- **Registration** (RCW 18.27.080) + **required disclosure** where applicable (RCW 18.27.114)
- **Pre-lien notice** where applicable (RCW 60.04.031)
- **Deadlines:** record 90 days (RCW 60.04.091) + foreclose 8 months (RCW 60.04.141)
- **Contractual waiver / release:**
 - Progress waivers/releases don't subordinate priority absent a true subordination agreement. *A.A.R. Testing Lab., Inc. v. New Hope Baptist Church*, 112 Wn. App. 442, 448, 50 P.3d 650 (2002).
 - Voluntary release doesn't necessarily bar a later, timely lien; estoppel turns on reasonable reliance. *Shelcon Constr. Grp., LLC v. Haymond*, 187 Wn. App. 878, 351 P.3d 895 (2015).

Waiver - Idaho

- **Registration required** — Idaho Code § 54-5208.
 - Unregistered work = **no lien**. *Genho v. Riverdale Hot Springs, LLC*, 174 Idaho 894, 907, 560 P.3d 1041 (2024).
 - If contracting entity is the contractor, **entity must be registered**. See *Stonebrook Const., LLC v. Chase Home Fin., LLC*, 152 Idaho 927, 931, 277 P.3d 374 (2012).
 - Lower tiers: must not **know** upstream is unregistered; must **reasonably believe** registered
- **Record lien** — within 90 days of completion. Idaho Code § 45-507.
- **Foreclose** — suit within 6 months. Idaho Code § 45-510.
- **Express Wavier** — must be supported by consideration to be binding and effective. See *Pierson v. Sewell*, 97 Idaho 38, 42, 539 P.2d 590 (1975).
- **Unregistered contractor:** Contractor must allege and prove that he was a duly registered contractor or exempt from registration “at all times during the performance of such act or contract.” *ParkWest Homes LLC v. Barnson*, 149 Idaho 603, 608, 238 P.3d 203 (2010).



Challenging Liens

Common bases for reducing or invalidating liens.

Challenging Liens - Idaho

- Unlike Washington, no show cause procedure for challenging frivolous or clearly excessive lien.
- Can post a lien release bond.
- Can challenge the validity of the lien, including the amount, in foreclosure proceedings.
- If lien claimant did not substantially comply with lien statute, the lien may be invalid.

Challenging Liens - Washington

RCW 60.04.081

- Show cause procedure
- Frivolous if “improperly filed beyond legitimate dispute” or “no possibility of succeeding.”
Williams v. Athletic Field, Inc., 172 Wn.2d 683, 699, 261 P.3d 109 (2011).
 - Invalid≠/≠ frivolous.
 - Remedy -> full release of lien RCW 60.04.081(4)
- Clearly excessive = amount “unquestionably far greater” than goods/services provided.
Woodley v. Style Corporation, 7 Wn. App. 2d 543, 453 P.3d 739 (Div. 1 2019).
 - Remedy -> reduce, not release lien RCW 60.04.081(4)
- Attorneys’ Fees and Costs: awarded to prevailing party (incl. on appeal).

Any questions?



Thank you!



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