

LEGAL CORNER

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Lien Claims for Public Work Projects

Claims of lien for public work projects are different from the lien claims for private projects. Washington law does not permit the filing of a lien on public property. However, the law allows parties providing labor, materials or services to a public works project to lien against the retained percentage held by the public agency, and to claim against the bond required on all public contracts. The claimant need not choose between the bond claim and the retainage lien: the claimant may choose either or both. As usual, the claimant must comply with the procedural requirements, which of course are different.

Claims for the retained percentage and bond are governed by RCW 60.28 and 39.08.

1. **Retained Percentage.** Contracting agencies must withhold in trust up to five percent of the prime contractors' earned payment pending completion of the work and final acceptance. This withholding or retainage is a fund for payment of lien claims. The retainage protects and pays for claims of any person arising under the public works contract and taxes owed by the contractor.

Notice of a claim of lien against the retainage must be filed within 45 days of completion of the contract work. Claimant then has four months from filing to bring an action to foreclose the lien. In a lien foreclosure action, the prevailing claimant may obtain an award of attorney's fees.

2. **Bond Claims.** The contractor who successfully bids a public works project must post a performance and payment bond. The payment bond is conditioned on the contractor paying all laborers, mechanics, subcontractors, materialmen, and all persons who supply them.

Claims against the bond may be filed with the public agency any time up to 30 days after completion and final acceptance. Attorney's fees are allowed to a prevailing claimant under the bond statute.

Please note the differences in filing requirements for claims against the retainage and bond under public works contracts, and the longer filing requirements for private contracts. To make matters more complicated, some projects are a mix of private and public claims. For example, in a custom build or remodel to suit tenant for a public agency, the building may be owned by a private party, but the tenant improvements could be a public works contract. The contract may or may not specify which part of the work is private and which part is public. Please call me for a free copy of the basic form, Notice of Claim Against Retainage and Bond. (360) 352-1970.