

Construction Law Update

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Washington Supreme Court Upholds Validity of Sample Claim of Lien Form in the Lien Statute

The Washington Supreme Court has ruled that a Claim of Lien conforming to the sample form in the statute, even though the sample does not contain all the provisions required by the statute, is sufficient to make the claim valid. In *Williams v. Athletic Field, Inc.*, issued on September 15, the Court took the opposite approach from the state Court of Appeals, which had invalidated a Claim of Lien because it lacked a proper acknowledgment required under the lien statute, RCW 60.04. In its decision reversing the appeals court and reinstating the Claim of Lien, the Court recognized that the statute is ambiguous with respect to the contents of and the persons authorized to acknowledge the validity of a lien claim, but chose to liberally construe the statute to achieve its intended purposes. While the Court's ruling is a victory for pragmatism and substance over form, it also runs contrary to the oft-stated rule of strict construction of the lien statute and could raise questions about how other provisions in the statute will be construed in future cases.

In the case before the Court, Athletic Field had provided construction services to Williams for an estimated value of \$420,000. Disputes arose between the parties and Williams refused to pay Athletic Field its full invoiced amounts. Athletic Field retained a lien filing service, LienData USA, Inc. ("LienData"), to prepare and file a Claim of Lien for the unpaid balance.

The Claim of Lien at issue identified LienData as the agent for claimant Athletic Field, and an individual from LienData signed the acknowledgment clause. However, the acknowledgment did not identify the person who signed the lien as an officer or employee of LienData, failed to declare execution of the Claim of Lien as a free and voluntary act of the claimant, and failed to set forth the signatory's authority to act on behalf of LienData. Consequently, the Court of Appeals ruled that the Claim of Lien was invalid for lack of a proper acknowledgment.

Washington's lien statute requires that a Claim of Lien include an acknowledgment pursuant to RCW 64.08, which requires specific language for individual and corporate acknowledgments. Corporate acknowledgments require, in part, statements declaring that execution of the Claim of Lien is a free and voluntary act of the corporation, and that the signatory is authorized by the corporation to execute the Claim of Lien. Athletic Field's Claim of Lien did not have any such acknowledgment.

Washington's lien statute also provides a sample Claim of Lien form that does not include an acknowledgment that complies with RCW 64.08. Athletic Field's Claim of Lien included verbatim the language provided in the sample Claim of Lien form.

In evaluating the Claim of Lien, the Supreme Court noted the ambiguity in the lien statute regarding whether an additional acknowledgment is required if a claimant submits a Claim of Lien using the sample form provided in the statute. The Court concluded that the sample form effectively creates an exception to the acknowledgment requirements otherwise required under the statute and noted the statute's dictate that "[a] claim of lien substantially in the [sample] form shall be sufficient." Accordingly, the Court reinstated Athletic Field's Claim of Lien and numerous lien claimants across the state can now breathe a heavy sigh of relief with the assurance that using the sample form in the statute will not invalidate their Claim of Lien.

The Court's analysis rejected the oft-stated principle that mechanics' liens are strictly construed under the statute and adopted a liberal construction "to provide security for all parties intended to be protected" by the lien statute. This raises the question of how other provisions of the lien statute will be construed in the future. It may be that the acknowledgment issue is unique and that the Court would not adopt a similar liberal construction for other provisions in the lien statute. Consequently, the best practice remains to comply strictly with the provisions of the lien statute when pursuing a Claim of Lien.

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