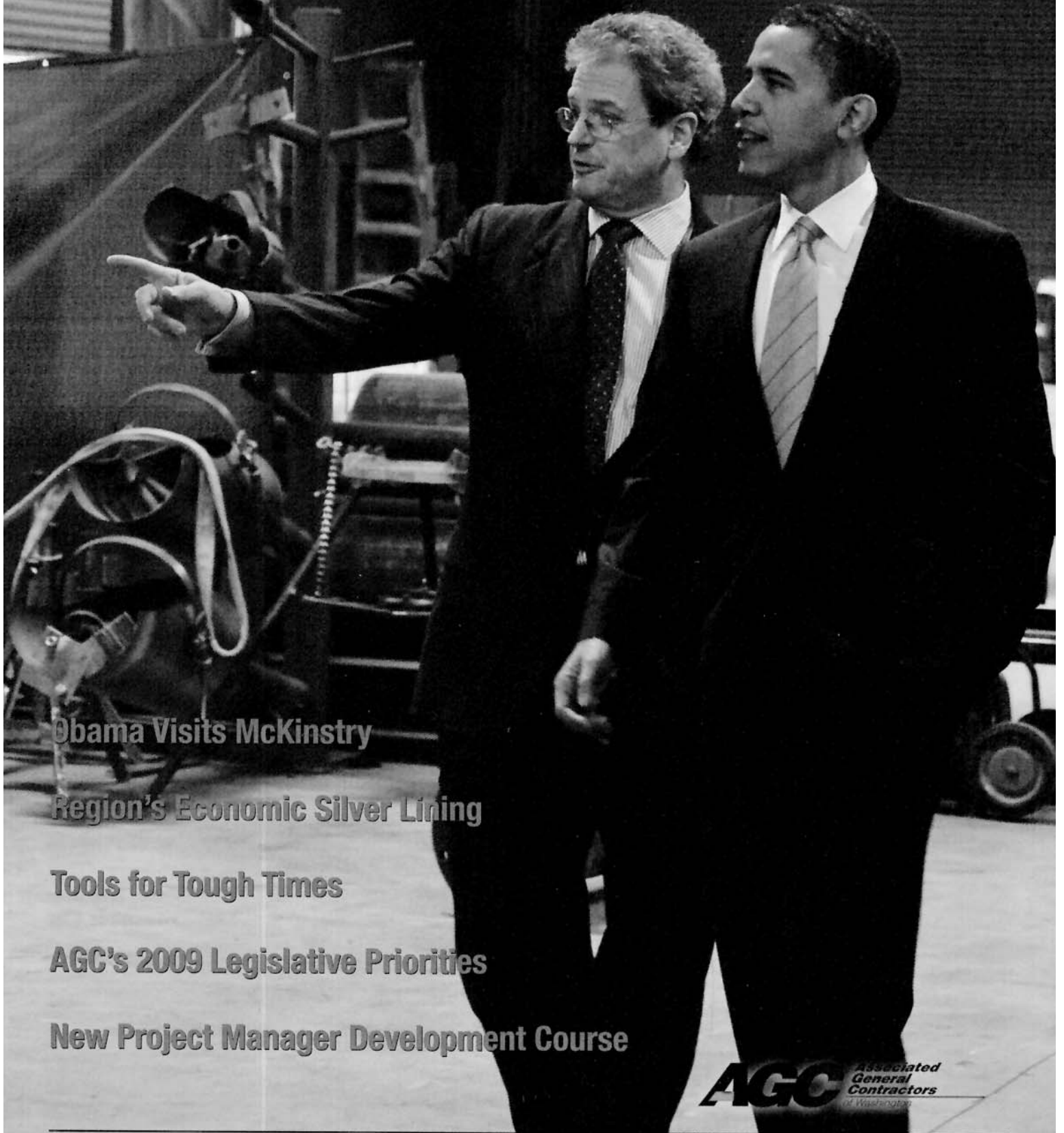


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The Right to Lien: When Your Work Works for You

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Of a contractor's methods to collect payment, perhaps the most fundamental is the ability to lien property. While Washington's lien laws provide a powerful tool to utilize during tough times, specific considerations must be taken into account at each step of the lien process.

Contractor Registration

A contractor's right to lien is forfeited without proper registration with the Department of Labor and Industries; moreover, an unregistered contractor likely cannot bring a lawsuit against the owner (or tenant) to recover money owed. Contractors should be registered at the time the work is performed. If they aren't, the chances of getting paid are significantly decreased.

Notice Requirements

When dealing directly with the property owner, any contractor performing construction on four or fewer residential units when the contract is \$1,000 or more, and any contractor performing construction on a commercial building when the contract price totals between \$1,000 and \$60,000, must provide the customer with a disclosure statement prior to starting work on the project. A Notice to Customer template can be found in RCW 18.27.114. The notice need not be given on public works proj-

ects, by contractors dealing with other contractors, or by materialmen or suppliers who only deliver or furnish products or materials but provide no labor. Also, due to recent legislation, a contractor must retain a signed copy of the disclosure statement in its file for a minimum of three years.

In addition, there are other pre-lien notices depending on the type of contract and status on the project (Notice to Owner; Notice of Professional Services; Notice to Lender). Failing to provide them may invalidate lien rights or a claim's priority. When in doubt, give the notice(s) prior to starting work in order to preserve lien rights.

Recording the Lien and Serving a Copy on the Owner

A Claim of Lien must be recorded with the county auditor where the project is located within 90 days from when the contractor last furnished labor, material, professional services or equipment. This means the last day of "contract work" including change orders and punch-list items, but not warranty work or incidental items.

A typical lien form lists the contractor's name and address; first and last date of work; person who owes it payment; description of the property; owner or reputed owner; amount of the lien claim; and verification that the lien is not frivolous or clearly excessive. It can only include amounts owed, at the agreed contract price, for work performed, and not such other damages as lost profits or amounts for inconvenience.

Failure to comply with the 90-day recording period is fatal to a lien claim. A copy of the recorded lien must be served on the owner within 14 days.

The lien can be amended before the 90-day period ends; once a foreclosure lawsuit starts, amendment requires Court permission.

Foreclosure

A contractor must bring a lien foreclosure lawsuit within eight months after recording its lien. Failure to bring a timely foreclosure lawsuit is fatal to an otherwise valid lien.

Unlike the recorded Claim of Lien form, a foreclosure lawsuit must name the property's true owner and others with a recorded interest in the property. A title report can help identify these parties, and it is worth the extra cost to obtain a Litigation Guarantee from the title company to ensure that the report is reliable. Even if litigation has started, failing to name the property's true owner as a defendant within eight months after recording defeats the lien claim.

Construction contracts often contain arbitration provisions. Nonetheless, a lien foreclosure action must start in Court. After filing a lawsuit, the contractor can request a stay, go through arbitration, and then return to Court to confirm the arbitrator's decision.

Conclusion

Lien law relies on basic concepts, but maximizing this tool requires knowing the rules and planning ahead; if properly exercised, a lien claim can exert the kind of leverage that causes owners to take notice, take action and negotiate.

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