

CONTRACTOR DISCLOSURES

Idaho laws governing the filing of liens require contractors to disclose potential liens and other information to owners and purchasers of residential real property. The law includes specifics as to the contracts to which it applies and defines the term “general contractor,” whose compliance it requires. The Idaho Contractors Board provides the following information to registered contractors to facilitate compliance with the Idaho Residential Real Property Lien Disclosure Law quoted herein:*

I. Contractors and Contracts Covered by the Residential Real Property Lien Disclosure Law (Idaho Code § 45-525)

Idaho Code § 45-525(5) states:

- (5) Definitions. For purposes of this section:
 - (a) “General contractor” means a person who enters into an agreement in excess of two thousand dollars (\$2,000) with:
 - (i) A homeowner or prospective residential real property purchaser for the construction, alteration or repair of residential real property; or
 - (ii) A prospective residential real property purchaser for the purchase and sale of newly constructed property.

The term “general contractor” does not include subcontractors, materialmen or rental equipment providers who do not have a direct contractual relationship with the homeowner or residential real property purchaser.

- (b) “Residential real property” shall include owner and nonowner occupied real property consisting of not less than one (1) nor more than four (4) dwelling units.

II. Initial Disclosures Required by the Residential Real Property Lien Disclosure Law

Idaho Code § 45-525(2) states:

- (2) General contractor information. Prior to entering into any contract in an amount exceeding two thousand dollars (\$2,000) with a homeowner or residential real property purchaser to construct, alter or repair any improvements on residential real property, or with a residential real property purchaser for the purchase and sale of newly constructed property, the general contractor shall provide to the homeowner a disclosure statement setting forth the information specified in this subsection. The statement shall contain an acknowledgment of receipt to be executed by the homeowner or residential real property purchaser. The general contractor shall retain proof of receipt and shall provide a copy to the homeowner or residential real property purchaser. The disclosure shall include the following:
- (a) The homeowner or residential real property purchaser shall have the right at the reasonable expense of the homeowner or residential real property purchaser to require that the general contractor obtain lien waivers from any subcontractors providing services or materials to the general contractor;
 - (b) The homeowner or residential real property purchaser shall have the right to receive from the general contractor proof that the general contractor has a general liability insurance policy including completed operations in effect and proof that the general contractor has worker's compensation insurance for his employees as required by Idaho law;
 - (c) The homeowner or residential real property purchaser shall be informed of the opportunity to purchase an extended policy of title insurance covering certain unfiled or unrecorded liens; and
 - (d) The homeowner or residential real property purchaser shall have the right to require, at the homeowner's or residential real property purchaser's expense, a surety bond in an amount up to the value of the construction project.

III. General Contractors' Additional Requirement to Disclose Information About Subcontractors, Materialmen and Rental Equipment

Idaho Code § 45-525(3) states:

- (3) Subcontractor, materialmen and rental equipment information.**
 - (a) A general contractor shall provide to a prospective residential real property purchaser or homeowner a written disclosure statement, which shall be signed by the general contractor listing the business names, addresses and telephone numbers of all subcontractors, materialmen and rental equipment providers having a direct contractual relationship with the general contractor and who have supplied materials or performed work on the residential property of a value in excess of five hundred dollars (\$500). A general contractor is not required under this subsection to disclose subcontractors, materialmen or rental equipment providers not directly hired by or directly working for the general contractor. Such information shall be provided within a reasonable time prior to:
 - (i) The closing on any purchase and sales agreement with a prospective residential real property purchaser; or
 - (ii) The final payment to the general contractor by a homeowner or residential real property purchaser for construction, alteration, or repair of any improvement of residential real property.
 - (b) All subcontractors, materialmen and rental equipment providers listed in the disclosure statement are authorized to disclose balances owed to the prospective real property purchasers or homeowners and to the agents of such purchasers or homeowners.
 - (c) The general contractor shall not be liable for any error, inaccuracy or omission of any information delivered pursuant to this section if the error, inaccuracy or omission was not within the personal knowledge of the general contractor.

IV. Exception to Disclosure Requirement for Certain Emergency Repairs

Idaho Code § 45-525(6) states:

- (6) This section shall not apply to instances in which a homeowner or the agent of the homeowner initiates the contact with the general contractor for purposes of providing repairs necessary to meet a bona fide emergency of the homeowner or to make necessary repairs to an electrical, plumbing or water system of the homeowner.

V. Violation of Disclosure Requirements

Idaho Code § 45-525(4) states:

- (4) Failure to disclose. Failure to provide complete disclosures as required by this section to the homeowner or prospective residential real property purchaser shall constitute an unlawful and deceptive act or practice in trade or commerce under the provisions of the Idaho consumer protection act, Chapter 6, Title 48, Idaho Code.

Pursuant to Idaho Code § 54-5215(2)(b), the Idaho Contractors Board may discipline a registered contractor for a violation of the Idaho Consumer Protection Act.

* Information contained in this website includes quotations of language from the Idaho Code. It does not constitute the entire lien statute and is not to be regarded as legal advice to a particular individual or entity. Those accessing this information should consult their own attorney with respect to the application of the quoted statute, as well as other statutes and rules, to their individual circumstances. The Idaho Contractors Board and the Idaho Bureau of Occupational Licenses do not provide legal advice to private parties.

** Pursuant to the Idaho Contractor Registration Act all individuals and entities required to register with the Idaho Contractors Board are registered as “contractors.” The registration form asks for the “type of construction” and lists 4 “general contractor types” and 50 “subcontractor types.” A contractor’s self-characterization as a “general contractor type” or “subcontractor type” does not mean it is a general contractor or subcontractor for purposes of the Residential Real Property Lien Disclosure Law quoted

herein. That determination depends on the nature of the individual contract between the contractor and the homeowner, prospective real property purchaser or another contractor. A contractor may be a subcontractor in some instances while at the same time a general contractor as to others. By way of example consider the following:

Example: John the concrete contractor is contacted by Phil the homeowner who requests John to provide a quote to construct a concrete sidewalk and patio for Phil's house. John quotes Phil a price of \$3,000 and Phil accepts the quote and John and Phil enter into a contract for John's concrete crew to construct a concrete sidewalk and patio for Phil's house for \$3,000. On the same day John is also approached by Chuck the contractor who has a contract to build a house for Ned the prospective residential real property purchaser. Chuck asks John to provide a quote to construct concrete footings, foundation, sidewalks and driveway pursuant to the plan for a house Chuck has a contract to build for Ned. John quotes Chuck a price of \$25,000 and Chuck accepts the quote and John and Chuck enter into a contract for John's concrete crew to construct concrete footings, foundation, sidewalks and driveway for Ned's house pursuant to the plan and schedule Chuck provides to John.

In this example as to the contract for a sidewalk and patio for Phil's house, John is a "general contractor" for purposes of the Residential Real Property Lien Disclosure Law and must provide disclosures to homeowner Phil pursuant to its requirements. As to the contract for footings, foundation, sidewalks and driveway for Ned's house, John does not have a disclosure obligation because he is a subcontractor whose contract is with Chuck the general contractor. Chuck's contract is with Ned the prospective real property purchaser and Chuck must provide disclosures to Ned as required by the Residential Real Property Lien Disclosure Law, including the requirement to disclose the business name, address and telephone number of John as a subcontractor.