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MIND OF A LAWYER. HEART OF A CONTRACTOR.

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## **Washington Court of Appeals Confirms It's Tough To Argue Around the Model Disclosure Statement Requirements**

In previous posts, I've written about the [requirement for contractors contracting with property owners to provide a Model Disclosure Statement](#) (Requirement in RCW 18.27.114(1)).

A case decided Division III of the Court of Appeals last year addresses a challenge to this act made by a contractor, and highlights just how difficult it is for folks to argue that the Model Disclosure Statement is not required on a qualifying project.

In this case, [AWR Construction v. Labor & Industries](#), a contractor contracted to replace the roof of an apartment building. The owner of the apartment building – while not acting as a contractor on the project – was actually a registered contractor.

The Model Disclosure Statement must be provided whenever a contractor contracts with an owner. It is not required when a contractor is contracting with other contractors, suppliers, or the like.

AWR Construction's argument here was that the property owner was a registered contractor, and thus, the disclosure requirement did not apply.

While this at first may sound like a clear position, there's actually a decent justification behind the argument. The Model Disclosure Statement is required for the public's interest, to disclose certain things to the public that is not known by them... but is known by contractors (i.e. that a lien can be filed against a project by subs, even after payment to the prime).

So, if the purpose of the statute is to disclose this type of information to the public, then why require this disclosure to a registered contractor?

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Ordinarily, the disclosure need not be delivered to other contractors. The Court of Appeals found this was not the case, however, when the registered contractor was acting in the role of an owner, and not a contractor – as was the case here.

The disclosure requirement has nothing to do with the parties' actual registration (or lack thereof), but everything to do with the role of the contractor's customer. If the client is the owner of the property, the disclosure must be sent.

Therefore: [Send Model Disclosure Statement...or Else!](#)

## **Related articles**

- [Model Disclosure Statement Required in Washington To Protect Lien Rights When Contracting With Owner](#) (constructionlawmonitor.com)