

# Construction Liens

- Explanation of construction liens
- Notices required
- How consumers can protect themselves
- Contractor responsibilities



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*The purpose of this pamphlet is to inform contractors and consumers about Oregon's construction lien laws. The information in this pamphlet provides general answers to common questions about construction liens.*

*This pamphlet is divided into four sections: "Explanation of construction liens," "Notices required," "How consumers can protect themselves," and "Contractor responsibilities." Readers are encouraged to review all sections of the pamphlet to more fully understand Oregon's lien laws. This pamphlet should not be considered legal advice and is not a substitute for obtaining the advice of an attorney.*

*Contractors needing assistance providing notices, filing liens, or obtaining lien priority, should consult an attorney. Some attorneys specialize in construction law and may offer classes or publications relating to liens. To find a construction law attorney, contractors may contact construction industry associations, or the Oregon State Bar Attorney Referral Service at 1-800-452-7636 or [www.osbar.org/public](http://www.osbar.org/public).*



## Explanation of construction liens



### What is a construction lien?

Construction liens have been a part of Oregon's law for over 100 years. Under this law, anyone who constructs improvements on property, supplies materials, rents equipment, or provides services for improvements has a right to collect payment from the property if they are not paid. If the general contractor is not paid or does not pay the subcontractors, laborers, material suppliers, or equipment rental companies, those persons may claim a lien against the property.

### What is the purpose of the construction lien law?

The purpose of the law is to ensure that people are paid for value that they add to someone's property. A bank can reclaim a car if payments are not made. Work done to real estate, however, is permanent and cannot be reclaimed. The lien laws protect those persons working on the property who do not have a contract directly with the property owner (who contracted only with the general contractor).

### For purposes of the lien law, what is the difference between a general contractor and a subcontractor?

Usually, the property owner has a contract with a general, or original, contractor. The general contractor then contracts with subcontractors to provide services such as roofing, drywall, plumbing, electrical, painting, or window installation. The property owner does not usually hire the subcontractors.

### Who can claim a lien?

General contractors, subcontractors, employees, material suppliers, and equipment rental companies that do not receive payment can claim liens. Even if the property owner pays the general contractor in full, the subcontractors, employees, material suppliers, and equipment rental companies may not be paid. These persons and companies may then claim a lien against the owner's property.

### What are the property owner's responsibilities to a lien holder?

Property owners can be forced to pay the lien holder (the person claiming the lien) or face a potential court order to sell the property for payment.

Property owners can be liable if the general contractor does not pay subcontractors, employees, materials suppliers, and equipment rental companies.

# Notices Required



## **What information or warnings must be given to the property owner by the general contractor?**

Any contractor who contracts directly with a residential property owner or sells a new residence directly to the owner must provide an Information Notice to Owner about Construction Liens. Contractors can obtain the form on the CCB website under Contractor's Tools-Notices and Contracts.

## **What is the purpose of an Information Notice to Owner about Construction Liens?**

The Information Notice to Owner about Construction Liens explains Oregon lien law and gives steps that property owners can take to protect themselves. It describes the rights and responsibilities of property owners and general contractors. If a contractor fails to deliver the notice as required under the law, the contractor loses the right to claim a lien against the property.

## **Who must provide and receive an Information Notice to Owner about Construction Liens?**

A contractor who contracts to construct or improve residential property, or who constructs and sells a new residence, must give the owner or buyer the notice. The notice must be given if the construction contract is for more than \$2,000, or if the sale of a new residence occurs within 75 days of the completion of construction. If the property owner who contracts for construction work is a licensed contractor, the notice does not have to be given. Note: "residential property" may include property not occupied by the owner.

## **What if the contract price is less than \$2,000 but goes over \$2,000 during the job?**

If the contract goes over \$2,000 during construction, the Information Notice to Owner about Construction Liens must be mailed or delivered no later than five days after the contractor knows that the contract exceeds \$2,000.

The Information Notice to Owner about Construction Liens explains Oregon lien law and gives steps that property owners can take to protect themselves.

## **When, and how does the Information Notice to Owner about Construction Liens need to be given?**

If there is a requirement for a written contract for construction, the notice must be given on or before the date that the contract is signed. The notice contains signature lines for both the contractor and the property owner. Delivery must be made personally, by registered or certified mail, or by first class mail with a certificate of mailing.

If the general contractor is the builder-owner and sells the residence within 75 days of the completion of construction, the notice must be delivered to the new owner. It must be given at the time the builder-owner agrees to sell the property.

## **Is there other information that owner-builders must provide when they sell a house?**

While not a notice requirement, under the 2003 Homebuyer Protection Act, a builder-owner must provide protection for the buyer against lien claims. The CCB provides a form that the builder-owner should complete to show how the builder-owner has complied with the law. The form, Notice of Compliance with the Homebuyer Protection Act (HPA), is available from the CCB at [www.oregon.gov/ccb](http://www.oregon.gov/ccb) or 503-378-4621.

## **What information or warnings must be given to the property owner by persons other than general contractors who may claim a lien?**

Subcontractors, employees, material suppliers, and equipment rental companies usually must provide a Notice of Right to a Lien to property owners in order to claim a valid lien if they are not paid. The Notice of Right to a Lien is available online at [www.oregon.gov/ccb](http://www.oregon.gov/ccb) under Contractor Forms.

Subcontractors, employees, material suppliers, and equipment rental companies usually must provide a Notice of Right to a Lien to property owners.



### What is the purpose of a Notice of Right to a Lien?

A Notice of Right to a Lien lets the property owner know of the possibility that a lien could be placed on their property by subcontractors, employees, material suppliers, and equipment rental companies who are not paid. A Notice of Right to a Lien gives the property owner the name of the person who ordered the services or materials. It also gives the name of the subcontractor, employee, material, equipment, or service provider and describes the materials, equipment, or services ordered.

### Who must provide and receive a Notice of Right to a Lien?

Unless the material, equipment, services, or labor were requested by the property owner, the subcontractors, employees, material suppliers, and equipment rental companies provide a Notice of Right to a Lien to the property owner. If a person provides labor or labor and materials for a commercial improvement, a Notice of Right to a Lien does not need to be given. A “commercial improvement” is a structure or building that is not intended for occupancy as a residence.

### When and how does the Notice of Right to a Lien need to be given?

The Notice of Right to a Lien may be given at any time during the construction, but **it should be given within eight working days of the start date of the work or the delivery date of the materials or equipment.** If the notice was delivered to the property owner on day nine, then the subcontractor or materials provider would not be entitled to payment for anything that occurred on the first day of the job. The Notice of Right to a Lien is considered given when it is personally delivered or mailed.

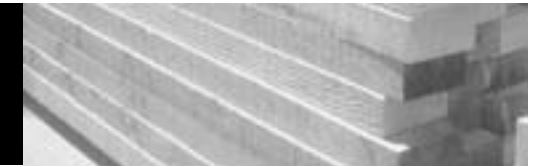
### What is the difference between a Notice of Right to a Lien and a filed lien?

Sending a Notice of Right to a Lien is not the same as filing a lien claim. The notice protects the right of the person sending the notice to later file the lien. A construction lien should be filed with the recording officer in the county or counties where the construction occurred. A lien holder has 75 days after completing the construction, or ceasing work on the construction, in which to file the lien. Only liens that have been properly filed can be enforced by a lawsuit in court.

Sending a Notice of Right to a Lien is not the same as filing a lien claim.



## How consumers can protect themselves



### What can I do after receiving an Information Notice to Owner About Construction Liens or a Notice of Right to a Lien?

These notices list several ways to protect yourself from having a lien filed on your property:

- **One way is to issue joint checks.** A check can be written jointly payable to the contractor and to the subcontractor, material supplier, or any other party who gave the property owner a Notice of Right to a Lien. Be aware that many banks will not accept checks made payable to multiple parties unless each party appears at the bank with government-issued identification at the time of deposit.
- **Another way is to use lien waivers or releases.** Before you make any payments to your contractor, ask every person who gave you a Notice of Right to a Lien to provide you with a signed lien waiver or release. Contact an attorney for more information on using lien waivers or releases.

### Do I have any additional rights when I receive a Notice of Right to a Lien?

Yes. A property owner who receives a Notice of Right to a Lien may send a letter to the person who delivered the notice demanding:

- a list of materials or equipment, or
- a description of labor or services supplied, or
- a statement of the contractual basis for the material, equipment or labor, including a percentage of the contract completed and the charges incurred.

The person who delivered the notice must respond within 15 days of receiving the letter (not including Saturdays, Sundays, or holidays). Failure to respond does not invalidate the lien, but will result in a loss of any claim for attorney fees or costs in a lawsuit to foreclose the lien.

The Information Notice to Owner About Construction Liens and the Notice of Right to a Lien, list ways for property owners to protect themselves.

**Can someone file a lien if they have not provided an Information Notice to Owner About Construction Liens or a Notice of Right to a Lien?**

Usually, a lien is not enforceable against your property unless you were given the proper notices. If you are buying a new or partly-built home, you may not receive lien notices because the work was done when the builder-seller still owned the property. It is the builder-seller who would have received the lien notices. In this case, a lien may be claimed against the property even though you did not receive any lien notices. The Homebuyer Protection Act passed in 2003 may provide protection in this type of situation (see next question).

**Is there a law that protects new home buyers from liens?**

Yes. In 2003, the Oregon legislature enacted a law, called the Homebuyer Protection Act, to protect new home buyers from liens filed related to construction work performed before the sale.

The law applies to the sale of a new single family home (or duplex, triplex, or condominium unit) or to an existing single family home (or duplex, triplex, or condominium unit) that was remodeled at a cost of \$50,000 or more.

To protect the buyer and comply with the law, the builder-seller must complete the Notice of Compliance with the Homebuyer Protection Act (HPA) of 2003 (a form available from the CCB website). Both seller and buyer must sign the form and retain copies for their records. As stated on the form:

The builder-seller must provide protection for the buyer against claims of lien by:

- Purchasing title insurance;
- Retaining at least 25% of the sales price in escrow;
- Obtaining lien waivers or releases;
- Obtaining a bond or letter of credit; or
- Waiting to complete the sale after the deadline for properly filing liens (usually 75 days).

The Homebuyer Protection Act protects new home buyers from liens related to construction performed before the sale.



**Who is likely to file a lien against my property?**

Liens are usually filed by one of your general contractor's subcontractors, employees, material suppliers, or equipment rental companies, because the general contractor did not pay for the work performed, materials supplied, or equipment rented. Your general contractor may file a lien if you have not paid him or her.

**Is having a lien against my property a serious matter?**

Yes, if the lien is valid and you do not pay the person filing the lien, you could be legally forced to sell your property to pay the lien holder.

**But I already paid my general contractor. Does this mean that I will have to pay twice?**

Yes, it could mean exactly that. Even though you paid your general contractor in full, the construction lien law says that you can still be responsible for bills for services, labor, material, and equipment rentals.

**What should I do if a lien is filed against my property?**

Consult an attorney. Lien laws are complicated and your attorney is your best source of advice.

**Can a lien be invalid and, if so, under what circumstances?**

It is possible that a filed lien is invalid. The contractor filing the lien may not have been licensed with the CCB when the work was done. The person filing the lien may have failed to provide you with the proper notices, or may not have provided the notices at the required time. These are just a few examples. Again, your attorney is your best source of advice.

**If I find that the lien is valid, what do I do?**

You may be able to file a complaint against your contractor for liens filed by subcontractors, employees, material suppliers, and equipment rental companies. Contact the CCB at [www.oregon.gov/ccb](http://www.oregon.gov/ccb) or 503-378-4621 to obtain a form entitled Breach of Contract Complaint Form for Owners and Primary Contractors. Read and follow the instructions carefully. You must give the contractor written notice that you plan to file a complaint with the CCB. When you complete the form, be sure, on item number 4 (Nature of Complaint) to mark the box "Complaint by Owner – Construction Lien Filed." You will send the complaint form and other required documents to the CCB office. If the CCB determines it

If a valid lien is filed against your property, you should contact an attorney and also seek relief through the CCB complaint process.



can process the complaint, it will request that you pay a fee of \$50.

The CCB may be able to help you obtain money from the general contractor to pay all or part of the money owed. If the contractor is unable or unwilling to pay, the CCB may be able to request that the contractor's bonding company pay you. Filing the complaint form is the first step in getting help from the CCB.

**What else does the CCB need besides a completed complaint form?**

You should attach the following documents to your completed complaint form:

1. A copy of your contract
2. Records of payments made to your primary contractor
3. A copy of the Information Notice provided by your primary contractor
4. A copy of the Notice of Right to a Lien, if you received one from the subcontractor or others
5. A copy of the lien with the county recorder's seal
6. A copy of any foreclosure documents that you may have received, and
7. Copies of invoices from the company that filed the lien (the subcontractor, material supplier, or equipment rental company)
8. A copy of your pre-complaint notice letter to your contractor and a copy of the post office receipt showing that you sent the letter by certified mail, the date you sent the letter and the address you sent it to.

**What happens after I send this information to the CCB?**

Processing your complaint may involve an arbitration proceeding (including a hearing) or a contested case hearing. This process can take several weeks or months. Obtaining money from the surety bond for your complaint may be delayed by complaints filed by other homeowners.

**Will the CCB automatically process my complaint?**

The CCB cannot process your complaint if:

- Your general contractor was not licensed when the work was done.
- If the contractor's bond has already been paid

The CCB complaint process, if successful, can obtain money from the general contractor's surety bond to pay all or part of, the money owed.



out to others who filed complaints before you, the CCB cannot obtain bond funds for your complaint.

**Suppose I am faced with a foreclosure of the lien while the complaint process is taking place – what can I do?**

You may have the right to request a "stay" (delay) of the foreclosure proceedings from the court until the CCB has finished processing your complaint. The law governing the procedure is set forth at [ORS 87.058](#). Consult your attorney for assistance in preparing a petition to the court for a stay.

**A contractor filed a lien on my home a year ago and is refusing to take it off. How can I get the lien removed?**

Liens are invalid after 120 days if no lawsuit to foreclose on the lien has been filed and no extension of time has been awarded. Contact your attorney for further information.

**My primary contractor did not pay the subcontractor because the subcontractor's work was of poor quality. Now, the subcontractor has filed a lien on my property. What can be done to get me out of the dispute? Can I file a complaint against the subcontractor?**

You can request that the general contractor and subcontractor settle their differences in court or that they file CCB complaints against each other and let the CCB help resolve their dispute.

You can also file a complaint against your general contractor if the lien is not immediately released. You cannot file a complaint against the subcontractor because you must have a contract with someone in order to file a complaint against them. Your general contractor can file a complaint against the subcontractor.

Property owners cannot file complaints against subcontractors because there must be a contract with between the two parties in order for one party to file a complaint against the other.



# Contractor responsibilities



## Who sends what notice to property owners?

- If you contract directly with an owner of residential property, you must provide the Information Notice to Owner about Construction Liens.
- If you have no direct contract with an owner of property, and you wish to have a right to file a lien, you must send a Notice of Right to a Lien to the property owner.

There are some exceptions. Refer to pages 2 - 5 for the exceptions that may apply.

## Are there any specific requirements for contractors that have built a house on their own property, or have rehabilitated an existing house that they own, and are now selling the house?

Yes. Under the Homebuyer Protection Act, the builder-seller has certain obligations if the sale involves:

- A new single family home, duplex, triplex, condominium unit, or
- Remodeling an existing single family home, duplex, triplex, condominium unit for a cost of at least \$50,000 within three months prior to the sale

If so, the builder-seller must provide protection for the buyer against claims of lien by:

- Purchasing title insurance;
- Retaining at least 25% of the sales price in escrow;
- Obtaining lien waivers or releases;
- Obtaining a bond or letter of credit; or
- Waiting to complete the sale after the deadline for perfecting liens (usually 75 days).

The builder-seller must complete the Notice of Compliance with the Homebuyer Protection Act (HPA) of 2003 (a form available from the CCB website). Both seller and buyer must sign the form and retain copies for their records.

Contractors who have contracts with the property owner must give the Information Notice to Owner about Construction Liens.

Failure to provide the Notice of Compliance with the Homebuyer Protection Act (HPA) not later than the date of sale of residential property, is a Class "A" violation under Oregon law. In addition, if the builder-seller fails to provide the buyer with the protections required, and the buyer is damaged as a result, the buyer may seek recovery from the builder-seller for an amount up to twice the actual damages, plus attorney fees, costs, and disbursements.

## Are there any residential property owners for whom general contractors do not need to provide an Information Notice To Owner About Construction Liens?

Yes. If the owner of the residential property is a licensed contractor, the notice is not required. This is also the case, for example, when a general contractor is constructing a house for a property owner who is also a licensed contractor. The general contractor does have lien rights against the property, but is not required to deliver an Information Notice To Owner About Construction Liens to the property owner.

## Do I need to provide an Information Notice To Owner About Construction Liens when I bid a commercial job?

No. The notice is for residential construction only.

## How important is the Information Notice To Owner About Construction Liens and what happens if a general contractor does not provide one to a residential property owner?

The notice is very important! If the general contractor fails to provide it to the property owner, the contractor loses lien rights, faces possible suspension of his or her license, and a civil penalty of up to \$5,000.

The notice has signature spaces for the general contractor's signature and the property owner's signature. The general contractor should either provide duplicate originals that are each signed, or provide a copy of the signed original to the property owner. The general contractor must keep an original or a copy as proof that the notice was provided to the property owner. CCB's rules require that you maintain proof of delivery of this notice for a period of two years after entering into the contract.

The general contractor must keep proof of delivery of the Information Notice to Owner About Construction Liens, for two years after entering into a contract.



**Where can I get copies of the Information Notice To Owner About Construction Liens?**

Licensed contractors may download and print copies from the CCB website, or call the CCB and request a copy.-

**Suppose the general contractor fails to provide an Information Notice To Owner About Construction Liens to the residential property owner. Can a subcontractor, employee, material supplier, or equipment rental company still file a lien against the property owner?**

Yes, as long as the subcontractor, employee, material supplier, or equipment rental company has given the property owner a Notice of Right to a Lien and has met all deadlines for sending the notice.

**If I am a subcontractor, is it true that I cannot file a lien against a residential property owner unless I have previously sent a Notice of Right to a Lien?**

That is correct. Since your contract is with the general contractor, you must provide a Notice of Right to a Lien to the property owner (with whom you have no contract). The notice must be given within a required time period (see below).

**When should a subcontractor or supplier send a Notice of Right to a Lien?**

The Notice of Right to a Lien should be given within eight working days of the start date of the work provided, or the delivery date of materials or equipment. For example, if a subcontractor began work on December 12, 2007 (a Wednesday) the subcontractor would need to provide the Notice of Right to a Lien no later than December 24, 2007 (a Monday following two weekend days) in order to have a right to a lien on all work performed beginning the day the subcontractor started work. The Notice of Right to a Lien is considered given when it is personally delivered or mailed. (Also see explanation below.)

Subcontractors, employees, material suppliers, and equipment rental companies must give the property owner a Notice of Right to a Lien if they want to protect their lien rights.



**Are there any other persons that I need to notify about the possibility that I may file a lien?**

In order to obtain priority (preference) over a previously filed mortgage or trust deed on the property, persons providing materials or supplies must also provide the Notice of Right to a Lien to the holder of a recorded mortgage or trust deed. The notice should be given within eight working days of the delivery date of the materials or supplies. If the notice was delivered to the mortgage or trust deed holder on the ninth day after delivery of the materials or supplies, then the supplier would not be entitled to payment for the materials or supplies provided on the first day of the job. You may wish to contact an attorney for more specifics on this notice requirement.

**What happens if I sent the Notice of Right to a Lien too late or to the wrong address, or if I had some other problem with its delivery?**

You lose your lien rights. You may want to contact an attorney.

**Where can I get Notice of Right to a Lien forms?**

The form is available from the CCB website or by calling 503-378-4621.

**How do I go about filing a lien?**

Consult an attorney. A lien involves a notary, legal description, recording fee, several deadlines, and extensive paperwork. If anything in the process is not done correctly, the lien may be invalid, or you could lose your right to collect attorney fees should you have to foreclose on the lien.

**What is the deadline for filing a lien? What if I file the lien after that deadline?**

You have 75 days to file a lien from:

- 1. The date you last worked or delivered materials to the property or
- 2. The date of substantial completion of the construction,

whichever date came first.

The lien will be invalid and cannot be enforced if it is filed more than 75 days after the applicable date.

If you intend to file a lien, you should consult an attorney. If anything in the process is done incorrectly, the lien may be invalid.





**The requirements for pursuing a lien are so strict. Why?**

Foreclosure of a lien is a serious matter – someone can lose his or her property. The strict requirements are also intended to prevent abuses which may result in homeowners having to pay twice for the same materials, equipment, services, or labor.

**What do I need to do after I file a lien and it is recorded?**

Within 20 days after the lien is filed, the lien claimant must mail a written notice to the owner and any mortgage or trust deed holder, stating that the lien claim has been filed. A copy of the lien must be attached to the written notice. Failure to deliver this notice does not invalidate the lien, but you will be unable to recover costs, disbursements or attorney fees upon foreclosure of the lien.

**What happens after a lien is filed and recorded?**

Either the property owner pays the amount you are owed, or you may file a lawsuit to foreclose the lien. Within 120 days of the date you recorded the lien, you must bring a lawsuit to foreclose on the lien. The lien will become invalid after 120 days if a court action is not filed.

**How do I initiate a foreclosure action?**

The CCB cannot help you file a foreclosure action, which is a type of lawsuit filed in court. You will need to talk to an attorney.

**As the general contractor, I just want to get the money that the property owner owes me. Is there an easier way for a general contractor to get paid?**

If you are the general contractor and you improved property at the owner’s request, you must file a lien to rightfully claim an interest in the property, to obtain your payment. However, if you prefer, you may file a claim in state small claims court (for amounts of \$7,500 or less), or in state circuit court (for larger amounts). The CCB has no authority to resolve contractor disputes against property owners. The CCB may get involved if the property owner requests the dispute resolution assistance.

If a general contractor has not been paid by the property owner, he or she can either file a lien claim, file a claim in state small claims court, or in state circuit court.



**Can a subcontractor, laborer, material supplier, or equipment rental company file a lien against a licensed general contractor who did not pay them in full?**

Usually, the answer is no. The only time that a lien can be filed against the general contractor is if the general contractor owns the property. In that case, subcontractors do have lien rights – without providing an Information Notice to Owner About Construction Liens.

**Are there other ways that subcontractors, laborers, material suppliers, and equipment rental companies can get the money that they are owed by a general contractor?**

Yes. A subcontractor, material supplier, or equipment rental company can file a complaint with the CCB or file a lawsuit in court. If either the CCB complaint process or lawsuit is successful, payment may be made from the contractor’s bond. Bond payments to non-owner complainants is limited to \$3,000. If the person filing the complaint does not receive full payment from the bond, they can file the CCB order with any county clerk, where it will have the same effect as a court judgment. See an attorney for more information.

**How does a subcontractor, employee, material supplier, or equipment rental company file a complaint with the CCB against the general contractor?**

You should obtain the appropriate complaint form from the CCB website, or contact the CCB at 503-378-4621 and ask for a form. There are three forms that you may obtain online at [www.oregon.gov/ccb](http://www.oregon.gov/ccb):

- Breach of Contract Complaint Form for Subcontractors
- Breach of Contract Complaint Form for Employees
- Breach of Contract Complaint Form for Material/ Equipment

You must file the complaint within one year of the date of the debt.

**Suppose a property owner, who has had a valid lien filed against his or her property, files a complaint with the CCB. What does this mean?**

If the general contractor was paid in full, a property owner may file a complaint with the CCB against the general contractor to obtain an award to pay all or part of the money owed to a subcontractor, material supplier, or equipment rental company.

If a general contractor has not paid subcontractors or other suppliers, those persons may file a complaint with the CCB.





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If the contractor is unable or unwilling to pay, the CCB may require that payment be made from the contractor's bond. The CCB will process the complaint if:

1. It is filed within the one-year filing period, and
2. If the general contractor was licensed when the work was done.

The processing of the complaint may involve an on-site investigation, arbitration, or a contested case hearing. This process can take several months.

**What if the subcontractor, material supplier, or equipment rental company begins the process to foreclose their lien while the property owner's complaint is pending?**

The property owner has the right to request that the court issue a stay. This will delay the foreclosure proceedings until the CCB finishes processing the complaint.

**In summary, what are the most important things for a general contractor to do in order to file a valid residential lien?**

1. The general contractor must be licensed with the CCB, and
2. The general contractor must give the property owner an Information Notice to Owner About Construction Liens if it is required, and
3. The lien must be filed within 75 days of the last day labor was provided or materials furnished.

**In summary, what is important for a subcontractor, material supplier, or equipment rental company to do in order to file a valid residential lien claim?**

Send the Notice of Right to a Lien by registered or certified mail, or deliver it in person within eight working days of starting the work or providing the materials or equipment.

**Where can I get more information about Oregon's lien laws?**

You may wish to contact an attorney or review Oregon's Lien Law, found in [ORS Chapter 87](#).

To protect their lien rights, contractors should be licensed, and should provide the required notices to property owners.

