

FINAL ORDER

As of: August 12, 2015

1 **BEFORE THE DIRECTOR OF THE DEPARTMENT OF CONSUMER AND BUSINESS**
2 **SERVICES OF THE STATE OF OREGON**

3 **IN THE MATTER OF:**

4 **3D CODE CONSULTING, LLC,**
5 **A DOMESTIC LIMITED LIABILITY**
6 **COMPANY,**

7
8 **RESPONDENT.**

NOTICE OF PROPOSED APPLICATION
DENIAL

NOTICE OF PROPOSED
DISQUALIFICATION

NOTICE OF FINAL ORDER ON DEFAULT

BCD CASE C2015-0097

9 **IF YOU DO NOT REQUEST A HEARING IN WRITING WITHIN 60 DAYS OF THE**
10 **POSTMARK DATE OF THIS NOTICE,**
11 **THIS NOTICE WILL BECOME A FINAL ORDER**

12 More information about this Notice and how to request a hearing is included below.

13 Pursuant to Oregon Revised Statutes (ORS) 455.129(2)(a), (2)(c), (2)(h), (2)(r)(B), and
14 (3)(d), the Director of the Department of Consumer and Business Services (Director) proposes to
15 deny the Third Party Plan Review and Inspection Business Registration Application (SRB
16 Application) of 3D Code Consulting, LLC (Respondent) for the reasons identified below, including
17 acting in a manner that created a serious danger to public health and safety by failing to provide
18 proof of required insurance, performing work without necessary approvals, procuring others to
19 perform inspections without required certifications, and failing to comply with applicable statutes
20 and rules.

21 Further, if a final order of denial is issued pursuant to this Notice, whether after hearing,
22 settlement, or upon default, then, pursuant to ORS 455.127(2)(a) and (3), the Director also proposes
23 to disqualify Respondent from obtaining a Third Party Plan Review and Inspection Business
24 Registration (SRB) for a period of five (5) years.

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1 Some of the terms used in this Notice may be defined in ORS 183.310(1)-(10), ORS
2 455.010(1)-(10), ORS 455.715(1)-(3), OAR 918-001-0005(1)-(4), OAR 918-030-0010(1)-(11),
3 OAR 918-090-0010(1)-(12), and OAR 918-098-1005(1)-(20).

4 FINDINGS OF FACT

- 5 1. Douglas Dick (Dick) is the sole owner and member of Respondent.
- 6 2. On or about June 7, 2007, Dick registered On the Level Inspection Concepts, Inc. (OTLIC,
7 Inc.), a domestic business corporation, with the Corporation Division of the Oregon
8 Secretary of State. Dick is the secretary, president, and sole stockholder of OTLIC, Inc.
- 9 3. On or about March 11, 2015, the Building Codes Division (Division) and OTLIC, Inc.,
10 through Dick, entered into and executed a stipulated order in case 2012-0234, which
11 included:

12 a. Conclusions of law¹ finding:

- 13 i. OTLIC, Inc. engaged in the business of providing plan review and inspection
14 services without approval by the Division and thereby violated ORS
15 455.705(2)(b);
- 16 ii. OTLIC, Inc. allowed an individual to perform commercial structural
17 inspections on prefabricated structures without the individual being certified
18 as a Structural Inspector under OAR 918-098-1015(3) and thereby violated
19 ORS 455.450(2) on at least 25 occasions; and
- 20 iii. OTLIC, Inc. failed to submit a copy of two contracts for plan review and
21 inspection services to the Division for approval within ten days of signing
22 those contracts and thereby violated OAR 918-674-0250(4).

23 b. The following sanctions:

- 24 i. an assessment of \$3,000 in total civil penalties for violations of ORS
25 455.705(2)(b), ORS 455.450(2), and OAR 918-674-0250(4); and

¹ Incorporated by reference into the stipulated order.

1 ii. an order to cease and desist from violations of ORS chapter 455 and OAR
2 chapter 918, division 674.

3 4. On or about March 24, 2015, the Division issued a final order against OTLIC, Inc. in case
4 C2014-0024, which included:

5 a. Conclusions of law finding:

- 6 i. OTLIC, Inc. engaged in the business of providing prefabricated structure plan
7 approvals or inspections without an approval issued by the Division, thereby
8 violating ORS 455.705(2)(b); and
9 ii. OTLIC, Inc. procured a person to engage in an activity for which a certificate
10 is required without the person having obtained such certificate, thereby
11 violating ORS 455.450(2).

12 b. The following sanctions:

- 13 i. an assessment of \$5,000 in total civil penalties for violations of ORS
14 455.705(2)(b) and ORS 455.450(2); and
15 ii. a denial of OTLIC, Inc.'s application for third-party prefabricated structure
16 plan review and inspection business.

17 5. On or about May 28, 2015, the Division issued a final order against OTLIC, Inc. in case
18 2012-0233, which included:

19 a. Conclusions of law finding:

- 20 i. OTLIC, Inc. engaged in the business of providing third party plan review
21 and inspection services without being registered as such a business with the
22 Division, thereby violating OAR 918-090-0100;
23 ii. OTLIC, Inc. acted in a manner that created a serious danger to the public
24 health or safety by failing to carry or submit proof of errors and omissions
25 liability insurance, when not so insured under a municipality, thereby

1 violating ORS 455.129(2)(i);

2 iii. OTLIC, Inc. did not meet the requirements for a quality control manual,
3 thereby violating OAR 918-090-0300(1); and

4 iv. OTLIC, Inc. submitted an application that contained an incorrect or
5 misleading statement, thereby violating ORS 455.129(2)(c).

6 b. The following sanctions:

7 i. an order to cease and desist from violations of OAR 918-090-0100, OAR
8 918-090-0110, OAR 918-090-0300, and ORS 455.129;

9 ii. an assessment of \$3,000 in civil penalties for violations of OAR 918-090-
10 0100; and

11 iii. a denial of OTLIC, Inc.'s third party plan review and inspection business
12 registration application.

13 6. On or about May 8, 2015, Respondent submitted a Third Party Plan Review and Inspection
14 Business Registration Application (SRB Application) to the Division.

15 7. The SRB Application identifies Douglas Dick as Respondent's president, owner, and
16 stockholder.²

17 8. As part of its SRB Application, Respondent submitted a quality control manual to the
18 Division.

19 9. The quality control manual contains, among other items, the following:

20 a. Under the subheading "Errors and Omissions," the name of an insurance company, a
21 policy number, and a set of dates; and

22 b. Under the subheading "General Liability," the name of an insurance company, an
23 address, and a policy number.

24 10. Respondent did not submit proof of general liability insurance or errors and omissions
25 liability insurance or their equivalent. Respondent did not submit any information stating

² Respondent is a limited liability company, which has members rather than presidents or stockholders.

1 that its errors and omissions insurance is covered by all municipalities³ for which it is
2 working.

3 **APPLICABLE LAW**

- 4 1. Under ORS 455.457, the Director by rule shall establish a licensing system for persons that
5 perform specialty code inspections or plan reviews and for businesses that employ persons
6 that perform specialty code inspections or plan reviews.
- 7 2. OAR 918-090-0100 provides that a registration as a plan review and inspection business
8 shall be held by any person who engages in or follows the business or occupation of, or
9 advertises or purports to engage in or perform plan reviews or inspections other than as an
10 exclusive employee of a municipality, the Division, or a registered plan review and
11 inspection business.
- 12 3. OAR 918-090-0110(2) provides that an application for plan review and inspection business
13 registration shall include at least the following:

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15 (g) Proof of general liability insurance of at least \$1 million or its equivalent, including
16 but not limited to the name of the insurance company, the amount for which insured,
17 the policy number, expiration date and the current business address and phone
18 number of the insurance company's agent;

19 (h) Proof of "errors and omissions" liability insurance or its equivalent, of at least
20 \$500,000 per occurrence, with an aggregate limit of at least \$500,000 per policy
21 year, including but not limited to, the name of the insurance company, the amount
22 for which insured, the policy number and expiration, and the current business
23 address and phone number of the insurance company's agent. In lieu of errors and
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25 ³ Respondent's quality control manual states that its "clients consist of Cities and Municipalities that have established Building Departments, with State of Oregon BCD approved operating plans." However, it also appears that Respondent seeks to work solely for the City of Manzanita, as that is the only specific jurisdiction Respondent references in its application and the only jurisdiction from which Respondent submitted documentation.

1 omission insurance required by this rule, businesses contracting directly with a
2 municipality to provide specialty code inspections and plan reviews may be covered
3 by the municipality's insurance. When this option is used, the business shall submit
4 sufficient information for the Division to determine the errors and omissions
5 insurance is covered by all municipalities for which the person or business is
6 working.

7 4. Under ORS 455.129(2), the Director may deny a license or registration if the applicant:

8 a. Has failed to comply with the laws administered by the Division or the rules adopted
9 by the Division.

10 ***

11 (c) Has filed an application for a license, certificate or registration that, as of the date
12 the license, certificate, or registration was issued or the date of an order denying the
13 application, was incomplete in any material respect or contained a statement that, in
14 light of the circumstances under which it was made, was incorrect or misleading in
15 any respect.

16 ***

17 (h) Has failed to meet any condition or requirement to obtain or maintain a license,
18 certificate, or registration.

19 ***

20 (r) Is a business, the owner or an officer of which was an owner or officer in another
21 business at the time:

22 ***

23 (B) An act or failure to act by any owner or officer of the other business
24 resulted in action being taken against the license, certificate, or registration of
25 the other business by the Department, the Director, or any advisory board.

- 1 5. Under ORS 455.129(3)(d), the Department may deny a license issued under ORS chapter
2 455 for those reasons enumerated in 455.129(2).
- 3 6. Under ORS 455.127(2)(a), the Director may disqualify a person⁴ from obtaining a license or
4 registration if the person is or has been subject to civil penalties, revocation, cancellation, or
5 suspension of a license, registration, certificate, or certification or other sanction by the
6 Director, Department, or an advisory board.
- 7 7. Under ORS 455.127(3), a disqualification under ORS 455.127(2) shall be for a period
8 determined by the Director, department, or appropriate advisory board by rule, not to exceed
9 five (5) years.

10 CONCLUSIONS OF LAW

- 11 1. The sole owner and member of Respondent was the owner and officer of another business at
12 the time that an act or failure to act by an owner or officer of that other business resulted in
13 an action being taken against the registration of that other business by the Director.
14 Specifically, in BCD case C2014-0024, Douglas Dick was the owner of OTLIC, Inc. at the
15 time that acts or failures to act by Dick resulted in the Director's denial of OTLIC, Inc.'s
16 application for third party plan review and inspection business registration. Similarly, in
17 BCD case 2012-0233, Douglas Dick was the owner, of OTLIC, Inc. at the time that acts or
18 failures to act by Dick resulted in the Director's denial of OTLIC, Inc.'s application for third
19 party plan review and inspection business registration. Therefore, under ORS
20 455.129(2)(r)(B) and (3)(d), the Director may deny Respondent's SRB Application.
- 21 2. By failing to submit adequate proof of general liability insurance of at least \$1 million or its
22 equivalent, including but not limited to the name of the insurance company, the amount for
23 which insured, the policy number, expiration date, and the current business address and
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25 ⁴ For the purposes of this section, a "person" includes individuals, corporations, associations, firms, partnerships, limited liability companies, joint stock companies, public agencies, and an owner or holder of a direct or indirect interest in a corporation, association, firm, partnership, limited liability company, or joint stock company. ORS 455.127(1).

1 phone number of the insurance company's agent, Respondent failed to comply with OAR
2 918-090-0110(2)(g).

3 3. By failing to submit adequate proof of errors and omissions liability insurance or its
4 equivalent of at least \$500,000 per occurrence, with an aggregate limit of at least \$500,000
5 per policy year, including but not limited to, the name of the insurance company, the amount
6 for which insured, the policy number and expiration, and the current business address and
7 phone number of the insurance company's agent or, alternatively, by failing to submit
8 sufficient information for the Division to determine that all municipalities with which
9 Respondent is contracting are providing Respondent with errors and omissions insurance
10 coverage, Respondent failed to comply with OAR 918-090-0110(2)(h).

11 4. By failing to submit proof of general liability insurance in accordance with OAR 918-090-
12 0110(2)(g) or errors and omissions liability insurance in accordance with OAR 918-090-
13 0110(2)(h), Respondent failed to comply with the laws administered by the Division or the
14 rules adopted by the Division. Therefore, under ORS 455.129(2)(a) and (3)(d), the Director
15 may deny Respondent's SRB Application.

16 5. By failing to submit proof of general liability insurance in accordance with OAR 918-090-
17 0110(2)(g) or errors and omissions liability insurance in accordance with OAR 918-090-
18 0110(2)(h), Respondent has filed an application for registration that, as of the date of this
19 denial, was incomplete in a material respect. Therefore, under ORS 455.129(2)(c) and
20 (3)(d), the Director may deny Respondent's SRB Application.

21 6. By failing to submit proof of general liability insurance in accordance with OAR 918-090-
22 0110(2)(g) or errors and omissions liability insurance in accordance with OAR 918-090-
23 0110(2)(h), Respondent has failed to meet a condition or requirement to obtain a license
24 registration. Therefore, under ORS 455.129(2)(h) and (3)(d), the Director may deny
25 Respondent's SRB Application.

1 7. If the order to deny Respondent's SRB application for these reasons becomes final,
2 Respondent will be subject to sanctions by the Director. Then, at that time, because
3 Respondent is subject to sanctions by the Director, the Director may disqualify Respondent
4 from obtaining a Third Party Plan Review and Inspection Business Registration for up to
5 five (5) years pursuant to ORS 455.127(2)(a) and (3).

6 **ORDER**

7 Pursuant to ORS 455.129(2)(a), (2)(c), (2)(h), (2)(r)(B), and (3)(d), the Director denies
8 Respondent's application for registration as a Third Party Plan Review and Inspection Business.
9 Therefore, and in addition, pursuant to ORS 455.127(2)(a) and (3), the Director disqualifies
10 Respondent from obtaining a Third Party Plan Review and Inspection Business registration for a
11 period of five (5) years from the execution date of this order.

12 **FOR THE DIRECTOR OF THE DEPARTMENT OF CONSUMER AND BUSINESS**
13 **SERVICES**

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15 Andrea Simmons for
16 Director
17 Department of Consumer and Business Services
State of Oregon

Date: July 2, 2015

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1 **NOTICE OF RIGHT TO HEARING**

2 Respondent is entitled to a hearing as provided by the Administrative Procedures Act, ORS
3 chapter 183. If Respondent requests a hearing, the request must be in writing and postmarked no
4 later than 60 days from the date of service of this Notice. If the Notice was served on Respondent in
5 person, the date of service is the date Respondent received the Notice. If the Notice was served
6 through the mail, the date of service is the day the Notice was mailed, not the day it was received by
7 Respondent. If a request for hearing is not received within the 60-day period, Respondent's right to
8 a hearing shall be considered waived. Mail hearing requests to Building Codes Division,
9 Enforcement Section, P.O. Box 14470, Salem, Oregon, 97309.

10 Respondent has the right to be represented by legal counsel. Pursuant to ORS 183.457, a
11 corporation may be represented by an authorized representative at the hearing. If Respondent
12 requests a hearing, Respondent will be notified of the time and place of the hearing. The Division
13 will give Respondent information on the procedures, right of representation, and other rights of
14 parties relating to the conduct of the hearing before the commencement of the hearing.

15 **NOTICE TO ACTIVE DUTY SERVICEMEMBERS**

16 Active duty servicemembers have a right to stay proceedings under the Federal
17 Servicemembers Civil Relief Act. Contact the Oregon State Bar at 800-452-8260 or the Oregon
18 Military Department at 800-452-7500 for more information. If Respondent needs help finding legal
19 assistance, visit the United States Armed Forces Legal Assistance Legal Services Locator website at
20 <http://legalassistance.law.af.mil/content/locator.php>.

21 **NOTICE OF FINAL ORDER**

22 If Respondent does not request a hearing within 60 days, withdraws a hearing request,
23 notifies the Building Codes Division or the administrative law judge that Respondent will not
24 appear at a scheduled hearing, or fails to appear at a scheduled hearing, then this Notice will
25 become a final order by default. If this Notice becomes a final order by default, the Division's file

1 on the matter, including all materials submitted by Respondent, becomes the record for the purpose
2 of establishing a prima facie case.

3 **RIGHT TO JUDICIAL REVIEW**

4 Respondent is entitled to judicial review of a final order in this matter. Judicial review may
5 be obtained by filing a petition for review with the Oregon Court of Appeals within 60 days after a
6 final order is served upon Respondent. See ORS 183.482. If a final order is served on Respondent in
7 person, the date of service is the date Respondent receives the order. If a final order is served
8 through the mail, the date of service is the day the order is mailed, not the day it is received by the
9 Respondent. If Respondent does not file a petition for judicial review within the 60-day time period,
10 Respondent will lose the right to appeal. The phone number for the Oregon Court of Appeals is
11 503-986-5555.

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