

**RELEVANT STATUTES AND RULES –
Residential Contracts:
Making and Using a Practical Contract**

STATUTES:

ORS 41.580. Statute of frauds. (1) In the following cases the agreement is void unless it, or some note or memorandum thereof, expressing the consideration, is in writing and subscribed by the party to be charged, or by the lawfully authorized agent of the party; evidence, therefore, of the agreement shall not be received other than the writing, or secondary evidence of its contents in the cases prescribed by law: * * *

(e) An agreement for the leasing for a longer period than one year, or for the sale of real property, or of any interest therein.

ORS 83.710. Definitions for ORS 83.710 to 83.750; application of ORS 83.710 to 83.750. (1)

As used in ORS 83.710 to 83.750:

(a) A transaction is a “home solicitation sale” if:

(A) It is a sale, lease or rental of goods or services, as defined in ORS 83.010;

(B) The seller or the seller’s representative personally solicits the sale, lease or rental, including a sale, lease or rental in response to or following an invitation by the buyer; and

(C) The buyer’s written agreement or offer to purchase is made at a place other than the place of business of the seller. As used in this subparagraph, “a place other than the place of business of the seller” means a place that is not the seller’s main or permanent branch office or permanent local address and includes but is not limited to the residence or workplace of the buyer and facilities rented by the seller on a temporary or short-term basis, such as a hotel or motel room, restaurant or dormitory lounge. * * *

(2) The provisions of ORS 83.710 to 83.750 relating to home solicitation sales do not apply to: * * *

(c) A contract in writing for the sale or lease of a house or business property or the construction of a new house or business property.

ORS 83.720. Cancellation of home solicitation sale; notice; exception. (1) Except as provided in subsection (5) of this section, in addition to any other right to revoke an offer or rescind a transaction that the buyer may have, the buyer has the right to cancel a home solicitation sale until 12 midnight of the third business day after the day on which the buyer signs an agreement or offer to purchase that complies with ORS 83.710 to 83.750 or pays by cash or check.

(2) Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address stated in the agreement or offer to purchase.

(3) Notice of cancellation, if given by mail, is given when it is deposited in a mailbox properly addressed and postage prepaid.

(4) Notice of cancellation given by the buyer need not take a particular form and is sufficient if it indicates by a form of written expression the intention of the buyer not to be bound by the home solicitation sale.

(5) The buyer may not cancel a home solicitation sale if the buyer initiates the contact with the seller and the buyer, in a separate signed writing not furnished by the seller, requests that the seller provide goods or services without delay because of an emergency, describes the

emergency and expressly acknowledges and waives the right to cancel the sale within three business days, and:

(a) The seller in good faith makes a substantial beginning of performance of the contract before the buyer gives notice of cancellation; and

(b) In case of goods, the goods cannot be returned to the seller in substantially as good condition as when received by the buyer.

ORS 83.730. Written agreement or offer to purchase; contents; notice of buyer's right to cancel; form. (1) A home solicitation sale must be evidenced by a written agreement or offer to purchase signed by the buyer. At the time a buyer executes the written agreement or offer to purchase:

(a) The seller must furnish the buyer with a fully completed copy of the written agreement or offer to purchase.

(b) The written agreement or offer to purchase must:

(A) Designate as the date of the transaction the date on which the buyer actually signs;

(B) Contain the name of the seller and address of the seller's place of business;

(C) Be in the same language as the language that is principally used in the sales presentation; and

(D) Contain, in immediate proximity to a space reserved for the signature of the buyer, in at least 10-point boldfaced type, a statement in substantially the following form:

You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of buyer's right to cancel for an explanation of the right to cancel.

(c) The seller must provide the buyer, by a method chosen by the seller, with a duplicate copy of the notice of the buyer's right to cancel described in subsection (2) of this section so that, if the buyer cancels the transaction, the buyer can retain a complete copy of the written agreement or offer to purchase. If both copies of the notice are not attached to the written agreement or offer to purchase, the seller shall change the last sentence in the statement required under paragraph (b)(D) of this subsection to conform to the actual location of the copies of the notice. Both copies of the notice must contain:

(A) The name of the seller;

(B) The address of the seller's place of business;

(C) The date of the transaction; and

(D) The date, not earlier than the third business day following the date of the transaction, by which the buyer may give notice of cancellation.

(d) The seller must orally inform the buyer of the buyer's right to cancel.

(2) The notice of the buyer's right to cancel must be in conspicuous type, 10-point or larger, and must read as follows:

NOTICE OF BUYER'S RIGHT TO CANCEL

(1) (Date) You, the buyer, may cancel this agreement without any penalty, cancellation fee or other financial obligation by mailing or delivering a notice to the seller within **THREE BUSINESS DAYS** from the above date.

(2) If you cancel:

(a) Any property you traded in, any payments you made under the sales contract and any checks or notes you signed will be returned within 10 business days following receipt by the seller of your notice of cancellation. Any security interest that arises from the transaction will be canceled.

(b) You may either make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under the sales contract or you may comply with the seller's instructions regarding the return shipment of the goods at the seller's expense and risk.

(c) If you make the goods available to the seller at your residence and the seller does not pick up the goods within 20 days of the date of your notice of cancellation, you may keep or discard the goods without further obligation.

(d) If you do not make the goods available to the seller, or if you agree to return the goods to the seller and you do not return the goods, you must perform all of your obligations under the sales contract.

(3) To cancel this transaction, mail or deliver a signed and dated copy of this notice or other written expression of your intention to cancel, or send a telegram, to (name of seller) at (address of seller's place of business) not later than 12 midnight on (date), the third business day after you signed the written agreement or offer to purchase.

I HEREBY CANCEL THIS TRANSACTION.

(Signature of buyer)

(Date)

(3) In a home solicitation sale subject to federal rules under 16 C.F.R. part 429, the seller may provide the notice required by the federal rules in lieu of the notice required under subsection (2) of this section if the notice required under federal rules contains the information specified in subsection (1)(c) of this section.

(4) Until the seller has complied with this section the buyer may cancel the home solicitation sale by notifying the seller in any manner and by any means of an intention to cancel.

ORS 701.131. License required to perfect lien or obtain judicial or administrative remedy; exception. (1) Except as provided in subsection (2) of this section, a contractor may not perfect a construction lien, file a complaint with the Construction Contractors Board or commence an arbitration or a claim in a court of this state for compensation for the performance of any work or for the breach of any contract for work that is subject to this chapter, unless the contractor had a valid license issued by the board and properly endorsed for the work performed:

(a) At the time the contractor bid or entered into the contract for performance of the work; and

(b) Continuously while performing the work for which compensation is sought.

(2) The board, arbitrator or court may not apply the provisions of subsection (1) of this section to a contractor if the board, arbitrator or court determines that:

(a) The contractor either did not have a valid license with a proper endorsement at any time required under subsection (1) of this section, or had an initial issuance of a valid license, and:

(A) The contractor was not aware of the requirement that the contractor be licensed or properly endorsed for the work performed, and the contractor submitted a completed application

for a license within a number of days established by the board, but not more than 90 days, of the date the contractor became aware of the requirement;

(B) At the time the contractor perfected a construction lien or commenced any claim subject to the provisions of subsection (1) of this section, the contractor was licensed by the board and properly endorsed for the work performed; and

(C) Enforcement of the provisions of subsection (1) of this section would result in substantial injustice to the contractor;

(b) The contractor was licensed by the board for some but not all of the times required under subsection (1) of this section and had a lapse in the license and:

(A) The contractor was not aware of the lapse in the license for more than a number of days established by the board, but not to exceed 90 days, before submitting a completed application for license renewal with the board;

(B) Except for perfection of a construction lien and a court action to foreclose the lien, at the time the contractor commenced any claim subject to the provisions of subsection (1) of this section the contractor's license was renewed under ORS 701.063 to include the entire time period for which a license was required under subsection (1) of this section; and

(C) For perfection of a construction lien and a court action to foreclose the lien, the contractor's license was renewed under ORS 701.063 for the entire time period for which a license was required under subsection (1) of this section, but not later than 90 days following perfection of the lien; or

(c) The proceeding:

(A) Is directed against a person or entity that:

(i) Is subject to this chapter or ORS chapter 671 or 672;

(ii) Provides construction or design labor or services of any kind; or

(iii) Manufactures, distributes, rents or otherwise provides materials, supplies, equipment, systems or products; and

(B) Arises out of defects, deficiencies or inadequate performance in the construction, design, labor, services, materials, supplies, equipment, systems or products provided.

(3) A contractor that falsely swears to information submitted to the board under ORS 701.046 or submitted in a registration of securities described in ORS 701.046 (2), or that knowingly violates the provisions of ORS 656.029, 670.600 or 701.046, may not perfect a construction lien, file a complaint with the board or commence an arbitration or a claim in a court of this state for compensation for the performance of any work on a residential structure or for the breach of any contract for work on a residential structure that is subject to this chapter.

ORS 701.305. Requirement for written contract with residential property owner; standard contractual terms; rules. (1) A contractor may not perform work to construct, improve or repair a residential structure or zero-lot-line dwelling for a property owner without a written contract if the aggregate contract price exceeds \$2,000. If the price of a contract was initially less than \$2,000, but during the course of performance the contract exceeds that amount, the contractor shall mail or otherwise deliver a written contract to the property owner not later than five days after the contractor knows or should reasonably know that the contract price will exceed \$2,000. Failure to have a written contract will not void the contract.

(2) The Construction Contractors Board shall adopt rules that require a contractor to use standard contractual terms in a construction contract for which subsection (1) of this section

requires a written contract. The standard contractual terms shall be clear and use words of common understanding.

ORS 701.320. Offer of warranty; withdrawal of contract offer. (1) A contractor that enters into a contract to construct a new residential structure or zero-lot-line dwelling, or to sell a new residential structure or zero-lot-line dwelling constructed by the contractor, shall make a written offer to the property owner or original purchaser of the structure or dwelling of a warranty against defects in materials and workmanship for the structure or dwelling. The property owner or original purchaser of the structure or dwelling may accept or refuse the offer of a warranty by the contractor. If a contractor makes the written offer of a warranty before the contractor and the property owner both sign a written construction contract and the property owner refuses the offered warranty, the contractor may withdraw the offer to construct the structure or dwelling.

(2) Subsection (1) of this section does not apply to a residential structure that is a manufactured dwelling as defined in ORS 446.003.

ORS 701.330. Consumer notice form; notice of procedure form; rules. (1) The Construction Contractors Board shall adopt by rule a consumer notice form designed to inform a property owner or original purchaser of the actions the property owner or original purchaser should take to protect the property owner in a residential structure or zero-lot-line dwelling repair, remodel or construction project or to protect the original purchaser in a residential structure or zero-lot-line dwelling construction project. The form shall briefly describe and identify additional sources of information regarding:

- (a) Contractor licensing standards;
- (b) Contractor bond and insurance requirements;
- (c) The requirement to offer a warranty under ORS 701.320; and
- (d) Other information specified by the board.

(2) The board shall adopt by rule a notice of procedure form that briefly describes and identifies additional sources of information regarding the procedure described under ORS 701.560 to 701.595 and other information specified by the board.

(3) The consumer notice form and notice of procedure form adopted by the board shall include signature lines for the contractor and for the property owner or original purchaser.

(4) The board shall adopt rules specifying the time and manner for a contractor to deliver a consumer notice form and notice of procedure form.

(5) The board may adopt rules that require a contractor to maintain evidence of delivery of the consumer notice form and notice of procedure form and that specify the retention period for and the form of that evidence.

ORS 701.335. Recommended maintenance schedule; rules. (1) A contractor that enters into a contract to construct a new residential structure or zero-lot-line dwelling shall provide a recommended maintenance schedule to the property owner or original purchaser of the proposed structure or dwelling at the time that the contractor makes a written offer of warranty under ORS 701.320.

(2) The Construction Contractors Board shall adopt rules describing the minimum information that a contractor shall provide to a property owner or original purchaser under subsection (1) of this section. The minimum information shall include, but need not be limited to, the following:

- (a) Definitions and descriptions of moisture intrusion and water damage.

- (b) An explanation of how moisture intrusion and water damage can occur.
- (c) A description and recommended schedule for maintenance to prevent moisture intrusion.
- (d) Advice on how to recognize the signs of water damage.
- (e) Appropriate steps to take when water damage is discovered.

RULES:

OAR 812-001-0200. Consumer Notices Adoption.

(1) In order to comply with the requirement to adopt an information notice to owner under ORS 87.093, the Construction Contractors Board adopts the form entitled “Information Notice to Owner About Construction Liens,” as revised January 1, 2010. This form may be obtained from the agency.

(2) In order to comply with the requirement to adopt a consumer notice form under ORS 701.330(1), the board adopts the form “Consumer Protection Notice” as revised April 26, 2011.

(3) In order to comply with the requirement to adopt an “Information Notice to Property Owners About Construction Responsibilities” form under ORS 701.325(3), the board adopts the form “Information Notice to Property Owners About Construction Responsibilities” as revised September 23, 2008.

(4) In order to comply with the requirement to adopt a notice of procedure form under ORS 701.330(2), the board adopts the form “Notice of Procedure” dated December 4, 2007.

(5) The board adopts the form “Notice of Compliance with Homebuyer Protection Act” (HPA) as revised December 1, 2010.

(6) The board adopts the form “Model Features for Accessible Homes” dated December 4, 2007.

(7) The board adopts the form “Home Inspection Consumer Notice” dated October 27, 2009.

OAR 812-005-0800. Schedule of Penalties. The agency may assess penalties, not to exceed the amounts shown in the following guidelines: * * *

(9) Failure to include license number in advertising or on contracts, in violation of OAR 812-003-0120: First offense \$100, second offense \$200, subsequent offenses \$400. * * *

(12) Failing to use a written contract as required by ORS 701.305: \$500 for the first offense; \$1,000 for the second offense; and \$5,000 for subsequent offenses.

OAR 812-012-0110. Terms of Written Contract.

(1) If a contractor is required to have a written contract under ORS 701.305, the written contract or attached addendum to the written contract must contain the following:

(a) The contractor’s name, address, phone number and license number issued by the board as shown on board records.

(b) An acknowledgment of a written offer of a warranty, if an offer is required by ORS 701.320, and indication of the acceptance or rejection of the offered warranty;

(c) An explanation of the property owner’s rights under the contract, including, but not limited to, the ability to file a complaint with the board and the existence of any mediation or arbitration provision in the contract, set forth in a conspicuous manner as defined by the board by rule;

(d) Customer’s name and address;

(e) Address where the work is to be performed;

- (f) A description of the work to be performed; and
- (g) Price and payment terms.
- (2) The information described in section (1) of this rule must be legible and in dark ink.

OAR 812-012-0120. Maintenance Schedules.

(1) A contractor that constructs a new residential structure or zero-lot-line dwelling shall provide a maintenance schedule to the first purchaser or owner of the structure or dwelling. The maintenance schedule will recommend periodic steps that the purchaser or owner should take to prevent moisture intrusion or water damage to the structure or dwelling. The minimum information contained in the maintenance schedule will consist of the information listed below in section (4).

(2) “Moisture intrusion” and “water damage” are defined as follows:

(a) “Moisture intrusion” means water, whether liquid, frozen, condensed or vaporized, that penetrates into a structure or behind the outside cladding of a structure.

(b) “Water damage” means damage or harm caused by moisture intrusion that reduces the value or usefulness of a structure.

(3) Moisture intrusion and water damage may occur, for example, from the following:

- (a) Missing or loose roofing materials or flashing;
- (b) Window sills or door frames without adequate caulking or weather-stripping;
- (c) Lack of caulking in siding, mortar in masonry or grout in exterior ceramic tile installations;
- (d) Degraded paint on exterior siding or surfaces;
- (e) Overflowing or clogged gutters;
- (f) Gutter drains or downspouts that are not a sufficient distance from the structure;
- (g) Improper drainage slope next to foundation;
- (h) Plant materials too close to the structure or foundation;
- (i) Sprinklers that overspray onto the structure or foundation;
- (j) Non-working interior ventilation systems.

(4) The recommended maintenance schedule for new residential structures and dwellings, to prevent moisture intrusion and water damage, is as follows:

(a) At least once a year:

(A) Check roof for damaged, loose or missing shingles. Check flashing around roof stacks, vents, skylights, and chimneys and in roof valleys for missing or loose flashing. Repair or replace if necessary.

(B) Check for water stains in the roof of the attic and in the exterior overhangs or soffits. If water stains are present, locate and repair the cause of moisture intrusion.

(C) Check and repair missing mortar in exterior masonry.

(D) Check painted surfaces for cracking, peeling or fading. Repaint if necessary.

(E) Inspect gutters and downspouts for leaks. Repair if necessary. Check alignment of gutters, downspouts and splash blocks to ensure that water is properly diverted away from the structure and foundation. Repair if necessary.

(F) Inspect gutters for debris blockage. Remove debris (for example, tree needles and leaves) from downspouts and gutters.

(G) Check soil around foundation to make sure that it slopes in such a way that water can flow away from the foundation. Fill soil in any areas that have settled around the foundation.

(H) Trim back tree branches, shrubs and other plants to make sure they are not in contact with the structure.

(I) Check landscaping sprinklers to make sure that they are not set so that they will soak siding or form puddles near the foundation. Adjust if necessary.

(b) At least twice a year, check and repair missing, cracked or peeling caulking or weather-stripping around window sills, door frames and in siding gaps.

(c) At least once every two months, check to make sure that interior mechanical ventilation systems (such as bathroom, kitchen and utility room vent fans) are in good working order. Repair if necessary.

(5) Signs of water damage may include, but are not limited to, dampness, staining, mildewing (blackened surfaces with musty smell) and softness in wood members (possible sign of dry rot).

(6) If water damage is discovered, investigation should be made into the source of the water damage. Steps should be taken to repair or replace building components or materials that allowed moisture intrusion leading to the water damage. Additional steps may need to be taken depending on the extent of the water damage.

(7) The maintenance schedule in section (4) contains the minimum information that a contractor that constructs a new residential structure or zero-lot-line dwelling must provide. A contractor may offer a maintenance schedule with additional information, recognizing the uniqueness of each structure and its material components. A contractor may use any form or layout for its maintenance schedule, provided that it contains the information in section (4).

(8) The contractor that constructs a new residential structure or zero-lot-line dwelling shall provide a copy of its maintenance schedule to the first purchaser or owner no later than 60 days after substantial completion of the structure or dwelling, or occupancy of the structure or dwelling, whichever occurs later.

(9) For purposes of this rule, a contractor that constructs a new residential structure or zero-lot-line dwelling refers to the prime or general contractor that contracts with the homeowner or sells to the first purchaser. Subcontractors that do not have a contractual relationship with the homeowner or first purchaser are not required to deliver a maintenance schedule.

OAR 812-012-0130. Delivery and Proof of Delivery of Consumer Notice.

(1) If a contractor is required to have a written contract under ORS 701.305, the consumer notices described in OAR 812-001-0200(1), (2) and (4) shall be delivered on or before the date the contract is entered into.

(2) The contractor shall maintain proof of delivery of the Consumer Protection Notice, Notice of Procedure, and the notice required under ORS 87.093, if required, for a period of two years after the contract was entered into. Proof of delivery of the notices shall include, but not be limited to:

(a) A signed copy of the notices;

(b) An unambiguous phrase in the written contract that acknowledges receipt of the notices and that is initialed by the owner; or

(c) Copies of the written contract, if the notices are fully contained in the written contract.