

# CONSTRUCTION CLAIMS TASK FORCE

## DRAFT

### Regular Meeting Minutes

April 11, 2006

The Construction Claims Task Force met on Tuesday, April 11, 2006, in Room 260, Labor and Industry Building, 350 Winter Street NE, Salem, Oregon.

**Members Present:** David DeHarrport  
Jon Fahr  
Eric Grasberger  
Elsie Jones  
Steve Malany  
Bill Nesmith  
Laura Schauer  
Tom Skaar  
Jim Vavrek

**Members Absent:** None

**Staff Present:** Cory Streisinger, Director of Department of Consumer and Business Services  
Mark Long, Administrator of Building Codes Division  
Craig P. Smith, Administrator, Construction Contractors Board  
Richard Baumann, Building Codes Division  
Chris Huntington, Building Codes Division  
Jim Denno, Building Codes Division  
Cece Newell, Insurance Division  
Bill Boyd, Construction Contractors Board  
Cathy Dixon, Construction Contractors Board  
Michael Morter, Insurance Division  
Rick Blackwell, Building Codes Division  
Andrea Simmons, Building Codes Division  
Richard Rogers, Building Codes Division  
Rebai Tamerhoulet, Building Codes Division  
Gina Fox, Construction Contractors Board

**Guests Present:**

Chuck Day, Adair Homes  
Richard Wendt, West Hills Development  
Steve Murrey, State Farm  
John Powell, State Farm  
Amanda Rich, CBIC  
Roland Carson, Dupont Tyvek  
Ken Cochran, AFSCME  
Tom Dymont, CBIC  
Steve Krieg, City of Woodburn  
Brian Miller, Farmers Insurance  
Kelvin Detwyler, Salem Ins. & HBA of Salem

Jerry Wear  
Lana Butterfield, BCS  
Kelly Ross, CBIC  
Pat Dorney, CBIC  
Janet Adkins, OR Legislative Committee  
Alan Seymour, ODOE  
Larry Peabody, ORA  
Stephen Kafoury, ORA  
Lori Graham, COD  
Angie Dilkes, PacWest  
Scott Barrie, OHBA

**Action Items**

- Submit public notice for May 24, 2006 meeting.
- Combine concepts and regroup into preventative and enforcement/recovery groups.
- Convert other states comparison into a matrix.
- Phase I final recommendations vote.

**I. TASKFORCE BUSINESS****A. Call to Order:**

Chair Eric Grasberger called the meeting to order at 1:35 p.m.

**B. Approval of Agenda for April 11, 2006 Meeting:**

**MOTION:** Eric Grasberger moved to approve the agenda for the April 11, 2006 meeting.

**VOTE:** 9-0, Ayes—Grasberger, DeHarrport, Fahr, Jones, Malany, Nesmith, Schauer, Skaar, and Vavrek.

**C. Approval of February 15, 2006 Meeting Minutes:**

**MOTION:** Eric Grasberger moved to approve the February 15, 2006 minutes.

**VOTE:** 9-0, Ayes—Grasberger, DeHarrport, Fahr, Jones, Malany, Nesmith, Schauer, Skaar, and Vavrek.

**D. Next Meeting Date:**

**MOTION:** Eric Grasberger moved to approve the next meeting date of May 24, 2006, 1:30 p.m. to 5:00 p.m.

**VOTE:** 9-0, Ayes—Grasberger, DeHarrport, Fahr, Jones, Malany, Nesmith, Schauer, Skaar, and Vavrek.

**E. Project Update:****1. CCTF Schedule:**

Mark Long, Building Codes Division, reported that meeting dates have been scheduled for the following 2006 dates: May 24, June 28, July 26, September 19, and October 10. (**Exhibit 1**) Task force members reported conflicts with the October meeting date; staff will contact task force members with alternative dates for the October meeting. A meeting date for August has not yet been set. Task force members agreed to have the August meeting on August 23<sup>rd</sup> from 9:00 a.m. to 12:30 p.m.

The May meeting will be the final meeting in Phase 1. The meeting will include further discussion by the members on the concept papers currently under review as well as opportunity for public comment. The meeting will conclude with the

task force voting on which concepts will move on for further drafting for possible inclusion in the task force's report to the legislature. Staff will provide updates on the further drafting of Phase 1 concepts at future meetings.

Phase 2 will begin in June where the task force will begin receiving information regarding insurance issues. Phase 3 will begin in September where the task force will begin incorporating final recommendations and concepts into the legislative report.

## **2. Insurance Study RFP:**

Michael Morter, Insurance Division, reported that American Actuarial Consulting Services is underway. An insurance data call has been issued and is due back the third week of April. The due date of the first report was moved back from May 1 to May 15. This should not affect the final report date. American Actuarial Consulting Services will be making a presentation at the June meeting. There will be an opportunity for discussion on the initial report.

## **II. NEW BUSINESS**

### **Agency Overviews:**

Craig P. Smith, Administrator, Construction Contractors Board and Mark Long, Administrator, Building Codes Division, presented an overview of construction regulation. (**Exhibit 6**)

### **Consumer Information:**

Craig P. Smith, CCB, discussed CCB's consumer information publications with the task force. (**Exhibit 10**) CCB currently offers eight publications directed towards consumers:

- 16 Ways to Avoid Remodeling Repair and Construction Problems (**Exhibit 12**)
- Consumer Check List (**Exhibit 13**)
- Acting as Your Own Contractor (**Exhibit 14**)
- Manufactured Dwelling Home Repair (**Exhibit 15**)
- Ten Risky Home Improvement Shortcuts (**Exhibit 16**)
- Looking for a Home Inspector (**Exhibit 17**)
- New home warranties (**Exhibit 18**)
- How to Avoid Being the Victim of Construction Fraud (**Exhibit 19**)

CCB Administrator Smith discussed enhancements to CCB's website. (**Exhibit 11**) CCB is working to educate consumers and get these publications to them. It is vital that consumers know their rights and responsibilities. Some possible concepts would be to set minimum standards for written construction contracts; require basic information such as names of parties, license number, list of work to be performed, completion dates, and size of print. Also encourage the parties to put change orders in writing. Strengthen incentives for contractors to provide important consumer protection notices (Consumer Notice and Information Notice to Owners About Construction Liens). CCB has heard some contractors are not giving the notices to consumers.

Eric Grasberger suggested seeking a spending limitation for postage to mail information to consumers from the permit address taken out on permits. He also suggested providing the information to consumer with the lien notice.

Steve Malany suggested asking financial institutions to help disseminate the consumer publication information to consumers.

Tom Skaar suggested that CCB revise the Information Notice to Owners About Construction Liens to mention the consumer publications and reference CCB's website where they can get more information.

Mark Long, Administrator, Building Codes Division (BCD), discussed the permits protect program with task force members. **(Exhibit 9)** The division brought together the Permits Protect partners from other state agencies, local government - with support from industry - to help promote the Permits Protect message. The program has created promotional materials, ads, and a character, "Joe Saturday," to help deliver the message. The Web site also has a Permits Protect "toolkit" for local building departments and contractors who want to help spread the Permits Protect message. The division also sends out media releases when a significant enforcement action has been taken against a licensed person or business. It is hoped that this will help alert consumers about these persons and businesses. Administrator Long discussed a concept to require building maintenance schedules in contracts. Owners of structures need to have a maintenance schedule in order to maintain their buildings.

**Standards:**

Mark Long, Administrator, BCD, discussed the following standards:

- **Building Code Changes:** Develop minimum building envelope design standards, including use of drainage cavity; and explore rainscreen technology as a construction approach. Require additional mechanical venting of moisture from interior spaces. Require moisture content not to exceed a defined level before closing the wall cavity. Adopt code changes related to the type of flashing. Adopt code changes related to concrete and slab-on-grade construction, including proper venting.
- **Best Practices:** Develop and mandate the use of best practices or guidelines as part of the minimum code requirements. Develop and make available best practice guidelines. Make training of best practices guidelines available to contractors or designers.
- **Additional Permit Requirements:** Require the responsible party to take out the permit (general contractor or designee). Require the permit holder to designate the responsible person. Issue a "certificate of occupancy" for residential structures statewide. Develop a list of inspection items to be checked for residential and low-rise residential structures. Both the contractor and designers would be accountable for any defects.

Eric Grasberger suggested developing a checklist rather than a form for each jurisdiction to use when conducting permit inspections. The International code Council (ICC) has a recommended list of items to inspect. This list should include safety-related and construction defect issues.

**Design:**

Mark Long, Administrator, BCD, discussed requiring water/moisture prevention detail in the building design as well as requiring on-site assurance of compliance with design details. This would require designers to focus on preventing water intrusion. Require third-party inspections of building envelope methodologies.

Task force members discussed the problem of material installers not following manufacturer recommendations. Some contractors do not read the plans and just keep installing things the way they have always done. Another problem is that plans lack sufficient details for the contractor to follow. All of the above make proper inspections more important.

**Workforce:**

Craig P. Smith, CCB, discussed the following workforce concepts:

- Establishing Building Envelope Competency Requirements:
  - Certify Responsible Managing Individuals (RMI) in Building Envelope Construction: An RMI could certify that each worker is properly trained per a standard determined by state or other authority. RMI would maintain records. RMI could supply a document to owner certifying that building materials were installed to code and in accordance with industry standards.
  - An alternative would be to have the building envelope contractor's RMI personally certify in writing to the owner that all materials were installed in accordance with the building material manufacturer's recommendation **and** Oregon building code requirements. The RMI would be personally accountable for any false certification and the business as well as the RMI could be permanently barred from operating a construction business in Oregon if the RMI issued a false written building envelope certification. Mr. Smith suggested that this form of accountability might result in greater compliance and fewer defects than the previously mentioned solution.
  - Strengthen RMI Requirements: Ensure that RMI actually manage or run the business. Ensure that employee RMI is as responsible for construction defects as owner and officers of construction businesses.
- Additional Bonding/Financial Security Requirements for Construction Business:
  - Increase Contractor Surety Bond:
    - Increases bond for all contractors.
    - Consider stratified bonding requirements based upon volume of work.
    - Consider performance bond for high risk contracting.
  - Recovery Fund: Creates a second form of financial security for residential consumers:
    - Limits payout to homeowners.
    - Cap payouts
    - Schedule payout on periodic basis (i.e., once a year)
    - Exclude attorney fees
    - Go after problem contractors to recover payout
  - Continuing Education/Training for Construction Contractors (RMI) and Designers:

- Voluntary training for designers and building envelope contractors.
- Mandate training for: Building envelope contractors; Installers; and Property Managers.
- Building Contract Standards:
  - Set minimum standards or terms for residential construction/improvement contracts.
  - Publish sample contract that could serve as an example for consumers and construction contractors.

**Construction Site:**

Mark Long, BCD, discussed the following concepts:

- Additional Workforce Requirements: Certify RMI in building envelope construction.
- New Building Code Standards.
- Specific designs for water/moisture prevention.
- Additional permitting standards.
- Onsite work assurance.

**Enforcement Issues:**

Craig P. Smith, CCB, discussed the following concepts:

- Strengthen CCB Enforcement Tools.
  - Expand CCB's authority to immediately suspend licenses of contractors that fail to pay construction debts.
  - Strengthen revocation laws so that owners and officers of construction businesses that have been the subject of a CCB revocation proceeding are precluded from becoming an officer, owner or RMI of a new CCB license for a set period of time (i.e., one to two years).
  - Criminal citation authority for CCB Special Investigations Unit (SIU) investigators.
- Recovery Fund: Provides additional security for homeowners AND enforcement of CCB Dispute Resolution Services (DRS) orders for negligent or improper work.
- Use of Media Releases: Make sure state disciplinary efforts (both CCB and BCD) are publicized to maximize deterrent effect. Mark Long, BCD, provided a sample of a media release. (**Exhibit 21**), (**Exhibit 22**), (**Exhibit 23**), and (**Exhibit 24**)

**Maintenance Issues:**

Craig P. Smith, CCB, and Mark Long, BCD, discussed the following maintenance issues:

- Provide Information to Consumers About Proper Maintenance of Homes/Residential Structures:
  - Provide consumers with best practice information for maintaining home.
  - Mandate the contractor, developer or other party to provide maintenance information to owner.
  - Mandate that contractor provide proof of state mandated maintenance schedule.

- Third-Party Warranties: Mark Long reported that the states of New Jersey and Washington have warranty programs. Staff will be researching this area further. American Actuarial is researching information on the third-party providers. Mark Long provided a handout from New Jersey. (**Exhibit 25**)

Task force members discussed concerns of creating a money-making program that may entice more claims due to deeper pockets to go after.

### III. TASK FORCE DISCUSSION:

#### A. **Other States Comparison: (Exhibit 7)**

Laura Schauer asked that the comparison of other states be converted to a matrix. Staff should research what other states have warranty programs.

#### B. **Concept Papers: (Exhibit 8)**

Task force member Steve Malany suggested that even though some items did not receive a top priority, experts suggested them and task force members should keep them in mind. Mark Long reported that many items overlap and include some items suggested by experts that may not have been selected as the top 10 topics.

1. **Concept 1: Construction Contractors Board Enforcement Powers:** Task force members all agree on concept 1. David DeHarrport suggested adding checking financial stability of contractors and criminal background checks.
2. **Concept #2: Building Envelope Contractor Licensing.** Steve Malany suggested that Concepts #2, 6 (Best Practices Guidelines), 7 (Quality Control Measures) and 10 (Training) be grouped together because they are interrelated. Eric Grasberger suggested grouping concepts 5 (Building Code Amendments) and 6 (Best Practices Guidelines) together.  

Task force members discussed grouping concepts into preventative concepts and enforcement/recovery related concepts.
3. **Concept #3: Recovery Fund.** Task force members felt that a recovery fund, as opposed to increasing the bond amount, is the more effective method of addressing the problem of unpaid debt for construction defects.
4. **Concept #4: Contractor Bonding.** The task force determined that increasing the bond amount would not achieve the goal of addressing unpaid debt for construction defected. The task force suggested that CCB should consider some adjustment to contractor bond amounts to reflect inflation.
5. **Concept #5: Building Code Amendments.** Task force members discussed incorporating good ideas from experts who appeared before them suggesting building code amendments into this concept. Task force members further expressed not specifically recommending rainscreen technology. Rainscreen may create more problems; as an alternative develop performance standards for water intrusion. A less specific recommendation should be further explored.

6. Concept #9 (Consumer Education Related Maintenance). Tie this concept to Concept #8 (Residential Permits).

Task force members suggested changing the title “How to Avoid Problems” to Consumer Notices with Permits.

#### **IV. ADJOURNMENT**

Chair Grasberger adjourned the meeting 5:10 p.m.

##### *Exhibits:*

- 1 – CCTF Agenda/Timeline (1 page) – *Agenda item I-E-1*
- 2 – CCB board member information (2 pages)
- 3 – Summary of 2/15/06 panel presentations (5 pages)
- 4 – Recommendations received to date (7 pages)
- 5 – Results of 2/15/06 prioritization exercise (1 page)
- 6 – Agency overview of task force recommendations (1 page) – *Agenda item II*
- 7 – State-by-state comparison (6 pages) – *Agenda item III-A*
- 8 – Concept papers (23 pages) – *Agenda item III-B*
- 9 – BCD consumer awareness, permits protect (1 page) – *Agenda item II*
- 10 – CCB Consumer Education (3 pages) – *Agenda item II*
- 11 – CCB Consumer Help web page (6 pages) – *Agenda item II*
- 12 – 16 Ways to Avoid Remodel, Repair and Construction Problems (8 pages) – *Agenda item II*
- 13 – Consumer Check List (2 pages) – *Agenda item II*
- 14 – Acting as Your Own Contractor (2 pages) – *Agenda item II*
- 15 – Manufactured Dwelling Home Repair (2 pages) – *Agenda item II*
- 16 – Ten Risky Home Improvement Shortcuts (2 pages) – *Agenda item II*
- 17 – Looking for a Home Inspector (2 pages) – *Agenda item II*
- 18 – New home warranties (2 pages) – *Agenda item II*
- 19 – How to Avoid Being the Victim of Construction Fraud (5 pages) – *Agenda item II*
- 20 – CCB Claimant Survey– (7 pages) – *Agenda item II*
- 21 – BCD News Release, state revokes plumbing license (1 page) – *Agenda item II*
- 22 – BCD News Release, cease-and-desist order for Corvallis company (1 page) – *Agenda item II*
- 23 – BCD News Release, cease-and-desist order for alarm company (1 page) – *Agenda item II*
- 24 – BCD Enforcement Matrix of Media Releases (1 page) – *Agenda item II*
- 25 – New Jersey New Home Warranty Program – (6 pages) – *Agenda item II*