

## Proposal #4: Consumer Information

August 23, 2006

Through the series of panels and discussions, it has been recommended that consumers need information at the beginning of a project to inform them of their rights and responsibilities in the construction process and information on how to maintain their home. During the joint agency presentation at the April 11, 2006 Construction Claims Task Force meeting members expressed interest in providing consumer protection information at the beginning stages of construction. Some construction claims may be alleviated by giving consumers the information early in the construction process. The Task Force recommended that staff further look into providing consumer protection information at the “front-end” of a construction project.

### 1. Background

During the May 24, 2006 meeting, Task Force members directed staff to look into several topics on information. First, the Task Force recommended that staff examine whether to revise the Construction Contractors Board “Information Notice to Owners” to inform consumers where to obtain CCB consumer information.<sup>1</sup> Second, the Task Force recommended that staff investigate whether to require contractors to provide information on consumer protection at the time of the bid in order to maintain their lien rights.<sup>2</sup> Finally, the Task Force asked staff to consider a time period for a consumer to fully review consumer information and a contract prior to signing an agreement.<sup>3</sup>

### 2. Information Currently Provided by Contractors

In researching this line of inquiry, Oregon law currently requires that contractors provide their clients with at least three items of information as part of a licensee’s ongoing requirements. First, contractors must supply consumers with a notification prepared by the Construction Contractors Board that gives advice on how to protect themselves during new construction or remodeling projects.<sup>4</sup> The consumer information form is prepared by the CCB and distributed free of charge to contractors, who then must hand the forms out “when the contractor submits a bid or proposal for work on a residential structure.”<sup>5</sup> The form “shall include an explanation of the meaning of licensure, including a statement that licensure is not an endorsement of a contractor’s work, and an explanation of the bond and insurance levels required of contractors for the benefit of property owners.”<sup>6</sup> The responsibility to give this information to a homeowner is a condition of a contractor’s license, and the CCB can revoke, suspend or refuse to reissue a license accordingly.<sup>7</sup>

Oregon law also prescribes the distribution of certain information connected to construction liens. For a residential construction contract with an aggregate price of more than \$1,000, a contractor must give a homeowner a form entitled “Information Notice to Owner”.<sup>8</sup> This lien notice form must explain “in nontechnical language and in a clear and coherent manner using words in their common and everyday meaning” the legal requirements of construction liens.<sup>9</sup> The lien notice explains how an owner can avoid multiple payments for the same materials and labor, how to file a claim against a licensed contractor and, if warranted, collect damages from the contractor’s bond, and advises consumers on their

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<sup>1</sup> Minutes, Construction Claims Task Force x (May 24, 2006).

<sup>2</sup> Id.

<sup>3</sup> Id.

<sup>4</sup> ORS 701.055(13).

<sup>5</sup> Id.

<sup>6</sup> Id.

<sup>7</sup> ORS 701.135(1)(a) (Action on license can be taken if licensee or applicant has violated ORS 701.055).

<sup>8</sup> ORS 87.093(1) and (3).

<sup>9</sup> ORS 87.093(1).

right to receive information on the reasonable value of materials, equipment, services or labor.<sup>10</sup> The contractor is obligated to furnish the lien notice form to a purchaser of a newly-completed home within 75 days of completion, when the parties sign a contract for construction or remodeling, or within five days of making an unwritten agreement to begin construction.<sup>11</sup> If the contractor fails to give information on lien rights to the owner, the contractor may not place a lien on the property.<sup>12</sup> The CCB also retains the ability to suspend the license or impose a civil penalty of up to \$2,000 on the contractor that did not furnish the form.<sup>13</sup>

Finally, contractors must inform consumers that the contractor has the right to inspect construction defects and offer repairs or payment before the consumer files a lawsuit or requests arbitration.<sup>14</sup> The dispute resolution information is submitted to the consumer at the same time as the consumer protection notification.<sup>15</sup> The dispute resolution notice must be clearly visible and may also be included as part of the contract terms.<sup>16</sup> The statute also recites specific language that the notice must contain.<sup>17</sup> Even though this dispute resolution notice must be handed out concurrent with the consumer protection information form, it is not clear that a license action can take place against a contractor for failing to follow the requirement.

Internet hyperlinks and CCB contact information was added to the “Information Notice to Consumers” form on February 3, 2006.<sup>18</sup>

### *3. Time Period to Consider Contract Prior to Signing a Contract*

Oregon’s real estate transaction law does not allot a time period for a buyer to consider a transaction and mandatory information. However, in certain transactions Oregon law allows a buyer to rescind an agreement to purchase property. In “solicitation sales”, where the buyer and seller’s bargaining occurs outside the normal course of commercial transactions (i.e., retail), the buyer can back out of the contract.<sup>19</sup> A buyer that wishes to cancel a solicitation contract has 72 hours after signing an agreement or paying for the goods to inform the seller of the cancellation.<sup>20</sup> The buyer is required to deliver written notice of the cancellation to the seller.<sup>21</sup>

### *4. Staff Analysis and Recommendations*

Even though information Internet hyperlinks and CCB contact information is on the “Information Notice to Owner” form, CCB regulations do allow contractors to use previous versions of the form. In the interest of consistency and clarity, staff recommends that the CCB regulation disallow distribution of the previous versions of the form.

One issue that appears on analysis of the Oregon information notices is that there is no specific mechanism for verifying whether a homeowner received the required notices. The consumer information form is required to be given at the time of bid or proposal, but verifying an exchange of information in a non-binding forum appears difficult. A compliance mechanism exists in the form of license action, but proof of delivery appears to be the crux of the matter. Similarly, the dispute resolution form has no

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<sup>10</sup> ORS 87.093(1)(a)-(c).

<sup>11</sup> ORS 87.093(2)(a)-(b).

<sup>12</sup> ORS 87.093(5).

<sup>13</sup> ORS 87.093(6).

<sup>14</sup> ORS 701.590(1).

<sup>15</sup> *Id.* See also ORS 701.055(13).

<sup>16</sup> *Id.*

<sup>17</sup> ORS 701.590(2).

<sup>18</sup> OAR 812-001-0200(1) (2006). See also Construction Contractors Board, Information Notice to Owner About Construction Liens (February 3, 2006), available at <https://ccbed.ccb.state.or.us/WebPDF/CCB/Publications/INFO-NTC2.pdf>.

<sup>19</sup> See ORS 83.710(1)(a)(definition of home solicitation sale); ORS 83.720 (cancellation of home solicitation sale contract).

<sup>20</sup> ORS 83.720.

<sup>21</sup> *Id.*

concrete verification procedure. The contractor must give the form to the consumer at the time that they convey the general consumer information, but no specific verification needs to take place. Further, it is unclear whether the contractor can even be held responsible for omitting the dispute resolution form. The lien notice form is self-verifying; a contractor sends the notice form via certified mail, which provides the proof of delivery to the person. The consequence of not sending a notice – in other words, losing the ability to claim a lien and possible license action – compels action.

One option to ensure better distribution of information to consumers is to link the contractor's right to receive payment to the verification of delivery of the consumer information and the dispute resolution forms. The construction lien law that requires notice for residential consumers should be modified to include dispute resolution information and general consumer information. The consumer information piece should be a copy of the form presented and signed at the time of the bid. If the notice is not delivered or delivered without the requisite copies, the contractor would be subject to administrative sanction and be unable to collect money owed to them for materials, labor and the like. Additionally, if a contractor fails to deliver the requisite notice, a homeowner should be able to file a construction claim against the contractor up to two years after the project was completed. In practice, verifying that the exchange of information took place will require additional steps a contractor has to take in order to validly place a lien on a structure – such as filing a signed acknowledgement form with the recorder's office in the county where the house stands.

Staff recommends that the existing consumer protection notice and the dispute resolution notice are tied to perfecting a valid construction lien. Staff also recommends that the length of time available to file a claim with the CCB should be extended if the contractor fails to provide the consumer information form and the dispute resolution form.

In terms of setting aside a time period for reviewing consumer information and a contract, the current Oregon model discussed above can be adapted for this circumstance. Staff recommends that a consumer agreeing to the construction or purchase of a new residential structure has 72 hours to review the consumer information notices given to them in the agreement. Information given with the contract will need to be conspicuous, for ease of review. Also, a verification mechanism (i.e., an initialed line of the agreement) may need to be added to verify that the information was included with the contract. If the consumer is not given the required information, or the information is not complete enough for the consumer to make an informed judgment, they may send written notice to the contractor or seller within 72 hours of signing the contract.

**Recommendation #4. Staff recommends the following changes to Oregon consumer information forms:**

- 1. Amend administrative rules to disallow previous versions of the Information Notice to Owners to be distributed to consumers.*
- 2. Amend consumer information, lien notice and dispute resolution statutes to include mechanisms for verifying distribution to the consumer.*
- 3. Link the existing consumer protection notice and the dispute resolution notice to the right to claim a valid construction lien.*
- 4. Provide a 72-hour timeframe for a consumer to review consumer protection information after signing a contract for construction or sale of new home.*
- 5. The length of time available to file a claim with the CCB should be extended to two years if the contractor fails to provide the consumer information form and the dispute resolution form.*