

Construction Claims Task Force

Proposal Packages

November 28, 2006

Introduction:

The task force convened for the first time on September 21, 2005 and has held a total of twelve meetings to date. To identify and scrutinize the recommendations that may ultimately become part of the legislative report, the Task Force has gathered and analyzed information, taken invited testimony and held public comment sessions. The Task Force received input and recommendations from more than thirty experts in the fields of construction and insurance and received more than seventy different recommendations.

Public comment and participation has been a major part of the Task Force's work. To date, the Task Force has heard public comment from forty-one individuals. The CCTF Web site has received more than three hundred and thirty submissions, with more than three hundred persons signed up for automatic notification of Web site updates.

The Task Force has divided its work into two phases. During Phase I of its work, the Task Force has studied issues related to construction defects. The Task Force has approved a package of six proposals for public comment. Phase II of the Task Force's work focused on issues related to construction insurance. Out of the construction insurance component of its work, the Task Force has forwarded five proposals for public comment. The meeting occurring on November 28, 2006 is the last scheduled opportunity for public comment. A list of the eleven proposals (with appropriate subheadings) appears below.

Phase I Proposal Package:

Building Code Amendment Proposal

- Prohibit components within a cavity from exceeding 19% at the time of covering.
- For mechanical ventilation systems in bathrooms, laundry rooms and similar facilities, require a minimum flow rate of 80 cubic feet per minute (cfm).
- In bathrooms, require humidity sensors or other acceptable methods of automation to activate ventilation systems.
- Restrict the noise level of active bathroom ventilation to less than 2.5 sone levels (approximately 40 decibels).
- Locate bathroom fans as close as is practicable to the shower or tub area.
- In kitchens, prohibit the use of recirculating range hoods or provide for other approved forms of active ventilation.
- Noise produced by active kitchen ventilation should not exceed 4.0 sone levels (approximately 48 decibels).

Require appropriate, horizontal flashing over all plant-on trims, such as 'z' metal flashing configurations. [May need rework as performance standard]

CCB Licensing & Enforcement Changes Proposal

- Expand CCB's enforcement authority by adding an expedited emergency suspension process outside the Administrative Procedures Act to deal with problem contractor licenses.

- Licensees or responsible managing individuals subject to sanction by the CCB must not serve as owners, officers, directors, or managers of another construction firm.
- Require officers, directors, owners and entities to disclose, from the last five years, financial matters that evidence past financial malfeasance – unsatisfied court judgments, insolvencies, fraud, misrepresentation, conversion of funds, and other acts that may unfavorably affect future construction contracts. Allow the CCB to actively investigate an applicant's past financial dealings extending back five years.
- Require officers, directors, and owners to disclose criminal activity bearing on the ability to contract from the last five years. Allow the CCB to conduct active criminal checks, including using state and federal biometric databases. Allow the CCB to acquire criminal records in the course of investigating applicants.
- Expand prohibited acts by contractors that can be prosecuted by the government as crimes, and expand the range of penalty options to include restitution, enhanced fines and limited incarceration based on the monetary value of the contract, the nature of the offense and whether a person is a repeat offender.
- Confer on CCB authority to issue criminal citations.

Recovery Fund Proposal

- Establish a recovery fund for residential construction only.
- Require only those contractors whose work is directly connected to residential construction to participate in the recovery fund.
- Allow current CCB dispute resolution services to directly pay out of the recovery fund at the conclusion of dispute resolution proceedings, or payouts based on civil litigation.
- Confer administrative authority for the recovery fund in the Construction Contractors Board.
- Assess residential-only contractors a reasonable fee (\$20 to \$50), offset with civil penalty funds and other funding sources.
- Retain investment income made off recovery fund money for additional resources.
- Restrict the use of the recovery fund to pay construction defect claims.
- Set aside a flexible percentage of recovery fund money for administrative expenditures.
- Allow the Construction Contractors Board to pursue subrogation claims to replenish the recovery fund.
- Allow the Construction Contractors Board to condition, suspend or revoke a license to secure payment from the recovery fund.
- Cap payouts to \$20,000 per claimant.
- Cap aggregate liabilities against a contractor to \$100,000.
- Limit damage reimbursement to actual damages.
- Create mechanisms for prorated and proportional share payments from recovery fund.
- Provide limited ability to Construction Contractors Board to modify orders to protect the integrity of the recovery fund.

Consumer Information Proposal

- Amend administrative rules to disallow distribution of previous versions of the Information Notice to Owners.
 - Require by statute signature lines on consumer information, lien notice and dispute resolution forms for consumer and contractor to sign to verify distribution.
 - Lack of written contract invalidates a claim of a valid construction lien.
 - Provide one business day after signing a construction contract for a consumer to fully review consumer protection information and the contract.
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- In cases where a contractor does not provide required forms for the consumer, extend length of time to file a claim with the CCB from one year to two years.

Residential Permits Proposal

- Alter permit application process to require the applicant to specify the owner of the project, the contractor performing the work for the owner, and identify the CCB-issued license number and the identity of any certified envelope specialists working on the permitted construction project.
- When an owner acquires a permit, require local building department to distribute revised Information Notice to Owners About Construction Responsibilities. Revised form should include at a minimum (1) the owner's duty to comply with building codes, (2) the responsibility of the owner to supervise construction work, if the owner is acting as their own general contractor, and (3) the owner's responsibility to make corrections after inspection.
- Require a certificate of occupancy for all structures built to the residential component of the state building code.

Building Envelope Certification Proposal

- Maintain the CCB licensing system currently in place.
- Create a certification that is required for any contractor licensed in Oregon directly working on a residential or commercial building envelope.
- Prohibit uncertified contractors from working on building envelopes.
- For contracting firms, require contractors that work on building envelopes employ at least one individual acting in a supervisory capacity who has obtained the certification.
- Require a contracting firm's certified envelope specialist provide the prescribed degree of training to subordinate employees on the appropriate materials, code requirements, and design requirements utilized at the particular structure.
- Require the certified envelope specialist to verify by checklist that construction work involving the envelope meets code requirements and approved designs.
- Require a certified envelope specialist to complete and submit additional verification to the local building department in order to obtain a certificate of occupancy.
- Require certified individuals take a set number of continuing education hours on substantive construction requirements.
- Modify as needed the appropriate CCB enforcement laws to ensure contractors are properly certified and meeting any responsibilities under the certification.
- Require all contractors obtain continuing education, which may include education on building code changes.

Phase II Proposal Package

Warranty Proposal Part 1 – First Party Warranty

- Establish a first party warranty requirement for new residential structures.
 - One year warranty provided by the builder to warrant that the structure will be free from any defect due to workmanship, materials or noncompliance with building code.
 - Two year warranty provided by the builder to warrant that the building envelope will be free from any defect due to materials, workmanship or noncompliance with building code.
 - Warranty to be recorded in deed at the time of sale.
 - Transfer of warranty without charge to subsequent owners during the warranty period.
 - No disclaimer or waiver of warranty permitted.
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Warranty Proposal Part 2 – Structural Warranty

- Ten year warranty for any structural defect that results in failure of a load bearing part of the home or causes structural damage that materially affects the use of the home for residential occupancy.
- Builder may warrant structural defect or purchase warranty coverage that meets the requirements of the warranty provisions.
- Specific definition of structural defect would apply. The current proposed language is:
 - * *Structural defect* means any defect in the load-bearing portions of a new residential structure that adversely affects its' load-bearing function to the extent that the home becomes or is in serious danger of becoming unsafe, unsanitary, or otherwise uninhabitable.
 - * As in the First Party Warranty Part 1 the following requirements would be included:
 - Warranty to be recorded in deed at the time of sale.
 - Transfer of warranty without charge to subsequent owners during the warranty period.
 - No disclaimer or waiver of warranty permitted.

General Liability Coverage Proposal

- Amend requirements for contractor licensing to provide that the coverage necessary for contractors general liability include completed operations liability.
- Enforcement would continue under existing law with the Construction Contractors Board.
- Phase-in period would be allowed to implement the requirement as existing licensure renews after the effective date.

Wrap Project Limit Proposal

Streamline rate filing requirements for policies on single project owner or contractor controlled coverage applying to all contractors working on a job in two areas:

- Eliminate project minimum limit for projects including workers' compensation to allow open consideration by insurers for projects of any size. Filing and prior approval would continue to be required in order to allow for proper handling of claims for injured workers.
- Waive requirements for fictitious groups for group general liability policies for contractors to encourage open market for smaller projects that do not include workers' compensation.

Voluntary Loss Control Discounts Proposal

- Encourage use of loss control discounts on construction contractor business.
- Clarify by issuance of an Insurance Division Bulletin that discounts offered for contractors adopting best practices recommended by the Construction Claims Task Force will not be required to include statistical support for the discounts in their filings.
- Bulletin to be issued using examples of best practices adopted by the Task Force in their final report to the Legislature in 2007.

Data Reporting Requirements Proposal

- Require insurers writing contractors liability in Oregon to maintain and report specific data elements on contractor business to allow for assessment of market conditions on an ongoing basis.
- Proposed areas of consideration for regularly maintained data include:
 - * Written premium by classification
 - * Policy count by classification
 - * Paid Losses
 - * Loss reserves
 - * Reported claim count