



# CONSTRUCTION CONTRACTORS BULLETIN BOARD

HELPING TO PREVENT AND RESOLVE PROBLEMS IN THE CONSTRUCTION INDUSTRY

August 2007

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Administrator: Craig P. Smith  
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Officer: Gina Fox

Licensing Manager: Kristie Patton

Dispute Resolution Manager: Bill Boyd

Enforcement Manager: Richard Blank

Administrative Services Manager:  
Linda Teet

Information Technology Manager:  
Shelly Wiles

## 2007 Legislative Highlights: Some of the most significant changes since 1972

On July 26, 2007 the Oregon Legislature wrapped up the regular session of the 74<sup>th</sup> Legislative Assembly which produced some of the biggest changes to the construction law since the Builder's Board was created in 1972. Here are some of the highlights:

### **Increase in Enforcement field presence:**

The legislature authorized \$1.1 million to be used to create a field investigations unit. This unit will consist of 12 investigators whose primary goal is to be out in the field performing site checks, field investigations and other duties that enable the CCB to respond to and deter illegal activity. The agency expects to begin having this unit in place in the fall of 2007.

### **"Fast-track" dispute-resolution mediation:**

Two limited duration positions were added by legislature with the goal of avoiding a formal contract dispute by providing a "fast-track" mediation services. These positions will also assist those needing help with understanding and complying with the complaint filing requirements. The agency expects to have these positions filled in the fall of 2007.

### **Commercial and residential endorsements:**

The separation of commercial and residential contractors is a significant change in construction licensing law. In addition to the licensing separation, the new law mandates commercial contractors to have entry level experience requirements and continuing education for key employees. Bond amounts for commercial contractors will increase, between 33% and 500% depending on the chosen endorsement level by the commercial contractor. Parts of these laws become effective July 1, 2008 and some become effective in 2009.

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## CCB Guide to Legislative Changes

The CCB is putting together a guide to help contractors understand the changes to the law.

The guide is expected to be mailed in November and will be mailed to all parties that currently receive the CCB Bulletin Board newsletter.

Call 503-378-4621 ext 4016 for more information.

## Summary of Oregon House and Senate's Passed Legislation

The following is a summary of the bills that affect construction licensing laws that have passed and will become effective January 1, 2008 unless otherwise noted. These bills were introduced by the CCB, the Task Force on Construction Claims and other sources.

### Increase consumer protections (Task Force on Construction Claims) – HB 2654B:

- Requires construction contractors to maintain insurance that provides liability coverage for completed work.
- Increases level of required contractor bond by \$5,000 applicable to new contractors after January 1, 2008 and to all contractors upon license renewal after January 1, 2009.

#### Construction Contractors Bulletin Board, Issue #69

This newsletter, an official publication of the Oregon Construction Contractors Board, gives Oregon contractors information on laws, policies and activities of the CCB and better business practices.

CCB mission:

*The CCB protects the public's interest relating to improvements to real property. The Board regulates construction contractors and promotes a competitive business environment through education, contractor licensing, dispute resolution and law enforcement.*

Board members:

\*Tom Skaar, Portland  
 \*\*Walt Gamble, West Linn  
 Chuck Crump, Salem  
 Richard DeWolf, Portland  
 Cliff Harkins, Canby  
 Dennis Schad, Coos Bay  
 Mary Stern, McMinnville  
 Sandy Trainor, Sherwood  
 \*Chair, \*\*Vice-chair

Editor: Gina Fox  
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In compliance with the Americans with Disabilities Act, this publication is available in alternative formats by contacting the editor.

- Requires contractors to offer warranties that can be refused by the purchaser.
- Allows contractors to withdraw the offer to build if the warranty is refused.
- Establishes standard notice and contract requirements for contractors.
- Requires contractors to provide maintenance information to purchasers and to use standard terms.
- Disallows liens if the contractor fails to provide a written contract.
- Allows a one-day period for purchasers to cancel contracts.
- Requires the Construction Contractors Board to establish contractor continuing education system. (Date established by the board shall be no earlier than January 1, 2010)
- Allows the board to investigate applicants for past court judgments, criminal charges, and other administrative orders.
- Clarifies that a judgment or civil penalty arising from construction related business activity or workers compensation is a construction debt.
- Expands the information that must be disclosed to the board when applying for a license including court judgments, criminal charges, and administrative orders.
- Expands the board's ability to suspend or refuse to issue a license and to issue civil penalties.
- Expands emergency suspension powers to include unpaid construction debt, court judgments, and other administrative orders.
- Expands authority of the board to issue cease and desist orders, stop work orders, orders of corrective action, and civil penalties for licensed and unlicensed contractors.

### Commercial Contractor License Reform (Associated General Contractors) – HB 3242C:

- Creates two new CCB license endorsements: General Commercial Contractor and Specialty Commercial Contractor. Each endorsement has two levels-level I and level II contractor (entry level contractor).
- Sets new bonding requirements: General Commercial Contractor Level I - \$75,000; Specialty Commercial Contractor Level I - \$50,000; General and Specialty Commercial Contractors Level II - \$20,000.
- Requires new liability coverage at the following levels: General Commercial Contractor Level I - \$2 million aggregate; General Commercial Contractor Level II/ Specialty

*Continued on page 3*

### Highlights...Continued from page 1

#### Bond Increases:

Bond amounts will increase 33% for residential contractors and inspectors. This equals to a \$5000 increase across the board to each licensing category. This bond increase becomes effective at license renewal or new applications on or after January 1, 2008.

#### Continuing Education:

New laws will also require continuing education for all licensed contractors. The CCB will be developing a workgroup with industry associations and the CCB Training and Education Advisory Committee to develop the standards and criteria. If you are interested in working on this project, contact your association.

*Summary... Continued from page 2*

Commercial Level I- \$1 million aggregate; Specialty Commercial Contractor Level II- \$500,000.

- Sets new experience and continuing education requirements as follow: General and Specialty Commercial Contractors level I must have 8 years experience and/or education and 40 hours of continuing education per company per year; General and Specialty Commercial Contractors Level II must have 4 years experience and/or education and 16 hours of continuing education per company per year.
- Experience must be as a construction worker, supervising employee or licensed contractor.
- Education, including graduating from an apprenticeship program, may substitute for a portion of required experience.
- Continuing education requirements must be completed by key employees on construction means, methods business practices and ethics.
- HB 3242 A also creates a new construction building envelope warranty of 2 years on the envelope and penetration component for new large commercial projects, including annual inspection of property.
- Requires Commercial Independent Contractors to be required to provide personal election workers' compensation insurance as a condition of licensure.

**Requires All Business Entities to Notify CCB When Ownership Changes –SB 91A:**

- Requires a licensed contractor to notify the Construction Contractors Board of changes to the names or address of owners, officers, managers, members, trustees, or responsible managing individuals.
- If the applicant for a contractor's license is a trust, requires the names of trustees on the application.

**Changes Word “Claim” to “Complaint” – SB 94:**

- Revises certain terms in statutes related to construction contractors.
- Replaces the term “claim” with the term “complaint” in statutes governing dispute resolution and makes other clarifying changes.

**Oregon Certified Home Inspector Fee – SB 95:**

- Establishes a fee of no higher than \$150 for issuing an initial two-year home inspector certificate.
- Modifies the term of the certificate from one to two years.

**Clauses in Contracts Requiring Mandatory Arbitration – SB 484B:**

- Allows consumer to revoke provision of consumer contract that requires the consumer to assert or respond to claim in another state.
- Defines consumer contract as a contract for personal, family or household purposes of \$15,000, or less.
- Remedies include requiring proceedings to be conducted in this state and reasonable attorney fees against attempted enforcement of revoked provision.

**Chimney Cleaning or Servicing – SB 605:**

- Clarifies that persons in the business of cleaning and/or servicing chimneys are required to be licensed as construction contractors with the Construction Contractors Board.
- Delays any civil penalties for unlicensed servicing of chimneys for one year.

**Unpaid Adverse Court Judgments or Arbitration Awards – HB 2107B:**

- Requires construction contractors to notify the Construction Contractors Board of unpaid judgments or arbitration award against them that involve either breach of contract or negligent or improper work related to construction of a residential structure.
- Creates exemptions for contractors who pay within 30 days or whose judgment is under appeal.
- Requires CCB, in determining disciplinary sanction, to consider reasonable attempts by the contractor to make payments toward satisfaction of judgment.

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**Not in compliance with Oregon law?**

Having a construction business can seem complicated and the laws regulating the business may seem burdensome. Not only are there licensing laws, but there are employment laws, workers' compensation laws, tax laws, building codes and OSHA laws.

What you think you are “saving” by failing to comply with Oregon laws could potentially ruin all you have worked for and cost you dearly.

Ask Lynn Haller.

Haller became actively licensed with the CCB in June 2000. His license was suspended in 2003 for failure to provide proof of liability insurance. It hadn't been active since.

On May 11 2007, Coos Bay police found a man seriously injured from a fall from a roof. The man later died as a result of the fall.

The man who fell off the roof was Thomas Burke. Haller was paying

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# Understanding Oregon Lien Waivers

By Alan Mitchell, Mitchell Law Offices, LLC

Lien waivers are a common aspect of construction projects. A lien waiver is a written agreement that a party is giving up some or all of its construction lien rights for that project. Typically, a lien waiver is connected with payment to a contractor (or subcontractor or supplier). Often, the payment is conditioned upon the lien waiver being signed before the payment is actually made.

Ultimately, lien waivers benefit owners, who want to make certain that they will not be required to pay twice for the same work. They can also benefit lenders,

who want to make certain that their rights are protected.

Lien waivers may be used at different points during a project; first, as part of intermediate progress payments and, second, as part of final payments.

The language of a lien waiver is very important. Unless the parties signing lien waivers carefully read and understand the language of a lien waiver, they might give up rights without being aware that they are doing so.

Some lien waivers are conditional (meaning they are not effective unless the money is actually received) and others are unconditional (meaning they are effective even if the money is never paid). Some lien waivers waive all of your rights through a certain date and others waive rights only to the extent of the payment. Typically, owners (and lenders) prefer unconditional lien

waivers because they do not want any “surprises.”

Sometimes, contracts will require the use of specific lien waiver forms. If that form is one that you do not want to sign, you should raise that concern before you sign the contract or start work. In this regard, remember that a subcontract may incorporate terms of the contract between the general contractor and the owner. If that agreement includes language about lien waivers, then subcontractors may be bound by those terms.

Another contractual issue is that Oregon law allows parties to waive their construction lien rights in advance (if the waiver is very clear). Therefore, parties should carefully read their contracts to see whether they include an enforceable anticipatory lien waiver clause.

## CCB by the Numbers

January – March 2007

### Licensing:

Number of Licensed Contractors: **45,330**  
 Number of new applications: **1,624**  
 Number of renewals: **3,320**  
 Number of active certified Home Inspectors: **586**

### Dispute Resolution:

Number of complaints filed: **616**  
 Number of investigations: **281**  
 Number of settlements on-site: **175**  
 Number of final orders issued: **170**

### Enforcement:

Complaints of illegal activity: **932**  
 Jobsite inspections: **175**  
 Investigations opened: **932**  
 Warnings issued: **62**  
 Number of licenses suspended: **115**

### Education:

Number of candidates tested: **1,367**  
 Number of candidates that passed on first attempt: **1203**

### Customer Service:

Incoming telephone calls: **27,341**

## Insurance Questions?

Contractors who have questions about their insurance policy or insurance rights, or who may be having problems with their insurance company or agent can get **free** help from the Department of Consumer and Business Services, Insurance Division consumer advocacy program.

Whether your questions are about commercial insurance or personal lines insurance, such as auto, health, life, long-term care, or homeowners, a consumer advocate can help.

The consumer advocacy program provides free help with claim denials,

non-renewals, claim delays, misrepresentation, claim settlements, cancellation, or premium problems.



Advocates will offer assistance toward resolving your complaints or providing you with general information about insurance.

Call toll-free, 1-888-877-4894, or in Salem: 503-947-7984. E-mail: [dcbs.insmail@state.or.us](mailto:dcbs.insmail@state.or.us), or visit their Website [www.insurance.oregon.gov](http://www.insurance.oregon.gov) at

*Summary ...Continued from page 2*

**Reorganization of ORS 701.055 and Suspends Contractors Out of Compliance with Building Codes Division License – HB 2109A:**

- Expands the list of violations that could subject construction contractors to license suspension or revocation to include sections of plumbing, electrical, boiler, elevator, and corporate tax laws.
- Specifies that loss of certain trades licenses could subject the contractor to suspension or revocation.
- Reorganizes contractor statutes by dividing one long chapter into shorter, single-subject statutes.
- Adjusts statutory references and clarifies conflicting provisions.

**Strengthen CCB Responsible Managing Individual (RMI) Requirements – HB 2111:**

- Requires a construction contracting business owner or designee claiming

status as a “responsible managing individual” to exercise management and supervisory authority over construction activities of the business.

- Authorizes the Construction Contractors Board to adopt rules defining management and supervisory authority over construction activities of a business.

**Prohibits Installation of Barrier-Type Insulation and Finish Systems – HB 2112B:**

- Prohibits the use of barrier-type exterior insulation and finish systems on buildings.
- Exempts application of barrier-type product on concrete walls and concrete masonry block walls, architectural applications that are decorative or otherwise not intended to protect the interior space of the building, and necessary repairs or replacements of such material on existing buildings.

**Bond Alternative for Nonprofits Rehabilitating Drug Houses – HB 2309:**

- Requires the Construction Contractors Board to create an alternative to the required contractor bond for nonprofit organizations rehabilitating illegal drug manufacturing sites.

**Contested Case Hearings – HB 2423A:**

- Reorganizes statutes relating to notices of agency action in contested cases.
- Establishes that agencies must, in a contested case, send parties written notice of the rights and procedures that apply to the case.
- Clarifies that an officer at a hearing must develop the record fully to include the facts and the law

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## Oregon Administrative Rules Effective July 1

At the June board meeting, the following rules were adopted:

**812-001-0200**

**Consumer Protection Notices**

Board members voted to adopt in rule the entire name of the Information Notice to owner about Construction Lien. The board adopted the revised version of the form February 3, 2006. The board also removed the provision that previously adopted version could be used.

Contractor should check the version date of the form they are using. Page two of the notice should read: (Info-Ntc2/f/02-03-06)

The current form can be downloaded from the CCB website at [www.oregon.gov/CCB](http://www.oregon.gov/CCB).

**812-006-0450**

**Experience**

The board adopted rules to clarify experience under ORS 701.078 (1). To demonstrate experience the individual must have been listed on agency records as having been a sole proprietor, partner, venturer, member, corporate officer, trustee, or designated RMI of a business licensed before July 1, 2000, the license may not be lapsed or if lapsed, has not lapsed for more than 24 months, and the RMI must have been listed as a sole proprietor, partner, venturer, member, corporate officer, trustee, or designated RMI within 24 month period of the application date.

**812-002-0673**

**Signed by Respondent**

Board members adopted the definition to clarify that a returned receipt or letter indicating receipt of a notice of intent to file a complaint may be signed by the principals, employees or authorized agents of the respondent.

Other rules adopted were housekeeping:

Remove the word tape from tape recordings since the agency doesn't only use tape but also digital means of recording.

Change the word claim to complaint to reflect changes in terms used by the agency.





# Notice

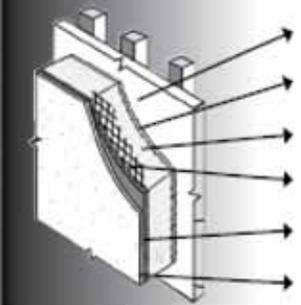
## Oregon law bans EIFS barrier systems, often referred to as "synthetic stucco"

The 2007 Legislature took new measures to ban Barrier-type Exterior Insulation and Finish Systems (EIFS), sometimes called "synthetic stucco," in new construction. Health and safety concerns regarding the installation of EIFS barrier systems led to the change in law. All EIFS or "synthetic stucco" systems must have a waterproof membrane over the substrate and a drainage system to allow moisture to drain from behind the EIFS.

**This ban does NOT include EIFS drainage systems or "traditional stucco."**

### Prohibited

#### Barrier-type Exterior Insulation and Finish Systems



- Substrate (e.g., plywood)
- Adhesive/attachment
- Insulation board
- Reinforcing mesh
- Base coat with reinforcing mesh embedded
- Finish coat

**Barrier-type EIFS can ONLY be used in the following three scenarios:**

- Repairs and replacement to existing systems
- Architectural features not protecting an interior space
- Installation on concrete and concrete masonry unit (CMU) block surfaces

**Remember: Not all stucco is barrier-type.**

**Make sure you know which EIFS system is being used.**

For more information contact your local building department.

\*#4141 (8/2008)

## EFIS Ban

Effective January 1, 2008, contractors may no longer install barrier-type exterior insulation and finish system (EFIS) on new residential structures. The law also bans the use on existing residential structures except as necessary to repair or replace a previously installed barrier-type exterior insulation and finish system.

The Department of Consumer and Business Services, Building Codes Division have created the adjacent "Notice" and will be supplying them to building departments for posting.

## BCD's Regional Program

The Building Code Division's Regional Program Services section helps the division carry out its mission by working locally in several regions of the state. The staff partners with state and local government entities to help facilitate local construction projects, and assist local governments with other services such as e-permitting, best practices and dispute resolution.

Contacts:

NW Region: Michael Morter, 503-373-1313

Valley/Mid-Coast/Southern Oregon: Michael Morter, 503-373-7510

E.Oregon/Bend: Jerod Broadfoot, 541-276-7814, extension 34

### Compliance ... Continued from page 1

Burke to do some of the roofing work that Haller entered into a contract with a homeowner to perform.

Haller was cited \$3000 by Oregon OSHA for failure to provide training on fall protection to employees and failure to report to OSHA a fatality. The CCB opened an investigation for working without a license— it could be up to a

\$5000 penalty for each occurrence. Other state agencies may open their own investigations.

Construction contractors have a legal and moral responsibility to know and follow the laws that will protect the worker, themselves and the public. Most community colleges have small business development centers that can

help business owners understand their requirements. The CCB publication, Contractor's Resource Guide provides contact information for many agencies and organizations helpful to contractors. You can download the publication from the CCB website or call 503-378-4621 to have one mailed.

Non-compliance doesn't pay, it costs.

## Oregon Small Business Help

**Oregon Small Business Forum**  
**Tuesday, August 28, 2007**  
**8:00 a.m. - 12:00 Noon**

**Clackamas Community College  
 SBDC at 7736 S.E. Harmony  
 Road, OIT Building, Rm. 172,  
 Milwaukie**

Hosted by North Clackamas County Chamber of Commerce and the Clackamas Community College SBDC. Build and strengthen relationships with other organizations that serve small business, network to better serve your members or clients, and share your organization's key messages and hot topics in an informal roundtable discussion. August topic is "What is Employee Leasing or a PEO (Professional Employer Organization) and how does it affect small business?"

Government and non-profit business organizations are offering a day of free counseling as well as informational seminars to assist new business owners and those thinking about going into business and aim to be successful.

**Oregon Small Business Fair**  
**Saturday, September 8, 2007**  
**8:00 a.m. - 4:30 p.m.**

**Oregon Convention Center,  
 777 N.E. Martin Luther King Jr.  
 Blvd., Portland.**

For more information, call 503-329-4260 or visit the web site for a complete list of FREE Seminars and Exhibitors at <http://www.portlandonline.com/smallbusinessfair/>

**Rogue Valley Business  
 Resource Fair**  
**Saturday, October 13, 2007**  
**9:30 a.m. to 2:00 p.m.**

**Rogue Community College at  
 the Medford Campus, Building  
 G, 117 South Central, Medford,**

For information, call 541-776-6060, Ext. 233 or email: [Ainoura.Oussenbec@state.or.us](mailto:Ainoura.Oussenbec@state.or.us) or visit the web site at <http://www.businessresourcefair.org/>

### Summary ... Continued from page 5

applicable to the issues before the tribunal.

#### **House "Flipping" Exemption (Oregon Association of Realtors) – HB 2498B:**

- Exempts from construction contractor licensing a non-resident owner of a home who contracts with licensed contractors to perform work on up to three existing houses in a calendar year.
- Specifies that the owner must hire a general contractor if the work requires any building permits.

#### **Public Works Bond— Disadvantaged, Minority, Women or Emerging Small Business – HB 2776A:**

- Extends the option for disadvantaged, minority, women or emerging small business to not obtain a public works bond from one year to four years after certification.

- Allows contractor or subcontractor not to file public works bond for projects with contract price less than \$100,000.

#### **Public Works to Include Cost- Effective Solar Energy Designs and Technology – HB 2620B:**

- Provides that public improvement contracts for construction or for certain reconstruction or major renovation projects of public buildings are considered to contain an amount equal to at least 1.5 percent of the total contract price for inclusion of appropriate solar energy technology.
- Provides exceptions.
- Requires the Department of Energy to develop forms and to report to the Legislative Assembly in 2009 and 2011 on the use of solar energy technology in construction, reconstruction or major renovation of public buildings.

#### **CCB Budget – HB 5013A:**

CCB's approved budget of \$15,071,037 Other Funds, and 80 positions. The approved budget provides additional resources to expand consumer education and enforcement programs.

**NOTE:** Legislation that may affect construction contracting businesses may include other state agencies such as: Consumer and Business Services, Employment Department, Department of Revenue, and Department of Administrative Services. For information on other legislation, contact the appropriate state agency or view their web page through the State of Oregon's home page at <http://www.oregon.gov/>.

Oregon Construction Contractors Board  
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PERMIT #81

Mercury  
Thermostats  
Annual Notification  
ORS 701.550

It is against the law for any person to install a thermostat containing mercury in commercial or residential buildings. This rule does not prohibit the installation on thermostats containing mercury on industrial equipment used for safety controls.

(ORS 455.355)  
(OAR 918-440-0510)

The 2001 Oregon Legislature passed The Oregon Mercury Reduction Act which phased out the use of mercury in certain consumer products for which there are readily available alternatives



## What's the buzz?

### Responsible Managing Individuals (RMIs) are more important than ever

When Oregon legislature passed HB 2111 the message was clear: The RMI is an important person in a construction business.

Under current law, to be appointed the RMI, the individual must be an owner or employee, take prerequisite training and pass the state test. If an employee is designated as the RMI, the employee must exercise supervisory or management authority over the business' construction activities. A

business must always have at least one designated RMI.

HB 2111 requires the RMI, whether they are an owner or employee, to exercise supervisory or management authority over the business' construction activities.

This bill becomes effective January 1, 2008.

Over the next several months, the Construction Contractors Board (CCB)

will be working on administrative rules that define "exercising supervisory or management authority over the business' construction activities".

Rule hearings are a public process and testimony during the rule hearing is appreciated.

All notices for upcoming rule hearings are on the CCB website at [www.oregon.gov/CCB](http://www.oregon.gov/CCB). Click on Statutes and Rules.