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2013 OREGON REVISED STATUTES
Construction Contractors Board

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CHAPTER 701:
CONSTRUCTION CONTRACTORS BOARD

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GENERAL PROVISIONS

701.002 Short title. Chapter 928, Oregon Laws 1989, shall be known as the Construction Contractors Licensing Act. [Formerly 701.900]

Note: Legislative Counsel has substituted “chapter 928, Oregon Laws 1989,” for the words “this Act” in section 31, chapter 928, Oregon Laws 1989, compiled as 701.900 and renumbered 701.002 in 2001. Specific ORS references have not been substituted, pursuant to 173.160. The sections for which substitution otherwise would be made may be determined by referring to the 1989 Comparative Section Table located in Volume 20 of ORS.

701.005 Definitions. As used in this chapter:

(1) “Board” means the Construction Contractors Board.

(2) “Commercial contractor” means a licensed contractor that holds an endorsement as a:

- (a) Commercial general contractor level 1;
- (b) Commercial specialty contractor level 1;
- (c) Commercial general contractor level 2;
- (d) Commercial specialty contractor level 2; or
- (e) Commercial developer.

(3) “Commercial developer” means a developer of property that is zoned for or intended for use compatible with a small commercial or large commercial structure.

(4) “Construction debt” means an amount owed:

(a) Under an order or arbitration award issued by the board that has become final by operation of law;

(b) Under a judgment, arbitration award or civil penalty that has become final by operation of law arising from construction activities within the United States; or

(c) Under a judgment or civil penalty that has become final by operation of law arising from a failure to comply with ORS 656.017; or

(d) To employees of a construction contracting business for unpaid wages.

(5) “Contractor” means any of the following:

(a) A person that, for compensation or with the intent to sell, arranges or undertakes or offers to undertake or submits a bid to construct, alter, repair, add to, subtract from, improve, inspect, move, wreck or demolish, for another, a building, highway, road, railroad, excavation or other structure, project, development or improvement attached to real estate, or to do any part thereof.

(b) A person that purchases or owns property and constructs or for compensation arranges for the construction of one or more residential structures or small commercial structures with the intent of selling the structures.

(c) A school district, as defined in ORS 332.002, that permits students to construct a residential structure or small commercial structure as an educational experience to learn building techniques and sells the completed structure.

(d) A community college district, as defined in ORS 341.005, that permits students to construct a residential structure or small commercial structure as an educational experience to learn building techniques and sells the completed structure.

(e) A person except a landscape contracting business, nurseryman, gardener or person engaged in the commercial harvest of forest products, that is engaged as an independent contractor to remove trees, prune trees, remove tree limbs or stumps or to engage in tree or limb guying.

(f) A business that supplies the services of a home inspector certified under ORS 701.350 or a cross-connection inspector and backflow assembly tester certified under ORS 448.279.

(g) A person that for compensation arranges, undertakes, offers to undertake or submits a bid to clean or service chimneys.

(6) “Developer” means a contractor that owns property or an interest in property and engages in the business of arranging for construction work or performing other activities associated with the improvement of real property, with the intent to sell the property.

(7)(a) “General contractor” means a contractor whose business operations require the use of more than two unrelated building trades or crafts that the contractor supervises or performs in whole or part, whenever the sum of all contracts on any single property, including materials and labor, exceeds an amount established by rule by the board.

(b) “General contractor” does not mean a specialty contractor or a residential limited contractor.

(8)(a) “Home improvement” means a renovation, remodel, repair or alteration by a residential contractor to an existing owner-occupied:

(A) Residence that is a site-built home;

(B) Condominium, rental residential unit or other residential dwelling unit that is part of a larger structure, if the property interest in the unit is separate from the property interest in the larger structure;

(C) Modular home constructed off-site;

(D) Manufactured dwelling; or

(E) Floating home, as defined in ORS 830.700.

(b) “Home improvement” does not include a renovation, remodel, repair or alteration by a residential contractor:

(A) To a structure that contains one or more dwelling units and is four stories or less above grade; or

(B) That the residential contractor performed in the course of constructing a new residential structure.

(9)(a) “Home inspector” means a person who, for a fee, inspects and provides written reports on the overall physical condition of a residential structure.

(b) “Home inspector” does not include persons certified under ORS chapter 455 to inspect new,

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repaired or altered structures for compliance with the state building code.

(10) "Key employee" means an employee or owner of a contractor who is a corporate officer, manager, superintendent, foreperson or lead person or any other employee the board identifies by rule.

(11) "Large commercial structure" means a structure that is not a residential structure or small commercial structure.

(12) "Officer" means any of the following persons:

(a) A president, vice president, secretary, treasurer or director of a corporation.

(b) A general partner in a limited partnership.

(c) A manager in a manager-managed limited liability company.

(d) A member of a member-managed limited liability company.

(e) A trustee.

(f) A person the board defines by rule as an officer. The definition of officer adopted by board rule may include persons not listed in this subsection who may exercise substantial control over a business.

(13) "Residential contractor" means a licensed contractor that holds an endorsement as a:

(a) Residential general contractor;

(b) Residential specialty contractor;

(c) Residential limited contractor;

(d) Residential developer;

(e) Residential locksmith services contractor;

(f) Home inspector services contractor;

(g) Home services contractor; or

(h) Home energy performance score contractor.

(14) "Residential developer" means a developer of property that is zoned for or intended for use compatible with a residential or small commercial structure.

(15)(a) "Residential structure" means:

(A) A residence that is a site-built home;

(B) A structure that contains one or more dwelling units and is four stories or less above grade;

(C) A condominium, rental residential unit or other residential dwelling unit that is part of a larger structure, if the property interest in the unit is separate from the property interest in the larger structure;

(D) A modular home constructed off-site;

(E) A manufactured dwelling;

(F) A floating home as defined in ORS 830.700;

or

(G) An appurtenance to a home, structure, unit or dwelling described in subparagraphs (A) to (F) of this paragraph.

(b) "Residential structure" does not mean:

(A) Subject to paragraph (a)(C) of this subsection, a structure that contains both residential and nonresidential units;

(B) Transient lodging;

(C) A residential school or residence hall;

(D) A state or local correctional facility;

(E) A youth correction facility as defined in ORS 420.005;

(F) A youth care center operated by a county juvenile department under administrative control of a juvenile court pursuant to ORS 420.855 to 420.885;

(G) A detention facility as defined in ORS 419A.004;

(H) A nursing home;

(I) A hospital; or

(J) A place constructed primarily for recreational activities.

(16) "Responsible managing individual" means an individual who:

(a) Is an owner described in ORS 701.094 or an employee of the business;

(b) Exercises management or supervisory authority, as defined by the board by rule, over the construction activities of the business; and

(c)(A) Successfully completed the training and testing required for licensing under ORS 701.122 within a period the board identifies by rule;

(B) Demonstrated experience the board requires by rule; or

(C) Complied with the licensing requirements of ORS 446.395.

(17) "Small commercial structure" means:

(a) A nonresidential structure that has a ground area of 10,000 square feet or less, including exterior walls, and a height of not more than 20 feet from the top surface of the lowest flooring to the highest interior overhead finish of the structure;

(b) A nonresidential leasehold, rental unit or other unit that is part of a larger structure, if the unit has a ground area of 12,000 square feet or less, excluding exterior walls, and a height of not more than 20 feet from the top surface of the lowest flooring to the highest interior overhead finish of the unit;

(c) A nonresidential structure of any size for which the contract price of all construction contractor work to be performed on the structure as part of a construction project does not total more than \$250,000; or

(d) An appurtenance to a structure or unit described in paragraphs (a) to (c) of this subsection.

(18) "Specialty contractor" means a contractor who performs work on a structure, project, development or improvement and whose operations as such do not fall within the definition of "general contractor." "Specialty contractor" includes a person who performs work regulated under ORS 446.395.

(19) "Worker leasing company" means a person licensed under ORS 656.850 (2) to perform the service of providing nontemporary workers by contract and for a fee to work for a client.

(20) "Zero-lot-line dwelling" means a single-family dwelling unit constructed in a group of attached units in which:

(a) Each attached unit extends from foundation to roof with open space on two sides; and

(b) Each dwelling unit is separated by a property line. [1971 c.740 §1; 1975 c.721 §1; 1977 c.537 §2; 1981 c.618 §8; 1983 c.616 §4; 1989 c.762 §7; 1989 c.928 §1; 1991 c.181 §1; 1993 c.18 §151; 1997 c.814 §1; 1999 c.325 §1; 2001 c.196 §2; 2001 c.197 §9; 2003 c.14 §440; 2003 c.675 §69; 2005 c.432 §6; 2005 c.609 §21; 2007 c.511 §1; 2007 c.541 §41; 2007 c.648 §§23,23a; 2007 c.836 §56; 2009 c.271 §1; 2009 c.757 §6; 2010 c.77 §4; 2011 c.170 §1; 2011 c.630 §38; 2013 c.130 §6; 2013 c.251 §3; 2013 c.300 §6; 2013 c.383 §8]

Note 1: The amendments to 701.005 by section 8, chapter 383, Oregon Laws 2013, become operative July 1, 2014. See section 17, chapter 383, Oregon Laws 2013. The text that is operative on and after July 1, 2014, including amendments by section 6, chapter 130, Oregon Laws 2013, section 3, chapter 251, Oregon Laws 2013, and section 6, chapter 300, Oregon Laws 2013, is set forth for the user's convenience.

701.005. As used in this chapter:

(1) "Board" means the Construction Contractors Board.

(2) "Commercial contractor" means a licensed contractor that holds an endorsement as a:

- (a) Commercial general contractor level 1;
- (b) Commercial specialty contractor level 1;
- (c) Commercial general contractor level 2;
- (d) Commercial specialty contractor level 2; or
- (e) Commercial developer.

(3) "Commercial developer" means a developer of property that is zoned for or intended for use compatible with a small commercial or large commercial structure.

(4) "Construction debt" means an amount owed under:

- (a) Under an order or arbitration award issued by the board that has become final by operation of law;
- (b) Under a judgment or civil penalty that has become final by operation of law arising from construction activities within the United States; or
- (c) Under a judgment or civil penalty that has become final by operation of law arising from a failure to comply with ORS 656.017; or

(d) To employees of a construction contracting business for unpaid wages.

(5) "Contractor" means any of the following:

(a) A person that, for compensation or with the intent to sell, arranges or undertakes or offers to undertake or submits a bid to construct, alter, repair, add to, subtract from, improve, inspect, move, wreck or demolish, for another, a building, highway, road, railroad, excavation or other structure, project, development or improvement attached to real estate, or to do any part thereof.

(b) A person that purchases or owns property and constructs or for compensation arranges for the construction of one or more residential structures or small commercial structures with the intent of selling the structures.

(c) A school district, as defined in ORS 332.002, that permits students to construct a residential structure or small commercial structure as an educational experience to learn building techniques and sells the completed structure.

(d) A community college district, as defined in ORS 341.005, that permits students to construct a residential structure or small commercial structure as an educational experience to learn building techniques and sells the completed structure.

(e) A person except a landscape contracting business, nurseryman, gardener or person engaged in the commercial harvest of forest products, that is engaged as an independent contractor to remove trees, prune trees, remove tree limbs or stumps or to engage in tree or limb guying.

(f) A business that supplies the services of a home inspector certified under ORS 701.350 or a cross-connection inspector and backflow assembly tester certified under ORS 448.279.

(g) A person that for compensation arranges, undertakes, offers to undertake or submits a bid to clean or service chimneys.

(6) "Developer" means a contractor that owns property or an interest in property and engages in the business of arranging for construction work or performing other activities associated with the improvement of real property, with the intent to sell the property.

(7)(a) "General contractor" means a contractor whose business operations require the use of more than two unrelated building trades or crafts that the contractor supervises or performs in whole or part, whenever the sum of all contracts on any single property, including materials and labor, exceeds an amount established by rule by the board.

(b) "General contractor" does not mean a specialty contractor or a residential limited contractor.

(8)(a) "Home improvement" means a renovation, remodel, repair or alteration by a residential contractor to an existing owner-occupied:

(A) Residence that is a site-built home;

(B) Condominium, rental residential unit or other residential dwelling unit that is part of a larger structure, if the property interest in the unit is separate from the property interest in the larger structure;

(C) Modular home constructed off-site;

(D) Manufactured dwelling; or

(E) Floating home, as defined in ORS 830.700.

(b) "Home improvement" does not include a renovation, remodel, repair or alteration by a residential contractor:

(A) To a structure that contains one or more dwelling units and is four stories or less above grade; or

(B) That the residential contractor performed in the course of constructing a new residential structure.

(9)(a) "Home inspector" means a person who, for a fee, inspects and provides written reports on the overall physical condition of a residential structure.

(b) "Home inspector" does not include persons certified under ORS chapter 455 to inspect new, repaired or altered structures for compliance with the state building code.

(10) "Key employee" means an employee or owner of a contractor who is a corporate officer, manager, superintendent, foreperson or lead person or any other employee the board identifies by rule.

(11) "Large commercial structure" means a structure that is not a residential structure or small commercial structure.

(12) "Officer" means any of the following persons:

(a) A president, vice president, secretary, treasurer or director of a corporation.

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(b) A general partner in a limited partnership.
(c) A manager in a manager-managed limited liability company.

(d) A member of a member-managed limited liability company.

(e) A trustee.

(f) A person the board defines by rule as an officer. The definition of officer adopted by board rule may include persons not listed in this subsection who may exercise substantial control over a business.

(13) "Residential contractor" means a licensed contractor that holds an endorsement as a:

(a) Residential general contractor;

(b) Residential specialty contractor;

(c) Residential limited contractor; or

(d) Residential developer.

(e) Residential locksmith services contractor;

(f) Home inspector services contractor; or

(g) Home services contractor.

(14) "Residential developer" means a developer of property that is zoned for or intended for use compatible with a residential or small commercial structure.

(15)(a) "Residential structure" means:

(A) A residence that is a site-built home;

(B) A structure that contains one or more dwelling units and is four stories or less above grade;

(C) A condominium, rental residential unit or other residential dwelling unit that is part of a larger structure, if the property interest in the unit is separate from the property interest in the larger structure;

(D) A modular home constructed off-site;

(E) A manufactured dwelling;

(F) A floating home as defined in ORS 830.700; or

(G) An appurtenance to a home, structure, unit or dwelling described in subparagraphs (A) to (F) of this paragraph.

(b) "Residential structure" does not mean:

(A) Subject to paragraph (a)(C) of this subsection, a structure that contains both residential and nonresidential units;

(B) Transient lodging;

(C) A residential school or residence hall;

(D) A state or local correctional facility;

(E) A youth correction facility as defined in ORS 420.005;

(F) A youth care center operated by a county juvenile department under administrative control of a juvenile court pursuant to ORS 420.855 to 420.885;

(G) A detention facility as defined in ORS 419A.004;

(H) A nursing home;

(I) A hospital; or

(J) A place constructed primarily for recreational activities.

(16) "Responsible managing individual" means an individual who:

(a) Is an owner described in ORS 701.094 or an employee of the business;

(b) Exercises management or supervisory authority, as defined by the board by rule, over the construction activities of the business; and

(c)(A) Successfully completed the training and testing required for licensing under ORS 701.122 within a period the board identifies by rule;

(B) Demonstrated experience the board requires by rule; or

(C) Complied with the licensing requirements of ORS 446.395.

(17) "Small commercial structure" means:

(a) A nonresidential structure that has a ground area of 10,000 square feet or less, including exterior walls, and a height of not more than 20 feet from the top surface of the lowest flooring to the highest interior overhead finish of the structure;

(b) A nonresidential leasehold, rental unit or other unit that is part of a larger structure, if the unit has a ground area of 12,000 square feet or less, excluding exterior walls, and a height of not more than 20 feet from the top surface of the lowest flooring to the highest interior overhead finish of the unit; or

(c) A nonresidential structure of any size for which the contract price of all construction contractor work to be performed on the structure as part of a construction project does not total more than \$250,000; or

(d) An appurtenance to a structure or unit described in paragraphs (a) to (c) of this subsection.

(18) "Specialty contractor" means a contractor who performs work on a structure, project, development or improvement and whose operations as such do not fall within the definition of "general contractor." "Specialty contractor" includes a person who performs work regulated under ORS 446.395.

(19) "Worker leasing company" means a person licensed under ORS 656.850 (2) to perform the service of providing nontemporary workers by contract and for a fee to work for a client.

(20) "Zero-lot-line dwelling" means a single-family dwelling unit constructed in a group of attached units in which:

(a) Each attached unit extends from foundation to roof with open space on two sides; and

(b) Each dwelling unit is separated by a property line.

Note 2: The amendments to 701.005 by section 59, chapter 630, Oregon Laws 2013, become operative July 1, 2017, and apply to complaints filed on or after July 1, 2017. See section 73, chapter 630, Oregon Laws 2011. The text that is operative on and after July 1, 2017, including amendments by section 7, chapter 130, Oregon Laws 2013, section 4, chapter 251, Oregon Laws 2013, section 7, chapter 300, Oregon Laws 2013, is set forth for the user's convenience.

701.005. As used in this chapter:

(1) "Board" means the Construction Contractors Board.

(2) "Commercial contractor" means a licensed contractor that holds an endorsement as a:

(a) Commercial general contractor level 1;

(b) Commercial specialty contractor level 1;

(c) Commercial general contractor level 2;

(d) Commercial specialty contractor level 2; or

(e) Commercial developer.

(3) "Commercial developer" means a developer of property that is zoned for or intended for use compatible with a small commercial or large commercial structure.

(4) "Construction debt" means an amount owed under:

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(a) Under an order or arbitration award issued by the board that has become final by operation of law;

(b) Under a judgment or civil penalty that has become final by operation of law arising from construction activities within the United States; or

(c) Under a judgment or civil penalty that has become final by operation of law arising from a failure to comply with ORS 656.017; or

(d) To employees of a construction contracting business for unpaid wages.

(5) "Contractor" means any of the following:

(a) A person that, for compensation or with the intent to sell, arranges or undertakes or offers to undertake or submits a bid to construct, alter, repair, add to, subtract from, improve, inspect, move, wreck or demolish, for another, a building, highway, road, railroad, excavation or other structure, project, development or improvement attached to real estate, or to do any part thereof.

(b) A person that purchases or owns property and constructs or for compensation arranges for the construction of one or more residential structures or small commercial structures with the intent of selling the structures.

(c) A school district, as defined in ORS 332.002, that permits students to construct a residential structure or small commercial structure as an educational experience to learn building techniques and sells the completed structure.

(d) A community college district, as defined in ORS 341.005, that permits students to construct a residential structure or small commercial structure as an educational experience to learn building techniques and sells the completed structure.

(e) A person except a landscape contracting business, nurseryman, gardener or person engaged in the commercial harvest of forest products, that is engaged as an independent contractor to remove trees, prune trees, remove tree limbs or stumps or to engage in tree or limb guying.

(f) A business that supplies the services of a home inspector certified under ORS 701.350 or a cross-connection inspector and backflow assembly tester certified under ORS 448.279.

(g) A person that for compensation arranges, undertakes, offers to undertake or submits a bid to clean or service chimneys.

(6) "Developer" means a contractor that owns property or an interest in property and engages in the business of arranging for construction work or performing other activities associated with the improvement of real property, with the intent to sell the property.

(7)(a) "General contractor" means a contractor whose business operations require the use of more than two unrelated building trades or crafts that the contractor supervises or performs in whole or part, whenever the sum of all contracts on any single property, including materials and labor, exceeds an amount established by rule by the board.

(b) "General contractor" does not mean a specialty contractor or a residential limited contractor.

(8)(a) "Home improvement" means a renovation, remodel, repair or alteration by a residential contractor to an existing owner-occupied:

(A) Residence that is a site-built home;

(B) Condominium, rental residential unit or other residential dwelling unit that is part of a larger structure, if the property interest in the unit is separate from the property interest in the larger structure;

(C) Modular home constructed off-site;

(D) Manufactured dwelling; or

(E) Floating home, as defined in ORS 830.700.

(b) "Home improvement" does not include a renovation, remodel, repair or alteration by a residential contractor:

(A) To a structure that contains one or more dwelling units and is four stories or less above grade; or

(B) That the residential contractor performed in the course of constructing a new residential structure.

(9)(a) "Home inspector" means a person who, for a fee, inspects and provides written reports on the overall physical condition of a residential structure.

(b) "Home inspector" does not include persons certified under ORS chapter 455 to inspect new, repaired or altered structures for compliance with the state building code.

(10) "Key employee" means an employee or owner of a contractor who is a corporate officer, manager, superintendent, foreperson or lead person or any other employee the board identifies by rule.

(11) "Large commercial structure" means a structure that is not a residential structure or small commercial structure.

(12) "Officer" means any of the following persons:

(a) A president, vice president, secretary, treasurer or director of a corporation.

(b) A general partner in a limited partnership.

(c) A manager in a manager-managed limited liability company.

(d) A member of a member-managed limited liability company.

(e) A trustee.

(f) A person the board defines by rule as an officer.

The definition of officer adopted by board rule may include persons not listed in this subsection who may exercise substantial control over a business.

(13) "Residential contractor" means a licensed contractor that holds an endorsement as a:

(a) Residential general contractor;

(b) Residential specialty contractor;

(c) Residential limited contractor; or

(d) Residential developer.

(e) Residential locksmith services contractor;

(f) Home inspector services contractor;

(g) Home services contractor; or

(h) Home energy performance score contractor.

(14) "Residential developer" means a developer of property that is zoned for or intended for use compatible with a residential or small commercial structure.

(15)(a) "Residential structure" means:

(A) A residence that is a site-built home;

(B) A structure that contains one or more dwelling units and is four stories or less above grade;

(C) A condominium, rental residential unit or other residential dwelling unit that is part of a larger structure, if the property interest in the unit is separate from the property interest in the larger structure;

(D) A modular home constructed off-site;

(E) A manufactured dwelling;

(F) A floating home as defined in ORS 830.700; or

(G) An appurtenance to a home, structure, unit or dwelling described in subparagraphs (A) to (F) of this paragraph.

(b) "Residential structure" does not mean:

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(A) Subject to paragraph (a)(C) of this subsection, a structure that contains both residential and nonresidential units;

(B) Transient lodging;

(C) A residential school or residence hall;

(D) A state or local correctional facility;

(E) A youth correction facility as defined in ORS 420.005;

(F) A youth care center operated by a county juvenile department under administrative control of a juvenile court pursuant to ORS 420.855 to 420.885;

(G) A detention facility as defined in ORS 419A.004;

(H) A nursing home;

(I) A hospital; or

(J) A place constructed primarily for recreational activities.

(16) "Responsible managing individual" means an individual who:

(a) Is an owner described in ORS 701.094 or an employee of the business;

(b) Exercises management or supervisory authority, as defined by the board by rule, over the construction activities of the business; and

(c)(A) Successfully completed the training and testing required for licensing under ORS 701.122 within a period the board identifies by rule;

(B) Demonstrated experience the board requires by rule; or

(C) Complied with the licensing requirements of ORS 446.395.

(17) "Small commercial structure" means:

(a) A nonresidential structure that has a ground area of 10,000 square feet or less, including exterior walls, and a height of not more than 20 feet from the top surface of the lowest flooring to the highest interior overhead finish of the structure;

(b) A nonresidential leasehold, rental unit or other unit that is part of a larger structure, if the unit has a ground area of 12,000 square feet or less, excluding exterior walls, and a height of not more than 20 feet from the top surface of the lowest flooring to the highest interior overhead finish of the unit; or

(c) A nonresidential structure of any size for which the contract price of all construction contractor work to be performed on the structure as part of a construction project does not total more than \$250,000; or

(d) An appurtenance to a structure or unit described in paragraphs (a) to (c) of this subsection.

(18) "Specialty contractor" means a contractor who performs work on a structure, project, development or improvement and whose operations as such do not fall within the definition of "general contractor." "Specialty contractor" includes a person who performs work regulated under ORS 446.395.

(19) "Worker leasing company" means a person licensed under ORS 656.850 (2) to perform the service of providing nontemporary workers by contract and for a fee to work for a client.

(20) "Zero-lot-line dwelling" means a single-family dwelling unit constructed in a group of attached units in which:

(a) Each attached unit extends from foundation to roof with open space on two sides; and

(b) Each dwelling unit is separated by a property line.

701.007 [1989 c.928 §3; repealed by 1991 c.79 §3]

701.010 Exemptions from licensure; rules. The Construction Contractors Board may adopt rules to make licensure optional for persons who offer, bid or undertake to perform work peripheral to construction, as defined by administrative rule of the board. The following persons are exempt from licensure under this chapter:

(1) A person who is constructing, altering, improving or repairing personal property.

(2) A person who is constructing, altering, improving or repairing a structure located within the boundaries of any site or reservation under the jurisdiction of the federal government.

(3) A person who furnishes materials, supplies, equipment or finished product and does not fabricate them into, or consume them, in the performance of the work of a contractor.

(4) A person working on one structure or project, under one or more contracts, when the aggregate price of all of that person's contracts for labor, materials and all other items is less than \$1,000 and such work is of a casual, minor or inconsequential nature. This subsection does not apply to a person who advertises or puts out any sign or card or other device that might indicate to the public that the person is a contractor.

(5) An owner who contracts for work to be performed by a licensed contractor. This subsection does not apply to a person who, in the pursuit of an independent business, constructs, remodels, repairs or for compensation and with the intent to sell the structure, arranges to have constructed, remodeled or repaired a structure with the intent of offering the structure for sale before, upon or after completion. It is prima facie evidence that there was an intent of offering the structure for sale if the person who constructed, remodeled or repaired the structure or arranged to have the structure constructed, remodeled or repaired does not occupy the structure after its completion.

(6) An owner who contracts for one or more licensed contractors to perform work wholly or partially within the same calendar year on not more than three existing residential structures of the owner. This subsection does not apply to an owner contracting for work that requires a building permit unless the work that requires a permit is performed by, or under the direction of, a residential general contractor.

(7) A person performing work on a property that person owns or performing work as the owner's employee, whether the property is occupied by the owner or not, or a person performing work on that person's residence, whether or not that person owns the residence. This subsection does not apply to a person

performing work on a structure owned by that person or the owner's employee, if the work is performed in the pursuit of an independent business with the intent of offering the structure for sale before, upon or after completion.

(8) A person licensed or registered in one of the following trades or professions when operating within the scope of that license or registration:

(a) An architect registered by the State Board of Architect Examiners.

(b) A professional engineer registered by the State Board of Examiners for Engineering and Land Surveying.

(c) A water well contractor licensed by the Water Resources Department.

(d) A sewage disposal system installer licensed by the Department of Environmental Quality.

(e) A landscape contracting business licensed under ORS 671.510 to 671.760.

(f) A pesticide operator licensed under ORS 634.116 who does not conduct inspections for wood destroying organisms for the transfer of real estate.

(g) An appraiser certified or licensed under ORS chapter 674 or an appraiser assistant registered under ORS chapter 674 by the Appraiser Certification and Licensure Board.

(9) A landscape contracting business operating within the scope of a license issued under ORS 671.510 to 671.760 that:

(a) Constructs fences, decks, arbors, patios, landscape edging, driveways, walkways or retaining walls and meets the applicable bonding requirements under ORS 671.690; or

(b) Subcontracts to a licensed plumbing contractor, or otherwise arranges for a licensed plumbing contractor to perform, the installation of an irrigation system described in ORS 671.540(1)(m) or the repair or maintenance of an irrigation system.

(10) A person who performs work subject to this chapter as an employee of a contractor.

(11) A manufacturer of a manufactured home constructed under standards established by the federal government.

(12) A person involved in the movement of:

(a) Modular buildings or structures other than manufactured structures not in excess of 14 feet in width.

(b) Structures not in excess of 16 feet in width when the structures are being moved by their owner if the owner is not a contractor required to be licensed under this chapter.

(13) A surety company, commercial lending institution, holding company for a commercial lending institution, subsidiary of a commercial lending institution or subsidiary of a holding company for a commercial lending institution that arranges for completion, repair or remodeling by one or more licensed contractors of a structure in which the

company, institution, holding company or subsidiary holds a legal or security interest. As used in this subsection, "commercial lending institution" means any bank, mortgage banking company, trust company, savings bank, savings and loan association, credit union, national banking association, federal savings and loan association, insurance company or federal credit union maintaining an office in this state.

(14) A real estate licensee who engages in the management of rental real estate as defined in ORS 696.010 or the employee of that licensee when performing work on a structure that the real estate licensee manages under a contract.

(15) Units of government other than those specified in ORS 701.005(5)(c) and (d).

(16) A qualified intermediary in a property exchange that qualifies under section 1031 of the Internal Revenue Code as amended and in effect on January 1, 2004, if the qualified intermediary is not performing construction activities.

(17) A worker leasing company or temporary service provider, both as defined in ORS 656.850, that supplies personnel to a licensed contractor for the performance of work under the direction and supervision of the contractor.

(18) City or county inspectors acting under ORS 701.225 or inspectors described in ORS 455.715.

(19) A person performing work for purposes of agricultural drainage, agricultural trenching or agricultural irrigation or involving the construction of agricultural fences to control livestock.

(20) A person performing work that is subject to ORS 527.610 to 527.770 on forestlands for which notice of operation has been filed under ORS 527.670.

[1971 c.740 §20; 1979 c.312 §1; 1981 c.618 §9; 1983 c.616 §5a; 1989 c.928 §2; 1991 c.181 §2; 1991 c.463 §1; 1993 c.18 §152; 1995 c.644 §1; 1997 c.814 §8; 1999 c.32 §4; 1999 c.325 §5; 1999 c.402 §12; 2001 c.196 §3; 2001 c.197 §10; 2003 c.285 §1; 2003 c.329 §1; 2003 c.675 §70; 2005 c.254 §12; 2005 c.432 §7; 2005 c.609 §22; 2007 c.541 §42; 2007 c.639 §1; 2007 c.836 §57; 2009 c.259 §31; 2009 c.483 §5; 2011 c.174 §1; 2013 c.196 §22; 2013 c.378 §1]

701.013 Intent relating to certain business license requirements. It is the intent of the Legislative Assembly to reduce the number of city business licenses that construction contractors are required to obtain in order to conduct business in the Portland metropolitan area. It is the purpose of this section and ORS 701.015 to enable construction contractors to secure from the metropolitan service district one business license that will permit the conduct of business by construction contractors in cities in which the contractors perform a limited amount of work and in which they do not have a principal place of business. Furthermore, it is also the intent of the Legislative Assembly that this section and ORS 701.015 apply

only to construction contractors engaged in the building trades and crafts without regard to any subsequent expansion of the jurisdiction of the Construction Contractors Board over other trades and crafts. It is declared to be the policy of this state that, to the maximum extent possible consistent with the requirements of this section and ORS 701.015, the cities within the boundaries of the metropolitan service district be allowed to control the imposition of business license taxes and to maintain the level of revenues obtained from those taxes. The amount and trends of revenue produced or distributed to each city is intended to reflect the construction business activity within the participating cities. [1991 c.79 §1; 2001 c.409 §10; 2007 c.541 §43]

Note: 701.013 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 701 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

701.015 Business license requirements in cities and metropolitan service districts; fees; distribution of fees. (1) A contractor shall pay directly to any city within the boundaries of a metropolitan service district any business license tax imposed by the city when:

(a) The principal place of business of the contractor is within the city; or

(b) The principal place of business of the contractor is not within the city but the contractor derives gross receipts of \$250,000 or more from business conducted within the boundaries of the city during the calendar year for which the business license tax is owed.

(2) A contractor who conducts business during any year in any city within the boundaries of the metropolitan service district other than a city to which the contractor has paid a business license tax for that year may apply for a business license from the metropolitan service district.

(3) When a contractor obtains a business license from the metropolitan service district under subsection (2) of this section, if a city within the boundaries of the metropolitan service district other than a city to which the contractor is required to directly pay a business license tax under subsection (1) of this section demands payment of a business license tax by the contractor, the city shall waive such payment upon presentation of proof by the contractor that the contractor has a business license issued by the metropolitan service district. Possession by the contractor of a current business license issued by the metropolitan service district under subsection (2) of this section shall be proof sufficient to obtain the waiver described in this subsection.

(4) The metropolitan service district shall issue a business license to a contractor when:

(a) The contractor presents proof to the district that the contractor has paid the business license tax imposed by each city within the boundaries of the

district to which the contractor must directly pay a business license tax under subsection (1) of this section; and

(b) The contractor pays a license fee to the district. The license fee charged under this paragraph shall be twice the average business license tax charged contractors by cities located within the metropolitan service district plus an amount that is sufficient to reimburse the district for the administrative expenses of the district incurred in carrying out its duties under this section.

(5) The metropolitan service district shall distribute the business license fees collected by the district under this section, less administrative expenses, to the cities that are located wholly or partly within the district and that collect a business license tax. In any year, each such city shall receive such share of the license fees as the number of residential building permits that it issued during that year bears to the total number of residential building permits that were issued during that year by all of the cities located wholly or partly within the district. Distribution of moneys under this subsection shall be made at least once in each year. The metropolitan service district shall determine the number of residential building permits issued by cities within the district from statistics and other data published by the State Housing Council.

(6) As used in this section:

(a) "Business license tax" means any fee paid by a person to a city or county for any form of license that is required by the city or county in order to conduct business in that city or county. The term does not include any franchise fee or privilege tax imposed by a city upon a public utility under ORS 221.420 or 221.450 or any provision of a city charter.

(b) "Conducting business" means to engage in any activity in pursuit of gain including activities carried on by a person through officers, agents and employees as well as activities carried on by a person on that person's own behalf.

(c) "Principal place of business" means the location in this state of the central administrative office of a person conducting business in this state. [1987 c.581 §2; 1989 c.1064 §§1,2; 1991 c.79 §2; 1999 c.176 §1; 2007 c.541 §44]

701.020 Certain cities exempt from application of ORS 701.015. (1) A city that imposes a business license tax based on or measured by adjusted net income earned by conducting business within the city shall be exempt from ORS 701.015.

(2) As used in this section, "business license tax" has the meaning given that term in ORS 701.015. [1987 c.581 §7]

Note: 701.020 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 701 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

LICENSING

701.021 License requirement; endorsements.

(1) Except as provided in ORS 701.010, a person or joint venture that undertakes, offers to undertake or submits a bid to do work as a contractor must have a current license issued by the Construction Contractors Board and possess an appropriate endorsement as provided in this section. For purposes of offering to undertake or submitting a bid to do work, a partnership or joint venture is licensed and endorsed if any partner or joint venturer whose name appears in the business name of the partnership or joint venture has a current license issued by the board and possesses an appropriate endorsement.

(2) A person or joint venture that undertakes, offers to undertake or submits a bid to do work as a contractor in preparation for or in connection with a residential structure must have one of the following endorsements:

- (a) Residential general contractor.
- (b) Residential specialty contractor.
- (c) Residential limited contractor.
- (d) Residential developer.
- (e) Residential locksmith services contractor;
- (f) Home inspector services contractor;
- (g) Home services contractor; or
- (h) Home energy performance score contractor.

(3) A person or joint venture that undertakes, offers to undertake or submits a bid to do work as a contractor in preparation for or in connection with a small commercial structure must have one of the following endorsements:

- (a) Residential general contractor.
- (b) Residential specialty contractor.
- (c) Residential limited contractor.
- (d) Residential developer.
- (e) Residential locksmith services contractor;
- (f) Commercial general contractor level 1.
- (g) Commercial specialty contractor level 1.
- (h) Commercial general contractor level 2.
- (i) Commercial specialty contractor level 2.
- (j) Commercial developer.

(4) A person or joint venture that undertakes, offers to undertake or submits a bid to do work as a contractor in preparation for or in connection with a large commercial structure must have one of the following endorsements:

- (a) Commercial general contractor level 1.
- (b) Commercial specialty contractor level 1.
- (c) Commercial general contractor level 2.
- (d) Commercial specialty contractor level 2.
- (e) Commercial developer.

[2007 c.836 §2; 2010 c.57 §1; 2013 c.300 §8; 2013 c.383 §10]

Note: The amendments to 701.021 by section 10, chapter 383, Oregon Laws 2013, become operative July 1, 2014. See section 17, chapter 383, Oregon Laws 2013. The

text that is operative on and after July 1, 2014, including amendments by section 8, chapter 300, Oregon Laws 2013, is set forth for the user's convenience.

701.021 License requirement; endorsements. (1)

Except as provided in ORS 701.010, a person or joint venture that undertakes, offers to undertake or submits a bid to do work as a contractor must have a current license issued by the Construction Contractors Board and possess an appropriate endorsement as provided in this section. For purposes of offering to undertake or submitting a bid to do work, a partnership or joint venture is licensed and endorsed if any partner or joint venturer whose name appears in the business name of the partnership or joint venture has a current license issued by the board and possesses an appropriate endorsement.

(2) A person or joint venture that undertakes, offers to undertake or submits a bid to do work as a contractor in preparation for or in connection with a residential structure must have one of the following endorsements:

- (a) Residential general contractor.
- (b) Residential specialty contractor.
- (c) Residential limited contractor.
- (d) Residential developer.
- (e) Residential locksmith services contractor;
- (f) Home inspector services contractor; or
- (g) Home services contractor.

(3) A person or joint venture that undertakes, offers to undertake or submits a bid to do work as a contractor in preparation for or in connection with a small commercial structure must have one of the following endorsements:

- (a) Residential general contractor.
- (b) Residential specialty contractor.
- (c) Residential limited contractor.
- (d) Residential developer.
- (e) Residential locksmith services contractor;
- (f) Commercial general contractor level 1.
- (g) Commercial specialty contractor level 1.
- (h) Commercial general contractor level 2.
- (i) Commercial specialty contractor level 2.
- (j) Commercial developer.

(4) A person or joint venture that undertakes, offers to undertake or submits a bid to do work as a contractor in preparation for or in connection with a large commercial structure must have one of the following endorsements:

- (a) Commercial general contractor level 1.
- (b) Commercial specialty contractor level 1.
- (c) Commercial general contractor level 2.
- (d) Commercial specialty contractor level 2.
- (e) Commercial developer.

701.025 [1989 c.762 §1; 1989 c.870 §§3,3a; renumbered 670.600 in 1991]

701.026 Subcontractor licensing; landscaping.

(1) A contractor may not hire a contractor to perform work unless the contractor is licensed under this chapter and properly endorsed for the work to be performed or is exempt from licensure under ORS 701.010.

(2) Except as provided in ORS 671.540, a contractor that is not licensed under ORS 671.560 shall hire a person licensed under ORS 671.560 to perform landscaping work. [Formerly 701.055]

701.030 [1989 c.762 §1a; renumbered 670.605 in 1991]

701.031 Evidence of doing business as contractor. (1) It is prima facie evidence that a person is doing business as a contractor if:

(a) The person for that person's own use performs, employs others to perform, or for compensation and with the intent to sell the structure arranges to have performed, work described in ORS 701.005(5); and

(b) Within any 36-month period the person offers for sale two or more newly built structures on which work described in paragraph (a) of this subsection was performed.

(2) Licensure under this chapter is prima facie evidence that the licensee conducts a separate, independent business. [2007 c.114 §3]

701.035 Applicant required to be independent contractor to be eligible for license; classes of licenses. (1) An applicant must qualify as an independent contractor under ORS 670.600 to be eligible for a license with the Construction Contractors Board.

(2) The board shall establish two classes of independent contractor:

(a) The nonexempt class is composed of the following entities:

(A) Sole proprietorships, partnerships, corporations and limited liability companies:

(i) With one or more employees; or
(ii) That utilize one or more workers supplied by a worker leasing company.

(B) Partnerships, corporations and limited liability companies with more than two partners, corporate officers or members, if any of the partners, corporate officers or members are not part of the same family and related as parents, spouses, sisters, brothers, daughters or sons, daughters-in-law or sons-in-law or grandchildren.

(b) The exempt class is composed of all sole proprietorships, partnerships, corporations and limited liability companies that do not qualify as nonexempt.

(3) If a person who is licensed as exempt under subsection (2)(b) of this section hires one or more employees, or utilizes one or more workers supplied by a worker leasing company or falls into any of the categories set out in subsection (2)(a)(B) of this section, the person is subject to penalties under ORS 701.992 for improper licensing. If a person who is licensed as exempt under subsection (2)(b) of this section hires one or more employees, or utilizes one or more workers supplied by a worker leasing company, the person is also subject to licensing sanctions under ORS 701.098. The person must reapply to the board in the correct class.

(4) The decision of the board that a person is an independent contractor applies only when the person is

performing work of the nature described in ORS 701.021.

(5) A person that is within the exempt class described in subsection (2)(b) of this section and is licensed as a commercial contractor shall procure and maintain workers' compensation insurance as authorized by ORS 656.128.

[1989 c.870 §4; 1995 c.216 §1; 1999 c.402 §13; 2007 c.836 §15; 2009 c.408 §§2,3; 2013 c.300 §10]

Note: Section 13, chapter 300, Oregon Laws 2013, provides:

Sec. 13. The amendments to ORS 701.035 and 701.098 by sections 10 and 11, chapter 300, Oregon Laws 2013, apply to utilization of workers that are supplied by a worker leasing company 90 or more days after the effective date of this 2013 Act [January 1, 2014]. [2013 c.300 §13]

701.038 Residential limited contractors. A residential limited contractor may not:

(1) Perform work as a contractor exceeding \$40,000 in gross annual volume; or

(2) Enter into contracts to perform work as a contractor in excess of \$5,000. [2007 c.836 §5]

701.042 Residential or commercial developers. A residential or commercial developer:

(1) Shall act only in association with licensed general contractors, one or a combination of whom must have sole responsibility for overseeing all phases of construction activity on a property; and

(2) May not perform any construction work on a property. [2997 c.836 §6; 2007 c.836 §7]

701.046 License application. (1) Except as provided in subsection (2) of this section, an applicant for a construction contractor license must submit the application on a form prescribed by the Construction Contractors Board. The application shall include, but not be limited to, the following information:

(a) The endorsement being sought.
(b) A list of construction debts involving the applicant, or an owner or officer of the applicant, if the order, award, penalty or judgment that establishes the debt was issued within the preceding five years.

(c) For each person described in paragraphs (h), (i) and (j) of this subsection, a Social Security number.

(d) Workers' compensation insurance account number, if the applicant is required to have workers' compensation insurance.

(e) Unemployment insurance account number, if the applicant is required to have unemployment insurance.

(f) State withholding tax account number, if the applicant is required to withhold state income tax.

(g) Federal employer identification number, if the applicant is required to have a federal employer identification number.

(h) The name and address of:

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(A) Each partner, if the applicant is a partnership, limited liability partnership or foreign limited liability partnership.

(B) The general partner, if the applicant is a limited partnership.

(C) Each joint venturer, if the applicant is a joint venture.

(D) The owner, if the applicant is a sole proprietorship.

(E) The officers, if the applicant is a corporation.

(F) The manager and each member, if the applicant is a manager-managed limited liability company.

(G) Each member, if the applicant is a member-managed limited liability company.

(H) The responsible managing individual designated by the applicant.

(I) Each trustee, if the applicant is a trust.

(i) The name and address of the following if the applicant is a partnership, limited liability partnership, foreign limited liability partnership, joint venture, manager-managed limited liability company or member-managed limited liability company:

(A) Each partner in a partnership, limited liability partnership or foreign limited liability partnership that is a partner, joint venturer or member of the applicant.

(B) Each general partner in a limited partnership that is a partner, joint venturer or member of the applicant.

(C) Each joint venturer in a joint venture that is a partner, joint venturer or member of the applicant.

(D) The manager and each member of a manager-managed limited liability company that is a partner, joint venturer or member of the applicant.

(E) Each member of a member-managed limited liability company that is a partner, joint venturer or member of the applicant.

(F) Each officer of a corporation that is a partner, joint venturer or member of the applicant.

(G) Each individual who has a controlling ownership interest in, or management authority over, the applicant and who meets criteria adopted by the board by rule.

(j) The name and address of the following if the applicant is a limited partnership:

(A) Each partner of any partnership, limited liability partnership or foreign limited liability partnership that is the general partner of the applicant.

(B) Each general partner of any limited partnership that is the general partner of the applicant.

(C) Each joint venture in any joint venture that is the general partner of the applicant.

(D) The manager and each member of any manager-managed limited liability company that is the general partner of the applicant.

(E) Each member of any member-managed limited liability company that is the general partner of the applicant.

(F) Each officer of any corporation that is the general partner of the applicant.

(k) For each person described in paragraphs (h), (i) and (j) of this subsection, information as required by board rule regarding the following if related to construction activities:

(A) A final judgment against the person by a court in any state entered within five years preceding the application date that requires the person to pay money to another person or to a public body if the judgment remains unsatisfied on the application date.

(B) A final order against the person by an administrative agency in any state issued within five years preceding the application date that requires the person to pay money to another person or to a public body if the order remains unsatisfied on the application date.

(C) A court action against the person in any state pending on the application date that alleges the person owes money to another person or to a public body.

(D) An action by an administrative agency in any state pending on the application date that seeks an order that the person pay money to another person or to a public body.

(E) A conviction for a crime listed in ORS 701.098(1)(i) entered within five years preceding the application date.

(F) An indictment for a crime listed in ORS 701.098(1)(i) filed within five years preceding the application date.

(L) The basis on which the applicant meets the standards for independent contractor status under ORS 670.600.

(2) Subsection (1)(h), (i) and (j) of this section does not apply if the applicant is a company that offers securities registered with the United States Securities and Exchange Commission for sale to the general public.

(3) The application described in subsection (1) of this section must be accompanied by proof satisfactory to the board that the applicant:

(a) Is in compliance with ORS 701.091.

(b) Has the legal capacity to enter into contracts.

(4) Subsection (3)(a) of this section does not apply to an applicant for licensing with endorsement solely as a residential or commercial developer.

(5) An applicant shall conform to the information provided by the applicant on the application and to the terms of the application.

[Formerly 701.075; 2009 c.11 §§90,91; 2009 c.226 §3; 2013 c.300 §1]

701.050 Commercial contractor key employees. (1) A commercial general contractor or commercial specialty contractor shall certify upon license application or renewal that the contractor has one or more key employees with the combined total amount of experience required under ORS 701.084.

(2) Except as provided in subsection (3) of this section, the experience certified under subsection (1) of this section must be as a licensed contractor, journeyman, foreperson or supervisor or as any other employee engaged in construction work for a licensed contractor.

(3) The following experience or education may substitute for construction experience described in subsection (2) of this section:

(a) Completion of an apprenticeship program may substitute for up to three years of experience;

(b) A bachelor's degree in a construction-related field may substitute for up to three years of experience;

(c) A bachelor's degree or master's degree in business, finance or economics may substitute for up to two years of experience; and

(d) An associate's degree in construction or building management may substitute for up to one year of experience. [2007 c.836 §8]

701.055 [1971 c.740 §7; 1975 c.721 §2; 1981 c.618 §10; 1983 c.616 §6; 1989 c.430 §6; 1989 c.624 §1; 1989 c.928 §4; 1995 c.771 §1; 1997 c.785 §3; 1999 c.35 §1; 1999 c.325 §2; 1999 c.402 §14; 2001 c.196 §4; 2001 c.197 §11; 2005 c.249 §1; 2005 c.432 §8; 2007 c.114 §8; 2007 c.639 §2; 2007 c.648 §17; 2007 c.836 §16; renumbered 701.026 in 2007]

701.056 Licensing application fee; rules. Each applicant shall pay to the Construction Contractors Board:

(1) For an application for the issuance or renewal of a contractor license, an application fee as determined by the board under ORS 701.238.

(2) For an application for changes to a contractor license, other than changes due to clerical errors by the board, an application fee established by board rule. [Formerly 701.125]

701.058 [2003 c.675 §68; repealed by 2007 c.836 §51]

701.060 Licensing in another category; fee. Any contractor licensed under this chapter may at any time apply for an additional or different endorsement. The Construction Contractors Board may charge a fee not to exceed \$20 for each application. [1977 c.426 §2; 1981 c.618 §11; 1983 c.616 §7; 1989 c.430 §2; 1989 c.928 §5; 1999 c.402 §15; 2007 c.114 §9; 2007 c.836 §17]

701.063 Term of license; fee; renewal; inactive status; license identification card. (1) A license is valid for two years from the date of issuance unless the license is revoked or suspended as set forth in ORS 701.098.

(2) A license may be renewed by submitting an application for renewal on the prescribed form, providing any additional information required, including evidence of completion of any required

education, and submitting the appropriate application fee, as provided by Construction Contractors Board rule.

(3) The board may vary the dates of license renewal by giving to the licensee written notice of the renewal date assigned and by making appropriate adjustments in the fee for the license renewal application.

(4) If a contractor applies for renewal not more than two years after the contractor's license lapses, upon the contractor's compliance with the requirements of subsection (2) of this section, the board may renew the lapsed license. The board may designate the effective date of renewal as the last date on which the contractor was licensed.

(5) A contractor may convert a license to inactive status if the contractor is not engaged in work as a contractor. A contractor having an inactive license is subject to board licensing requirements and application fees, but is not subject to the bonding requirement of ORS 701.068 or the insurance requirement of ORS 701.073. A commercial general or commercial specialty contractor having an inactive license is not subject to the key employee continuing education requirements of ORS 701.124. An inactive license is not considered a valid license for purposes of offering to undertake construction work, submitting a bid for construction work, obtaining a building permit or performing construction work. A license may not be placed or maintained in inactive status more than once during any two-year licensing term.

(6) The board shall issue a pocket-card certificate of licensure to a contractor licensed under this chapter indicating the type of license issued. [Formerly 701.115; 2009 c.408 §§4,5]

701.065 [1971 c.740 §8; 1973 c.832 §55; 1975 c.654 §1; 1979 c.874 §1; 1983 c.616 §8; 1989 c.870 §10,10a; 1989 c.928 §6; 1997 c.818 §3; 1999 c.402 §16; 2003 c.675 §71; 2007 c.793 §6; 2007 c.836 §58; renumbered 701.131 in 2007]

701.067 [1989 c.870 §9; 1995 c.618 §124; 1999 c.402 §17; renumbered 701.128 in 2007]

701.068 Bonding requirements; action against surety; rules. (1) An applicant for issuance or renewal of a contractor license shall file with the Construction Contractors Board a surety bond with one or more corporate sureties authorized to do business in this state in the amount set forth in ORS 701.081 or 701.084.

(2) If an applicant for issuance, renewal or an additional endorsement of a license will hold endorsements as both a residential contractor and a commercial contractor, the applicant shall file with the board a surety bond for each endorsement in the amount set forth in ORS 701.081 or 701.084.

(3) The surety bond for a residential contractor must provide that the applicant, with regard to work

subject to this chapter, will pay amounts determined by the board as provided under ORS 701.145. The surety bond for a commercial contractor must provide that the applicant, with regard to work subject to this chapter, will pay amounts determined by the board as provided under ORS 701.146. Bonds filed under this section shall remain in effect for at least one year or until depleted by payments under ORS 701.150, 701.153 and 701.157, unless the surety sooner cancels the bond. At the discretion of the surety the bond may be continued for an additional period by continuation certificate. Except as provided in subsection (4) of this section, the aggregate liability of the surety under the bond for complaints against the contractor may not exceed the penal sum of the bond no matter how many years the bond is in force. Except as provided in subsection (4) of this section, an extension by continuation certificate, reinstatement, reissue or renewal of the bond may not increase the liability of the surety.

(4) The board, by rule, may require a licensee to obtain a new surety bond if, pursuant to a board determination issued under ORS 701.145 or 701.146, the surety pays an amount out of the bond of the licensee. The new surety bond must be in the applicable amount set forth in ORS 701.081 or 701.084 unless a higher amount is required by a board condition or rule described in subsection (5) or (6) of this section. The board may allow a licensee to obtain, instead of a new bond, a certification that the surety remains liable for the full penal sum of the bond, notwithstanding payment by the surety on the complaint.

(5) If the amount the licensee must pay against the bond under subsection (3) of this section exceeds the amount of the bond, the board shall suspend the contractor's license until the amount owed is paid. The board, as a condition of ending the suspension, may require a contractor requesting reinstatement of a license to file a bond of an amount up to five times as much as the amount required ordinarily of a licensee under ORS 701.081 or 701.084.

(6) The board by rule may establish conditions for applicants or persons licensed under this chapter under which the applicant or licensee must file a bond of an amount up to five times as much as the amount required ordinarily of an applicant or licensee under ORS 701.081 or 701.084. The board may reduce the amount of bond it would otherwise require if the contractor demonstrates satisfactory completion of approved elective classes on dispute resolution and prevention, basic accounting and record keeping or such other classes as the board may prescribe.

(7) The bond required under this section is for the exclusive purpose of payment of amounts for which the board has determined the surety to have responsibility.

(8) Upon issuance of a determination under ORS 701.145 or 701.146 for a complaint against a contractor who holds a bond required under this section, the board

shall notify the surety on the bond of the determination in a manner determined by the board by rule. The notification shall include a list of all board determinations for payment by the surety from the bond.

(9) A court action may not be commenced against a surety on a bond required under this section until 30 days after the date that the surety is notified by the board under ORS 701.150 that payment is due on the determination.

(10) In any action against a surety on a bond under this section that is based on the failure of the surety to pay an amount determined by the board, the court may award:

(a) Costs;

(b) Reasonable attorney fees to the prevailing party as part of the costs; and

(c) Twice the amount that the board determined the surety must pay on the complaint, if the surety arbitrarily and capriciously refused to pay.

[Formerly 701.085; 2009 c.225 §1; 2011 c.630 §39]

Note: The amendments to 701.068 by section 60, chapter 630, Oregon Laws 2011, become operative July 1, 2017, and apply to complaints filed on or after July 1, 2017. See section 73, chapter 630, Oregon Laws 2017. The text that is operative on and after July 1, 2017, is set forth for the user's convenience.

701.068. (1) An applicant for issuance or renewal of a contractor license shall file with the Construction Contractors Board a surety bond with one or more corporate sureties authorized to do business in this state in the amount set forth in ORS 701.081 or 701.084.

(2) If an applicant for issuance, renewal or an additional endorsement of a license will hold endorsements as both a residential contractor and a commercial contractor, the applicant shall file with the board a surety bond for each endorsement in the amount set forth in ORS 701.081 or 701.084.

(3) The surety bond for a residential contractor must provide that the applicant, with regard to work subject to this chapter, will pay amounts ordered paid by the board under ORS 701.145. The surety bond for a commercial contractor must provide that the applicant, with regard to work subject to this chapter, will pay amounts ordered paid by the board under ORS 701.146. Bonds filed under this section shall remain in effect for at least one year or until depleted by payments under ORS 701.150, 701.153 and 701.157, unless the surety sooner cancels the bond. At the discretion of the surety the bond may be continued for an additional period by continuation certificate. Except as provided in subsection (4) of this section, the aggregate liability of the surety under the bond for complaints against the contractor may not exceed the penal sum of the bond no matter how many years the bond is in force. Except as provided in subsection (4) of this section, an extension by continuation certificate, reinstatement, reissue or renewal of the bond may not increase the liability of the surety.

(4) The board, by rule, may require a licensee to obtain a new surety bond if, pursuant to a board order for payment of a complaint described in ORS 701.140, the surety pays an amount out of the bond of the licensee. The new surety bond must be in the applicable amount set forth in

ORS 701.081 or 701.084 unless a higher amount is required by a board condition or rule described in subsection (5) or (6) of this section. The board may allow a licensee to obtain, instead of a new bond, a certification that the surety remains liable for the full penal sum of the bond, notwithstanding payment by the surety on the complaint.

(5) If the amount the licensee must pay against the bond under subsection (3) of this section exceeds the amount of the bond, the board shall suspend the contractor's license until the amount owed is paid. The board, as a condition of ending the suspension, may require a contractor requesting reinstatement of a license to file a bond of an amount up to five times as much as the amount required ordinarily of a licensee under ORS 701.081 or 701.084.

(6) The board by rule may establish conditions for applicants or persons licensed under this chapter under which the applicant or licensee must file a bond of an amount up to five times as much as the amount required ordinarily of an applicant or licensee under ORS 701.081 or 701.084. The board may reduce the amount of bond it would otherwise require if the contractor demonstrates satisfactory completion of approved elective classes on dispute resolution and prevention, basic accounting and record keeping or such other classes as the board may prescribe.

(7) The bond required under this section is for the exclusive purpose of payment of final orders and arbitration awards of the board in accordance with this chapter.

(8) Upon determination under ORS 701.145 or 701.146 of a complaint against a contractor who holds a bond required under this section, the board shall notify the surety on the bond of the final order in a manner determined by the board by rule. The notification shall include a list of all complaints upon which a final order has been issued.

(9) A court action may not be commenced against a surety on a bond required under this section until 30 days after the date that the surety is notified by the board under ORS 701.150 that payment is due on the final order.

(10) In any action against a surety on a bond under this section that is based on the failure of the surety to pay a final order, the court may award:

- (a) Costs;
- (b) Reasonable attorney fees to the prevailing party as part of the costs; and
- (c) Twice the amount of any damages that the board ordered the surety to pay on the complaint, if the surety arbitrarily and capriciously refused to pay upon order of the board.

701.070 [1975 c.383 §§2,3; repealed by 1983 c.616 §17]

701.072 [2005 c.432 §2; 2007 c.836 §19; renumbered 701.122 in 2007]

701.073 Insurance required of licensed contractors. (1) A contractor who possesses a license as required under this chapter shall have in effect public liability, personal injury and property damage insurance covering the work of the contractor that is subject to this chapter, including the covering of liability for products and completed operations according to the terms of the policy and subject to applicable policy exclusions, for an amount not less

than the applicable amount set forth in ORS 701.081 or 701.084.

(2) The contractor shall provide satisfactory evidence to the Construction Contractors Board at the time of licensure and renewal that the insurance required by subsection (1) of this section has been procured and is in effect. [Formerly 701.105]

701.075 [1971 c.740 §9; 1973 c.832 §56; 1979 c.312 §2; 1981 c.618 §12; 1989 c.624 §2; 1989 c.870 §2; 1989 c.928 §7; 1995 c.216 §6; 1999 c.344 §1; 1999 c.402 §18a; 2001 c.160 §2; 2001 c.196 §5; 2003 c.675 §73; 2005 c.432 §9; 2007 c.478 §2; 2007 c.648 §24; 2007 c.836 §58a; renumbered 701.046 in 2007]

701.077 [2005 c.432 §4; 2007 c.648 §25; renumbered 701.094 in 2007]

701.078 [2005 c.432 §3; 2007 c.113 §1; 2007 c.648 §26; 2007 c.836 §21; renumbered 701.091 in 2007]

701.080 [1979 c.312 §5; 1983 c.616 §9; 1989 c.928 §8; 1997 c.301 §1; 1999 c.402 §20; renumbered 701.117 in 2007]

701.081 Residential contractors; bond; insurance; responsible managing individual. (1) A residential general contractor shall:

- (a) Obtain a surety bond under ORS 701.068 in the amount of \$20,000;
- (b) Obtain general liability insurance under ORS 701.073 in an amount of not less than \$500,000; and
- (c) Have a responsible managing individual who meets the requirements of ORS 701.091.

- (2) A residential specialty contractor shall:
 - (a) Obtain a surety bond under ORS 701.068 in the amount of \$15,000;
 - (b) Obtain general liability insurance under ORS 701.073 in an amount not less than \$300,000; and
 - (c) Have a responsible managing individual who meets the requirements of ORS 701.091.

- (3) A residential limited contractor shall:
 - (a) Obtain a surety bond under ORS 701.068 in the amount of \$10,000;
 - (b) Obtain general liability insurance under ORS 701.073 in an amount not less than \$100,000; and
 - (c) Have a responsible managing individual who meets the requirements of ORS 701.091.

- (4) A residential developer shall:
 - (a) Obtain a surety bond under ORS 701.068 in the amount of \$20,000; and
 - (b) Obtain general liability insurance under ORS 701.073 in an amount not less than \$500,000.
- (5) A residential locksmith services contractor shall:

- (a) Obtain a surety bond under ORS 701.068 in the amount of \$10,000;
- (b) Obtain general liability insurance under ORS 701.073 in an amount of not less than \$100,000; and

(c) Have a responsible managing individual for the business who is certified as a locksmith under ORS 701.485.

(6) A home inspector services contractor shall:

(a) Obtain a surety bond under ORS 701.068 in the amount of \$10,000;

(b) Obtain general liability insurance under ORS 701.073 in an amount of not less than \$100,000; and

(c) Have a responsible managing individual for the business who is certified as a home inspector under ORS 701.350.

(7) A home services contractor shall:

(a) Obtain a surety bond under ORS 701.068 in the amount of \$10,000; and

(b) Obtain general liability insurance under ORS 701.073 in an amount of not less than \$100,000.

(8) A home energy performance score contractor shall:

(a) Obtain a surety bond under ORS 701.068 in the amount of \$10,000;

(b) Obtain general liability insurance under ORS 701.073 in an amount of not less than \$100,000; and

(c) Have an owner or employee that is certified by the board as a home energy assessor.

[2007 c.836 §3; 2013 c.300 §9; 2013 c.383 §11]

Note: The amendments to 701.081 by section 11, chapter 383, Oregon Laws 2013, become operative July 1, 2014. See section 17, chapter 383, Oregon Laws 2013. The text that is operative until July 1, 2014, including amendments by section 9, chapter 300, Oregon Laws 2013, is set forth for the user's convenience.

701.081 Residential contractors; bond; insurance; responsible managing individual. (1) A residential general contractor shall:

(a) Obtain a surety bond under ORS 701.068 in the amount of \$20,000;

(b) Obtain general liability insurance under ORS 701.073 in an amount of not less than \$500,000; and

(c) Have a responsible managing individual who meets the requirements of ORS 701.091.

(2) A residential specialty contractor shall:

(a) Obtain a surety bond under ORS 701.068 in the amount of \$15,000;

(b) Obtain general liability insurance under ORS 701.073 in an amount not less than \$300,000; and

(c) Have a responsible managing individual who meets the requirements of ORS 701.091.

(3) A residential limited contractor shall:

(a) Obtain a surety bond under ORS 701.068 in the amount of \$10,000;

(b) Obtain general liability insurance under ORS 701.073 in an amount not less than \$100,000; and

(c) Have a responsible managing individual who meets the requirements of ORS 701.091.

(4) A residential developer shall:

(a) Obtain a surety bond under ORS 701.068 in the amount of \$20,000; and

(b) Obtain general liability insurance under ORS 701.073 in an amount not less than \$500,000.

(5) A residential locksmith services contractor shall:

(a) Obtain a surety bond under ORS 701.068 in the amount of \$10,000;

(b) Obtain general liability insurance under ORS 701.073 in an amount of not less than \$100,000; and

(c) Have a responsible managing individual for the business who is certified as a locksmith under ORS 701.485.

(6) A home inspector services contractor shall:

(a) Obtain a surety bond under ORS 701.068 in the amount of \$10,000;

(b) Obtain general liability insurance under ORS 701.073 in an amount of not less than \$100,000; and

(c) Have a responsible managing individual for the business who is certified as a home inspector under ORS 701.350.

(7) A home services contractor shall:

(a) Obtain a surety bond under ORS 701.068 in the amount of \$10,000; and

(b) Obtain general liability insurance under ORS 701.073 in an amount of not less than \$100,000.

701.082 Residential contractor continuing education requirements; exemptions. (1)(a) Except as provided in subsections (2) and (6) of this section and 701.083, to qualify for the renewal of a residential contractor license the licensee must complete eight hours of continuing education during the two-year licensing period preceding the renewal.

(b) Three of the hours required under paragraph (a) of this subsection must be education regarding laws, regulations and business practices. The Construction Contractors Board shall develop materials for the education. The education must be offered by the board or by an approved continuing education provider acting under an agreement with the board.

(c) Five of the hours required under paragraph (a) of this subsection must be education from approved providers and be courses the board has approved as continuing education regarding one or more of the following:

(A) Construction business practices.

(B) Marketing.

(C) Customer service.

(D) Accounting.

(E) Business law.

(F) Bidding.

(G) Building codes.

(H) Safety.

(I) Energy efficiency.

(J) Trade specific subjects, such as roofing, excavation or exterior shell construction.

(K) Other subjects that the board determines by rule to be appropriate.

(2)(a) In addition to completing the continuing education required under subsection (1) of this section, to qualify for the renewal of a residential contractor license the licensee must complete an additional eight hours of continuing education during the two-year licensing period preceding the renewal if the residential contractor was not licensed by the board as a

residential contractor during any part of the six-year period immediately preceding the renewal.

(b) Continuing education that is required of a residential contractor under paragraph (a) of this subsection must be offered by an approved continuing education provider or the board. The education may be in any subject described in subsection (1) of this section related to construction or the business of the residential contractor.

(3) A residential contractor applying for the renewal of a license shall certify the number of continuing education hours completed by the contractor during the two-year period immediately preceding the renewal. The board may require verification of certified continuing education hours described in subsection (1)(c) of this section.

(4) Notwithstanding subsections (1) to (3) of this section, the board may adopt rules to adjust the period allowed for the completion of continuing education when the renewing residential contractor holds a lapsed license described under ORS 701.063 (4).

(5) Subsections (1) to (4) of this section do not apply to a residential contractor endorsed only as a residential developer.

(6) The board may exempt residential contractors from continuing education requirements under this section. The board may create exemptions under this subsection by rule or may grant an exemption on a case-by-case basis.

[2013 c.718 §4]

Note: Section 7 (2), chapter 718, Oregon Laws 2013, provides:

Sec. 7 (2) Notwithstanding subsection (1) of this section, sections 2 to 5 of this 2013 Act [701.082, 701.083, 701.265 and 701.267] and the repeal of ORS 701.123, 701.126 and 701.127 by section 6 of this 2013 Act, the board may adopt rules to allow full or partial continuing education credit for continuing education courses or specialized education program coursework completed prior to January 1, 2015, regardless of whether a course or program coursework meets minimum standards adopted by the board under section 2 of this 2013 Act [701.265]. [2013 c.718 §7(2)].

701.083 Residential contractor specialized education programs. The Construction Contractors Board may allow a residential contractor to participate in a specialized education program under ORS 701.120 in lieu of completing continuing education described in ORS 701.082 (1)(c). The board may establish a minimum number of specialized education program hours or courses that the residential contractor must complete during a two-year period to substitute for all or part of the required continuing education hours. If the specialized education program provides training in one- and two-family dwelling construction, the board may approve the specialized education program as a substitute for continuing education only if the program meets the program criteria described in ORS 455.805

(3) and Department of Consumer and Business Services rules adopted under ORS 455.810. [2013 c.718 §5]

701.084 Commercial contractors; bond; insurance; responsible managing individual; key employees. (1) A commercial general contractor level 1 shall:

(a) Obtain a surety bond under ORS 701.068 in the amount of \$75,000;

(b) Obtain general liability insurance under ORS 701.073 in an amount of not less than \$2 million;

(c) Have a responsible managing individual who meets the requirements of ORS 701.091; and

(d) Have one or more key employees with a combined total of at least eight years of experience described in ORS 701.050.

(2) A commercial specialty contractor level 1 shall:

(a) Obtain a surety bond under ORS 701.068 in the amount of \$50,000;

(b) Obtain general liability insurance under ORS 701.073 in an amount not less than \$1 million;

(c) Have a responsible managing individual who meets the requirements of ORS 701.091; and

(d) Have one or more key employees with a combined total of at least eight years of experience described in ORS 701.050.

(3) A commercial general contractor level 2 shall:

(a) Obtain a surety bond under ORS 701.068 in the amount of \$20,000;

(b) Obtain general liability insurance under ORS 701.073 in an amount of not less than \$1 million;

(c) Have a responsible managing individual who meets the requirements of ORS 701.091; and

(d) Have one or more key employees with a combined total of at least four years of experience described in ORS 701.050.

(4) A commercial specialty contractor level 2 shall:

(a) Obtain a surety bond under ORS 701.068 in the amount of \$20,000;

(b) Obtain general liability insurance under ORS 701.073 in an amount not less than \$500,000;

(c) Have a responsible managing individual who meets the requirements of ORS 701.091; and

(d) Have one or more key employees with a combined total of at least four years of experience described in ORS 701.050.

(5) A commercial developer shall:

(a) Obtain a surety bond under ORS 701.068 in the amount of \$20,000; and

(b) Obtain general liability insurance under ORS 701.073 in an amount not less than \$500,000. [2007 c.836 §4; 2008 c.5 §1]

701.085 [1971 c.740 §10; 1975 c.383 §4; 1975 c.721 §3; 1979 c.874 §2; 1981 c.618 §1; 1983 c.616 §10; 1989 c.430 §3; 1989 c.624 §3; 1989 c.928 §10;

1991 c.181 §4; 1995 c.771 §2; 1997 c.301 §2; 1999 c.325 §3; 1999 c.344 §2; 1999 c.402 §21a; 2001 c.157 §1; 2001 c.196 §6; 2001 c.197 §12; 2003 c.675 §74; 2007 c.648 §22; 2007 c.793 §7; 2007 c.836 §61; renumbered 701.068 in 2007]

701.086 Key employee continuing education.

(1) A commercial general contractor level 1 or commercial specialty contractor level 1 shall have a key employee, or combination of key employees, who completes at least 40 hours of continuing education per year.

(2) A commercial general contractor level 2 or commercial specialty contractor level 2 shall have a key employee, or combination of key employees, who completes the equivalent of at least 16 hours of continuing education per year.

(3) Notwithstanding subsection (1) of this section, if a commercial general contractor level 1 or commercial specialty contractor level 1 has no more than four key employees, the contractor shall have a key employee, or combination of key employees, that completes continuing education each year equivalent to the number of key employees multiplied by eight hours.

(4) Continuing education may be provided by post-secondary institutions, trade schools, trade associations, professional societies, private companies, public agencies, business associations and contractor-provided in-house training programs. Continuing education topics may include, but need not be limited to, construction means, methods and business practices.

(5) A contractor applying for renewal shall certify the number of continuing education hours completed during the preceding licensing period.

(6) A contractor subject to this section shall maintain records of the continuing education completed by key employees.

(7) This section does not apply to a commercial contractor:

(a) That is subject to regulation under ORS 479.510 to 479.945 or 480.510 to 480.670 or ORS chapter 693; or

(b) As provided by rule by the Construction Contractors Board. [Formerly 701.124]

701.088 Contractor rehabilitating illegal drug manufacturing site; substitution for bond; fee; rules. (1) As used in this section:

(a) “Illegal drug manufacturing site” has the meaning given that term in ORS 453.858.

(b) “Nonprofit organization” means an organization or group of organizations described in section 501(c)(3) of the Internal Revenue Code that is exempt from income tax under section 501(a) of the Internal Revenue Code.

(2) The Construction Contractors Board shall adopt rules prescribing terms and conditions under which a general or specialty contractor that is a

nonprofit organization engaged in rehabilitating an illegal drug manufacturing site may substitute a letter of credit from a bank authorized to do business in this state, or substitute a cash deposit, for a bond required under ORS 701.068. A letter of credit or cash deposit described in this section substitutes for a bond only for purposes of work the contractor performs on an illegal drug manufacturing site. The letter of credit or cash deposit must be equivalent in amount to the bond that would otherwise be required of the contractor under ORS 701.068.

(3) The board may charge a contractor a fee to cover any expense incurred by the board in allowing the contractor to substitute a letter of credit or cash deposit under this section.

(4) A contractor that supplies a letter of credit or cash deposit under this section is considered to be bonded under ORS 701.068 for purposes of performing rehabilitation work on illegal drug manufacturing sites. A letter of credit or cash deposit that a contractor supplies under this section is considered to be a surety bond issued under ORS 701.068 for purposes of claims involving the contractor’s rehabilitation work on illegal drug manufacturing sites. The issuer of a letter of credit described in this section is considered to be a surety for a bond only for purposes of receiving notification of a determination under ORS 701.068 or 701.146. [2007 c.203 §2; 2011 c.630 §40]

Note: The amendments to 701.088 by section 61, chapter 630, Oregon Laws 2011, become operative July 1, 2017, and apply to complaints filed on or after July 1, 2017. See section 73, chapter 630, Oregon Laws 2011. The text that is operative on and after July 1, 2017, is set forth for the user’s convenience.

701.088. (1) As used in this section:

(a) “Illegal drug manufacturing site” has the meaning given that term in ORS 453.858.

(b) “Nonprofit organization” means an organization or group of organizations described in section 501(c)(3) of the Internal Revenue Code that is exempt from income tax under section 501(a) of the Internal Revenue Code.

(2) The Construction Contractors Board shall adopt rules prescribing terms and conditions under which a general or specialty contractor that is a nonprofit organization engaged in rehabilitating an illegal drug manufacturing site may substitute a letter of credit from a bank authorized to do business in this state, or substitute a cash deposit, for a bond required under ORS 701.068. A letter of credit or cash deposit described in this section substitutes for a bond only for purposes of work the contractor performs on an illegal drug manufacturing site. The letter of credit or cash deposit must be equivalent in amount to the bond that would otherwise be required of the contractor under ORS 701.068.

(3) The board may charge a contractor a fee to cover any expense incurred by the board in allowing the contractor to substitute a letter of credit or cash deposit under this section.

(4) A contractor that supplies a letter of credit or cash deposit under this section is considered to be bonded under ORS 701.068 for purposes of performing rehabilitation work on illegal drug manufacturing sites. A letter of credit or cash

deposit that a contractor supplies under this section is considered to be a surety bond issued under ORS 701.068 for purposes of claims involving the contractor's rehabilitation work on illegal drug manufacturing sites. The issuer of a letter of credit described in this section is considered to be a surety for a bond only for purposes of receiving notice under ORS 701.068 or 701.146.

701.091 Responsible managing individual. (1)

A business licensed under this chapter must at all times have at least one responsible managing individual.

(2) Subsection (1) of this section does not apply to a business licensed with endorsement solely as a residential or commercial developer. [Formerly 701.078]

701.094 Definition for ORS 701.098 and 701.102; rules. (1) As used in ORS 701.098 and 701.102, "owner" means:

(a) A sole proprietor of, partner in or holder of a controlling interest in a business; or

(b) A person defined as an owner by Construction Contractors Board rule.

(2) The board shall adopt rules defining an owner for purposes of subsection (1) of this section. The rules may not define an owner in a manner that includes an investor who has no right to manage a business, including but not limited to:

(a) A person who is solely a minority shareholder in a corporation;

(b) A member of a manager-managed limited liability company; or

(c) A limited partner in a limited partnership who does not participate in the control of the business of the limited partnership. [Formerly 701.077]

701.095 [1971 c.740 §11; 1975 c.721 §4; 1981 c.618 §5; repealed by 1987 c.414 §172]

701.098 Grounds for discipline; rules; suspension or refusal of license without prior hearing; hearing; civil penalty; injunctions; cease and desist orders; restoration or reissuance of license. (1) The Construction Contractors Board may revoke, suspend or refuse to issue or reissue a license and the board may assess a civil penalty as provided in ORS 701.992 if the board determines after notice and opportunity for hearing:

(a) That the licensee or applicant has violated a provision of this chapter.

(b) That the licensee has violated a rule or order of the board.

(c) That the licensee has knowingly assisted an unlicensed person to act in violation of this chapter.

(d) That the licensee has knowingly assisted a licensed contractor to perform work for which the contractor is not properly endorsed.

(e) That a lien was filed on a structure under ORS 87.010 to 87.060 and 87.075 to 87.093 because the licensee or applicant wrongfully failed to perform a

contractual duty to pay money to the person claiming the lien.

(f) That the licensee has knowingly provided false information to the board.

(g) That the licensee has worked without a construction permit where a permit is required and the work resulted in a complaint being filed with the board under ORS 701.139. For purposes of this paragraph, "construction permit" includes a building permit, electrical permit, mechanical permit or plumbing permit.

(h) That the number of licensed contractors working together on the same task on the same job site, where one of the contractors is classed as exempt under ORS 701.035(2)(b), exceeded the following:

(A) Two sole proprietors;

(B) One partnership;

(C) One corporation; or

(D) One limited liability company.

(i) Consistent with the provisions of ORS 670.280, that the licensee or applicant, or an owner or officer of the licensee or applicant has been convicted of one of the following crimes in this state or an equivalent crime in another state:

(A) Murder;

(B) Assault in the first degree;

(C) Kidnapping;

(D) Rape, sodomy or unlawful sexual penetration;

(E) Sexual abuse;

(F) Arson in the first degree;

(G) Robbery in the first degree;

(H) Theft in the first degree; or

(I) Theft by extortion.

(j) That the licensee or applicant has not, within 90 days after the date when payment was received from the public contracting agency, or contractor in the case of a subcontractor, made payment to any person for supplying labor or materials contracted for with a public contract for a public improvement plus the amount of interest due.

(k) That the licensee or applicant has repeatedly reported bad faith or false complaints of nonpayment against contractors or subcontractors.

(L) That the licensee or applicant has engaged in conduct as a contractor that is dishonest or fraudulent and that the board finds injurious to the welfare of the public.

(m) That the contractor has hired employees while licensed as exempt under ORS 701.035.

(n) That the contractor has utilized one or more workers supplied by a worker leasing company while licensed as exempt under ORS 701.035.

(2) The board may revoke, suspend or refuse to issue or reissue a license if the board determines after notice and opportunity for hearing that an applicant or licensee is unfit for licensure based upon information submitted to the board under ORS 701.046, submitted

in a registration of securities described in ORS 701.046(2) or discovered by a board investigation under ORS 701.225.

(3) The board may assess a civil penalty as provided in ORS 701.992 if the board determines after notice and opportunity for hearing that any person has violated ORS 701.021.

(4)(a) The administrator of the board, in accordance with administrative rules adopted by the board and after setting forth specific reasons for the findings, may suspend or refuse to renew a license without hearing in any case where the administrator finds a serious danger to the public welfare, including but not limited to:

(A) Lack of a surety bond required by ORS 701.068;

(B) Lack of liability insurance required by ORS 701.073;

(C) Hiring employees while classed as exempt under ORS 701.035;

(D) Utilizing one or more workers supplied by a worker leasing company while classed as exempt under ORS 701.035;

(E) Conduct as a construction contractor that is dishonest or fraudulent; or

(F) Failure to pay a construction debt.

(b) If the licensee or applicant demands a hearing within 90 days after the date of notice to the licensee or applicant of the suspension or refusal to renew, then a hearing must be granted to the licensee or applicant as soon as practicable after the demand, and the administrator shall issue, pursuant to the hearing as required by ORS chapter 183, an order confirming, altering or revoking the administrator's earlier order. Notwithstanding ORS 670.325, a hearing need not be held where the order of suspension or refusal to renew is accompanied by or is pursuant to a citation for violation that is subject to judicial determination in any court of this state, and the order by its terms will terminate in case of final judgment in favor of the licensee or applicant.

(5)(a) In addition to all other remedies, if the board has reason to believe that a person is engaging in an act, practice or transaction that violates this chapter or a board rule, the board may issue an order directing the person to cease the act or to take corrective action.

(b) The board shall mail a copy of an order issued under this subsection to the person by first class mail with certificate of mailing. The board shall include with the order a notice informing the person of the right to request a hearing concerning the order. The notice shall inform the person that any hearing request must be received by the board no later than 21 days after the date the order was mailed by the board.

(c) If the board receives a timely request for a hearing concerning an order issued under this subsection, the board shall schedule the hearing no later than 30 days after receiving the request. The

board shall mail written notice of the hearing to the person by first class mail with certificate of mailing no later than seven days before the scheduled hearing date.

(d) An order described in this subsection becomes final if the person does not file a timely request for a hearing concerning the order or fails to appear at the requested hearing as scheduled.

(e) The issuance of a board order under this subsection is subject to ORS 183.413 to 183.497.

(6) In addition to all other remedies, if it appears to the board that a person has engaged in, or is engaging in, any act, practice or transaction that violates the provisions of this chapter, the board may direct the Attorney General or the district attorney of the county in which the act, practice or transaction occurs, to apply to the court for an injunction restraining the person from violating the provisions of this chapter. An injunction may not issue for failure to maintain the list provided for in ORS 701.345, unless the court determines that the failure is intentional.

(7) A certified copy of the record of conviction shall be conclusive evidence of a conviction under subsection (1)(i) of this section.

(8) If the board suspends or revokes the license of an individual contractor or contractor business for a violation of subsection (1)(h) of this section, the board may not restore or reissue the license unless the individual contractor or a responsible managing individual for the contractor business has successfully completed the training and testing described in ORS 701.122.

[Formerly 701.135; 2009 c.226 §§4,5; 2009 c.408 §§6,7; 2013 c.300 §11]

Note: See note under 701.035.

701.100 [1989 c.870 §5; 1991 c.67 §185; 1991 c.181 §5; 1995 c.771 §8; 1999 c.344 §3; 1999 c.402 §22; 2001 c.850 §5; 2001 c.924 §24; 2003 c.778 §3; repealed by 2007 c.114 §16]

701.102 Sanction for past unresolved activity; probation. (1) As used in this section, "construction contractor license" means a license issued within the United States to engage in the business of construction contracting.

(2) The Construction Contractors Board may revoke, suspend or refuse to issue a license required under this chapter to a business if:

(a) The business owes a construction debt or has had a construction contractor license revoked or suspended;

(b) An owner, officer or responsible managing individual of the business owes a construction debt or has had a construction contractor license revoked or suspended;

(c) An owner, officer or responsible managing individual of the business was an owner, officer or responsible managing individual of another business at the time the other business incurred a construction debt

that is owing or at the time of an event that resulted in the revocation or suspension of the other business's construction contractor license; or

(d) The board determines that an owner, officer or responsible managing individual of the business is not fit for licensure, based upon information submitted to the board under ORS 701.046, submitted in a registration of securities described in ORS 701.046(2) or discovered by a board investigation under ORS 701.225.

(3) The board may place a contractor on probation if a total of three or more complaints are filed with the board under ORS 701.139 within a 12-month period against the contractor or a former licensed construction contracting business in which the contractor held at least a 10 percent ownership interest, measured as determined by board rule. A contractor may not be placed on probation unless the board determines after investigation that it is likely that the contractor has caused harm to the complainants. The board may require a contractor that is placed on probation to develop a corrective action plan, to attend specific classes and to resolve outstanding complaints. The board may require a contractor that is placed on probation to take training and pass a test, both as described in ORS 701.122. The board shall take action to terminate the contractor's license if the contractor is unwilling or unable to comply with the conditions of probation. [Formerly 701.137; 1999 c.344 §8; 1999 c.402 §23a; 2001 c.924 §27; 2005 c.432 §10; 2007 c.648 §27; 2007 c.793 §8; 2009 c.226 §6]

701.103 [2001 c.850 §2; 2007 c.793 §9; renumbered 701.112 in 2007]

701.105 [1971 c.740 §12; 1975 c.383 §5; 1979 c.312 §3; 1983 c.616 §11; 1989 c.624 §4; 1989 c.928 §12; 1991 c.181 §6; 1999 c.325 §4; 1999 c.402 §24a; 2001 c.196 §7; 2003 c.675 §75; 2003 c.766 §§1,2; 2007 c.648 §§19,20; 2007 c.836 §§23,24; renumbered 701.073 in 2007]

701.106 Sanction for violation or failure to comply with certain laws. (1) A contractor that violates or fails to comply with any of the following provisions or any rules adopted under those provisions is subject to the suspension of, revocation of, refusal to issue or refusal to renew a license, imposition of a civil penalty under ORS 701.992, or a combination of those sanctions:

- (a) ORS 87.007(2).
- (b) ORS chapter 316 or 317.
- (c) ORS 446.225 to 446.285.
- (d) ORS 446.395 to 446.420.
- (e) ORS 447.010 to 447.156.
- (f) ORS chapter 455.
- (g) ORS 460.005 to 460.175.
- (h) ORS 479.510 to 479.945.
- (i) ORS 480.510 to 480.670.

- (j) ORS chapter 656.
- (k) ORS chapter 657.
- (L) ORS 670.600.
- (m) ORS 671.510 to 671.760.
- (n) ORS chapter 693.

(2) The imposition of a sanction under this section is subject to ORS 183.413 to 183.497. [2007 c.114 §14]

701.107 Sanction for assisting evasion of obligations. In addition to any other authority granted to the Construction Contractors Board, the board may revoke, suspend or refuse to issue a license to a person if the board finds that the person has engaged in dishonesty by supply any governmental entity or person with false information regarding the activities of a construction contracting business, knowing, or having reason to know, that the false information will result in any person evading all or part of an obligation with regard to:

- (1) Any federal, state or local income tax laws;
- (2) Social security contributions;
- (3) Unemployment taxes;
- (4) Workers' compensation premiums;
- (5) Wage and hour laws;
- (6) Federal or state occupational safety and health laws;
- (7) Child support;
- (8) Alimony;
- (9) A judgment;
- (10) A garnishment; or
- (11) Other laws or debts identified by the board by rule. [2013 c.251 §2]

701.108 Failure to comply with prevailing wage rate or other wage and hour standards for energy efficiency and sustainable technology projects. (1) If a project financed under the energy efficiency and sustainable technology loan program is to be constructed for a commercial structure, the State Department of Energy shall require that the certified contractor pay the employees used for the project at the prevailing wage rate determined by the Commissioner of the Bureau of Labor and Industries for each trade or occupation employed. If a project is not to be constructed for a commercial structure, but the department is uncertain whether prevailing wage requirements apply to the project, the department shall consult with the Bureau of Labor and Industries. As used in this subsection, "commercial structure" means a structure that is not a residential structure.

(2) If the Construction Contractors Board receives a complaint that a contractor certified under ORS 701.119 has failed to comply with a wage and hours standard for work on a project financed under the energy efficiency and sustainable technology loan program, the board shall forward the complaint to the Bureau of Labor and Industries. If the bureau determines that the contractor has violated a wage and

hours standard for work on a project financed under the loan program, the bureau shall notify the board of the determination. [2009 c.753 §52]

701.109 Reporting of final judgments. (1) As used in this section, “judgment” means:

- (a) A judgment issued in a court action; or
- (b) A court order that confirms an arbitration award.

(2) A contractor shall send the Construction Contractors Board a copy of a final judgment entered by a circuit court of this state, or by an equivalent court in another state, if the judgment orders the contractor to pay damages that arise from a breach of contract or from negligent or improper work and that relate to the construction or proposed construction of a residential structure. The contractor shall cause the copy of the final judgment to be delivered to the board no later than 45 days after the final judgment is recorded.

(3) Notwithstanding subsection (2) of this section, a contractor is not required to send the board a copy of a final judgment if:

(a) The contractor paid the damages and other amounts payable by the contractor under the judgment no later than 30 days after recording of the judgment; or

(b) The contractor is appealing the judgment and has filed any undertaking on appeal required by ORS 19.300.

(4) In determining whether to impose a disciplinary sanction under this chapter, the board shall give due consideration to any past or current attempts by the contractor to make payments toward satisfaction of a judgment. [2007 c.540 §2]

701.112 Continuation of board authority when change occurs in license status. A lapse, surrender, suspension or other change in license status does not affect any authority otherwise granted the Construction Contractors Board to proceed with an investigation, conduct a disciplinary hearing or take disciplinary action against a person for a violation of this chapter or rules of the board, or to determine a timely complaint described in ORS 701.140. [Formerly 701.103]

701.114 Change in responsible managing individual or persons exercising control of contractor. (1) Except as provided in this subsection, a contractor licensed under this chapter shall immediately notify the Construction Contractors Board of any change in the identity, name or address of a person who holds a position with the contractor that is described in ORS 701.046(1)(h), (i) or (j) or of a responsible managing individual for the contractor as defined in ORS 701.091. A contractor described in ORS 701.046(2) is not required to report a change in the identity, name or address of a person described in ORS 701.046(1)(h), (i) or (j).

(2) Except as provided in this subsection, if a partner or joint venturer departs from a contractor that is a partnership or joint venture, the contractor must obtain a new license before continuing to conduct activities that require a license under this chapter. A contractor described in ORS 701.046(2) that is a partnership or joint venture is not required to obtain a new license upon departure of a partner or joint venturer. [2007 c.114 §7; 2007 c.478 §1a; 2009 c.226 §7; 2013 c.300 §2]

701.115 [1971 c.740 §13; 1975 c.721 §5; 1983 c.616 §12; 1989 c.624 §6; 1989 c.928 §13; 1993 c.470 §2; 1997 c.818 §2; 1999 c.402 §25; 2001 c.196 §8; 2003 c.675 §76; 2005 c.432 §11; 2007 c.836 §25; renumbered 701.063 in 2007]

701.117 Contractor to notify board of address change; effect of mail to last-known address. A contractor shall notify the Construction Contractors Board of any change of address while licensed and for one year following the date the contractor’s license expires or otherwise becomes inactive. The contractor shall so notify the board within 10 days of the date upon which the change of address occurs. Initial notice of a contested case directed by the board to the last-known address of record shall be considered delivered when deposited in the United States mail and sent registered or certified or post office receipt secured. Any other communication directed by the board to the last-known address of record shall be considered delivered when deposited in the United States mail, regular mail.

[Formerly 701.080; 2011 c.630 §41]

Note: The amendments to 701.117 by section 62, chapter 630, Oregon Laws 2011, become operative July 1, 2017, and apply to complaints filed on or after July 1, 2017. See section 73, chapter 630, Oregon Laws 2011. The text that is operative on and after July 1, 2017, is set forth for the user’s convenience.

701.117. A contractor shall notify the Construction Contractors Board of any change of address while licensed and for one year following the date the contractor’s license expires or otherwise becomes inactive. The contractor shall so notify the board within 10 days of the date upon which the change of address occurs. Initial notice of a contested case or arbitration directed by the board to the last-known address of record shall be considered delivered when deposited in the United States mail and sent registered or certified or post office receipt secured. Any other communication directed by the board to the last-known address of record shall be considered delivered when deposited in the United States mail, regular mail.

701.119 Certification to participate in small scale local energy project program. (1) A licensed contractor that possesses an appropriate endorsement may apply to the Construction Contractors Board for certification to participate as a primary contractor, as defined in ORS 470.050, in the construction of small scale local energy projects financed through the energy

efficiency and sustainable technology loan program. The board may issue the certification to a contractor that meets the standards established by the State Department of Energy under ORS 470.560. The board may charge a reasonable fee for certifying a contractor.

(2) If the board receives information that the contractor has failed to comply with the certification standards established by the department or has violated a wage and hours standard described in ORS 701.108, the board shall hold a hearing and may revoke the certification.

(3) The board shall give the department notice of the issuance or revocation of a certification under this section.

[2009 c.753 §51, 2013 c.8 §4]

701.120 Specialized education programs; standards; specialized education notation in credentials; removal of notation; rules for use of credentials. (1) As used in this section, a “specialized education program” means one or more of the following:

(a) A structured program that is approved or certified by an appropriate state or federal agency, or by an organization recognized by the Construction Contractors Board as representing construction contractors, and is designed to educate contractors to deal with one or more specific consumer health or safety issues.

(b) A board-approved program from an accredited college or university that grants a two-year or four-year degree upon successful completion of the program.

(c) An apprenticeship program that is approved by the board.

(2) The board may identify general contractor and specialty contractor activities that require or substantially benefit from specialized education and establish standards for programs providing specialized education in those activities. The board may recognize and adopt the program standards established by another state agency regulating the same or related activities.

(3) Upon receipt of a request from a contractor who has successfully completed a specialized education program meeting board standards, the board shall note the specialized education on the contractor’s licensing record as part of the contractor’s professional credentials. The board may remove a professional credential from the contractor’s licensing record if the contractor fails to complete continuing education or other requirements imposed by the entity issuing the credential for maintaining competency in the activity, if the requirements were clearly stated in writing and provided to the contractor by the entity.

(4) The board shall include professional credentials described in this section in releases of contractor licensing information by the board. The board shall adopt rules to permit the inclusion of

professional credentials described in this section in advertising or other information holding forth to the public the qualifications of a contractor. [2001 c.428 §1]

Note: 701.120 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 701 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

701.122 Training requirements for individuals and businesses; testing of business license applicant; exception; rules.

(1) The Construction Contractors Board, by rule, shall impose training requirements for individuals and businesses seeking to be licensed under this chapter. The training required by the board must relate to business practices and laws affecting construction contractors. The board shall adopt standards for programs that provide training that meets the requirements of this subsection.

(2) In establishing training requirements under subsection (1) of this section, the board shall take into consideration the availability of training programs within the state and shall encourage training providers to use the most up-to-date technology. The board shall recognize and grant credit for training provided by private organizations if the training program meets the standards established by the board under subsection (1) of this section. The board periodically shall review the qualifications of private organizations and instructors to determine compliance with the program standards. The board shall develop and make available to the public a list of public and private programs that provide training that meets the training requirements established by the board under subsection (1) of this section.

(3) The board, by rule, shall approve a test for applicants for licensing under ORS 701.046. The test shall measure the applicant’s knowledge regarding business practices and laws that are the subject of the training required under subsection (1) of this section.

(4) Subsections (1) and (3) of this section do not apply to an applicant for licensing with endorsement solely as a residential or commercial developer. [Formerly 701.072]

701.123 [2011 c.170 §6; repealed by 2013 c. 718 §6]

701.124 [2007 c.836 §9; renumbered 701.086 in 2013]

701.125 [1971 c.740 §14; 1973 c.832 §57; 1975 c.721 §6; 1983 c.180 §3; 1999 c.402 §26; 2005 c.432 §12; renumbered 701.056 in 2007]

701.126 [2007 c.648 §2; repealed by 2013 c. 718 §6]

701.127 [2011 c.170 §5; repealed by 2013 c.718 §6]

701.128 Suit for damages for misrepresentation. If any person suffered costs or damages as a result of an individual providing a false or invalid Construction Contractors Board number or otherwise misleading a person with respect to licensure with the board, that person may bring suit in a court of competent jurisdiction to recover damages. The court may award reasonable attorney fees to the prevailing party in an action under this section. [Formerly 701.067]

Note: 701.128 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 701 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

701.130 [1983 c.180 §2; 1989 c.624 §5; 1989 c.928 §14; 1991 c.703 §38; 1999 c.402 §27; 2005 c.432 §13; renumbered 701.238 in 2007]

COMPLAINTS

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.

[Formerly 701.065; 2009 c.226 §§8,9; 2013 c.251 §5]

701.133 Notice of intent to file complaint; fees; rules.

(1) Unless otherwise provided by the Construction Contractors Board by rule, before filing a complaint under ORS 701.139, a person must send notice to the contractor that the person intends to file the complaint. The person must send the notice at least 30 days before filing the complaint. The notice must be mailed by certified mail to the last known address of the contractor as shown in board records. The board by rule may:

(a) Specify the manner in which the person may show compliance with this subsection at the time of filing the complaint.

(b) Provide that all or part of the requirements for sending a notice under this subsection may be waived if the contractor, by other means, has actual notice of the dispute with the person filing the complaint.

(2) If the notice described in subsection (1) of this section is mailed to the contractor fewer than 45 days before expiration of the time limitation under ORS 701.143 for the board to receive the complaint, the time limitation for the board to receive the complaint does not expire until 60 days after the notice is mailed.

(3) The board by rule may impose a processing fee for complaints filed under ORS 701.139. The fee amount may not exceed \$100. The board may impose different processing fees for complaints processed under ORS 701.145 than for complaints processed under ORS 701.146.

(4) If the board adopts rules under subsection (3) of this section, the rules:

(a) Except as provided in paragraphs (b) and (c) of this subsection, must provide that a prevailing complainant recover processing fees.

(b) Must provide that the board may waive or defer all or part of the processing fee upon application by the person filing the complaint that shows the person is unable to pay all or part of the fee. The application must be made under oath and notarized. The application must show the average monthly income and expenses of the complainant, assets and liabilities of the complainant and any other information required by board rule.

(c) May provide for the processing fee to be waived for all complaints that are based on the furnishing of labor by a complainant to a contractor. The board may provide for processing fee waiver under this paragraph only if, in the opinion of the board, a majority of complainants who file complaints based on the furnishing of labor to contractors are eligible for fee waivers as described in paragraph (b) of this subsection.

[Formerly 701.147; 2010 c.107 §§49, 50; 2011 c.595 §137; 2011 c.630 §§42, 43]

Note: The amendments 701.133 by section 63, chapter 630, Oregon Laws 2011, become operative July 1, 2017, and apply to complaints filed on or after July 1, 2017. See section 73, chapter 630, Oregon Laws 2011. The text that is operative on and after July 1, 2017, is set forth for the user's convenience.

701.133. (1) Unless otherwise provided by the Construction Contractors Board by rule, before filing a complaint under ORS 701.139, a person must send notice to the contractor that the person intends to file the complaint. The person must send the notice at least 30 days before filing the complaint. The notice must be mailed by certified mail to the last known address of the contractor as shown in board records. The board by rule may:

(a) Specify the manner in which the person may show compliance with this subsection at the time of filing the complaint.

(b) Provide that all or part of the requirements for sending a notice under this subsection may be waived if the contractor, by other means, has actual notice of the dispute with the person filing the complaint.

(2) If the notice described in subsection (1) of this section is mailed to the contractor fewer than 45 days before expiration of the time limitation under ORS 701.143 for the board to receive the complaint, the time limitation for the board to receive the complaint does not expire until 60 days after the notice is mailed.

(3) The board by rule may impose a processing fee for complaints filed under ORS 701.139. The fee amount may not exceed \$100. The board may impose different processing fees for complaints processed under ORS 701.145 than for complaints processed under ORS 701.146.

(4) If the board adopts rules under subsection (3) of this section, the rules:

(a) Except as provided in paragraphs (b) and (c) of this subsection, must provide that a prevailing complainant recover processing fees as damages in the final order of the board.

(b) Must provide that the board may waive or defer all or part of the processing fee upon application by the person filing the complaint that shows the person is unable to pay all or part of the fee. The application must be made under oath and notarized. The application must show the average monthly income and expenses of the complainant, assets and liabilities of the complainant and any other information required by board rule.

(c) May provide for the processing fee to be waived for all complaints that are based on the furnishing of labor by a complainant to a contractor. The board may provide for processing fee waiver under this paragraph only if, in the opinion of the board, a majority of complainants who file complaints based on the furnishing of labor to contractors are eligible for fee waivers as described in paragraph (b) of this subsection.

701.135 [1971 c.740 §15; 1975 c.721 §7; 1979 c.874 §3; 1981 c.618 §6; 1987 c.414 §40b; 1989 c.430 §7; 1989 c.744 §4; 1989 c.870 §§11,11a; 1989 c.928 §15; 1991 c.67 §186; 1991 c.181 §7; 1993 c.446 §1; 1995 c.216 §2; 1999 c.344 §4; 1999 c.402 §28c; 1999 c.689 §10; 2001 c.160 §3; 2001 c.196 §9; 2001 c.850 §6; 2005 c.432 §14; 2007 c.114 §10; 2007 c.648 §28b; 2007 c.793 §10; 2007 c.836 §63; renumbered 701.098 in 2007]

701.137 [Subsection (2) enacted as 1989 c.744 §2; subsection (1) enacted as 1989 c.928 §9; 1991 c.181 §8; 1995 c.771 §3; renumbered 701.102 in 1997]

701.138 [1991 c.598 §§1,2,5; 1999 c.402 §29; 1999 c.551 §15; 2007 c.114 §11; 2007 c.836 §27; renumbered 701.348 in 2007]

701.139 Board authority over disputes; resolution processes. The Construction Contractors Board may determine the validity of a complaint described in ORS 701.140 filed against a licensed contractor. A person must file the complaint within the

applicable time limitation described in ORS 701.143. The complaint must be filed and resolved as follows:

(1) A complaint against a residential contractor that is not also endorsed as a commercial contractor involving work on a residential or small commercial structure must be resolved as provided in ORS 701.145.

(2) A complaint against a commercial contractor that is not also endorsed as a residential contractor involving work on a small commercial or large commercial structure or an appurtenance to a large commercial structure must be resolved as provided in ORS 701.146.

(3) A complaint against a contractor that is endorsed as both a residential contractor and a commercial contractor:

(a) Involving work on a residential structure must be resolved as provided under ORS 701.145.

(b) Involving work on a small commercial structure may be resolved as provided in ORS 701.145 or 701.146, at the complainant's election.

(c) Involving work on a large commercial structure or an appurtenance to a large commercial structure must be resolved as provided in ORS 701.146.

[2001 c.197 §3; 2001 c.414 §5a; 2007 c.793 §11; 2007 c.836 §64; 2009 c.225 §2; 2011 c.170 §2; 2011 c.630 §44]

Note: The amendments 701.139 by section 64, chapter 630, Oregon Laws 2011, become operative July 1, 2017, and apply to complaints filed on or after July 1, 2017. See section 73, chapter 630, Oregon Laws 2011. The text that is operative on and after July 1, 2017, is set forth for the user's convenience.

701.139. The Construction Contractors Board may determine the validity of a complaint described in ORS 701.140 filed against a licensed contractor. A person must file the complaint within the applicable time limitation described in ORS 701.143. The complaint must be filed and resolved as follows:

(1) A complaint against a residential contractor that is not also endorsed as a commercial contractor involving work on a residential or small commercial structure must be resolved as provided in ORS 701.145.

(2) A complaint against a commercial contractor that is not also endorsed as a residential contractor involving work on a small commercial or large commercial structure or an appurtenance to a large commercial structure must be resolved as provided in ORS 701.146.

(3) A complaint against a contractor that is endorsed as both a residential contractor and a commercial contractor:

(a) Involving work on a residential structure must be resolved as provided under ORS 701.145.

(b) Involving work on a small commercial structure may be resolved as provided in ORS 701.145 or 701.146, at the complainant's election.

(c) Involving work on a large commercial structure or an appurtenance to a large commercial structure must be resolved as provided in ORS 701.146.

(4) Notwithstanding subsections (1) to (3) of this section and except as provided in ORS 701.144, with prior

agreement of the complainant and the licensed contractor, a complaint may be resolved by the board through binding arbitration under ORS 701.144.

701.140 Types of allowable complaints; restriction on processing complaint for recoupment of lien. A complaint under ORS 701.139 must arise from the performance, or a contract for the performance, of work that requires a contractor license issued by the Construction Contractors Board. The complaint must be of one or more of the following types:

(1) A complaint against a contractor by the owner of a structure or other real property for the following:

- (a) Negligent work.
- (b) Improper work.
- (c) Breach of contract.

(2) A complaint against a contractor by the owner of a structure or other real property to discharge, or to recoup funds expended in discharging, a lien established under ORS 87.010 to 87.060 and 87.075 to 87.093 under circumstances described under this subsection. The board shall process complaints described in this subsection under ORS 701.145 only if:

(a) The owner paid the contractor for that contractor's work subject to this chapter;

(b) A lien is filed against the property of the owner under ORS 87.010 to 87.060 and 87.075 to 87.093 because the contractor failed to pay the person claiming the lien for that person's contribution toward completion of the improvement; and

(c) The complaint is described in ORS 701.139(1) or (3)(a) or (b).

(3) A complaint against a licensed subcontractor by a licensed contractor for the following:

- (a) Negligent work;
- (b) Improper work; or
- (c) Breach of contract.

(4) A complaint by a person furnishing labor to a contractor or owed employee benefits by a contractor.

(5) A complaint, as limited by rule of the board, by a person furnishing material or renting or supplying equipment to a contractor. The minimum limit set by the board may not exceed \$150.

(6) A complaint by a subcontractor against a contractor for unpaid labor or materials arising out of a contract. [1981 c.618 §4; 1983 c.616 §13; 1989 c.167 §1; 1989 c.928 §16; 1991 c.181 §9; 1991 c.717 §1; 1997 c.301 §3; 1999 c.402 §30; 2001 c.197 §13; 2007 c.793 §12; 2007 c.836 §65; 2011 c.630 §45]

Note: The amendments to 701.140 by section 65, chapter 630, Oregon Laws 2011, become operative July 1, 2017, and apply to complaints filed on or after July 1, 2017. See section 73, chapter 630, Oregon Laws 2011. The text that is operative on and after July 1, 2017, is set forth for the user's convenience.

701.140. A complaint under ORS 701.139 must arise from the performance, or a contract for the performance, of

work that requires a contractor license issued by the Construction Contractors Board. The complaint must be of one or more of the following types:

(1) A complaint against a contractor by the owner of a structure or other real property for the following:

- (a) Negligent work.
- (b) Improper work.
- (c) Breach of contract.

(2) A complaint against a contractor by the owner of a structure or other real property to discharge, or to recoup funds expended in discharging, a lien established under ORS 87.010 to 87.060 and 87.075 to 87.093 under circumstances described under this subsection. If the complaint is processed under ORS 701.145, the Construction Contractors Board may reduce the amount of the complaint by any amount the complainant owes the contractor. The board shall process complaints described in this subsection under ORS 701.145 only if:

(a) The owner paid the contractor for that contractor's work subject to this chapter;

(b) A lien is filed against the property of the owner under ORS 87.010 to 87.060 and 87.075 to 87.093 because the contractor failed to pay the person claiming the lien for that person's contribution toward completion of the improvement; and

(c) The complaint is described in ORS 701.139 (1) or (3)(a) or (b).

(3) A complaint against a licensed subcontractor by a licensed contractor for the following:

- (a) Negligent work;
- (b) Improper work; or
- (c) Breach of contract.

(4) A complaint by a person furnishing labor to a contractor or owed employee benefits by a contractor.

(5) A complaint, as limited by rule of the board, by a person furnishing material or renting or supplying equipment to a contractor. The minimum limit set by the board may not exceed \$150.

(6) A complaint by a subcontractor against a contractor for unpaid labor or materials arising out of a contract.

701.143 Requirement for timely filing of complaints; timelines. The Construction Contractors Board may not process a complaint against a licensed contractor, including a complaint based upon a court judgment or an arbitration award, unless the complaint is filed with the board in a timely manner as follows:

(1) Except as otherwise provided in this section, if the owner of a new structure files the complaint, the board must receive the complaint no later than the earlier of:

(a) One year after the date the structure was first occupied; or

(b) Two years after substantial completion of the structure by the contractor filed against.

(2) Except as otherwise provided in this section, if the owner of an existing structure files the complaint, the board must receive the complaint no later than one year after the date the work was substantially completed by the contractor filed against.

(3) Regardless of whether the complaint involves a new or an existing structure, if the owner of the

structure files the complaint and the licensed contractor failed to begin the work, the board must receive the complaint no later than one year after the date the parties entered into the contract.

(4) Regardless of whether the complaint involves a new or an existing structure, if the owner of the structure files the complaint and the licensed contractor failed to substantially complete the work, the board must receive the complaint no later than one year after the date the contractor ceased to work on the structure.

(5) Except as otherwise provided in this section, if a licensed contractor files the complaint against the licensed contractor performing work as a subcontractor on a new structure, the board must receive the complaint no later than the earlier of:

(a) Fourteen months after the date the structure was first occupied; or

(b) Two years after substantial completion of the structure.

(6) Except as otherwise provided in this section, if a licensed contractor files the complaint against the licensed contractor performing work as a subcontractor on an existing structure, the board must receive the complaint no later than 14 months after the date the work on the structure was substantially completed.

(7) If a licensed contractor files the complaint against the licensed contractor performing work as a subcontractor on a structure and the subcontractor failed to substantially complete the work, the board must receive the complaint no later than 14 months after the date the subcontractor ceased to work on the structure.

(8) If the licensed contractor's employee, subcontractor or material or equipment supplier files the complaint, the board must receive the complaint no later than one year after the date the contractor incurred the indebtedness. [2001 c.197 §2 and 2001 c.414 §2; 2007 c.793 §13]

701.144 Use of binding arbitration and contested case hearings; rules.

(1) Subject to subsection (4) of this section, if the resolution of a complaint under ORS 701.145 requires a hearing, the Construction Contractors Board may require that the hearing be conducted as a binding arbitration under rules adopted by the board under subsection (3) of this section. This subsection does not authorize the board to require binding arbitration of a complaint that is subject to ORS 701.146.

(2) The board may use mediation or arbitration to resolve a construction dispute between any parties who agree to follow the rules of the board, other than a dispute involving work on a large commercial structure.

(3) Except as provided in this subsection, rules adopted by the board to regulate arbitration under subsections (1) and (2) of this section must substantially conform with the provisions of ORS

36.600, 36.610 to 36.630, 36.635 (2), 36.640, 36.645 (2), 36.650 to 36.680, 36.685 (1) and 36.690 to 36.740. The rules may:

(a) Require that a hearing under ORS 183.413 to 183.470 be conducted for issues for which a petition could be filed under ORS 36.615, 36.620, 36.625 and 36.640;

(b) Limit orders and awards made by the arbitrator as necessary to comply with this chapter;

(c) Require that a request that an arbitrator modify or correct an award under ORS 36.690 be submitted in a form specified by the rule;

(d) Require that a petition under ORS 36.705 (2) or 36.710 (1) be filed in a shorter period of time than provided by ORS 36.705 and 36.710; and

(e) Include any other provision necessary to conform the arbitration to this chapter.

(4) A party to a complaint that is subject to a board order of binding arbitration under subsection (1) of this section may avoid the arbitration if the party requests to have the complaint resolved through a contested case hearing or files a court action. A party making a hearing request or filing a court action under this subsection is subject to the following provisions:

(a) If the party requests to have a complaint resolved through a contested case hearing, the party must, within the time specified in paragraph (c) of this subsection, deliver the request in writing to the board and to all parties entitled by board rule to receive a copy of the request.

(b) If the party files a court action, the party must, within the time specified in paragraph (c) of this subsection, deliver a copy of the party's court pleading to the board and to all persons entitled by board rule to receive a copy of the pleading. If the party filing the court action is the complainant to the board, the complainant must plead all facts and issues of the board complaint in the court action. If the court action is filed by the contractor against whom a board complaint is alleged, the court action must be an action for damages, an action for declaratory judgment or another action that allows the board complainant to file a response pleading all facts and issues of the board complaint. The board complainant has the burden of proving the elements of the board complaint in a court action described in this paragraph.

(c) A party that is subject to paragraph (a) or (b) of this subsection must deliver the contested case hearing request or the copy of the party's court pleading to the board as described in paragraphs (a) and (b) of this subsection no later than the 30th day after the board sends notice that an arbitration hearing has been scheduled. Failure to timely deliver a request or court pleading under this paragraph constitutes consent to the binding arbitration.

(d) If a party makes a timely request under paragraph (a) of this subsection for a contested case hearing and another party timely files a court action

and complies with paragraph (b) of this subsection, the filing of the court action supersedes the request for a contested case hearing.

(e) A party may not withdraw a request made in compliance with paragraph (a) of this subsection unless all parties agree to the withdrawal.

(f) The board may adopt a rule that a contested case hearing for a complaint seeking less than \$1,000 is not available under this subsection.

(g) The provisions of paragraph (b) of this subsection are in addition to any other requirements imposed by law regarding the filing of a court action.

(5) The board may refuse to accept a dispute for mediation or arbitration under subsection (1) or (2) of this section if the board determines that the nature or complexity of the dispute is such that a court or other forum is more appropriate for resolution of the dispute. [2011 c.630 §58]

Note: 701.144 becomes operative July 1, 2017, and applies to complaints filed on or after July 1, 2017. See section 73, chapter 630, Oregon Laws 2011.

701.145 Resolution of complaints involving work on residential structures or certain small commercial structures. For a complaint described in ORS 701.139(1) or (3)(a) or a complaint under ORS 701.139(3)(b) that a complainant elects to have resolved under this section:

(1) The complainant must file the complaint with the Construction Contractors Board in a form prescribed by the board.

(2) The board may suspend processing of the complaint if:

(a) The same facts and issues involved in the complaint have been submitted to a court of competent jurisdiction for determination or have been submitted to any other entity authorized by law or the parties to effect a resolution or settlement; or

(b) The board determines that the nature or complexity of the dispute described in the complaint is such that a court is the appropriate forum for the adjudication of the dispute.

(3) The board may dismiss or close the complaint as established by rule of the board if any of the following conditions apply:

(a) The complainant does not respond to a board request and the request is necessary to the board's investigation of the complaint.

(b) The complainant does not allow the board to conduct one or more on-site meetings to mediate or investigate the complaint.

(c) The complainant does not permit the contractor against whom the complaint is filed to be present at an on-site investigation made by the board.

(d) The amount in controversy is less than an amount adopted by the board and not more than \$250.

(4) Upon acceptance of the complaint, the board shall give notice to the contractor against whom the complaint is made and shall initiate proceedings to

determine board jurisdiction over the complaint. The board shall attempt to conduct one or more meetings on-site or by telephone to mediate a dispute. During mediation of a dispute, the board may recommend to the contractor such action as the board considers appropriate to compensate the complainant. If the contractor performs accordingly, the board shall give that fact due consideration in any subsequent disciplinary proceeding brought by the board.

(5) If the parties do not resolve or settle the complaint, except as provided in subsection (6) of this section, the complainant may recover payment from the bond of the contractor only by obtaining:

(a) A final judgment against the contractor issued by a court of competent jurisdiction; or

(b) An arbitration award against the contractor that a court has reduced to a final judgment.

(6) If the complaint is filed under ORS 701.140 (4), the complainant may recover payment from the bond of the contractor as provided in subsection (5)(a) of this section or by obtaining a final order issued by the Bureau of Labor and Industries that states an amount of unpaid wages that the licensed contractor owes under ORS 652.140 or 653.010 to 653.261.

(7) For purposes of subsections (5) and (6) of this section, "final" means that the judgment or order has become final by operation of law or on appeal.

(8) The board shall send the surety on the contractor bond required under ORS 701.068 a copy of the final judgment or bureau final order, and a copy of a determination issued by the board that the surety must pay the amount stated by the board. A determination issued by the board may not include payment of any attorney fees awarded in the final judgment or bureau final order. The determination issued by the board is an order in other than a contested case proceeding. The determination order is not recordable under ORS 701.153 (1) and (2) to create a lien.

[1971 c.740 §16; 1979 c.874 §4; 1983 c.616 §14; 1989 c.167 §2; 1989 c.928 §17; 1991 c.181 §10; 1991 c.717 §2; 1993 c.470 §3; 1993 c.471 §1; 1995 c.771 §4; 1997 c.301 §4; 1999 c.331 §1; 1999 c.344 §5; 1999 c.402 §31; 1999 c.849 §§172,173; 2001 c.197 §§14,15; 2001 c.414 §§9a,10a; 2007 c.288 §16; 2007 c.793 §14; 2007 c.836 §66; 2011 c.630, §46]

Note: The amendments to 701.145 by section 66, chapter 630, Oregon Laws 2011, become operative July 1, 2017, and apply to complaints filed on or after July 1, 2017. See section 73, chapter 630, Oregon Laws 2011. The text that is operative on and after July 1, 2017, is set forth for the user's convenience.

701.145. For a complaint described in ORS 701.139 (1) or (3)(a) or a complaint under ORS 701.139 (3)(b) that a complainant elects to have resolved under this section:

(1) The complainant must file the complaint with the Construction Contractors Board in a form prescribed by the board.

(2) The board may suspend processing of the complaint if:

(a) The same facts and issues involved in the complaint have been submitted to a court of competent jurisdiction for determination or have been submitted to any other entity authorized by law or the parties to effect a resolution or settlement; or

(b) The board determines that the nature or complexity of the dispute described in the complaint is such that a court is the appropriate forum for the adjudication of the dispute.

(3) The board may dismiss or close the complaint as established by rule of the board if any of the following conditions apply:

(a) The complainant does not respond to a board request and the request is necessary to the board's investigation of the complaint.

(b) The complainant does not allow the board to conduct one or more on-site meetings to mediate or investigate the complaint.

(c) The complainant does not permit the contractor against whom the complaint is filed to be present at an on-site investigation made by the board.

(d) The board determines that the contractor against whom the complaint is filed is capable of complying with recommendations made by the board relative to the complaint, but the complainant does not permit the contractor to comply with the recommendations. The board may refuse to accept or further process a complaint under this paragraph only if the contractor was licensed at the time the work was first performed and is licensed at the time the board makes its recommendations.

(e) The amount in controversy is less than an amount adopted by the board and not more than \$250.

(4) Upon acceptance of the complaint, the board shall give notice to the contractor against whom the complaint is made and shall initiate proceedings to determine the validity of the complaint. If, after investigation, the board determines that a violation of this chapter or of any rule adopted thereunder has occurred, or damage has been caused by the contractor, the board may recommend to the contractor such action as the board considers appropriate to compensate the complainant. If the contractor performs accordingly, the board shall give that fact due consideration in any subsequent disciplinary proceeding brought by the board. The board may conduct one or more on-site meetings to mediate or investigate the complaint.

(5) Subject to ORS 701.144, if the board is unable to resolve the complaint under subsection (4) of this section, the board may issue a contested case notice under ORS 183.415 and:

(a) Issue a proposed default order under ORS 183.417 to become effective only if a party does not request a contested case hearing; or

(b) Refer the matter for hearing.

(6) The board shall send a copy of the notice and any proposed order described in subsection (5) of this section to the surety on the contractor bond required by ORS 701.068.

701.146 Resolution of complaints involving work on large commercial structures or certain small commercial structures. For a complaint described in ORS 701.139(2) or (3)(c) or a complaint under ORS 701.139(3)(b) that a complainant elects to have resolved under this section:

(1) The person seeking to file the complaint with the Construction Contractors Board must:

(a) Bring an action on the dispute against the licensed contractor in a court of competent jurisdiction; or

(b) Initiate a proceeding to resolve the dispute through binding arbitration substantially in conformance with ORS 36.600 to 36.740.

(2) The complainant must file the complaint with the Construction Contractors Board by delivering to the board a copy of the complainant's court pleading or the demand for arbitration or other document necessary to initiate arbitration. The pleading, demand or other document must be accompanied by a completed board complaint form. The complainant must also give notice to the surety on the bond by delivering to the surety a copy of the complainant's court pleading or the demand for arbitration or other document necessary to initiate arbitration and a copy of the completed board complaint form. Delivery to the board and the surety must be accomplished by certified mail, return receipt requested, no later than the earlier of:

(a) The 90th day after filing the court action or after filing or making the arbitration demand or other initiation of arbitration;

(b) The 14th day before the first day of trial or arbitration; or

(c) The 30th day before:

(A) The court issues a judgment in the action; or

(B) The arbitrator issues an award on the arbitration.

(3) Filing the complaint with the board under subsection (2) of this section constitutes filing the complaint for purposes of establishing timeliness of the complaint under ORS 701.143 and priority of the complaint for possible payment from the bond under ORS 701.157.

(4) Except as provided in this subsection and subsection (7) of this section, if the complainant properly gives notice to the surety under subsection (2) of this section, a judgment or award against the contractor entered in the action or arbitration is binding on the surety. If the complainant delivers the notice required under subsection (2) of this section to the wrong surety, the surety receiving the notice may avoid being bound by a judgment or award by delivering notice of the mistake to the complainant or the complainant's attorney of record, and to the board, on or before the 30th day after the surety receives notice under subsection (2) of this section. Delivery of the notice of mistake must be by certified mail, return receipt requested, or by facsimile machine or other form of transmission with an acknowledgment of receipt.

(5) A surety under subsection (2) of this section has an absolute right to intervene in an action or arbitration brought or initiated under subsection (1) of this section. A complainant may not join a surety as a

party to an action or arbitration unless the complainant disputes the validity or timeliness of the surety's notice of mistake or the surety disputes the validity or timeliness of the delivery to the surety of the notice required by subsection (2) of this section. If the surety elects to intervene or is joined as a party, the surety is bound by all issues of fact and law determined by the court or arbitrator and may not seek board review of those determinations.

(6) If a court issues a judgment on an action, or reduces an arbitration award to judgment, against a contractor on a complaint described in subsection (1) of this section, the complainant must deliver a certified copy of the judgment to the board and to the surety no later than the 30th day after entry of the judgment in order to maintain the complaint and possibly receive payment from the bond. The entry of a final judgment against the contractor concludes the contractor's involvement in any proceedings to determine whether the complaint is subject to payment from the bond. The complainant and the surety are the only parties to the administrative process set forth in subsection (7) of this section.

(7) Upon receipt of a timely delivered certified copy of the judgment as described in subsection (6) of this section, the board shall issue a determination that the surety must pay the amount stated by the board. The determination issued by the board is an order in other than a contested case proceeding. The determination shall include the amount of the judgment together with any costs, interest and attorney fees awarded under the judgment, to the extent that the judgment, costs, interest and fees are within the jurisdiction of the board. The board's determination of the complaint is limited to whether the complaint comes within the jurisdiction of the board and is subject to payment by the surety.

[2001 c.197 §4; 2003 c.294 §1; 2003 c.598 §50; 2005 c.263 §1; 2007 c.793 §15; 2007 c.836 §67; 2011 c.630 §47]

Note: The amendments 701.146 by section 67, chapter 630, Oregon Laws 2011, become operative July 1, 2017, and apply to complaints filed on or after July 1, 2017. See section 73, chapter 630, Oregon Laws 2011. The text that is operative on and after July 1, 2017, is set forth for the user's convenience.

701.146. For a complaint described in ORS 701.139 (2) or (3)(c) or a complaint under ORS 701.139 (3)(b) that a complainant elects to have resolved under this section:

(1) The person seeking to file the complaint with the Construction Contractors Board must:

(a) Bring an action on the dispute against the licensed contractor in a court of competent jurisdiction; or

(b) Initiate a proceeding to resolve the dispute through binding arbitration substantially in conformance with ORS 36.600 to 36.740.

(2) The complainant must file the complaint with the Construction Contractors Board by delivering to the board a copy of the complainant's court pleading or the demand for arbitration or other document necessary to initiate arbitration.

The pleading, demand or other document must be accompanied by a completed board complaint form. The complainant must also give notice to the surety on the bond by delivering to the surety a copy of the complainant's court pleading or the demand for arbitration or other document necessary to initiate arbitration and a copy of the completed board complaint form. Delivery to the board and the surety must be accomplished by certified mail, return receipt requested, no later than the earlier of:

(a) The 90th day after filing the court action or after filing or making the arbitration demand or other initiation of arbitration;

(b) The 14th day before the first day of trial or arbitration; or

(c) The 30th day before:

(A) The court issues a judgment in the action; or

(B) The arbitrator issues an award on the arbitration.

(3) Filing the complaint with the board under subsection (2) of this section constitutes filing the complaint for purposes of establishing timeliness of the complaint under ORS 701.143 and priority of the complaint for possible payment from the bond under ORS 701.157.

(4) Except as provided in this subsection and subsection (7) of this section, if the complainant properly gives notice to the surety under subsection (2) of this section, a judgment or award against the contractor entered in the action or arbitration is binding on the surety. If the complainant delivers the notice required under subsection (2) of this section to the wrong surety, the surety receiving the notice may avoid being bound by a judgment or award by delivering notice of the mistake to the complainant or the complainant's attorney of record, and to the board, on or before the 30th day after the surety receives notice under subsection (2) of this section. Delivery of the notice of mistake must be by certified mail, return receipt requested, or by facsimile machine or other form of transmission with an acknowledgment of receipt.

(5) A surety under subsection (2) of this section has an absolute right to intervene in an action or arbitration brought or initiated under subsection (1) of this section. A complainant may not join a surety as a party to an action or arbitration unless the complainant disputes the validity or timeliness of the surety's notice of mistake or the surety disputes the validity or timeliness of the delivery to the surety of the notice required by subsection (2) of this section. If the surety elects to intervene or is joined as a party, the surety is bound by all issues of fact and law determined by the court or arbitrator and may not seek board review of those determinations.

(6) If a court issues a judgment on an action, or reduces an arbitration award to judgment, against a contractor on a complaint described in subsection (1) of this section, the complainant must deliver a certified copy of the judgment to the board and to the surety no later than the 30th day after entry of the judgment in order to maintain the complaint and possibly receive payment from the bond. The entry of a final judgment against the contractor concludes the contractor's involvement in any proceedings to determine whether the complaint is subject to payment from the bond. The complainant and the surety are the only parties to the administrative process set forth in subsection (7) of this section.

(7) Upon receipt of a timely delivered certified copy of the judgment as described in subsection (6) of this section,

the board shall issue a proposed order in the amount of the judgment together with any costs, interest and attorney fees awarded under the judgment, to the extent that the judgment, costs, interest and fees are within the jurisdiction of the board. The board's determination of the complaint is limited to whether the complaint comes within the jurisdiction of the board and is subject to payment by the surety. The board shall issue the proposed order in a form that indicates the surety's maximum liability to the complainant. If a hearing is not requested within the time set forth in the proposed order, the proposed order becomes final without any further action by the board. If a hearing is requested, unless review of an issue is precluded under subsection (5) of this section, the board may determine:

(a) Whether the complaint was timely filed with the board as provided in ORS 701.143.

(b) Whether the surety received timely notice as provided in subsections (2) and (6) of this section.

(c) Whether the complaint is for work subject to this chapter.

(d) The extent of the surety's liability to the complainant.

701.147 [2001 c.414 §5; 2001 c.414 §§5b,7b; 2003 c.75 §61; 2003 c.294 §§2,3; 2005 c.207 §3; 2007 c.793 §16; renumbered 701.133 in 2007]

701.148 [2001 c.414 §4; 2001 c.414 §4a; 2003 c.598 §51; 2007 c.793 §17; 2007 c.836 §68; 2011 repealed by c.630 §53]

701.149 Status reports; alternative dispute resolution. (1) If the Construction Contractors Board suspends the processing of a complaint because of the complaint having been submitted to a court or arbitrator or because of a court having stayed action on the complaint, the board may require that the complainant provide status reports on the pending court action or arbitration. The board may dismiss or close a complaint filed under ORS 701.139 if the complainant fails to submit status reports on a pending court action or arbitration.

(2) ORS 183.605 to 183.690 do not limit in any way the ability of the board to make full use of alternative dispute resolution, including mediation or referral for arbitration, to resolve complaints against contractors filed under ORS 701.139.

[2005 c.207 §2; 2007 c.793 §18; 2011 c.630 §48]

Note: The amendments to 701.149 by section 68, chapter 630, Oregon Laws 2011, become operative July 1, 2017, and apply to complaints filed on or after July 1, 2017. See section 73, chapter 630, Oregon Laws 2011. The text that is operative on and after July 1, 2017, is set forth for the user's convenience.

701.149. (1) An arbitration conducted under ORS 701.144 must be held before an administrative law judge assigned under ORS 183.605 to 183.690 to act as arbitrator on behalf of the Construction Contractors Board. The assignment of an administrative law judge to act as arbitrator is subject to a request for a different arbitrator under ORS 183.645 or a rule adopted pursuant to ORS 183.645.

(2) If a party to a complaint under ORS 701.145 requests a contested case hearing, the board shall schedule the hearing.

(3) The board may adopt rules governing the avoidance of a contested case hearing. The rules may include, but need not be limited to, a limit on the time period during which a party to a complaint may avoid a contested case hearing by filing a court action.

(4) Contested case hearings before the board must be conducted by an administrative law judge assigned under ORS 183.605 to 183.690. Notwithstanding ORS 670.325, the board may delegate authority to the administrative law judge to issue a final order in any matter.

(5) In assigning administrative law judges for arbitration and contested case hearings conducted under this section, the chief administrative law judge of the Office of Administrative Hearings established under ORS 183.605 shall defer to board requests.

(6) If a complainant to the board files a court action, the board may require that the complainant provide status reports on the pending court action. The board may dismiss or close a complaint filed under ORS 701.139 if the complainant fails to submit status reports on a pending court action.

(7) ORS 183.605 to 183.690 do not limit in any way the ability of the board to make full use of alternative dispute resolution, including mediation or arbitration, to resolve complaints against contractors filed under ORS 701.139.

701.150 Determination of amount to be paid from bond. (1) If a licensed contractor fails to pay a complainant amounts due under a court judgment or under a final order of the Bureau of Labor and Industries, the Construction Contractors Board shall issue a determination stating the amount that a surety must pay the complainant. The surety shall pay the amount required under the determination as follows:

(a) If the complaint was filed under ORS 701.145, the surety shall pay the amount from a bond required for a residential contractor.

(b) If the complaint was filed under ORS 701.146, the surety shall pay the amount from a bond required for a commercial contractor.

(2) The surety may not pay on a complaint until the surety receives notice from the board that the complaint is ready for payment.

(3) Notwithstanding ORS 701.153 and 701.157, a bond is not subject to payment for a complaint that is filed more than 14 months after the earlier of:

(a) The expiration or cancellation date of the license that was in force when the work that is the subject of the complaint was completed or abandoned; or

(b) The date that the surety canceled the bond. [1971 c.740 §17; 1973 c.832 §60; 1981 c.618 §7; 1983 c.616 §15; 1987 c.414 §40c; 1989 c.928 §18; 1991 c.181 §11; 1997 c.387 §7; 1999 c.59 §208; 1999 c.402 §32; 2001 c.197 §16; 2001 c.427 §1a; 2007 c.793 §19; 2007 c.836 §69; 2011 c.630 §49]

Note: The amendments to 701.150 by section 69, chapter 630, Oregon Laws 2011, become operative July 1,

2017, and apply to complaints filed on or after July 1, 2017. See section 73, chapter 630, Oregon Laws 2011. The text that is operative on and after July 1, 2017, is set forth for the user's convenience.

701.150. (1) A Construction Contractors Board final order that is not paid by the contractor and that:

(a) Arises out of a complaint filed under ORS 701.145 must be satisfied from a bond required for a residential contractor.

(b) Arises out of a complaint filed under ORS 701.146 must be satisfied from a bond required for a commercial contractor.

(2) If a board final order is not paid by the contractor, the board shall notify the surety on the bond. The surety may not pay on a complaint until the surety receives notice from the board that the complaint is ready for payment.

(3) Notwithstanding ORS 701.153 and 701.157, a bond is not subject to payment for a complaint that is filed more than 14 months after the earlier of:

(a) The expiration or cancellation date of the license that was in force when the work that is the subject of the complaint was completed or abandoned; or

(b) The date that the surety canceled the bond.

701.153 Recording of order as lien; satisfaction of order against residential contractor. (1) If an order of the Construction Contractors Board determines a complaint against a residential contractor that was filed with the board prior to July 1, 2011, and the order becomes final by operation of law or on appeal and remains unpaid 10 days after the date the order becomes final, the complainant may file the order with the county clerk in any county of this state.

(2) Upon receipt of an order described in subsection (1) of this section, the clerk shall record the order in the County Clerk Lien Record. In addition to any other remedy provided by law, recording an order described in subsection (1) of this section in the County Clerk Lien Record pursuant to the provisions of this section has the effect provided for in ORS 205.125 and 205.126, and the order may be enforced as provided in ORS 205.125 and 205.126.

(3)(a) Payments from the surety bond of a residential contractor pursuant to a board determination under ORS 701.145 are satisfied in the following priority in any 90-day period:

(A) Board determinations as a result of complaints against a residential contractor by the owner of a residential or small commercial structure have payment priority to the full extent of the bond over all other types of complaints.

(B) If the determinations described in subparagraph (A) of this paragraph do not exhaust the bond, then amounts due under board determinations for all other types of residential or small commercial structure complaints filed with the board within that 90-day period may be paid from the bond, except that the total amount paid from any one bond to nonowner complainants may not exceed \$3,000.

(b) A 90-day period begins on the date the first complaint is filed with the board. Subsequent 90-day

periods begin on the date the first complaint is filed with the board after the close of the preceding 90-day period.

(4) If the total amount payable under determinations issued by the board for complaints against a residential contractor filed with the board within 90 days after the board receives notice of the first complaint against the contractor exceed the amount of the bond available for payment, subject to the priorities under this section, the board shall decide how payment of the determined amounts from the bond is to be apportioned.

(5) If the total amount payable under determinations issued by the board as a result of complaints that were filed with the board within 90 days after the board receives notice of the first complaint do not exceed the amount of the bond available for payment, those determinations have payment priority over amounts due under determinations resulting from subsequently filed complaints.

(6) The total amount paid from a residential contractor bond for costs and interest under all determinations issued by the board under ORS 701.145 may not exceed \$3,000.

[2007 c.836 §10; 2007 c.836 §52; 2011 c.630 §50]

Note: The amendments to 701.153 by section 70, chapter 630, Oregon Laws 2011, become operative July 1, 2017, and apply to complaints filed on or after July 1, 2017. See section 73, chapter 630, Oregon Laws 2011. The text that is operative on and after July 1, 2017, is set forth for the user's convenience.

701.153. (1) If an order of the Construction Contractors Board that determines a complaint under ORS 701.145 becomes final by operation of law or on appeal and remains unpaid 10 days after the date the order becomes final, the complainant may file the order with the county clerk in any county of this state.

(2) Upon receipt, the clerk shall record the order in the County Clerk Lien Record. In addition to any other remedy provided by law, recording an order in the County Clerk Lien Record pursuant to the provisions of this section has the effect provided for in ORS 205.125 and 205.126, and the order may be enforced as provided in ORS 205.125 and 205.126.

(3)(a) Payments from the surety bond of a residential contractor pursuant to board order and notice are satisfied in the following priority in any 90-day period:

(A) Board orders as a result of complaints against a residential contractor by the owner of a residential or small commercial structure have payment priority to the full extent of the bond over all other types of complaints.

(B) If the complaints described in subparagraph (A) of this paragraph do not exhaust the bond, then amounts due as a result of all other types of residential or small commercial structure complaints filed within that 90-day period may be satisfied from the bond, except that the total amount paid from any one bond to nonowner complainants may not exceed \$3,000.

(b) A 90-day period begins on the date the first complaint is filed with the board. Subsequent 90-day periods

begin on the date the first complaint is filed with the board after the close of the preceding 90-day period.

(4) If the total complaints filed with the board against a residential contractor within 90 days after the board receives notice of the first complaint against the contractor exceed the amount of the bond available for those complaints, the bond shall be apportioned as the board determines, subject to the priorities established under this section.

(5) If the total amounts due as a result of complaints filed with the board within 90 days after the first complaint is filed do not exceed the amount of the bond available for those complaints, all amounts due as a result of complaints filed within the 90-day period shall have priority over all complaints subsequently filed until the amount of the bond available for the payment of complaints is exhausted.

(6) The total amount paid from a residential contractor bond for costs, interest and attorney fees may not exceed \$3,000.

701.155 [1973 c.832 §59; repealed by 1981 c.618 §18]

701.157 Satisfaction of order against commercial contractor.

(1)(a) Payments from the surety bond of a commercial contractor pursuant to Construction Contractors Board order and notice are satisfied in the following priority in any 90-day period:

(A) Board orders as a result of complaints against a commercial contractor by a person furnishing labor to a contractor or owed employee benefits by a contractor have payment priority to the full extent of the bond over all other types of complaints.

(B) If the complaints described in subparagraph (A) of this paragraph do not exhaust the bond, then amounts due as a result of all other types of small commercial or large commercial structure complaints may be satisfied from the bond, except complaints for costs, interest and attorney fees.

(C) If complaints described in subparagraphs (A) and (B) of this paragraph do not exhaust the bond, then complaints for costs, interest and attorney fees resulting from small commercial or large commercial structure complaints may be satisfied from the bond.

(b) A 90-day period begins on the date the first complaint is filed with the board. Subsequent 90-day periods begin on the date the first complaint is filed with the board after the close of the preceding 90-day period.

(2) If the total complaints filed with the board against a commercial contractor within 90 days after the board receives notice of the first complaint against the contractor exceed the amount of the bond available for those complaints, the bond shall be apportioned as the board determines, subject to the priorities established under this section.

(3) If the total amounts due as a result of complaints filed with the board within 90 days after the first complaint is filed do not exceed the amount of the bond available for those complaints, all amounts due as a result of complaints filed within the 90-day period

shall have priority over all complaints subsequently filed until the amount of the bond available for the payment of complaints is exhausted. [2007 c.836 §11; 2007 c.836 §53]

701.160 Nonlawyer may represent certain forms of businesses before board; rules for additional business forms. Notwithstanding ORS 9.320:

(1) A party may appear or be represented by an individual who is not a member of the Oregon State Bar in a proceeding before the Construction Contractors Board if:

(a) The party is a corporation and the individual is an officer of the corporation;

(b) The party is a partnership, or a limited liability partnership or foreign limited liability partnership as those terms are defined in ORS 67.005, and the individual is a partner in the partnership, limited liability partnership or foreign limited liability partnership;

(c) The party is a limited partnership as defined in ORS 70.005 and the individual is a general partner in the partnership;

(d) The party is a manager-managed limited liability company as defined in ORS 63.001 and the individual is a manager of the company; or

(e) The party is a member-managed limited liability company as defined in ORS 63.001 and the individual is a member of the company.

(2) In addition to parties described in subsection (1) of this section, the board, by rule, may recognize particular business forms as parties that may appear or be represented by an individual who is not a member of the Oregon State Bar in a proceeding before the board. A board rule adopted under this subsection must identify the business form of the party and specify the required relationship between the party and the individual. The board may allow appearance or representation of a party only by an individual who is a director, officer, partner, trustee, manager or authorized regular employee of the party. [1985 c.599 §3; 1989 c.928 §19; 1995 c.480 §1; 2001 c.163 §1; 2003 c.75 §109]

701.170 [1989 c.430 §4 and 1989 c.928 §20; repealed by 1993 c.18 §153 and 1993 c.470 §5]

701.175 [2001 c.850 §3; 2007 c.793 §20; renumbered 701.315 in 2007]

701.180 Alternative mediation or arbitration process; waiver and compliance. Notwithstanding the provisions of ORS 36.600 to 36.740, any other provision of law or any contractual provision, failure of a contractor to initiate mediation or arbitration proceedings within 30 days after notification by the Construction Contractors Board of a complaint under ORS 701.145 is a waiver by the contractor of any contractual right to a mediation or arbitration process

in lieu of mediation by the board under ORS 701.145. If the parties do not resolve or settle the dispute pursuant to board mediation under ORS 701.145, unless otherwise provided by law regarding a dispute described under ORS 652.140 or 653.010 to 653.261, the complainant must comply with any contractual provision for mediation or arbitration of the dispute as a condition for obtaining the judgment required under ORS 701.145 (5).

[Subsection (1) enacted as 1989 c.430 §5; subsection (2) enacted as 1989 c.928 §21; 1991 c.67 §187; 1991 c.181 §12; 2001 c.197 §17; 2001 c.414 §11; 2003 c.598 §52; 2007 c.793 §21; 2011 c.630 §51]

Note: The amendments to 701.180 by section 71, chapter 630, Oregon Laws 2011, become operative July 1, 2017, and apply to complaints filed on or after July 1, 2017. See section 73, chapter 630, Oregon Laws 2011. The text that is operative on and after July 1, 2017, is set forth for the user's convenience.

701.180. Notwithstanding the provisions of ORS 36.600 to 36.740, any other provision of law or any contractual provision, failure of a contractor to initiate mediation or arbitration proceedings within 30 days after notification by the Construction Contractors Board of a complaint under ORS 701.145 is a waiver by the contractor of any contractual right to mediation or arbitration.

CONSTRUCTION CONTRACTORS BOARD

701.205 Construction Contractors Board; members; terms; confirmation; vacancies; qualifications. (1) The Construction Contractors Board is established, consisting of nine members appointed by the Governor subject to confirmation by the Senate in the manner provided by law. Three of the members shall be residential contractors who primarily work on residential or small commercial structures, including one contractor engaged in the business of remodeling, two shall be public members and one shall be an elected representative of a governing body of local government. Two of the members shall be commercial general contractors who primarily work on large commercial structures, and one shall be a commercial specialty contractor who primarily works on large commercial structures or a residential limited contractor. One member who is a contractor may be certified as a home inspector.

(2) The term of office of each member is four years, but a member serves at the pleasure of the Governor. Before the expiration of the term of a member, the Governor shall appoint a successor whose term begins on July 1 next following. A member is eligible for reappointment. If there is a vacancy for any cause, the Governor shall make an appointment immediately effective for the unexpired term.

(3) In order to be eligible for board membership, the six contractor members of the board shall be licensed under this chapter and shall maintain their licenses in good order during their term of office. [Subsections(1) and (2) enacted as 1971 c.740 §3;

subsection (3) enacted as 1971 c.740 §5; 1975 c.721 §8; 1977 c.537 §1; 1981 c.618 §13; 1987 c.414 §40; 1989 c.928 §22; 1991 c.181 §14; 1993 c.470 §4; 1997 c.814 §4; 1999 c.402 §33; 2001 c.197 §18; 2007 c.836 §34]

701.215 Officers; quorum; compensation and expenses; advisory committees. (1) The Construction Contractors Board shall select from among its members a chairperson, a vice chairperson and such other officers for such terms and with such duties and powers necessary for the performance of their duties as the board determines.

(2) A majority of the members of the board constitutes a quorum for the transaction of business.

(3) A member of the board is entitled to compensation and expenses as provided in ORS 292.495.

(4) The board may create advisory committees as the board considers necessary. The chairperson of the board, or a board member designated by the chairperson, shall be a member of any advisory committee created by the board. [1971 c.740 §6; 1989 c.928 §23; 2001 c.160 §6]

701.225 Investigatory powers of board; use of city or county inspectors; notice of noncompliance; conduct of hearings; authority of board to order work stopped. (1) The Construction Contractors Board may investigate the activities of any person engaged in the building and construction industry to determine compliance with this chapter.

(2) With the approval of the city or county, the board may conduct investigations with city or county inspectors, provided that the city or county is reimbursed by the board for the costs of such investigations.

(3) Any inspector authorized by the board to determine compliance with the provisions of this chapter is authorized to require any person who is engaged in any activity regulated by this chapter to demonstrate proof of compliance with the licensing requirements of this chapter. If a person who is contracting directly with the owner of a structure does not demonstrate proof of compliance with the licensing requirements of this chapter, the inspector shall give notice of noncompliance to the person. The notice of noncompliance shall be in writing, shall specifically state that the person is not in compliance with the licensing requirements of this chapter and shall provide that unless the person demonstrates proof of compliance within 10 days of the date of the notice, the inspector may by order stop all work then being done by the person. The notice of noncompliance shall be served upon the person and shall be served upon or delivered to the owner of each structure upon which the person is then performing work under contract, or mailed to all persons who are mortgagees or trust deed beneficiaries of record with respect to the real property

upon which each such structure is situated. If more than one person is the owner of any such structure, a copy of the notice need be given to only one of such persons. If after receipt of the notice of noncompliance the person fails within the 10-day period specified in the notice to demonstrate proof of compliance with the licensing requirements of this chapter, the inspector is authorized to order the work stopped by notice in writing served on any persons engaged in the activity. Any person so notified shall stop such work until proof of compliance is demonstrated. However, the inspector may not order the work stopped until at least 10 days after the copies of the notice of noncompliance have been served upon or delivered to the owners or mailed to the mortgagees and trust deed beneficiaries specified in this subsection.

(4) The board has the power to administer oaths, issue notices and subpoenas in the name of the board, compel the attendance of witnesses and the production of evidence, hold hearings and perform such other acts as are reasonably necessary to carry out its duties under this chapter.

(5) If any person fails to comply with a subpoena issued under subsection (4) of this section or refuses to testify on matters on which the person may be lawfully interrogated, the board shall compel obedience in the manner provided in ORS 183.440.

(6) Notwithstanding the provisions of subsection (3) of this section:

(a) The board may order the work stopped immediately if the contractor is working on a structure and the contractor was not licensed by the board when the work began; or

(b) The board may order the work stopped after 10 days' notice to the persons listed in subsection (3) of this section if the contractor is working on a structure and was licensed by the board when the job began but has let the license lapse. [1971 c.740 §18; 1975 c.721 §9; 1987 c.414 §40d; 1989 c.744 §3; 1989 c.928 §26; 1991 c.561 §1; 1999 c.402 §34]

701.227 Disqualification from eligibility for certain public contracts; list of disqualified contractors. (1) The Construction Contractors Board shall begin an action to determine whether a contractor or a subcontractor shall be considered not qualified to hold or participate in a public contract for a public improvement upon receipt of information from a public contracting agency or from any person who supplied labor or materials in connection with a public contract for a public improvement indicating that the contractor or subcontractor has not made payment to persons who supplied labor or materials within 60 days after the date when the payment was received by the contractor or subcontractor and that the payment was not a subject of a good faith dispute as defined in ORS 279C.580.

(2) If the board determines after notice and opportunity for hearing that a contractor or a

subcontractor did not make payment to persons who supplied labor or materials in connection with a public contract for a public improvement within 60 days after the date when payment was received by the contractor or subcontractor, the board shall place the contractor or the subcontractor on the list of persons who have been determined to be not qualified to hold or participate in a public contract for a public improvement. The board may not place a contractor or subcontractor on the list if the only reason that the contractor or subcontractor did not make payment to a person when payment was due is that the contractor or subcontractor did not receive payment from the public contracting agency, contractor or subcontractor when payment was due. The contractor or subcontractor shall remain on the list for a period of not less than six months.

(3) If the board determines that the information supplied to the board against a contractor or subcontractor was supplied in bad faith or was false, the person who supplied the information in bad faith or supplied false information shall be placed on the list of persons who have been determined to be not qualified to hold or participate in a public contract for a public improvement.

(4) The board shall create and maintain a list of contractors and subcontractors who have been determined to be not qualified to hold or participate in a public contract for a public improvement. The list may include any corporation, partnership or other business entity of which the contractor or subcontractor is an owner, shareholder or officer of the business or was an owner or officer of the business. The board shall provide access to the list to all public contracting agencies, contractors and subcontractors. [1999 c.689 §9; 2003 c.794 §318; 2005 c.409 §§1,2; 2007 c.793 §22]

701.230 Board to provide names of unlicensed or improperly endorsed contractors to other state agencies. At least once each month, the Construction Contractors Board shall provide to investigative units of the Department of Revenue, Department of Consumer and Business Services and Employment Department the name and address of each person who acts as a contractor in violation of this chapter or who knowingly assists an unlicensed person or a licensed contractor that is not properly endorsed to act in violation of this chapter. [1983 c.616 §2; 1989 c.928 §27; 1999 c.402 §35; 2007 c.836 §35]

701.235 Rulemaking. (1) The Construction Contractors Board shall adopt rules to carry out the provisions of this chapter including, but not limited to, rules that:

- (a) Establish language for surety bonds;
- (b) Establish processing requirements for different types of complaints described in this chapter;
- (c) Limit whether a complaint may be processed by the board if there is no direct contractual

relationship between the complainant and the contractor;

(d) Subject to ORS 701.145, 701.153 and 701.157, exclude or limit recovery from the contractor's bond required by ORS 701.068 of amounts awarded by a court or arbitrator for interest, service charges, costs and attorney fees arising from commencing the arbitration or court action and proving damages; and

(e) Designate a form to be used by an owner of residential property under ORS 87.007 for the purpose of indicating the method the owner has selected to comply with the requirements of ORS 87.007(2) or to indicate that ORS 87.007(2) does not apply.

(2) The board may adopt rules prescribing terms and conditions under which a contractor may substitute a letter of credit from a bank authorized to do business in this state instead of the bond requirements prescribed in ORS 701.068. [1971 c.740 §19; 1989 c.928 §28; 1991 c.181 §13; 2001 c.197 §19; 2003 c.778 §6; 2007 c.793 §23; 2007 c.836 §36; 2011 c.630 §52]

Note: The amendments to 701.235 by section 72, chapter 630, Oregon Laws 2011, become operative July 1, 2017, and apply to complaints filed on or after July 1, 2017. See section 73, chapter 630, Oregon Laws 2011. The text that is operative on and after July 1, 2017, is set forth for the user's convenience.

701.235. (1) The Construction Contractors Board shall adopt rules to carry out the provisions of this chapter including, but not limited to, rules that:

- (a) Establish language for surety bonds;
- (b) Establish processing requirements for different types of complaints described in this chapter;
- (c) Limit whether a complaint may be processed by the board if there is no direct contractual relationship between the complainant and the contractor;

(d) Subject to ORS 701.153 and 701.157, exclude or limit recovery from the contractor's bond required by ORS 701.068 of amounts awarded by a court or arbitrator for interest, service charges, costs and attorney fees arising from commencing the arbitration or court action and proving damages; and

(e) Designate a form to be used by an owner of residential property under ORS 87.007 for the purpose of indicating the method the owner has selected to comply with the requirements of ORS 87.007 (2) or to indicate that ORS 87.007 (2) does not apply.

(2) The board may adopt rules prescribing terms and conditions under which a contractor may substitute a letter of credit from a bank authorized to do business in this state instead of the bond requirements prescribed in ORS 701.068.

701.238 Determination of licensing application fee; rules. (1) Before July 1 of each year, the Construction Contractors Board shall determine the amounts of the fees to be charged for applications under ORS 701.056 for the issuance or renewal of contractor licenses. The fee amounts are subject to prior approval of the Oregon Department of Administrative Services and a report to the Emergency

Board prior to adoption. The fee amounts shall be within the budget authorized by the Legislative Assembly as that budget may be modified by the Emergency Board. The fee amounts established under this section may not exceed the cost of administering the regulatory program of the board under this chapter, as authorized by the Legislative Assembly within the board's budget, as the budget may be modified by the Emergency Board.

(2) The amounts of the fees determined by the board under subsection (1) of this section shall be effective as set by rule. [Formerly 701.130]

701.240 Provision of licensed contractors list to other state agencies; rules. (1) The Construction Contractors Board shall supply the Department of Revenue and the Employment Department with a partial or complete list of licensees as deemed necessary by the board.

(2) The lists required by subsection (1) of this section shall contain the name, address, Social Security or federal employer identification number of each licensee or such other information as the departments may by rule require. [1989 c.870 §6; 1999 c.402 §36; 2005 c.22 §479]

701.245 [1971 c.740 §23; 1975 c.721 §10; repealed by 1979 c.31 §1]

701.246 Confidentiality of information; permissible disclosures. (1) Social Security numbers, driver license numbers, dates of birth and other personal identifier information included in a license or certificate application filed under this chapter are confidential. Except as provided in this section, the Construction Contractors Board may not disclose personal identifier information contained in a license or certificate application.

(2) Subsection (1) of this section does not prohibit the board from making the following disclosures:

(a) Disclosures made with the written consent of the person to whom the personal identifier information pertains.

(b) Disclosures of information that a license or certificate holder is required by law or rule to disclose to the public, including but not limited to board-issued license or certificate numbers.

(c) Disclosures for the purpose of causing, conducting or assisting an investigation into possible violations of law, rules or regulations, including but not limited to disclosures to an administrative agency, law enforcement agency or district attorney office. A public body receiving information from the board under this paragraph may not disclose the information except as necessary to an investigation or as necessary to criminal, civil or contested case proceedings. [2009 c.226 §2]

701.250 Board to provide licensee's status on request; fee. (1) Any individual may request and the Construction Contractors Board shall provide notification of the status of one or more licensees. Status information provided by the board shall include any professional credentials earned by the contractor as described in ORS 701.120.

(2) The board may charge a standard fee for the notification described in subsection (1) of this section not to exceed the cost of preparation and provision of such notices. [1989 c.870 §7; 1999 c.402 §37; 2001 c.311 §4; 2001 c.428 §2; 2002 s.s.1 c.6 §§2,7; 2003 c.778 §11]

701.252 [1999 c.174 §2; 2001 c.104 §281; 2007 c.793 §24; repealed by 2007 c.836 §51]

701.255 Funds retained for collection of civil penalties. The Construction Contractors Board may retain 20 percent annually from the funds collected under ORS 701.992. The amount retained under this section shall be continuously appropriated for the board's costs of collection of civil penalties imposed by order of the board. [1989 c.928 §29; 1995 c.771 §5]

701.260 Appeal committee; membership; duties. (1) From within its membership, the Construction Contractors Board shall appoint three members, including one of the public members or the elected official, as an appeal committee. The board may appoint one or more appeal committees. At least one residential contractor shall be appointed to any committee that hears appeals involving residential complaints.

(2) An appeal committee shall hear appeals on proposed orders and on petitions for reconsideration and rehearing and motions for stays that were originally appealed to the board as proposed orders.

(3) The Construction Contractors Board shall not consider an appeal of a decision of an appeal committee. However, the full board may act as an appeal committee. The parties affected by a decision of an appeal committee shall retain the right to appeal the decision to the Court of Appeals. [1989 c.928 §24; 1993 c.470 §1; 1993 c.742 §53]

701.265 Continuing education system for residential contractors; rules. (1) The Construction Contractors Board shall adopt rules establishing a continuing education system for residential contractors licensed by the board. The rules shall include, but need not be limited to, minimum standards to be met:

(a) By approved providers of continuing education; and

(b) By courses that the board approves as continuing education.

(2) In establishing the continuing education system, the board may give consideration to any continuing education program adopted by national

construction licensing trade associations. [2013 c.718 §2]

701.267 Agreements with continuing education providers; credits; fees. (1) The Construction Contractors Board may enter into agreements with approved continuing education providers for the providers to offer education developed by the board under ORS 701.082 (1)(b). The agreements may provide for the board to collect payment from the providers for the use of the education materials developed by the board.

(2) In determining whether to approve an entity as a provider of continuing education that is required under ORS 701.082 (1)(c), the board shall consider:

- (a) Instructor qualifications; and
- (b) Attendance verification procedures.

(3) In determining whether to approve a course as continuing education described in ORS 701.082 (1)(c), the board shall consider the course content.

(4) In determining any process for approving an entity as a provider of continuing education that is not required under ORS 701.082 (1), the board may consider attendance verification procedures.

(5) The board may determine the number of continuing education hours to be credited to a continuing education course or to a specialized education program described in ORS 701.083.

(6) The board may establish reasonable fees for approvals of entities as continuing education providers, approvals of continuing education courses and approvals of specialized education programs described in ORS 701.083 and reasonable fees for any continuing education courses offered by the board. The board may charge an approved provider a reasonable fee for each attendee completing course hours in approved continuing education to cover board costs associated with administering the residential contractor continuing education system. [2013 c.718 §3]

701.270 [1989 c.928 §25; repealed by 1993 c.470 §5 and 1993 c.742 §11]

701.280 [1991 c.732 §§2,3,4; 1995 c.216 §5; 1997 c.814 §5; 1999 c.173 §1; 1999 c.402 §38; 2001 c.160 §7; repealed by 2005 c.432 §18]

701.285 [Formerly 456.752; repealed by 2001 c.160 §8]

701.290 [1995 c.560 §1; repealed by 2001 c.850 §8]

701.295 Board duty to investigate and seek prosecution of illegal activity. The Construction Contractors Board shall investigate allegations of illegal activity in the construction industry and seek civil or criminal prosecution of illegal activity that warrants more than an administrative sanction. [2001 c.850 §4]

701.300 [1989 c.928 §11; repealed by 1991 c.181 §16]

CONSTRUCTION CONTRACTS AND NOTICES

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.

[2007 c.648 §7; 2009 c.408 §8; 2009 c.409 §1; 2013 c.168 §1]

701.310 Cancellation of contract. (1) A property owner who enters into an initial written contract for the construction, improvement or repair of a residential structure or zero-lot-line dwelling on real property owned by the property owner may cancel the contract by delivery of a written notice of cancellation any time prior to 12 midnight at the end of the next business day. The notice of cancellation may be delivered in any written form or by any means that can readily be converted to written form, including, but not limited to, facsimile, electronic mail and regular mail. The notice must state the intention of the property owner to cancel the contract.

(2) Subsection (1) of this section does not allow a property owner to cancel a contract:

(a) If both parties agree that work is to begin before the cancellation period has expired;

(b) After a contractor substantially begins the residential construction, improvement or repair; or

(c) When an initial contract is being modified after expiration of the initial cancellation period. [2007 c.648 §8; 2009 c.409 §2]

701.312 Additional grounds for placing contractor on probation. Notwithstanding the conditions specified for probation in ORS 701.102 (3), the Construction Contractors Board may place a contractor on probation as provided in ORS 701.102 (3) if the contractor offers to perform a home improvement, accepts a deposit of more than 50 percent of the total contract price and:

(1) Fails to perform diligently and in accordance with the contract specifications the home improvement for which the contractor received the deposit; or

(2) Fails to perform the home improvement for which the contractor received the deposit and fails to return the deposit within 10 days after a reasonable demand to return the deposit. [2010 c.77 §6]

701.315 Contents of contract for work on residential structure. A contract that is for the performance of work on a residential structure and that is subject to this chapter may not contain a provision that limits the right of a person to file a complaint described in ORS 701.140 with the Construction Contractors Board. A contract described in this section may contain a provision requiring mediation or arbitration of a dispute arising from the contract. [Formerly 701.175]

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. [2007 c.648 §11; 2009 c.409 §3]

701.325 Condition for obtaining building permit; information notice; business licenses; local regulation. (1) If a person is required under this chapter to be licensed as a contractor, a city, county or state agency may not issue the person a building permit unless the person has a current, valid contractor license properly endorsed for the work to be performed. A city, county or state agency that requires the issuance of a permit for the construction, alteration, improvement, demolition, movement or repair of a building, structure or appurtenances to a structure shall, as a condition for issuing the permit, require the applicant for a permit to file a written statement signed by the applicant. If the applicant is a contractor, the contractor shall provide the contractor's license number and state that the license is in full force and effect. If the applicant is exempt from licensing under this chapter, the applicant shall state the basis for the exemption. The city, county

or state agency shall list the contractor's license number on the permit issued to that contractor.

(2) If the applicant for a building permit is exempt from licensure under ORS 701.010(6), the city, county or state agency shall supply the applicant with an Information Notice to Property Owners About Construction Responsibilities. The city, county or state agency may not issue a building permit for a residential structure to the applicant until the applicant signs a statement in substantially the following form:

(a) I have read and understand the Information Notice to Property Owners About Construction Responsibilities; and

(b) I own, reside in or will reside in the completed dwelling. My residential general contractor is _____, Construction Contractors Board license no._____, license expiration date _____. I will instruct my contractor that all subcontractors who work on this dwelling must be licensed with the Construction Contractors Board and properly endorsed for the work to be performed; or

(c) I am performing work on property I own, a residence that I reside in or a residence that I will reside in.

(d) I will be my own contractor and, if I hire contractors, I will hire only contractors licensed with the Construction Contractors Board and properly endorsed for the work to be performed.

(e) If I change my mind and do hire a residential general contractor, I will contract with a contractor who is licensed with the Construction Contractors Board and properly endorsed for the work to be performed. I will immediately notify the office issuing this building permit of the name and license number of the contractor _____.

(3) The Construction Contractors Board shall adopt by rule a form titled "Information Notice to Property Owners About Construction Responsibilities" that clearly describes in everyday language the responsibilities property owners are undertaking by acting as their own contractor and the problems that could develop. The responsibilities described in the form shall include, but not be limited to:

(a) Compliance with state and federal laws regarding Social Security tax, income tax and unemployment tax.

(b) Workers' compensation insurance on workers.

(c) Liability and property damage insurance.

(4) The board shall develop and furnish to city, county and state building permit offices, at no cost to the offices, the Information Notice to Property Owners About Construction Responsibilities and the statement to be signed by the permit applicant.

(5) A city or county that requires a business license for engaging in a business subject to regulation under this chapter shall require that the licensee or applicant for issuance or renewal of the business license file, or have on file, with the city or county, a signed statement that the licensee or applicant is licensed under this chapter.

(6) The provisions of this chapter are exclusive and a city, county or other political subdivision may not require or issue any registrations, licenses or surety bonds, nor charge any fee for the regulatory or surety registration of any contractor licensed with the board. This subsection does not affect the authority of a city, county or political subdivision to:

(a) License and levy and collect a general and nondiscriminatory license fee levied upon all businesses or upon business conducted by any firm within the city, county or political subdivision;

(b) Require a contractor to pay a fee, post a bond or require insurance when the city, county or political subdivision is contracting for the services of the contractor; or

(c) Regulate a contractor that is not required to be licensed under this chapter. [2007 c.114 §2; 2007 c.836 §16a]

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. [2007 c.648 §14; 2009 c.409 §4]

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. [2007 c.648 §13; 2009 c.409 §5]

701.340 Commercial structure warranty. A commercial general contractor level 1 or level 2 that constructs a new large commercial structure shall provide the owner with a two-year warranty of the building envelope and penetration components against defects in materials and workmanship. The warranty shall provide for the contractor to annually inspect the building envelope and penetration components during the warranty period. The warranty need not cover conditions resulting from improper maintenance by the owner. [2007 c.836 §12]

701.345 Subcontractor list. (1) A contractor shall maintain a list that includes the names, addresses and license numbers for all subcontractors or other contractors performing work on a project for that contractor.

(2) The contractor must deliver the list referred to in subsection (1) of this section to the Construction Contractors Board within 72 hours after a board request made during reasonable working hours. [2007 c.114 §4]

701.348 Sewer contractor requirements. (1) Every person offering to undertake or undertaking construction of building sewer piping shall comply with the requirements of ORS chapter 701.

(2) Every person submitting a bid or a written estimate of the costs to construct building sewer piping shall provide to potential customers, prior to an agreement to perform, the following:

(a) The person's Construction Contractors Board license number;

(b) The applicable bonding and liability coverage; and

(c) The statement described in ORS 701.325(1).

(3) Any person licensed under ORS 701.021 may install a building sewer after obtaining a permit for plumbing inspection under ORS 447.095.

(4) As used in this section, "building sewer" means that part of the system of drainage piping that conveys sewage into a septic tank, cesspool or other treatment unit that begins five feet outside the building or structure within which the sewage originates. [Formerly 701.138; 2013 c.1 §90]

Note: 701.348 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 701 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

HOME INSPECTORS

701.350 Home inspectors; certification; rules; fees; exemption. (1) An individual may not undertake, offer to undertake or submit a bid to do work as a home inspector unless the individual is certified as a home inspector under this section by the Construction Contractors Board and is an owner of, or employed by, a business that is licensed by the board.

(2) A business may not undertake, offer to undertake or submit a bid to do work as a home inspector unless the business is licensed by the board under this chapter and has an owner or an employee who is certified as a home inspector under this section. The board may adopt rules for determining whether an inspection and report that is limited to one or more specific systems or components of a residential structure or appurtenance is a sufficient assessment of the overall physical condition of the structure or appurtenance to constitute the services of a home inspector.

(3) The board shall adopt minimum standards of practice and professional conduct.

(4) The board shall require that an applicant for certification as a home inspector pass a test demonstrating the competency of the applicant to act as a home inspector. The board may adopt rules accepting the results of competency testing by a nationally recognized certification program for home inspectors. The board may adopt rules establishing additional requirements for the issuance or renewal of a home inspector certificate, including but not limited to training and continuing education requirements.

(5) The board shall adopt rules establishing procedures for the issuance, renewal and revocation of home inspector certification.

(6) The board may adopt rules establishing fees necessary for the administration of this section. The fees may not exceed the following:

(a) \$50 for application.

(b) \$50 for testing.

(c) \$150 for issuance of an initial two-year certificate.

(d) \$150 for renewal of a two-year certificate.

(7) This section does not apply to a person acting within the scope of a license, certificate or registration issued to the person by the Appraiser Certification and Licensure Board under ORS chapter 674. [1997 c.814 §§3,3a; 1997 c.690 §6; 1999 c.402 §39; 2001 c.196 §10; 2005 c.114 §1; 2005 c.254 §13; 2005 c.432 §15a; 2007 c.222 §1; 2011 c.79 §1]

Note: Section 3b, chapter 814, Oregon Laws 1997, provides:

Sec. 3b. The requirements of section 3 of this Act [701.350(1) and (2)] shall not apply to a person registered each year as a general contractor under ORS chapter 701 during the period from January 1, 1991, through the effective date of this Act [August 11, 1997]. [1997 c.814 §3b]

701.355 Home inspector undertaking of repair work on inspected structure. A business licensed as a contractor under this chapter and providing home inspector services by a home inspector certified under ORS 701.350 may not undertake, offer to undertake or offer to submit a bid to undertake work to repair a structure inspected by an owner or employee of the business within the 12 months following the inspection. [1997 c.814 §7; 2001 c.196 §11; 2005 c.432 §16]

701.360 Home inspector services contractor license; exemption from testing and continuing education. (1) A home inspector services contractor license authorizes the holder to operate a business providing the services of home inspectors as defined in ORS 701.005, but does not authorize the holder to engage in other contractor activities.

(2) Notwithstanding ORS 701.126, the Construction Contractors Board may not impose a continuing education requirement for a home inspector services contractor. This subsection does not exempt a responsible managing individual for the business from compliance with any continuing education requirements established by the board under ORS 701.350 for a certified home inspector.

(3) Notwithstanding ORS 701.122, the board may not require a home inspector services contractor or the responsible managing individual for the business to take a test measuring the knowledge of the contractor or responsible managing individual regarding business practices and laws affecting construction contractors. [2013 c.300 §5]

Note: 701.126 was repealed by section 6, chapter 718, Oregon Laws 2013. The text of 701.360 was not amended by enactment of the Legislative Assembly to reflect the repeal. Editorial adjustment of 701.360 for the repeal of 701.126 has not been made.

RETAINAGE

701.410 Definitions. (1) As used in ORS 279C.555, 279C.570, 701.410, 701.420, 701.430, 701.435 and 701.440:

(a) "Construction" means:

(A) Excavating, landscaping, demolishing and detaching existing structures, leveling, filling in and otherwise preparing land for the making and placement of a building, structure or superstructure;

(B) Creating or making a building, structure or superstructure; and

(C) Altering, partially constructing and doing repairs in and upon a building, structure or superstructure.

(b) "Contractor" means a person that contracts with an owner on predetermined terms to be responsible for performing all or part of a job of construction in accordance with established specifications or plans, and that retains control of the means, method and manner of accomplishing the desired result.

(c) "Owner" means a person that is or claims to be the owner in fee or a lesser estate of the land, building, structure or superstructure on which construction is performed and that enters into an agreement with a contractor for the construction.

(d) "Subcontractor" means a person that contracts with a contractor or another subcontractor on predetermined terms to be responsible for performing all or part of a job of construction in accordance with established specifications or plans.

(2) As used in ORS 701.410, 701.420, 701.430, 701.435 and 701.440, "retainage" means the difference between the amount a contractor or subcontractor earns under a construction contract and the amount the owner pays on the contract to the contractor, the amount the contractor pays on the contract to the subcontractor or the amount the subcontractor pays on the contract to another subcontractor.

[1975 c.772 §1; 1987 c.158 §148; 1999 c.59 §209; 2003 c.794 §319; 2005 c.22 §§480,481; 2010 c. 77 §7]

Note: 701.410 to 701.440 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 701 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

701.420 Partial payment; retainage; effect; interest; notice of completion; payment by contractor and owner. (1) Partial payment is allowed and may be made on contracts for construction and home improvement. An owner, contractor or subcontractor may withhold as retainage an amount equal to not more than five percent of the contract price of the work completed. Partial payment allowed under this subsection is not acceptance or approval of some of the work or a waiver of defects in the work.

(2) The owner, contractor or subcontractor shall pay interest at the rate of one percent per month on the final payment due the contractor or subcontractor. The interest shall commence 30 days after the contractor or subcontractor has completed and the owner has accepted the work under the contract for construction for which the final payment is due. The interest shall run until the date when final payment is tendered to the contractor or subcontractor. When the contractor or subcontractor considers the work that the contractor or subcontractor is contracted to perform to be complete, the contractor or subcontractor shall notify the party to whom the contractor or subcontractor is responsible for performing the construction work under the contract. The party shall, within 15 days after receiving the notice, either accept the work or notify the contractor or subcontractor of work yet to be performed under the contract. If the party does not accept the work or does not notify the contractor or subcontractor of work yet to be performed within the time allowed, the interest required under this subsection shall commence 30 days after the end of the 15-day period.

(3) When a contractor pays a subcontractor in full, including the amount the contractor withheld as retainage, the owner with whom the contractor has the contract shall pay the contractor, out of the amount that the owner withheld from the contractor as retainage, a sum equal to the amount of retainage that the contractor paid the subcontractor. The contractor shall notify the owner when the contractor pays a subcontractor in full under this section and the owner shall, within 15 days after receiving the notice, pay the contractor the amount due the contractor under this subsection. Interest on the amount due the contractor at the rate of one percent per month shall commence 30 days after the owner receives notice of full payment to the subcontractor.

[1975 c.772 §2; 2010 c. 77 §8; 2013 c.410 §2]

Note: See note under 701.410.

701.430 Performance bond; terms. A contractor or subcontractor may execute and deliver to the owner, contractor or subcontractor before the commencement of construction for which the contractor or subcontractor will be responsible for performing a good and sufficient bond in a sum equal to the contract price for the faithful performance of the contract. The term of the bond obtained under this subsection must extend to include the period during which claims of lien or notices of other encumbrances based on the construction performed under the contract may be filed under applicable law. The bond must be approved by the owner, contractor or subcontractor entitled to withhold retainage. A faithful performance bond delivered under this section must include, but not be limited to, provisions to the effect that:

(1) The obligations of the contract must be faithfully performed;

(2) Payment must promptly be made to all persons supplying labor or materials to the contractor or subcontractor for prosecution of the work provided in the contract;

(3) All contributions due the Industrial Accident Fund and the Unemployment Compensation Trust Fund from the contractor or subcontractor in connection with the performance of the contract must be made promptly; and

(4) All sums required to be deducted and retained from the wages of employees of the contractor or subcontractor pursuant to the Personal Income Tax Act of 1969, must be paid over to the Department of Revenue.

[1975 c.772 §3; 2013 c.410 §3]

Note: See note under 701.410.

701.435 Deposits in lieu of cash retainage. (1)

When a contractor on a public contract deposits bonds, securities or other instruments under ORS 279C.560(4), if the subcontract price exceeds \$50,000 and constitutes more than 10 percent of the cost of the public contract, a subcontractor on the public contract may deposit bonds, securities or other instruments with the contractor or in a bank or trust company for the contractor to hold for the contractor's benefit in lieu of moneys held as retainage. If the contractor accepts the bonds, securities or other instruments deposited as provided in this subsection, the contractor shall reduce the moneys held as retainage in an amount equal to the value of the bonds, securities and other instruments and pay the amount of the reduction to the subcontractor in accordance with ORS 701.420 and 701.430. Interest or earnings on the bonds, securities or other instruments shall accrue to the subcontractor.

(2) When a contractor on a public contract elects to have the public contracting agency deposit the accumulated retainage in an interest-bearing account under ORS 279C.560(5), the contractor, within 30 days following payment of the final amount due for construction of the public improvement, shall pay to each subcontractor who performed work on the construction the subcontractor's proportional share of the interest earnings that accrued to the contractor as a result of the election. A subcontractor's share of the total amount of interest earnings under this subsection shall be determined by the proportion that the amount of retainage withheld from the subcontractor bears to the amount of retainage withheld from the contractor and the length of time the retainage was withheld from the subcontractor. A share of the interest earnings shall be paid to a subcontractor under this subsection only when:

(a) Retainage is withheld from the subcontractor for more than 60 days after the day on which the first partial payment was due the subcontractor under the terms of the subcontract; and

(b) The amount of interest earnings due the subcontractor exceeds \$100.

(3) If the contractor incurs additional costs as a result of the exercise of an option described in subsection (1) or (2) of this section, the contractor may recover the costs from the subcontractor by reducing the final payment. As work on the subcontract progresses, the contractor shall, upon demand, inform the subcontractor of all accrued additional costs.

(4) Bonds, securities and other instruments deposited or acquired in lieu of retainage, as permitted by this section, must be of a character approved by the Director of the Oregon Department of Administrative Services, including but not limited to:

(a) Bills, certificates, notes or bonds of the United States.

(b) Other obligations of the United States or agencies of the United States.

(c) Obligations of a corporation wholly owned by the federal government.

(d) Indebtedness of the Federal National Mortgage Association.

(e) General obligation bonds of the State of Oregon or a political subdivision of the State of Oregon.

(f) Irrevocable letters of credit issued by an insured institution, as defined in ORS 706.008.

[1977 c.767 §2; 1983 c.690 §16; 2003 c.794 §320; 2009 c.568 §2]

Note: See note under 701.410.

701.440 Applicability to federal projects. ORS 279C.555, 701.410, 701.420 and 701.430 do not apply when the owner is the United States or any agency thereof or when the construction is paid for, in whole or in part, with federal moneys. [1975 c.772 §6; 2003 c.794 §321]

Note: See note under 701.410.

LOCKSMITHS

701.475 Definitions for ORS 701.475 to 701.490. As used in ORS 701.475 to 701.490:

(1) "Key" means a mechanical, electromechanical, electronic, electromagnetic or other device for operating a lock.

(2) "Lock" means a mechanical, electromechanical, electronic, electromagnetic or other device that is designed to control access from one area to another or control the use of a device in a structure or vehicle.

(3) "Locksmith" means a person who services, installs, repairs, rebuilds, rekeys, repins or adjusts locks, hardware peripheral to locks, safes, vaults, safe deposit boxes or mechanical or electronic security systems. [2009 c.781 §2]

701.480 Certification; licensing; holding out as locksmith or locksmithing business. (1) An individual may not undertake, offer to undertake or

submit a bid to do work as a locksmith for compensation, or with the expectation to be compensated, unless the individual is certified as a locksmith under ORS 701.485 by the Construction Contractors Board and is an owner of, or employed by, a business that is licensed by the board.

(2) A business may not undertake, offer to undertake or submit a bid to provide locksmith services unless the business is licensed by the board under this chapter and has an owner or an employee who is certified as a locksmith under ORS 701.485.

(3) A person may not use the title of locksmith, locksmith professional, commercial locksmith, lock installer or any title using a form of the word "locksmith" that indicates or tends to indicate that the person is a locksmith or provider of locksmith services unless the person is certified as a locksmith by the board or is a business licensed by the board that has an owner or employee who is certified by the board as a locksmith.

(4) A person may not use any sign, card or device that indicates or tends to indicate that the person is a locksmith or provider of locksmith services unless the person is certified as a locksmith by the board or is a business licensed by the board that has an owner or employee who is certified by the board as a locksmith. [2009 c.781 §3]

701.485 Standards of practice and professional conduct; determination of competency; sanctions; rules; fees. (1) The Construction Contractors Board shall adopt rules establishing minimum standards of practice and professional conduct for locksmiths and businesses that provide locksmith services.

(2) The board shall require that an applicant for certification as a locksmith pass a test demonstrating the competency of the applicant to act as a locksmith.

(3) The board may adopt rules to regulate the practice of locksmithing, including but not limited to rules:

(a) Accepting the results of competency testing by a nationally recognized certification program for locksmiths;

(b) Establishing requirements for the issuance or renewal of a locksmith certificate, including but not limited to training and continuing education requirements;

(c) Establishing standards of professional conduct for certified locksmiths; and

(d) Establishing fees necessary for the administration of ORS 701.475 to 701.490 that do not exceed the following amounts:

(A) \$100 for application.

(B) \$100 for testing.

(C) \$300 for issuance of an initial two-year certificate.

(D) \$300 for renewal of a two-year certificate.

(4) The board shall adopt rules establishing procedures for the issuance, renewal and revocation of a locksmith certificate.

(5) The board may suspend or revoke a locksmith certificate if the locksmith:

(a) Fails to comply with a continuing education requirement established by the board; or

(b) Violates a standard of professional conduct for certified locksmiths established by board rule. [2009 c.781 §4]

701.490 Exemptions from certification, licensure and other requirements. ORS 701.480 and 701.485 do not apply to:

(1) A person offering key duplication services at a fixed location or ancillary to other business activities, if the person does not undertake, offer to undertake or submit a bid to undertake other locksmith services;

(2) An individual performing work within the scope of a license described in ORS 479.905 to 479.945;

(3) A tow truck operator performing work for a towing business certified under ORS 822.205;

(4) A construction contractor licensed under this chapter or an owner, officer or employee of the licensed construction contractor, when acting within the scope of the contractor's license, if the contractor, owner, officer or employee does not hold out as a provider of locksmith services;

(5) Work performed by a manufacturer on a manufactured structure, modular building or structure or prefabricated structure that is or was produced by the manufacturer;

(6) A property owner or regular employee of the property owner, when performing work on the property;

(7) A property management company or the regular employee of a property management company, when performing work on the managed property;

(8) A real estate property manager as defined in ORS 696.010, or the employee of a property manager, performing work in the course of managing rental real estate;

(9) A landlord or landlord's agent, both as defined in ORS 90.100;

(10) A manufacturer of locks; or

(11) A person performing work as the representative of a manufacturer, wholesaler, distributor or retailer of locks. [2009 c.781 §5]

701.495 Residential locksmith services contractor license; exemption from testing and continuing education. (1) A residential locksmith services contractor license authorizes the holder to operate a business providing the services of locksmiths as defined in ORS 701.475 for residential or small commercial structures, but does not authorize the holder to engage in other contractor activities.

(2) Notwithstanding ORS 701.126, the Construction Contractors Board may not impose a continuing education requirement for a residential locksmith services contractor. This subsection does not exempt a responsible managing individual for the business from compliance with any continuing education requirements established by the board under ORS 701.485 for a certified locksmith.

(3) Notwithstanding ORS 701.122, the board may not require a residential locksmith services contractor or the responsible managing individual for the business to take a test measuring the knowledge of the contractor or responsible managing individual regarding business practices and laws affecting construction contractors. [2013 c.300 §4]

Note: 701.126 was repealed by section 6, chapter 718, Oregon Laws 2013. The text of 701.495 was not amended by enactment of the Legislative Assembly to reflect the repeal. Editorial adjustment of 701.495 for the repeal of 701.126 has not been made.

701.500 [1995 c.795 §2; 2007 c.71 §227; repealed by 2009 c.757 §12]

LEAD POISONING AND HAZARD REDUCTION

701.505 Definitions for ORS 701.505 to 701.515. For the purposes of ORS 701.505 to 701.515:

(1) “Abatement” has the meaning given that term in P.L. 102-550, section 1004, 40 C.F.R. 745.223 and as further defined pursuant to the authorities described in ORS 431.917.

(2) “Accredited training program” means a training program that has been accredited by the Oregon Health Authority to provide training for individuals engaged in lead-based paint activities.

(3) “Certified lead-based paint renovation contractor” means a contractor that is licensed by the Construction Contractors Board to conduct lead-based paint renovation under ORS 701.515.

(4) “Inspection” has the meaning given that term in P.L. 102-550, section 1004, 40 C.F.R. 745.223 and as further defined pursuant to the authorities described in ORS 431.917.

(5) “Lead-based paint” has the meaning given that term in P.L. 102-550, section 1004, and as further defined pursuant to the authorities described in ORS 431.917.

(6) “Lead-based paint activities” has the meaning given that term in 40 C.F.R. 745.223 and as further defined pursuant to the authorities described in ORS 431.917.

(7) “Lead-based paint activities contractor” means a contractor that is licensed by the Construction Contractors Board to conduct lead-based paint activities under ORS 701.515.

(8) “Renovation” has the meaning given that term in 40 C.F.R. 745.83 and as further defined pursuant to the authorities described in ORS 431.917. [1995 c.795 §3; 2009 c.595 §1112; 2009 c.828 §68]

701.510 License required to engage in lead-based paint activity. (1) A contractor may not perform lead-based paint activities in this state unless the contractor is a lead-based paint activities contractor.

(2) A contractor may not perform lead-based paint renovation in this state unless the contractor is a certified lead-based paint renovation contractor.

(3) A lead-based paint activities contractor or certified lead-based paint renovation contractor must comply with the provisions of ORS 431.920 and 701.505 to 701.515 and any rules adopted pursuant thereto.

(4) A construction contractor who successfully completes an accredited training program in lead-based paint activities qualifies to have certification in that activity included in the professional credentials of the contractor as described in ORS 701.120. The provisions of this subsection do not affect the licensing requirements established in ORS 701.515. [1995 c.795 §4; 2001 c.428 §3; 2009 c.757 §8]

701.515 Licensing system; fees; rules. (1) In accordance with applicable provisions of ORS chapter 183, the Construction Contractors Board by rule shall establish a system to license contractors as lead-based paint activities contractors and certified lead-based paint renovation contractors. The licensing system must include the requirements described in 40 C.F.R. 745.226. The licensing system must include but need not be limited to provisions:

(a) Prescribing the form and content of the times and procedures for submitting applications for licensing or renewal.

(b) Prescribing the fees for original licensing and renewal of the license in amounts that do not exceed the cost of administering the program.

(c) Requiring an applicant for a certified lead-based paint renovation contractor license to show that an employee of the applicant has completed an accredited training program.

(d) Prescribing the actions or circumstances that constitute failure to achieve or maintain licensing requirements, or that otherwise are contrary to the public interest, for which the board may refuse to issue or renew or may suspend or revoke a lead-based paint activities contractor or certified lead-based paint renovation contractor license.

(2) The board may establish by rule the requirements for specific types of licenses for lead-based paint activities contractors.

(3) The board may impose the following licensing fees:

(a) Lead abatement contractor, up to \$50 per year;

(b) Lead inspection contractor, up to \$50 per year;

(c) Lead supervisor or lead contractor, up to \$50 per year;

- (d) Lead inspector or assessor, up to \$50 per year;
- (e) Lead worker, up to \$25 per year; and
- (f) Certified lead-based paint renovation contractor, up to \$50 per year. [1995 c.795 §5; 2009 c.757 §9]

701.520 Construction Contractors Board Lead-Based Paint Activities Fund. The Construction Contractors Board Lead-Based Paint Activities Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Construction Contractors Board Lead-Based Paint Activities Fund shall be credited to the fund. The fund consists of moneys received by the Construction Contractors Board under ORS 701.995. Moneys in the fund are continuously appropriated to the Construction Contractors Board for the purposes of lead poisoning prevention, including consumer and industry outreach, public education and other activities. [2009 c.757 §11]

Note: 701.520 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 701 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

701.525 [2005 c.734 §4; 2007 c.70 §316; renumbered 701.545 in 2013]

HOME ENERGY ASSESSMENT AND PERFORMANCE SCORING

701.527 Definitions for ORS 701.527 to 701.536. As used in ORS 701.527 to 701.536:

(1) "Home energy assessor" means a person who assigns residential buildings a home energy performance score.

(2) "Home energy performance score" means a score assigned to a residential building using the home energy performance score system adopted by the State Department of Energy under ORS 701.469.703. [2013 c.383 §3]

Note: 701.527 becomes operative July 1, 2014. See section 17, chapter 383, Oregon Laws 2013.

701.529 Certification and licensing requirements; use of title. (1) An individual may not undertake, offer to undertake or submit a bid to do work as a home energy assessor unless the individual is certified as a home energy assessor under ORS 701.532.

(2) A business may not undertake, offer to undertake or submit a bid to assign home energy performance scores unless the business:

(a) Is licensed by the Construction Contractors Board under this chapter or endorsed as a residential contractor by the board under ORS 701.534; and

(b) Has an owner or an employee who is certified as a home energy assessor under ORS 701.532.

(3) A person may not use the title of home energy assessor or any title that indicates or tends to indicate that the person is a home energy assessor or an

assignor of home energy performance scores unless the person is certified as a home energy assessor under ORS 701.532 or is a business licensed by the board under this chapter or endorsed by the board under ORS 701.534 that has an owner or an employee who is certified as a home energy assessor under ORS 701.532.

(4) A person may not use any sign, card or device that indicates or tends to indicate that the person is a home energy assessor or an assignor of home energy performance scores unless the person is certified as a home energy assessor under ORS 701.532 or is a business licensed by the board under this chapter or endorsed by the board under ORS 701.534 that has an owner or an employee who is certified as a home energy assessor under ORS 701.532. [2013 c.383 §4]

Note: 701.529 becomes operative July 1, 2014. See section 17, chapter 383, Oregon Laws 2013.

701.530 [2005 c.734 §5; renumbered 701.547 in 2013]

701.532 Home energy assessor certification; training; rules; fees. (1) The Construction Contractors Board shall certify an individual as a home energy assessor if the individual meets the requirements of this section and of any rule adopted by the board under this section. A home energy assessor certificate must be renewed annually.

(2) The board shall require that an applicant for a home energy assessor certificate present proof of passing a training program designated by the State Department of Energy under ORS 469.703.

(3) The board may adopt rules to regulate the practice of assigning home energy performance scores, including:

(a) Prescribing the form and manner of applying for a home energy assessor certificate;

(b) Establishing procedures for the issuance, renewal or revocation of a home energy assessor certificate; and

(c) Establishing fees necessary for the administration of ORS 701.527 to 701.536 that do not exceed the following amounts:

(A) \$100 for application for a home energy assessor certificate;

(B) \$100 for issuance of an initial one-year home energy assessor certificate; and

(C) \$100 for renewal of a one-year home energy assessor certificate. [2013 c.383 §5]

Note: 701.532 becomes operative July 1, 2014. See section 17, chapter 383, Oregon Laws 2013.

701.534 Home energy performance score contractors. A home energy performance score contractor endorsement authorizes the holder to operate a business assigning home energy performance scores. [2013 c.383 §6]

Note: 701.534 becomes operative July 1, 2014. See section 17, chapter 383, Oregon Laws 2013.

701.536 Assessor and contractor exemption from testing and continuing education. (1) Notwithstanding ORS 701.126, the Construction Contractors Board may not impose a continuing education requirement for a home energy assessor or a home energy performance score contractor.

(2) Notwithstanding ORS 701.122, the board may not require a home energy assessor or a home energy performance score contractor to take a test measuring the knowledge of the home energy assessor, contractor or responsible managing individual regarding business practices and laws affecting construction contractors. [2013 c.383 §7]

Note: 701.536 becomes operative July 1, 2014. See section 17, chapter 383, Oregon Laws 2013.

Note: 701.126 was repealed by section 6, chapter 718, Oregon Laws 2013. The text of 701.536 was not amended by enactment of the Legislative Assembly to reflect the repeal. Editorial adjustment of 701.536 for the repeal of 701.126 has not been made.

ACCESSIBILITY FEATURES

701.545 Provision of accessible features list to purchaser; effect. (1) As used in this section and ORS 701.545:

(a) “Developer” means a person who contracts to construct, or arrange for the construction of, new residential housing on behalf of, or for the purpose of selling the residential housing to, a specific individual the person knows is the purchaser of the residential housing.

(b) “Residential housing”:

(A) Means a structure designed for use as a residence and containing dwelling units for three or fewer families.

(B) Means a structure that is a condominium as defined in ORS 100.005.

(C) Does not mean a manufactured structure as defined in ORS 446.003.

(2) A developer who enters into a contract to construct or arrange for the construction of new residential housing may, at the time of providing a purchaser with a written contract, also provide the purchaser with a list of features that may make residential housing more accessible to a person with a disability. The list may include the features identified in the model list of features adopted by the Construction Contractors Board by rule under ORS 701.530.

(3) The inclusion of a feature on the list supplied by the developer under subsection (2) of this section does not obligate the developer to make the feature available to a purchaser. The list supplied by the developer may specify for each feature whether the feature is standard, optional, available on a limited basis or unavailable from the developer. If a listed

feature is available from the developer as an option or on a limited basis, the list of features may specify the stage of construction by which the purchaser must submit to the developer any request that the residential housing be constructed with that feature.

(4) This section, or the inclusion of a feature on the model list developed under ORS 701.547, does not affect the requirement that installation of a feature comply with the state building code or be approved under ORS 455.060. [Formerly 701.525]

Note: 701.525 and 701.530 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 701 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

701.547 Model list of accessibility features; rules. The Construction Contractors Board shall adopt by rule a model list of features recommended for inclusion in a list of features that a developer supplies to a purchaser of residential housing under ORS 701.545. In developing the model list of features, the board shall solicit the comments of advocacy groups and other organizations serving persons with disabilities. [Formerly 701.530]

Note: See note under 701.545.

MERCURY THERMOSTATS

701.550 Notice of Department of Consumer and Business Services rules regarding thermostats containing mercury. The Construction Contractors Board shall provide an annual notice to each contractor licensed under this chapter that informs contractors of the rules developed by the Director of the Department of Consumer and Business Services pursuant to ORS 455.355 prohibiting the installation of thermostats that contain mercury and requiring proper disposal of thermostats that contain mercury. [2001 c.924 §22]

PROHIBITED MATERIAL INSTALLATION

701.555 Barrier-type exterior insulation and finish systems. (1) As used in this section, “barrier-type exterior insulation and finish system” means a foam insulation board inner layer, a polymer and cement base coat middle layer reinforced with glass fiber mesh and a textured finish coat exterior layer, in which:

(a) The layers are bonded to the outside face of an exterior wall;

(b) The middle or exterior layer, but not the inner layer, provides a water resistant barrier for the exterior of the building envelope;

(c) The layers do not provide a means of drainage for water that accumulates behind the exterior surface; and

(d) The layers insulate the building.

(2) A person licensed or required to be licensed under this chapter may not install a barrier-type exterior insulation and finish system on:

- (a) A new building; or
- (b) An existing building, except as necessary to repair or replace a previously installed barrier-type exterior insulation and finish system.

(3) Subsection (2) of this section does not apply to the application of a barrier-type exterior insulation and finish system:

- (a) As an architectural feature that is not intended to protect an interior space of the building; or
- (b) To a concrete wall or a concrete masonry unit block wall. [2007 c.851 §2]

NOTICES OF DEFECT IN RESIDENCE

701.560 Definitions for ORS 701.560 to 701.595 and 701.605. As used in ORS 701.560 to 701.595 and 701.605:

(1) “Contractor” means a person that performed services for the construction, alteration or repair of a residence.

(2) “Defect” means a deficiency, an inadequacy or an insufficiency arising out of or relating to the construction, alteration or repair of a residence. “Defect” includes a deficiency, an inadequacy or an insufficiency in a system, component or material incorporated into a residence.

(3) “Owner” means a person that possesses an interest in a residence or in land that is a residential site or has entered into a contract for the purchase of an interest in the residence or land. “Owner” includes:

- (a) A homeowners association as defined in ORS 94.550;
- (b) A managing entity as defined in ORS 94.803;
- (c) An owners’ association as described in ORS 94.858;
- (d) An association of unit owners as defined in ORS 100.005; and
- (e) Any other entity that possesses an interest in a residence or represents owners of a residence.

(4) “Remediation” means the repair or replacement of some or all of the defects described in an owner’s notice of defect sent under ORS 701.565.

(5) “Residence” means:

- (a) A residential structure as defined in ORS 701.005;
- (b) Common property as defined in ORS 94.550; and
- (c) A common element as defined in ORS 100.005.

(6) “Secondary notice” means a copy of an owner’s notice of defect that a contractor, subcontractor or supplier sends to another contractor, subcontractor or supplier that may be responsible for a defect.

(7) “Subcontractor” means any person that performed services for the construction, alteration or repair of a residence at the request or direction of a contractor.

(8) “Supplier” means any person that furnished or manufactured the systems, components or materials incorporated into a residence as part of the construction, alteration or repair of the residence. [2003 c.660 §1]

Note: 701.560 to 701.605 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 701 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

701.565 Notice of defect requirement; contents; mailing. (1) Except as provided in ORS 701.600, an owner may not compel arbitration or commence a court action against a contractor, subcontractor or supplier to assert a claim arising out of or related to any defect in the construction, alteration or repair of a residence or in any system, component or material incorporated into a residence located in this state unless the owner has sent that contractor, subcontractor or supplier a notice of defect as provided in this section and has complied with ORS 701.575.

(2) An owner must send a notice of defect by registered or certified mail, return receipt requested. If a notice of defect is sent to a contractor or subcontractor, the owner must send the notice to the last known address for the contractor or subcontractor as shown in the records of the Construction Contractors Board. If a notice of defect is sent to a supplier, the owner must send the notice to the Oregon business address of the supplier or, if none, to the registered agent of the supplier.

(3) A notice of defect sent by an owner must include:

- (a) The name and mailing address of the owner or the owner’s legal representative, if any;
- (b) A statement that the owner may seek to compel arbitration or bring a court action against the contractor, subcontractor or supplier;
- (c) The address and location of the affected residence;
- (d) A description of:
 - (A) Each defect;
 - (B) The remediation the owner believes is necessary; and
 - (C) Any incidental damage not curable by remediation as described in subparagraph (B) of this paragraph; and
 - (e) Any report or other document evidencing the existence of the defects and any incidental damage. [2003 c.660 §2; 2011 c.268 §1]

Note: See note under 701.560.

701.570 Secondary notice of defect; inspection of residence; response to notice or secondary notice. (1) A contractor, subcontractor or supplier that receives a notice of defect sent under ORS 701.565 shall, not later than 14 days after receiving the notice of defect, send a secondary notice to any other known contractor,

subcontractor or supplier that may be responsible for some or all of the defects described in the notice of defect. The contractor, subcontractor or supplier must send the secondary notice by registered or certified mail, return receipt requested, to an address described in ORS 701.565(2). The secondary notice must be accompanied by a statement describing the basis for contending that the other contractor, subcontractor or supplier may be responsible for some or all of the defects.

(2) A contractor, subcontractor or supplier that receives a notice of defect or secondary notice may send the owner a written request to conduct a visual examination of the residence. The written request must be sent not later than 14 days after the requesting contractor, subcontractor or supplier receives a notice of defect or secondary notice. The written request to conduct a visual examination of the residence must state the estimated time required for the visual examination.

(3) A contractor, subcontractor or supplier that receives a notice of defect or secondary notice may send the owner a written request to inspect the residence. The written request must be sent not later than 14 days after the requesting contractor, subcontractor or supplier conducted a visual examination of the residence. The written request to inspect the residence must state the nature and scope of the inspection, whether any testing is to be performed and the estimated time required for the inspection. The recipient of a secondary notice that requests to inspect the residence shall send a copy of the request to the sender of the secondary notice.

(4) A contractor, subcontractor or supplier that sends a secondary notice and intends to hold the recipient of the secondary notice liable for a defect described in a notice of defect shall coordinate the scheduling of any inspection with the owner and all recipients of a secondary notice from the contractor, subcontractor or supplier. The contractor, subcontractor or supplier shall deliver a copy of any written request to inspect the residence to each recipient of the secondary notice in time to provide the recipient with an opportunity to attend the requested inspection and to participate in any remediation. The sender of a secondary notice shall give reasonable advance notice to the owner or the owner's legal representative, if any, of the identity of any contractor, subcontractor or supplier who will attend the inspection.

(5) Unless otherwise agreed to by the owner, a contractor, subcontractor or supplier that receives a notice of defect or secondary notice shall send a written response to the owner not later than 90 days after the contractor, subcontractor or supplier receives a notice of defect or secondary notice. A contractor, subcontractor or supplier that receives a secondary notice also shall send a copy of the written response to the sender of the secondary notice. The written

response must be sent by registered or certified mail, return receipt requested. The written response must include:

(a) One or more of the following for each defect described in the notice of defect or secondary notice or discovered during the course of any visual examination or inspection:

(A) An acknowledgment of the existence, nature and extent of the defect without regard to responsibility for the defect.

(B) A statement describing the existence of a defect different in nature or extent from the defect described in the notice of defect or secondary notice, without regard to responsibility for the defect.

(C) A denial of the existence of the defect.

(b) A copy of the documents described in ORS 701.575(4).

(c) One or more of the following:

(A) An offer to perform some or all of the remediation. The offer must specify the date by which the offered remediation will be completed.

(B) An offer to pay a stated amount of monetary compensation to the owner for some or all of the acknowledged defects and any incidental damage. The offer must specify the date by which payment will be made.

(C) A denial of responsibility for some or all of the acknowledged defects or incidental damage.

[2003 c.660 §3; 2011 c.268 §2]

Note: See note under 701.560.

701.575 Availability of residence; scope of inspection; report of inspection results. (1) An owner sending a notice of defect under ORS 701.565 shall make the residence available for visual examination pursuant to any written request sent under ORS 701.570. The owner shall make the residence available for visual examination, during normal business hours or as otherwise agreed, not later than 20 days after receiving the written request for visual examination.

(2) An owner sending a notice of defect under ORS 701.565 shall make the residence available for an inspection pursuant to any written request sent under ORS 701.570. The owner shall make the residence available for inspection during normal business hours or at a time that is mutually agreeable to the owner and the requester.

(3) An inspection by a contractor, subcontractor or supplier may include any reasonable measures, including testing, for determining the nature, cause and extent of the defects described in the notice of defect or incidental damage and the nature and extent of the necessary remediation. Unless the contractor, subcontractor or supplier conducting the inspection and the owner agree otherwise, the contractor, subcontractor or supplier conducting the inspection shall repair any damage caused by the inspection. Any damage caused by the inspection that is not repaired

may be sought as incidental damage in any subsequent arbitration or court action by an owner against the contractor, subcontractor or supplier conducting the inspection.

(4) A contractor, subcontractor or supplier that requests to inspect a residence must include as part of the written response of the contractor, subcontractor or supplier under ORS 701.570, a written report or other document evidencing the result of the inspection and the existence or nonexistence of the defects described in the notice of defect or discovered during the inspection. [2003 c.660 §4]

Note: See note under 701.560.

701.580 Offer by contractor, subcontractor or supplier; effect of accepting offer; nonperformance; compelling arbitration or commencing court action; admissibility of response or reply. (1) An owner may accept an offer contained in a written response under ORS 701.570 by delivering a written acceptance to the offering contractor, subcontractor or supplier within 30 days after receiving the offer. If an owner fails to accept an offer within 30 days after receipt, the offer is deemed rejected.

(2) If the owner accepts a contractor, subcontractor or supplier's offer to perform remediation or to pay monetary compensation, completion of the remediation or payment satisfies the claims by the owner for those defects included in the offer for which remediation was performed or compensation paid, but not for any other defect. Except as provided in subsection (3) of this section, if the owner accepts an offer by a contractor, subcontractor or supplier that received a secondary notice, completion of the remediation or payment satisfies claims for those defects included in the offer for which remediation was performed or compensation paid, including claims by the owner and claims for contribution or indemnity against the contractor, subcontractor or supplier by the sender of the secondary notice, but not for any other defect.

(3) If the owner accepts an offer by a contractor, subcontractor or supplier that received a secondary notice to perform remediation or to pay monetary compensation and the contractor, subcontractor or supplier fails to perform in accordance with the accepted offer, then the sender of the secondary notice may perform the remediation or pay the monetary compensation offered by the nonperforming contractor, subcontractor or supplier.

(4) An owner that sends a notice of defect under ORS 701.565 may compel arbitration or commence a court action against a contractor, subcontractor or supplier if:

(a) The contractor, subcontractor or supplier that receives the notice of defect sent under ORS 701.565 does not send a timely written response under ORS 701.570;

(b) The written response of the contractor, subcontractor or supplier that received the notice of defect or a secondary notice does not offer remediation or monetary compensation;

(c) The owner rejects a written offer, or any part thereof, made by the contractor, subcontractor or supplier; or

(d) The contractor, subcontractor or supplier fails to perform in accordance with an accepted offer.

(5) A notice of defect and the documents described in ORS 701.575(4) are admissible in any arbitration or court action between or among an owner, contractor, subcontractor or supplier arising out of or related to the construction, alteration or repair of the residence.

(6) Except as provided in this subsection, a written response containing an offer to perform remediation or pay monetary compensation made under ORS 701.570(5) that is not accepted by the owner, and any reply by an owner, unless the reply contains a counteroffer accepted by a contractor, subcontractor or supplier, are not admissible during any subsequent arbitration or court action. A response or reply described in this subsection is admissible solely for the purpose of proving that an owner is qualified to compel arbitration or commence a court action under subsection (4)(c) of this section or determining the timeliness of an action under ORS 701.585. [2003 c.660 §5]

Note: See note under 701.560.

701.585 Effect of notice of defect on time for commencing court action. (1) If an owner sends a contractor, subcontractor or supplier a notice of defect within the time allowed for the owner to commence a court action against that contractor, subcontractor or supplier for a claim described in ORS 701.565, the time for the owner to commence the action shall be extended, notwithstanding any statute of limitation or statute of ultimate repose, until the later of:

(a) One hundred and twenty days after the owner receives a written response from the contractor, subcontractor or supplier that received the notice of defect if the written response does not contain a written offer to perform remediation or pay monetary compensation for one or more of the defects or incidental damage described in the notice of defect;

(b) One hundred and twenty days after the owner rejects a written offer by any contractor, subcontractor or supplier to perform remediation or pay monetary compensation for one or more of the defects or incidental damage described in the notice of defect; or

(c) Thirty days after the date specified in an accepted written offer by which the offering contractor, subcontractor or supplier is to complete the remediation or complete payment of monetary compensation for one or more of the defects and any incidental damage described in the notice of defect.

(2) Subsection (1) of this section does not shorten or terminate the time for bringing a claim in accordance with applicable statutes of ultimate repose and statutes of limitation.

(3) Delivery of a secondary notice sent by a contractor, subcontractor or supplier under ORS 701.570 does not act to toll the expiration of any right of the owner to commence a court action against the recipient of the secondary notice.

(4) Any remediation performed pursuant to an accepted offer made under ORS 701.570 does not constitute a new performance and, for purposes of ORS 12.135, relates back to the earliest date of substantial completion or abandonment of the construction, alteration or repair of the improvement to real property. [2003 c.660 §6]

Note: See note under 701.560.

701.590 [2003 c.660 §7; 2007 c.114 §12; repealed by 2007 c.648 §18]

701.595 Failure to follow notice of defect procedure. If an owner compels arbitration or commences a court action against any contractor, subcontractor or supplier to assert a claim arising out of or related to the construction, alteration or repair of a residence located in this state and the owner has not followed the procedure set forth in ORS 701.565 and 701.575, the arbitrator or court must dismiss the arbitration or action without prejudice. The owner may not commence a new arbitration or action unless the owner follows the procedure set forth in ORS 701.565 and 701.575. [2003 c.660 §8]

Note: See note under 701.560.

701.600 Nonapplicability of ORS 701.560 to 701.595 and 701.605. ORS 701.560 to 701.595 and 701.605 do not apply:

- (1) To personal injury or death claims.
- (2) To claims or complaints filed pursuant to ORS 671.695 or 701.139.
- (3) To claims against a person registered under ORS 671.010 to 671.220.
- (4) To complaints filed in a small claims department established in a justice court or circuit court as described in ORS 55.011.
- (5) To counterclaims or other responses to a contractor, subcontractor or supplier claim, arbitration demand or complaint that arises out of, or is related to, a contract for the construction, alteration or repair of a residence or a system, component or material incorporated into a residence.

[2003 c.660 §9; 2007 c.149 §10; 2007 c.793 §25; 2011 c.268 §3; 2013 c.196 §23]

Note: See note under 701.560.

WARRANTIES

701.605 Recording of written warranty agreement. (1) To facilitate the handling of warranty

work or remediation of defects to a new commercial or residential structure or a zero-lot-line dwelling, a contractor who builds the structure may present for recording in the deed records of the county in which the new structure is built a written warranty agreement that:

- (a) Is signed by the contractor and the original owner of the new structure;
- (b) Sets forth any express warranties furnished by the contractor; and
- (c) Contains the names of the contractor and the original property owner, the title of the document, a legal description of the property and acknowledgment of the signatures of the parties in the same manner as the parties to a deed are acknowledged.

(2) The warranties set forth in the recorded warranty agreement:

- (a) Benefit and burden subsequent owners of the structure.
- (b) Cease to affect title to the property 10 years after the date the instrument is recorded. [2005 c.169 §2; 2007 c.648 §29]

Note: See note under 701.560.

HOME SERVICE AGREEMENTS

701.610 Home services contractor license; exemption from testing and continuing education.

(1) As used in this section, “home” and “home service agreement” have the meanings given those terms in ORS 731.164.

(2) A home services contractor license authorizes the holder to operate a business providing service, repair or replacement for homes through a licensed contractor under a home service agreement.

(3) Notwithstanding ORS 701.126, the Construction Contractors Board may not impose a continuing education requirement for a home services contractor.

(4) Notwithstanding ORS 701.122, the board may not require a home services contractor to take a test measuring the knowledge of the contractor or responsible managing individual regarding business practices and laws affecting construction contractors. [2013 c.300 §5a]

Note: 701.126 was repealed by section 6, chapter 718, Oregon Laws 2013. The text of 701.610 was not amended by enactment of the Legislative Assembly to reflect the repeal. Editorial adjustment of 701.610 for the repeal of 701.126 has not been made.

CONSTRUCTION CONTRACT PAYMENTS

701.620 Definitions for ORS 701.620 to 701.640. As used in ORS 701.620 to 701.640:

(1) “Construction contract” means a written or oral construction agreement, including all drawings, specifications and addenda relating to:

- (a) Excavating, landscaping, demolishing and detaching existing structures, leveling, filling in and

other preparation of land for the making and placement of a building, structure or superstructure;

(b) Creation or making of a building, structure or superstructure; and

(c) Alteration, partial construction and repairs done in and upon a building, structure or superstructure.

(2) "Contractor" has the meaning given that term in ORS 87.005.

(3) "Days" means calendar days.

(4) "Material supplier" means any person providing materials or products under a construction contract by oral authorization, written contract, purchase order, price agreement, rental agreement or other contractual means.

(5) "Original contractor" has the meaning given that term in ORS 87.005.

(6) "Owner" has the meaning given that term in ORS 701.410.

(7) "Subcontractor" has the meaning given that term in ORS 87.005. [2003 c.675 §54; 2011 c.553 §1]

Note: 701.620 to 701.645 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 701 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

701.625 Progress payments; notice requirements; nonapproval of billing or estimate; withholding; final payment. (1) If a construction contract is for construction work that is expected to take 60 or more days to complete, an owner shall make progress payments to the original contractor. By mutual agreement with an original contractor, an owner may make progress payments to the original contractor under a construction contract for which the construction work is expected to take less than 60 days to complete.

(2) The owner shall make progress payments on the basis of a certified billing or estimate for work performed, and for materials or products supplied, during the preceding monthly billing cycle or during an alternative billing cycle identified in the construction contract. If a construction contract identifies an alternative billing cycle, the construction contract must expressly state in a clear and conspicuous manner that there is an alternative billing cycle and the owner must provide on each page of drawings and specifications in the construction contract a statement substantially similar to the following:

Notice of Alternative Billing Cycle

The construction contract will allow the owner to require the submission of billings or estimates in billing cycles other than monthly cycles. Billings or estimates for the construction contract shall be submitted as follows:

(3)(a) Except as provided in this subsection, the owner shall:

(A) Make progress payments no later than 14 days after the date the billing is received; and

(B) Make final payment of all remaining amounts no later than seven days after the date that the owner approves the work.

(b) An owner may make progress payments or final payment later than the time allowed under paragraph (a) of this subsection if:

(A) The owner provides drawings and specifications that expressly state in a clear and conspicuous manner that an extended payment period is allowed and identify the extended payment period as a specific number of days after the date that the billing or estimate is received or the date that the owner approves all work; and

(B) The owner provides on each page of drawings and specifications a statement substantially similar to the following:

Notice of Extended Payment Provision

The construction contract will allow the owner to make:

(1) Progress payments no later than _____ days after the date a billing or estimate is received.

(2) Final payment of all remaining amounts no later than _____ days after the date the owner approves all work.

(4) Payment is not required under this section unless the owner receives from the original contractor a billing or estimate for the work performed or the materials or products supplied in accordance with the terms of the construction contract.

(5) The owner is deemed to have received the billing or estimate when the billing or estimate is received by any person designated by the owner for the receipt, review or approval of the billing or estimate. A billing or estimate is deemed to be certified 10 days after the owner receives the billing or estimate, unless before that time the owner or the owner's agent prepares and issues a written statement detailing those items in the billing or estimate that are not approved. An owner may decline to approve a billing or estimate or portion of a billing or estimate because of:

(a) Unsatisfactory work progress;

(b) Defective construction work, materials or products not remedied;

(c) Disputed work, materials or products, except that the declined amount may not exceed 150 percent of the amount in dispute;

(d) Failure to comply with other material provisions of the construction contract;

(e) A third party claim being filed or reasonable evidence that a third party claim will be filed;

(f) Failure of the original contractor or a subcontractor to make timely payments to subcontractors and material suppliers for labor, equipment, materials and products;

(g) Damage to the owner;

(h) Reasonable evidence that the construction contract cannot be completed for the unpaid balance of the construction contract sum; or

(i) Other items as allowed under the construction contract terms and conditions.

(6) An owner may extend the period within which the billing or estimate may be certified if:

(a) The owner provides drawings and specifications that expressly allow in a clear and conspicuous manner an extended period within which a billing or estimate may be certified; and

(b) The owner provides for each page of drawings and specifications, including bid drawings and specifications and construction drawings and specifications, a statement substantially similar to the following statement:

Notice of Extended Certification Period Provision

The construction contract will allow the owner to certify billings and estimates no later than _____ days after the billings and estimates are received from the original contractor.

(7) Any requirement under this section that a statement be provided on a page of drawings or specifications may be satisfied by placing the required statement on either side of the page.

(8) After a subcontractor or material supplier submits a bid or proposal or other written pricing information to an original contractor, an owner and the original contractor may agree in writing to change the specified number of days after certification during which the owner may make payment to the original contractor or within which the owner must certify a billing or estimate. The billings by any subcontractor or material supplier that does not provide written consent to the change remain subject to the certification period indicated in the drawings and specifications. A construction contract may not be changed in a manner that alters the right of any subcontractor or material supplier to receive prompt and timely progress payments as provided under ORS 701.630.

(9) An owner may withhold from a progress payment an amount that is sufficient to pay the direct expenses the owner reasonably expects to incur to correct any items detailed in a written statement under subsection (5) of this section. The owner may also withhold a reasonable amount as retainage. As used in this subsection, "retainage" has the meaning given that term in ORS 701.410.

(10) When an original contractor completes and an owner approves all work under a construction contract, the owner shall make payment in full of all remaining amounts due on the construction contract as described in subsection (3) of this section. When an original contractor completes and an owner approves all work under a portion of a construction contract for which the construction contract states a separate price, the owner shall make payment in full of all remaining amounts due on that portion of the construction contract, subject to the satisfaction of any items detailed under subsection (5) of this section or ORS 701.630(4).

(11) If an owner or a person designated by the owner as responsible for making progress payments on a construction contract does not make a timely payment under this section, the owner shall pay the original contractor interest on the unpaid balance at the rate of one and one-half percent a month or fraction of a month, or at a higher rate as the parties to the construction contract may agree.

(12) On the written request of a subcontractor, the owner shall notify the subcontractor no later than five days after the issuance of a progress payment to the original contractor. On the written request of a subcontractor, the owner shall notify the subcontractor no later than five days after the owner makes the final payment to the original contractor on the construction contract.

(13) If the owner and original contractor are a single entity, that entity shall make progress and final payments to subcontractors and material suppliers as described in subsection (3) or (6) of this section.

(14) In any action, claim or arbitration brought to collect interest pursuant to this section, the prevailing party shall be awarded costs and reasonable attorney fees.

[2003 c.675 §55; 2011 c.553 §2]

Note: See note under 701.620.

701.630 Payments to subcontractors and material suppliers; failure to pay; omission of payment. (1) An original contractor, subcontractor or material supplier that performs in accordance with a construction contract is entitled to payment from the party with whom the original contractor, subcontractor or material supplier contracts.

(2)(a) If a subcontractor has performed in accordance with a construction contract, and the original contractor receives payment from the owner

for work performed by the subcontractor, the original contractor shall pay the subcontractor for that work no later than seven days after the original contractor receives the payment. If a material supplier has performed in accordance with a construction contract, and the original contractor receives payment from the owner for materials or products provided by the material supplier, the original contractor shall pay the material supplier for those materials and products no later than seven days after the original contractor receives the payment. An original subcontractor that receives payment under this subsection for work provided to the original subcontractor by another subcontractor, or for materials or products provided to the original subcontractor, shall pay the other subcontractor or material supplier for the work, materials or products no later than seven days after the original subcontractor receives the payment.

(b) Payment is not required under this subsection unless a subcontractor or material supplier provides to the original contractor or subcontractor a billing or invoice for the work performed or materials or products supplied in compliance with the terms of the contract between the parties. Each subcontractor or material supplier must provide an appropriate waiver of any lien for labor, equipment, services, materials or products in accordance with subcontract or purchase order terms and conditions. The original contractor or subcontractor may require that such waivers of lien be notarized.

(3) Any failure to reasonably account for the application or use of payments, as proven in a legal proceeding authorized under the terms of the construction contract, may constitute grounds for disciplinary action by the Construction Contractors Board under ORS 701.098.

(4) An original contractor that submits a billing or estimate to an owner, or an original subcontractor that submits a billing or estimate to the original contractor, may omit from the billing or estimate amounts to be withheld from payment to a subcontractor or material supplier because of:

- (a) Unsatisfactory work progress;
- (b) Defective construction work, materials or products not remedied;
- (c) Disputed work, materials or products, except that the withheld amount may not exceed 150 percent of the amount in dispute;
- (d) Failure to comply with other material provisions of the construction contract;
- (e) A third party claim being filed or reasonable evidence that a third party claim will be filed;
- (f) Failure of the subcontractor to make timely payments to subcontractors and material suppliers for labor, equipment, materials and products;
- (g) Damage to an original contractor, subcontractor or material supplier;

(h) Reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum; or

(i) Other items as allowed under the subcontract or purchase order terms and conditions.

(5) An original contractor or original subcontractor may also omit from a billing or estimate a reasonable amount for retainage, except that the amount omitted may not exceed the actual percentage allowed by the construction contract, subcontract or purchase order. As used in this subsection, "retainage" has the meaning given that term in ORS 701.410.

(6) If a progress or final payment to a subcontractor or material supplier is delayed by more than seven days after receipt of a progress or final payment by an original contractor or subcontractor, the original contractor or subcontractor shall pay its subcontractor or material supplier interest beginning on the eighth day, except during periods of time during which payment is withheld pursuant to subsection (4) or (5) of this section, at the rate of one and one-half percent a month or a fraction of a month on the unpaid balance or at such higher rate as the parties agree.

(7) In any action, claim or arbitration brought to collect interest under this section, the prevailing party shall be awarded costs and reasonable attorney fees. [2003 c.675 §56; 2011 c.553 §3]

Note: See note under 701.620.

701.635 Suspension of performance. (1) An original contractor may suspend performance under a construction contract, or if performance is suspended for longer than one month may terminate a construction contract, if the owner fails to make timely payment of the amount certified under ORS 701.625. An original contractor shall provide written notice to an owner at least seven days before the original contractor suspends performance or terminates the construction contract, unless a shorter notice period is prescribed in the construction contract. An original contractor may not be deemed in breach of a construction contract for suspending performance or terminating a construction contract pursuant to this subsection. A construction contract may not extend the notice period under this subsection.

(2) A subcontractor may suspend performance under a construction contract, or if performance is suspended for longer than one month may terminate a construction contract, if the owner fails to make timely payment of amounts certified under ORS 701.625 or the subcontractor does not receive payment for the certified work under ORS 701.630 (2). A subcontractor shall provide written notice to the original contractor and owner at least three days before the subcontractor suspends performance or terminates the construction contract, unless a shorter notice period is prescribed in the construction contract. A subcontractor may not be deemed in breach of a construction contract for

suspending performance or terminating a construction contract pursuant to this subsection. A construction contract may not extend the notice period under this subsection.

(3) A subcontractor may suspend performance under a construction contract, or if performance is suspended for longer than one month may terminate a construction contract, if the owner makes timely payment of amounts certified under ORS 701.625 for the subcontractor's work but the original contractor fails to pay the subcontractor for the certified work. A subcontractor shall provide written notice to the original contractor and owner at least seven days before the subcontractor suspends performance or terminates the construction contract, unless a shorter notice period is prescribed in the construction contract. A subcontractor may not be deemed in breach of a construction contract for suspending performance or terminating a construction contract pursuant to this subsection. A construction contract may not extend the notice period under this subsection.

(4) A subcontractor may suspend performance under a construction contract, or if performance is suspended for longer than one month may terminate a construction contract, if the owner declines or fails to approve portions of the contractor's billing or estimate under ORS 701.625 for that subcontractor's work and the reasons for nonapproval are not the fault of or directly related to the subcontractor's work. A subcontractor shall provide written notice to the original contractor and the owner at least seven days before the subcontractor suspends performance or terminates the construction contract, unless a shorter notice period is prescribed in the construction contract. A subcontractor may not be deemed in breach of a construction contract for suspending performance or terminating a construction contract pursuant to this subsection. A construction contract may not extend the notice period under this subsection.

(5) A contractor or subcontractor may not submit a notice of suspension under this section until the lawful period for payment to the contractor or subcontractor has expired.

(6) An original contractor or subcontractor that suspends performance as provided in this section may condition the supplying of further labor, equipment, services, materials or products upon the owner or original contractor paying, in addition to any amounts certified under ORS 701.625, any documented, substantial and reasonably incurred costs for mobilization resulting from the shutdown or start-up of a project.

(7) In any action, claim or arbitration brought pursuant to this section, the prevailing party shall be awarded costs and reasonable attorney fees.

(8) Written notice required under this section is deemed to have been provided if the notice:

(a) Is delivered in person to the owner, original contractor, subcontractor or a person designated by the owner, original contractor or subcontractor to receive notice; or

(b) Is delivered by certified mail, return receipt requested, or other means that provides written, third party verification of delivery to the last business address of the owner, original contractor or subcontractor known to the party giving notice. [2003 c.675 §57; 2011 c.553 §4]

Note: See note under 701.620.

701.640 Prohibition against contrary provisions, covenants or clauses. (1) A construction contract may not include any provision, covenant or clause that:

(a) Makes the construction contract subject to the laws of another state or that requires any litigation, arbitration or other dispute resolution proceeding arising from the construction contract to be conducted in another state; or

(b) States that a party to the construction contract cannot suspend performance under the construction contract or terminate the construction contract if another party to the construction contract fails to make prompt payments under the construction contract pursuant to ORS 701.620 to 701.640.

(2) Any provision, covenant or clause described in subsection (1) of this section is void and unenforceable. [2003 c.675 §58; 2011 c.553 §5]

Note: See note under 701.620.

701.645 Contracts and housing not subject to ORS 701.620 to 701.640. ORS 701.620 to 701.640 do not apply to:

(1) A contract for the construction, alteration, repair, maintenance, moving or demolition of a building that is subject to the Low-Rise Residential Dwelling Code;

(2) A public contract under ORS 279.835 to 279.855 or ORS chapter 279A, 279B or 279C; or

(3) Housing in which all or part of the dwelling units are reserved for rental to persons having an income equal to or less than 80 percent of the median household income for the area as determined by the Housing and Community Services Department. [2003 c.675 §59; 2003 c.794 §331d]

Note: See note under 701.620.

701.900 [1989 c.928 §31; 1999 c.402 §40; renumbered 701.002 in 2001]

PENALTIES

701.990 Criminal penalties. (1) Violation of ORS 701.021 is a Class A misdemeanor.

(2) The intentional use of a contractor's license number without the authorization of the licensed contractor is a Class A misdemeanor.

(3) Use of a contractor's license number, with or without the authorization of the licensed contractor, with the intent to deceive the public is a Class A misdemeanor. [1971 c.740 §22; 1999 c.344 §7; 2001 c.104 §282; 2001 c.850 §7; 2007 c.836 §37]

701.992 Civil penalties and other sanctions; enforcement. (1) Except as provided in subsections (4) and (5) of this section, any person who violates any provision of this chapter or any rule adopted by the Construction Contractors Board shall forfeit and pay into the General Fund of the State Treasury a civil penalty in an amount determined by the board of not more than \$5,000 for each offense.

(2) Civil penalties under this section shall be imposed as provided in ORS 183.745.

(3) The provisions of this section are in addition to and not in lieu of any other penalty or sanction provided by law.

(4) The board shall impose sanctions for violation of ORS 701.098(1)(h) on both the person to whom the contract is awarded and the person who awards the contract as follows:

(a) A penalty not less than \$500 nor more than \$1,000 for the first offense;

(b) A penalty not less than \$1,000 nor more than \$2,000 for the second offense;

(c) Suspension of the person's license for six months for a third offense;

(d) Suspension of the person's license for three years for a fourth offense; and

(e) Revocation of the person's license for a fifth offense.

(5) The board may impose a civil penalty not to exceed \$100 for each violation of ORS 87.007(3). [1971 c.740 §21; 1979 c.874 §5; 1981 c.618 §14; 1983 c.616 §16; 1983 c.696 §27; 1991 c.734 §90; 1995 c.216 §4; 1995 c.771 §6; 1999 c.402 §41; 2003 c.14 §441; 2003 c.778 §7; 2005 c.432 §17; 2007 c.836 §38]

701.995 Civil penalties for violations related to lead-based paint activities; reporting of penalties and sanctions.

(1) A person who violates any provision of, or any rule adopted under, ORS 701.505 to 701.515 shall pay to the Construction Contractors Board Lead-Based Paint Activities Fund established under ORS 701.520 a civil penalty of not more than \$5,000 for each violation.

(2) Civil penalties under this section shall be imposed as provided in ORS 183.745.

(3) A civil penalty imposed under this section is in addition to and not in lieu of any other penalty or sanction provided by law.

(4) The board shall report all civil penalties or sanctions imposed under this section to each of the following state agencies:

(a) The Oregon Health Authority;

(b) The Occupational Safety and Health Division of the Department of Consumer and Business Services; and

(c) The Department of Environmental Quality. [2009 c.757 §10; 2009 c.828 §69]

Note: 701.995 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 701 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

GENERAL PROVISIONS

12.010 Time of commencing actions. Actions shall only be commenced within the periods prescribed in this chapter, after the cause of action shall have accrued, except where a different limitation is prescribed by statute. [Amended by 1979 c.284 §43]

12.020 When action deemed begun. (1) Except as provided in subsection (2) of this section, for the purpose of determining whether an action has been commenced within the time limited, an action shall be deemed commenced as to each defendant, when the complaint is filed, and the summons served on the defendant, or on a codefendant who is a joint contractor, or otherwise united in interest with the defendant.

(2) If the first publication of summons or other service of summons in an action occurs before the expiration of 60 days after the date on which the complaint in the action was filed, the action against each person of whom the court by such service has acquired jurisdiction shall be deemed to have been commenced upon the date on which the complaint in the action was filed. [Amended by 1973 c.731 §1]

12.030 [Repealed by 1973 c.731 §2]

12.040 Limitations of suits generally; land patent suits; defense of possession by equitable title; suit on new promise, fraud or mistake. (1) A suit shall only be commenced within the time limited to commence an action as provided in this chapter; and a suit for the determination of any right or claim to or interest in real property shall be deemed within the limitations provided for actions for the recovery of the possession of real property.

(2) No suit shall be maintained to set aside, cancel, annul or otherwise affect a patent to lands issued by the United States or this state, or to compel any person claiming or holding under such patent to convey the lands described therein, or any portion of them, to the plaintiff in such suit, or to hold the same in trust for, or to the use and benefit of such plaintiff, or on account of any matter, thing or transaction which was had, done, suffered or transpired prior to the date of such patent, unless such suit is commenced within 10 years from the date of such patent.

(3) This section shall not bar an equitable owner in possession of real property from defending possession by means of the equitable title; and in any action for the recovery of any real property, or the possession thereof, by any person or persons claiming or holding the legal title to the same under such patent against any person or persons in possession of such real property under any equitable title, or having in equity the right to the possession thereof as against the plaintiff in such action, such equitable right of possession may be pleaded by answer in such action, or

set up by bill in equity to enjoin such action or execution upon any judgment rendered therein; and the right of such equitable owner to defend possession in such action, or by bill for injunction, shall not be barred by lapse of time while an action for the possession of such real property is not barred.

(4) In a suit upon a new promise, fraud or mistake, the limitation shall only be deemed to commence from the making of the new promise or the discovery of the fraud or mistake.

12.050 Action to recover real property. An action for the recovery of real property, or for the recovery of the possession thereof, shall be commenced within 10 years. No action shall be maintained for such recovery unless it appear that the plaintiff, an ancestor, predecessor, or grantor was seized or possessed of the premises in question within 10 years before the commencement of the action.

12.060 Suit or action on land contracts; time when they cease to affect the property. (1) Unless suit or action to enforce a contract for the sale of real property is instituted in the county in which the real property is situated within five years from the date of maturity of the final payment provided for in the contract, or from the date to which the final payment shall have been extended by agreement of record, the contract shall not thereafter be a lien, encumbrance, or cloud on the title of the property.

(2) When the purchase price fixed in the contract is payable in installments, the contract shall be deemed to mature on the date upon which the final payment would be payable if the minimum amount of the principal due on each installment had been paid as provided in the terms of the contract.

12.070 Action on judgment, decree or sealed instrument. (1) An action upon a judgment or decree of any court of the United States, or of any state or territory within the United States; or

(2) An action upon a sealed instrument entered into before August 13, 1965, shall be commenced within 10 years. [Amended by 1965 c.502 §3]

12.080 Action on certain contracts or liabilities. (1) An action upon a contract or liability, express or implied, excepting those mentioned in ORS 12.070, 12.110 and 12.135 and except as otherwise provided in ORS 72.7250;

(2) An action upon a liability created by statute, other than a penalty or forfeiture, excepting those mentioned in ORS 12.110;

(3) An action for waste or trespass upon or for interference with or injury to any interest of another in real property, excepting those mentioned in ORS 12.050, 12.060, 12.135, 12.137 and 273.241; or

(4) An action for taking, detaining or injuring personal property, including an action for the specific recovery thereof, excepting an action mentioned in

ORS 12.137; shall be commenced within six years. [Amended by 1957 c.374 §3; 1961 c.726 §396; 1973 c.363 §1; 1983 c.437 §2; 1987 c.705 §3; 1991 c.968 §2]

12.115 Action for negligent injury to person or property. (1) In no event shall any action for negligent injury to person or property of another be commenced more than 10 years from the date of the act or omission complained of.

(2) Nothing in this section shall be construed to extend any period of limitation otherwise established by law, including but not limited to the limitations established by ORS 12.110. [1967 c.406 §2]

12.135 Action for damages from construction, alteration or repair of improvement to real property; “substantial completion” defined; application. (1) An action against a person by a plaintiff who is not a public body, whether in contract, tort or otherwise, arising from the person having performed the construction, alteration or repair of any improvement to real property or the supervision or inspection thereof, or from the person having furnished design, planning, surveying, architectural or engineering services for the improvement, must be commenced before the earliest of:

(a) The applicable period of limitation otherwise established by law;

(b) Ten years after substantial completion or abandonment of the construction, alteration or repair of a small commercial structure, as defined in ORS 701.005, a residential structure, as defined in ORS 701.005, or a large commercial structure, as defined in ORS 701.005, that is owned or maintained by a homeowners association, as defined in ORS 94.550, or that is owned or maintained by an association of unit owners, as defined in ORS 100.005; or

(c) Six years after substantial completion or abandonment of the construction, alteration or repair of a large commercial structure, as defined in ORS 701.005, other than a large commercial structure described in paragraph (b) of this subsection.

(2) An action against a person by a public body, whether in contract, tort or otherwise, arising from the person having performed the construction, alteration or repair of any improvement to real property or the supervision or inspection thereof, or from the person having furnished design, planning, surveying, architectural or engineering services for the improvement, must be commenced not more than 10 years after substantial completion or abandonment of such construction, alteration or repair of the improvement to real property.

(3)(a) Notwithstanding subsections (1) and (2) of this section, an action against a person registered to practice architecture under ORS 671.010 to 671.220, a person registered to practice landscape architecture under ORS 671.310 to 671.459 or a person registered

to practice engineering under ORS 672.005 to 672.325 to recover damages for injury to a person, property or to any interest in property, including damages for delay or economic loss, regardless of legal theory, arising out of the construction, alteration or repair of any improvement to real property must be commenced before the earliest of:

(A) Two years after the date the injury or damage is first discovered or in the exercise of reasonable care should have been discovered;

(B) Ten years after substantial completion or abandonment of the construction, alteration or repair of a small commercial structure, as defined in ORS 701.005, a residential structure, as defined in ORS 701.005, or a large commercial structure, as defined in ORS 701.005, that is owned or maintained by an association of unit owners, as defined in ORS 100.005 or

(C) Six years after substantial completion or abandonment of the construction, alteration or repair of a large commercial structure, as defined in ORS 701.005, other than a large commercial structure described in subparagraph (B) of this paragraph.

(b) This subsection applies to actions brought by any person or public body.

(4) For purposes of this section:

(a) “Public body” has the meaning given that term in ORS 174.109; and

(b) “Substantial completion” means the date when the contractee accepts in writing the construction, alteration or repair of the improvement to real property or any designated portion thereof as having reached that state of completion when it may be used or occupied for its intended purpose or, if there is no such written acceptance, the date of acceptance of the completed construction, alteration or repair of such improvement by the contractee.

(5) For purposes of this section, an improvement to real property shall be considered abandoned on the same date that the improvement is considered abandoned under ORS 87.045.

(6) This section:

(a) Applies to an action against a manufacturer, distributor, seller or lessor of a manufactured dwelling, as defined in ORS 446.003, or of a prefabricated structure, as defined in ORS 455.010; and

(b) Does not apply to actions against any person in actual possession and control of the improvement, as owner, tenant or otherwise, at the time such cause of action accrues. [1971 c.664 §§2,3,4; 1983 c.437 §1; 1991 c.968 §1; 2009 c.485 §3; 2009 c.715 §1; 2013 c.469 §1]

Note: Section 3, chapter 715, Oregon Laws 2009, provides:

Sec. 3. The amendments to ORS 12.135 and 12.280 by sections 1 and 2 of this 2009 Act apply only to causes of action arising on or after the effective date of this 2009 Act [January 1, 2010]. [2009 c.715 §3]

Note: Section 2, chapter 469 Oregon Laws 2013, provides:

Sec. 2. The amendments to ORS 12.135 by section 1 of this 2013 Act apply only to causes of action arising on or after the effective date of this 2013 Act [January 1, 2014]. [2013 c.469 §2]

12.230 Acknowledgment or promise taking contract case out of statute; effect of payment. No acknowledgment or promise shall be sufficient evidence of a new or continuing contract, whereby to take the case out of the operation of this chapter, unless the same is contained in some writing, signed by the party to be charged thereby; but this section shall not alter the effect of any payment of principal or interest.

12.240 Effect of payment after obligation becomes due. Whenever any payment of principal or interest is made after it has become due, upon an existing contract, whether it is a bill of exchange, promissory note, bond, or other evidence of indebtedness, the limitation shall commence from the time the last payment was made.

12.250 Actions by state, county or public corporations. Unless otherwise made applicable thereto, the limitations prescribed in this chapter shall not apply to actions brought in the name of the state, or any county, or other public corporation therein, or for its benefit.

12.280 Action based on practice of land surveying. Notwithstanding ORS 12.135 or any other statute of limitation, an action against a person for the practice of land surveying, as defined in ORS 672.005, to recover damages for injury to a person, property or to any interest in property, including damages for delay or economic loss, regardless of legal theory, arising out of the survey of real property must be commenced within two years after the date the injury or damage is first discovered or in the exercise of reasonable care should have been discovered. In no event may an action arising out of a survey be commenced more than 10 years after the date on which any map prepared by the land surveyor is filed under the provisions of ORS 209.250, or, if no map is filed, more than 10 years after the completion of work on the survey. [1995 c.310 §2; 2009 c.715 §2]

Note: See note under 12.135.

UNIFORM ARBITRATION ACT

36.600 Definitions. As used in ORS 36.600 to 36.740:

(1) "Arbitration organization" means an association, agency, board, commission or other entity that is neutral and initiates, sponsors or administers an arbitration proceeding or is involved in the appointment of an arbitrator.

(2) "Arbitrator" means an individual appointed to render an award, alone or with others, in a controversy that is subject to an agreement to arbitrate.

(3) "Court" means a circuit court.

(4) "Knowledge" means actual knowledge.

(5) "Person" means an individual, corporation, business trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency or instrumentality, public corporation or any other legal or commercial entity.

(6) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form. [2003 c.598 §1; 2009 c.294 §3]

Note: Sections 3 and 31, chapter 598, Oregon Laws 2003, provide:

Sec. 3. (1) Sections 1 to 30 of this 2003 Act [36.600 to 36.740] govern an agreement to arbitrate made on or after the effective date of this 2003 Act [January 1, 2004].

(2) Sections 1 to 30 of this 2003 Act govern an agreement to arbitrate made before the effective date of this 2003 Act if all the parties to the agreement or to the arbitration proceeding so agree in a record.

(3) On or after September 1, 2004, sections 1 to 30 of this 2003 Act govern an agreement to arbitrate whenever made. [2003 c.598 §3]

Sec. 31. ORS 36.600 to 36.740 do not affect an action or proceeding commenced or right accrued before January 1, 2004. Subject to section 3, chapter 598, Oregon Laws 2003, an arbitration agreement made before January 1, 2004, continues to be governed by ORS 36.300 to 36.365 as though those sections were not repealed by section 57, chapter 598, Oregon Laws 2003. [2003 c.598 §31; 2005 c.22 §30]

Note: 36.600 to 36.740 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 36 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

36.605 Notice. (1) Except as otherwise provided in ORS 36.600 to 36.740, a person gives notice to another person by taking action that is reasonably necessary to inform the other person in ordinary course, whether or not the other person acquires knowledge of the notice.

(2) A person has notice if the person has knowledge of the notice or has received notice.

(3) A person receives notice when it comes to the person's attention or the notice is delivered at the person's place of residence or place of business, or at another location held out by the person as a place of delivery of such communications. [2003 c.598 §2]

Note: See notes under 36.600.

36.610 Effect of agreement to arbitrate; nonwaivable provisions. (1) Except as otherwise provided in this section, a party to an agreement to arbitrate or to an arbitration proceeding may waive, or the parties may vary the effect of, the requirements of ORS 36.600 to 36.740 to the extent permitted by law.

(2) Before a controversy arises that is subject to an agreement to arbitrate, a party to the agreement may not:

(a) Waive or agree to vary the effect of the requirements of this section or ORS 36.615, 36.620 (1), 36.630, 36.675 (1) or (2), 36.720 or 36.730;

(b) Agree to unreasonably restrict the right under ORS 36.635 to notice of the initiation of an arbitration proceeding;

(c) Agree to unreasonably restrict the right under ORS 36.650 to disclosure of any facts by a neutral arbitrator; or

(d) Waive the right under ORS 36.670 of a party to an agreement to arbitrate to be represented by a lawyer at any proceeding or hearing under ORS 36.600 to 36.740, but an employer and a labor organization may waive the right to representation by a lawyer in a labor arbitration.

(3) A party to an agreement to arbitrate or arbitration proceeding may not waive, or the parties may not vary the effect of, the requirements of this section or ORS 36.625, 36.660, 36.680, 36.690 (4) or (5), 36.700, 36.705, 36.710, 36.715 (1) or (2), 36.735 or 36.740 or section 3 (1) or (3) or 31, chapter 598, Oregon Laws 2003.

(4) Subsections (2) and (3) of this section do not apply to agreements to arbitrate entered into by two or more insurers, as defined by ORS 731.106, or self-insured persons for the purpose of arbitration of disputes arising out of the provision of insurance. [2003 c.598 §4; 2011 c.595 §118]

Note: See notes under 36.600.

36.615 Application for judicial relief; fees. (1) Except as otherwise provided in ORS 36.730, an application for judicial relief under ORS 36.600 to 36.740 must be made by petition to the court. The petitioner and the respondent must pay the filing fees established under ORS 21.135.

(2) Unless a civil action involving the agreement to arbitrate is pending, notice of a first petition to the court under ORS 36.600 to 36.740 must be served in the manner provided by ORCP 7 D. Otherwise, notice of the petition must be given in the manner provided by ORCP 9. [2003 c.598 §5; 2003 c.737 §§40a,40c; 2005 c.702 §§45,46,47; 2007 c.860 §6; 2010 c.107 §§40,41; 2011 c.595 §44]

Note: See notes under 36.600.

36.620 Validity of agreement to arbitrate; form of acknowledgment of agreement. (1) An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable and irrevocable except upon a ground that exists at law or in equity for the revocation of a contract.

(2) Subject to ORS 36.625 (8), the court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.

(3) An arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled.

(4) If a party to a judicial proceeding challenges the existence of, or claims that a controversy is not subject to, an agreement to arbitrate, the arbitration proceeding may continue pending final resolution of the issue by the court, unless the court otherwise orders.

(5) A written arbitration agreement entered into between an employer and employee and otherwise valid under subsection (1) of this section is voidable and may not be enforced by a court unless:

(a) At least 72 hours before the first day of the employee's employment, the employee has received notice in a written employment offer from the employer that an arbitration agreement is required as a condition of employment, and the employee has been provided with the required arbitration agreement that meets the requirements of, and includes the acknowledgment set forth in, subsection (6) of this section; or

(b) The arbitration agreement is entered into upon a subsequent bona fide advancement of the employee by the employer.

(6) The acknowledgment required by subsection (5) of this section must be signed by the employee and must include the following language in boldfaced type:

I acknowledge that I have received and read or have had the opportunity to read this arbitration agreement. I understand that this arbitration agreement requires that disputes that involve the matters subject to the agreement be submitted to mediation or arbitration pursuant to the arbitration agreement rather than to a judge and jury in court.

_____ [2003 c.598 §6; 2007 c.902 §1; 2011 c.489 §1]

Note: Section 4, chapter 902, Oregon Laws 2007, provides:

Sec. 4. The amendments to ORS 36.620 by section 1 of this 2007 Act apply to arbitration agreements entered into on or after the effective date of this 2007 Act [January 1, 2008]. [2007 c.902 §4]

Note: Section 2, chapter 489, Oregon Laws 2011, provides:

Sec. 2. The amendments to ORS 36.620 by section 1 of this 2011 Act apply to arbitration agreements entered into on or after the effective date of this 2011 Act [January 1, 2012]. [2011 c.489 §2]

Note: See notes under 36.600.

36.625 Petition to compel or stay arbitration.

(1) On petition of a person showing an agreement to arbitrate and alleging another person's refusal to arbitrate pursuant to the agreement:

(a) If the refusing party does not appear or does not oppose the petition, the court shall order the parties to arbitrate; and

(b) If the refusing party opposes the petition, the court shall proceed summarily to decide the issue as provided in subsection (8) of this section and order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate.

(2) On petition of a person alleging that an arbitration proceeding has been initiated or threatened but that there is no agreement to arbitrate, the court shall proceed summarily to decide the issue as provided in subsection (8) of this section. If the court finds that there is an enforceable agreement to arbitrate, it shall order the parties to arbitrate.

(3) If the court finds that there is no enforceable agreement to arbitrate, it may not order the parties to arbitrate pursuant to subsection (1) or (2) of this section.

(4) The court may not refuse to order arbitration because the claim subject to arbitration lacks merit or grounds for the claim have not been established.

(5) If a proceeding involving a claim referable to arbitration under an alleged agreement to arbitrate is pending in court, a petition under this section must be made in that court. Otherwise, a petition under this section may be made in any court as provided in ORS 36.725.

(6) If a party makes a petition to the court to order arbitration, the court on just terms shall stay any judicial proceeding that involves a claim alleged to be subject to the arbitration until the court renders a final decision under this section.

(7) If the court orders arbitration, the court on just terms shall stay any judicial proceeding that involves a claim subject to the arbitration. If a claim subject to the arbitration is severable, the court may limit the stay to that claim.

(8) A judge shall decide all issues raised under a petition filed under ORS 36.600 to 36.740 unless there is a constitutional right to jury trial on the issue. If there is a constitutional right to jury trial on an issue, the issue shall be tried to a jury upon the request of any party to the proceeding. [2003 c.598 §7]

Note: See notes under 36.600.

36.630 Provisional remedies.

(1) Before an arbitrator is appointed and is authorized and able to act, the court, upon petition of a party to an arbitration

proceeding and for good cause shown, may enter an order for provisional remedies to protect the effectiveness of the arbitration proceeding to the same extent and under the same conditions as if the controversy were the subject of a civil action.

(2) After an arbitrator is appointed and is authorized and able to act:

(a) The arbitrator may issue such orders for provisional remedies, including interim awards, as the arbitrator finds necessary to protect the effectiveness of the arbitration proceeding and to promote the fair and expeditious resolution of the controversy, to the same extent and under the same conditions as if the controversy were the subject of a civil action; and

(b) A party to an arbitration proceeding may move the court for a provisional remedy only if the matter is urgent and the arbitrator is not able to act timely or the arbitrator cannot provide an adequate remedy.

(3) A party does not waive a right of arbitration by making a petition under subsection (1) or (2) of this section. [2003 c.598 §8]

Note: See notes under 36.600.

36.635 Initiation of arbitration. (1) A person initiates an arbitration proceeding by giving notice in a record to the other parties to the agreement to arbitrate in the agreed manner between the parties or, in the absence of agreement, by certified mail, return receipt requested and obtained, or by service as authorized for summons under ORCP 7 D. The notice must describe the nature of the controversy and the remedy sought.

(2) Unless a person objects for lack or insufficiency of notice under ORS 36.665 (3) not later than the beginning of the arbitration hearing, the person by appearing at the hearing waives any objection to lack or insufficiency of notice. [2003 c.598 §9]

Note: See notes under 36.600.

36.640 Consolidation of separate arbitration proceedings. (1) Except as otherwise provided in subsection (3) of this section, upon petition of a party to an agreement to arbitrate or to an arbitration proceeding, the court may order consolidation of separate arbitration proceedings as to all or some of the claims if:

(a) There are separate agreements to arbitrate or separate arbitration proceedings between the same persons or one of them is a party to a separate agreement to arbitrate or a separate arbitration proceeding with a third person;

(b) The claims subject to the agreements to arbitrate arise in substantial part from the same transaction or series of related transactions;

(c) The existence of a common issue of law or fact creates the possibility of conflicting decisions in the separate arbitration proceedings; and

(d) Prejudice resulting from a failure to consolidate is not outweighed by the risk of undue

delay or prejudice to the rights of or hardship to parties opposing consolidation.

(2) The court may order consolidation of separate arbitration proceedings as to some claims and allow other claims to be resolved in separate arbitration proceedings.

(3) The court may not order consolidation of the claims of a party to an agreement to arbitrate if the agreement prohibits consolidation. [2003 c.598 §10]

Note: See notes under 36.600.

36.645 Appointment of arbitrator; service as neutral arbitrator. (1) If the parties to an agreement to arbitrate agree on a method for appointing an arbitrator, that method must be followed, unless the method fails. If the parties have not agreed on a method, the agreed method fails, or an arbitrator designated or appointed fails or is unable to act and a successor has not been appointed, the court, on petition of a party to the arbitration proceeding, shall appoint the arbitrator. An arbitrator so appointed has all the powers of an arbitrator designated in the agreement to arbitrate or appointed pursuant to the agreed method.

(2) An individual who has a known, direct and material interest in the outcome of the arbitration proceeding or a known, existing and substantial relationship with a party may not serve as an arbitrator required by an agreement to be neutral. [2003 c.598 §11]

Note: See notes under 36.600.

36.650 Disclosure by arbitrator. (1) Before accepting appointment, an individual who is requested to serve as an arbitrator, after making a reasonable inquiry, shall disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators in the arbitration proceeding any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator in the arbitration proceeding, including:

(a) A financial or personal interest in the outcome of the arbitration proceeding; and

(b) An existing or past relationship with any of the parties to the agreement to arbitrate or the arbitration proceeding, their counsel or representatives, a witness or another arbitrator in the proceeding.

(2) An arbitrator has a continuing obligation to disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators in the proceeding any facts that the arbitrator learns after accepting appointment that a reasonable person would consider likely to affect the impartiality of the arbitrator.

(3) If an arbitrator discloses a fact required by subsection (1) or (2) of this section to be disclosed and a party timely objects to the appointment or continued service of the arbitrator based upon the fact disclosed, the objection may be a ground under ORS 36.705 (1)(b) for vacating an award made by the arbitrator.

(4) If the arbitrator did not disclose a fact as required by subsection (1) or (2) of this section, upon timely objection by a party, the court under ORS 36.705 (1)(b) may vacate an award.

(5) An arbitrator appointed as a neutral arbitrator who does not disclose a known, direct and material interest in the outcome of the arbitration proceeding or a known, existing and substantial relationship with a party, the party's counsel or representatives, a witness or another arbitrator in the proceeding is presumed to act with evident partiality under ORS 36.705 (1)(b).

(6) If the parties to an arbitration proceeding agree to the procedures of an arbitration organization or any other procedures for challenges to arbitrators before an award is made, substantial compliance with those procedures is a condition precedent to a petition to vacate an award on that ground under ORS 36.705 (1)(b). [2003 c.598 §12]

Note: See notes under 36.600.

36.655 Action by majority. If there is more than one arbitrator, the powers of an arbitrator must be exercised by a majority of the arbitrators, but all of them shall conduct the hearing under ORS 36.665 (3). [2003 c.598 §13]

Note: See notes under 36.600.

36.660 Immunity of arbitrator; competency to testify; attorney fees and costs. (1) An arbitrator or an arbitration organization acting in that capacity is immune from civil liability to the same extent as a judge of a court of this state acting in a judicial capacity.

(2) The immunity afforded by this section supplements any immunity under other law.

(3) The failure of an arbitrator to make a disclosure required by ORS 36.650 does not cause any loss of immunity under this section.

(4) In a judicial, administrative or similar proceeding, an arbitrator or representative of an arbitration organization is not competent to testify, and may not be required to produce records as to any statement, conduct, decision or ruling occurring during the arbitration proceeding, to the same extent as a judge of a court of this state acting in a judicial capacity. This subsection does not apply:

(a) To the extent necessary to determine the claim of an arbitrator, arbitration organization or representative of the arbitration organization against a party to the arbitration proceeding; or

(b) To a hearing on a petition to vacate an award under ORS 36.705 (1)(a) or (b) if the petitioner establishes prima facie that a ground for vacating the award exists.

(5) If a person commences a civil action against an arbitrator, arbitration organization or representative of an arbitration organization arising from the services of the arbitrator, organization or representative, or if a person seeks to compel an arbitrator or a representative

of an arbitration organization to testify or produce records in violation of subsection (4) of this section, and the court decides that the arbitrator, arbitration organization or representative of an arbitration organization is immune from civil liability or that the arbitrator or representative of the organization is not competent to testify, the court shall award to the arbitrator, organization or representative reasonable attorney fees. [2003 c.598 §14]

Note: See notes under 36.600.

36.665 Arbitration process. (1) An arbitrator may conduct an arbitration in such manner as the arbitrator considers appropriate for a fair and expeditious disposition of the proceeding. The authority conferred upon the arbitrator includes the power to hold conferences with the parties to the arbitration proceeding before the hearing and, among other matters, determine the admissibility, relevance, materiality and weight of any evidence.

(2) An arbitrator may decide a request for summary disposition of a claim or particular issue:

(a) If all interested parties agree; or

(b) Upon request of one party to the arbitration proceeding, if that party gives notice to all other parties to the proceeding and the other parties have a reasonable opportunity to respond.

(3) If an arbitrator orders a hearing, the arbitrator shall set a time and place and give notice of the hearing not less than five days before the hearing begins. Unless a party to the arbitration proceeding makes an objection to lack or insufficiency of notice not later than the beginning of the hearing, the party's appearance at the hearing waives any objection based on lack or insufficiency of notice. Upon request of a party to the arbitration proceeding and for good cause shown, or upon the arbitrator's own initiative, the arbitrator may adjourn the hearing from time to time as necessary but may not postpone the hearing to a time later than that fixed by the agreement to arbitrate for making the award unless the parties to the arbitration proceeding consent to a later date. The arbitrator may hear and decide the controversy upon the evidence produced although a party who was duly notified of the arbitration proceeding did not appear. The court, on request, may direct the arbitrator to conduct the hearing promptly and render a timely decision.

(4) At a hearing under subsection (3) of this section, a party to the arbitration proceeding has a right to be heard, to present evidence material to the controversy and to cross-examine witnesses appearing at the hearing.

(5) If an arbitrator ceases or is unable to act during the arbitration proceeding, a replacement arbitrator must be appointed in accordance with ORS 36.645 to continue the proceeding and to resolve the controversy. [2003 c.598 §15]

Note: See notes under 36.600.

36.670 Representation by a lawyer; representation of legal or commercial entities. A party to an arbitration proceeding may be represented by a lawyer admitted to practice in this state or any other state. A corporation, business trust, partnership, limited liability company, association, joint venture or other legal or commercial entity may be represented by a lawyer admitted to practice in this state or any other state, by an officer of the entity, or by an employee or other agent authorized by the entity to represent the entity in the proceeding. [2003 c.598 §16]

Note: See notes under 36.600.

36.675 Witnesses; subpoenas; depositions; discovery. (1) An arbitrator may administer oaths. An arbitrator or an attorney for any party to the arbitration proceeding may issue a subpoena for the attendance of a witness and for the production of records and other evidence at any hearing. A subpoena must be served in the manner for service of subpoenas under ORCP 55 D and, upon petition to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner provided by ORCP 55 G.

(2) In order to make the proceedings fair, expeditious and cost-effective, upon request of a party to or a witness in an arbitration proceeding, an arbitrator may permit a deposition of any witness to be taken for use as evidence at the hearing, including a witness who cannot be subpoenaed for or is unable to attend a hearing. The arbitrator shall determine the conditions under which the deposition is taken.

(3) An arbitrator may permit such discovery as the arbitrator decides is appropriate in the circumstances, taking into account the needs of the parties to the arbitration proceeding and other affected persons and the desirability of making the proceeding fair, expeditious and cost-effective.

(4) If an arbitrator permits discovery under subsection (3) of this section, the arbitrator may order a party to the arbitration proceeding to comply with the arbitrator's discovery-related orders, issue subpoenas for the attendance of a witness and for the production of records and other evidence at a discovery proceeding, and take action against a noncomplying party to the extent a court could if the controversy were the subject of a civil action in this state.

(5) An arbitrator may issue a protective order to prevent the disclosure of privileged information, confidential information, trade secrets and other information protected from disclosure to the extent a court could if the controversy were the subject of a civil action in this state.

(6) All laws compelling a person under subpoena to testify and all fees for attending a judicial proceeding, a deposition or a discovery proceeding as a witness apply to an arbitration proceeding as if the controversy were the subject of a civil action in this state.

(7) The court may enforce a subpoena or discovery-related order for the attendance of a witness within this state, and for the production of records and other evidence issued by an arbitrator or by an attorney for any party to the proceeding in connection with an arbitration proceeding in another state, upon conditions determined by the court so as to make the arbitration proceeding fair, expeditious and cost-effective. A subpoena or discovery-related order issued by an arbitrator or by an attorney for any party to the proceeding in another state must be served in the manner provided by ORCP 55 D for service of subpoenas in a civil action in this state and, upon petition to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner provided by ORCP 55 G for enforcement of subpoenas in a civil action in this state. [2003 c.598 §17]

Note: See notes under 36.600.

36.680 Judicial enforcement of preaward ruling by arbitrator. If an arbitrator makes a preaward ruling in favor of a party to the arbitration proceeding, the party may request the arbitrator to incorporate the ruling into an award under ORS 36.685. A prevailing party may make a petition to the court for an expedited order to confirm the award under ORS 36.700, in which case the court shall summarily decide the petition. The court shall issue an order to confirm the award unless the court vacates, modifies, or corrects the award under ORS 36.705 or 36.710. [2003 c.598 §18]

Note: See notes under 36.600.

36.685 Award. (1) An arbitrator shall make a record of an award. The record must be signed or otherwise authenticated by any arbitrator who concurs with the award. If the award requires the payment of money, including but not limited to payment of costs or attorney fees, the award must be accompanied by a separate statement that contains the information required by ORS 18.042 for judgments that include money awards. The arbitrator or the arbitration organization shall give notice of the award, including a copy of the award, to each party to the arbitration proceeding.

(2) An award must be made within the time specified by the agreement to arbitrate or, if not specified therein, within the time ordered by the court. The court may extend or the parties to the arbitration proceeding may agree in a record to extend the time. The court or the parties may extend the time within or after the time specified or ordered. A party waives any objection that an award was not timely made unless the party gives notice of the objection to the arbitrator before receiving notice of the award. [2003 c.598 §19; 2003 c.576 §169a]

Note: See notes under 36.600.

36.690 Change of award by arbitrator. (1)

Upon request by a party to an arbitration proceeding, an arbitrator may modify or correct an award:

(a) Upon a ground stated in ORS 36.710 (1)(a) or (c);

(b) Because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

(c) To clarify the award.

(2) A request under subsection (1) of this section must be made and notice given to all parties within 20 days after the requesting party receives notice of the award.

(3) A party to the arbitration proceeding must give notice of any objection to the request within 10 days after receipt of the notice under subsection (2) of this section.

(4) If a petition to the court is pending under ORS 36.700, 36.705 or 36.710, the court may submit the claim to the arbitrator to consider whether to modify or correct the award:

(a) Upon a ground stated in ORS 36.710 (1)(a) or (c);

(b) Because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

(c) To clarify the award.

(5) An award modified or corrected pursuant to this section is subject to ORS 36.685 (1), 36.700, 36.705 and 36.710. [2003 c.598 §20]

Note: See notes under 36.600.

36.695 Remedies; fees and expenses of arbitration proceeding. (1) An arbitrator may award punitive damages or other exemplary relief if such an award is authorized by law in a civil action involving the same claim and the evidence produced at the hearing justifies the award under the legal standards otherwise applicable to the claim.

(2) An arbitrator may award reasonable attorney fees and other reasonable expenses of arbitration as may be specified in the arbitration agreement if such an award is authorized by law in a civil action involving the same claim or by the agreement of the parties to the arbitration proceeding.

(3) As to all remedies other than those authorized by subsections (1) and (2) of this section, an arbitrator may order such remedies as the arbitrator considers just and appropriate under the circumstances of the arbitration proceeding. The fact that such a remedy could not or would not be granted by the court is not a ground for refusing to confirm an award under ORS 36.700 or for vacating an award under ORS 36.705.

(4) An arbitrator's expenses and fees, together with other expenses, must be paid as provided in the award.

(5) If an arbitrator awards punitive damages or other exemplary relief under subsection (1) of this

section, the arbitrator shall specify in the award the basis in fact justifying and the basis in law authorizing the award and state separately the amount of the punitive damages or other exemplary relief. [2003 c.598 §21]

Note: See notes under 36.600.

36.700 Confirmation of award. (1) After a party

to an arbitration proceeding receives notice of an award, the party may make a petition to the court for an order confirming the award. The party filing the petition must serve a copy of the petition on all other parties to the proceedings. The court shall issue a confirming order unless within 20 days after the petition is served on the other parties:

(a) A party requests that the arbitrator modify or correct the award under ORS 36.690; or

(b) A party petitions the court to vacate, modify or correct the award under ORS 36.705 or 36.710.

(2) If a party requests that the arbitrator modify or correct the award under ORS 36.690, or petitions the court to vacate, modify or correct the award under ORS 36.705 or 36.710, the court may stay entry of an order on a petition filed under this section until a final decision is made on the request or petition. [2003 c.598 §22]

Note: See notes under 36.600.

36.705 Vacating award. (1) Upon petition to the

court by a party to an arbitration proceeding, the court shall vacate an award made in the arbitration proceeding if:

(a) The award was procured by corruption, fraud or other undue means;

(b) There was:

(A) Evident partiality by an arbitrator appointed as a neutral arbitrator;

(B) Corruption by an arbitrator; or

(C) Misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;

(c) An arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider evidence material to the controversy or otherwise conducted the hearing contrary to ORS 36.665 so as to prejudice substantially the rights of a party to the arbitration proceeding;

(d) An arbitrator exceeded the arbitrator's powers;

(e) There was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising an objection under ORS 36.665 (3) not later than the beginning of the arbitration hearing; or

(f) The arbitration was conducted without proper notice of the initiation of an arbitration as required in ORS 36.635 so as to prejudice substantially the rights of a party to the arbitration proceeding.

(2) A petition under this section must be filed within 20 days after the petitioner is served with a petition for confirmation of an award under ORS

36.700, unless the petitioner alleges that the award was procured by corruption, fraud or other undue means. If the petitioner alleges that the award was procured by corruption, fraud or other undue means, a petition under this section must be filed within 90 days after the grounds for challenging the award are known or, by the exercise of reasonable care, would have been known by the petitioner. A party filing a petition under this section must serve a copy of the petition on all other parties to the proceedings.

(3) If the court vacates an award on a ground other than that set forth in subsection (1)(e) of this section, it may order a rehearing. If the award is vacated on a ground stated in subsection (1)(a) or (b) of this section, the rehearing must be before a new arbitrator. If the award is vacated on a ground stated in subsection (1)(c), (d) or (f) of this section, the rehearing may be before the arbitrator who made the award or before any successor appointed for that arbitrator. The arbitrator must render the decision in the rehearing within the same time as that provided for an award in ORS 36.685 (2).

(4) If the court denies a petition to vacate an award, it shall confirm the award unless a petition to modify or correct the award is pending. [2003 c.598 §23]

Note: See notes under 36.600.

36.710 Modification or correction of award. (1)

Upon petition filed within 20 days after the petitioner is served with a petition for confirmation of an award under ORS 36.700, the court shall modify or correct the award if:

(a) There was an evident mathematical miscalculation or an evident mistake in the description of a person, thing or property referred to in the award;

(b) The arbitrator has made an award on a claim not submitted to the arbitrator and the award may be corrected without affecting the merits of the decision upon the claims submitted; or

(c) The award is imperfect in a matter of form not affecting the merits of the decision on the claims submitted.

(2) If a petition made under subsection (1) of this section is granted, the court shall modify or correct and confirm the award as modified or corrected. Otherwise, unless a petition to vacate is pending, the court shall confirm the award.

(3) A petition to modify or correct an award pursuant to this section may be joined with a petition to vacate the award.

(4) A party filing a petition under this section must serve a copy of the petition on all other parties to the proceedings. [2003 c.598 §24]

Note: See notes under 36.600.

36.715 Judgment on award; attorney fees and litigation expenses. (1) Upon granting an order confirming, vacating without directing a rehearing,

modifying or correcting an award, the court shall enter a judgment in conformity with the order. The judgment may be entered in the register and enforced as any other judgment in a civil action.

(2) A court may allow reasonable costs of the petition and subsequent judicial proceedings.

(3) On application of a prevailing party to a contested judicial proceeding under ORS 36.700, 36.705 or 36.710, the court may add reasonable attorney fees incurred in a judicial proceeding after the award is made to a judgment confirming, vacating without directing a rehearing, modifying or correcting an award. [2003 c.598 §25]

Note: See notes under 36.600.

36.720 Jurisdiction. (1) A court having jurisdiction over the controversy and the parties may enforce an agreement to arbitrate.

(2) An agreement to arbitrate providing for arbitration in this state confers exclusive jurisdiction on the court to enter judgment on an award under ORS 36.600 to 36.740. [2003 c.598 §26]

Note: See notes under 36.600.

36.725 Venue. A petition pursuant to ORS 36.615 must be made in the court for the county in which the agreement to arbitrate specifies the arbitration hearing is to be held or, if the hearing has been held, in the court for the county in which it was held. Otherwise, the petition may be made in the court for any county in which an adverse party resides or has a place of business or, if no adverse party has a residence or place of business in this state, in the court of any county in this state. All subsequent petitions must be made in the court hearing the initial petition unless the court otherwise directs. [2003 c.598 §27]

Note: See notes under 36.600.

36.730 Appeals. (1) An appeal may be taken from:

(a) An order denying a petition to compel arbitration.

(b) An order granting a petition to stay arbitration.

(c) A judgment entered pursuant to ORS 36.600 to 36.740, including but not limited to a judgment:

(A) Confirming or denying confirmation of an award.

(B) Modifying or correcting an award.

(C) Vacating an award without directing a rehearing.

(2) An appeal under this section must be taken as provided in ORS chapter 19. [2003 c.598 §28]

Note: See notes under 36.600.

36.735 Uniformity of application and construction. In applying and construing ORS 36.600 to 36.740, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. [2003 c.598

§29]

Note: See notes under 36.600.

36.740 Relationship to electronic signatures in Global and National Commerce Act. The provisions of ORS 36.600 to 36.740 governing the legal effect, validity and enforceability of electronic records or electronic signatures, and of contracts performed with the use of such records or signatures, conform to the requirements of Section 102 of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 and 7002, as in effect on January 1, 2004. [2003 c.598 §30]

Note: See notes under 36.600.

HOME SOLICITATION SALES

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.

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

(A) The seller or person acting for the seller engages in a solicitation conducted by telephone to a residence;

(B) The transaction is initiated by the seller or person acting for the seller and is in no way solicited by the buyer;

(C) The buyer’s agreement or offer to purchase is given over the telephone to the seller or person acting for the seller; and

(D) There is no personal contact between the buyer and the seller or person acting for the seller prior to delivery of goods or performance of services.

(c) “Business day” does not include a Saturday, Sunday or legal holiday.

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

(a) A sale made pursuant to a preexisting revolving charge account unless the sale is made at the residence of the buyer;

(b) The activities of a financial institution as defined in 15 U.S.C. 6827;

(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;

(d) A sale made pursuant to prior business negotiations relevant to the sale between the parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale;

(e) A sale for cash or check in the amount of less than \$25;

(f) A sale of insurance, farm equipment or motor vehicles;

(g) A sale of arts and crafts at a fair;

(h) A sale made at an event conducted under and

governed by ORS chapter 565; or

(i) Except as provided in subsection (3) of this section, a transaction in which the buyer initiated the contact and specifically requested that the seller come to the buyer’s home for the purpose of repairing or performing maintenance on the buyer’s personal property.

(3) The provisions of ORS 83.710 to 83.750 apply to a sale under subsection (2)(i) of this section if the seller, while at the home of the buyer to repair or perform maintenance on the buyer’s personal property at the request of the buyer, sells the buyer the right to receive additional goods or services other than replacement parts necessary to perform the maintenance or to make the repairs on the buyer’s personal property.

(4) The provisions of ORS 83.710 to 83.750 relating to telephone solicitation sales apply only to a sale of periodicals, magazines or any other reading material with or without illustrations that the buyer is to receive at fixed intervals and do not apply to sales of newspaper subscriptions or advertising and sales in which the buyer is offered reasonable opportunity to preview and return reading material without contractual obligation. [1971 c.744 §21(1); 1977 c.170 §1; 1979 c.503 §1; 2005 c.223 §1]

83.715 Telephone solicitation sale; contract; contents. (1) Except as provided in this section, no enforceable agreement may be formed by a telephone solicitation sale.

(2) To form a binding agreement by telephone solicitation sale, the seller must receive from the buyer a signed, written contract that contains all of the terms of the agreement between the seller and the buyer. The seller must provide a copy of the completed contract to the buyer.

(3) Any term or agreement between a buyer and seller in a telephone solicitation sale is void and unenforceable unless it is contained in the contract required by subsection (2) of this section.

(4) A contract required by subsection (2) of this section shall contain the following notice on a separate sheet that contains no other provision:

This contract is a contract made pursuant to a telephone solicitation sale regulated by Oregon Revised Statutes 83.710 to 83.750. The person offering to buy goods or services under this contract understands that:

(1) No discussions or agreements between the buyer and the person offering to sell goods or services formed a binding agreement except as provided by this contract;

(2) There is no binding agreement between the buyer and seller until the seller receives a copy of this contract signed by the buyer; and

(3) All of the terms of the agreement between the buyer and the seller are contained, in writing, in this contract.

[1979 c.503 §3]

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. [1971 c.744 §21(2); 2005 c.223 §2]

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

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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. [1971 c.744 §21(3); 1977 c.170 §2; 2005 c.223 §3]

83.740 Duties of seller upon cancellation of sale or revocation of offer to purchase. (1) The seller must tender to the buyer any payments made by the buyer and any note or other evidence of indebtedness within 10 days after a home solicitation sale has been canceled or an offer to purchase has been revoked.

(2) If the down payment includes goods traded in, the goods must be tendered in substantially as good condition as when received by the seller. If the seller fails to tender the goods as provided by this section, the buyer may elect to recover an amount equal to the trade-in allowance stated in the agreement.

(3) The buyer may retain possession of goods delivered to the buyer by the seller, and has a lien on the goods in the possession or control of the buyer for any recovery to which the buyer is entitled, until the seller has complied with the obligations imposed by this section. [1971 c.744 §21(4); 1977 c.170 §3]

83.750 Rights and duties of buyer upon cancellation of sale or revocation of offer to purchase. (1) Except as provided by ORS 83.740 (3), within a reasonable time after a home solicitation sale

has been canceled or an offer to purchase revoked, the buyer must tender to the seller upon demand any goods delivered by the seller pursuant to the sale, but the buyer is not obliged to tender at any place other than the residence of the buyer. If the seller fails to demand possession of goods within a reasonable time after cancellation or revocation, the goods become the property of the buyer without obligation to pay for them. For the purpose of this subsection, 20 days is presumed to be a reasonable time.

(2) The buyer has a duty to take reasonable care of the goods in the possession of the buyer before cancellation or revocation and for a reasonable time thereafter, during which time the goods are otherwise at the seller's risk.

(3) If the seller has performed any services pursuant to a home solicitation sale prior to its cancellation, the seller is entitled to no compensation. [1971 c.744 §21(5); 1977 c.170 §4]

CONSTRUCTION LIENS

87.001 Short title. ORS 87.001 to 87.060 and 87.075 to 87.093 shall be known and may be cited as the Construction Lien Law. [1975 c.466 §1]

87.005 Definitions for ORS 87.001 to 87.060 and 87.075 to 87.093. As used in ORS 87.001 to 87.060 and 87.075 to 87.093:

(1) "Commencement of the improvement" means the first actual preparation or construction upon the site or the first delivery to the site of materials of such substantial character as to notify interested persons that preparation or construction upon the site has begun or is about to begin.

(2) "Construction" means creating or making an improvement or performing an alteration, partial construction or repair in and upon an improvement.

(3) "Construction agent" means a contractor, architect, builder or other person having charge of construction or preparation.

(4) "Contractor" means a person that contracts on predetermined terms to be responsible for performing all or part of a job of preparation or construction in accordance with established specifications or plans, retaining control of the means, method and manner of accomplishing the desired result, and that provides:

- (a) Labor at the site; or
- (b) Materials, supplies and labor at the site.

(5) "Improvement" means a building, wharf, bridge, ditch, flume, reservoir, well, tunnel, fence, street, sidewalk, machinery, aqueduct or other structure or superstructure.

(6) "Mortgagee" means a person:

(a)(A) Whose name and address appear as mortgagee or beneficiary in a mortgage of record or a trust deed of record that is recorded under ORS 205.234 with the county clerk of the county within which the property or improvement is located; and

(B) That has a valid subsisting mortgage of record or trust deed of record that secures a loan upon land or upon an improvement; or

(b)(A) Whose name and address appear as the assignee of the mortgagee or beneficiary in an assignment of mortgage of record or a trust deed of record that is recorded under ORS 205.234 with the county clerk of the county within which the property or improvement is located; and

(B) That has a valid subsisting mortgage of record or trust deed of record that secures a loan upon land or upon an improvement.

(7) "Original contractor" means a contractor that has a contractual relationship with the owner.

(8) "Owner" means:

(a) A person that is or claims to be the owner in fee or a lesser estate of the land on which preparation or construction is performed;

(b) A person that entered into a contract to

purchase an interest in the land or improvement sought to be charged with a lien created under ORS 87.010; or

(c) A person that has a valid lease on land or an improvement and that possesses an interest in the land or improvement by reason of the lease.

(9) "Preparation" means excavating, surveying, landscaping, demolishing or detaching existing structures or leveling, filling in or otherwise making land ready for construction.

(10) "Site" means the land on which construction or preparation is performed.

(11) "Subcontractor" means a contractor that has no direct contractual relationship with the owner. [Amended by 1957 c.651 §1; 1973 c.671 §1; 1975 c.466 §2; 1977 c.596 §1; 2005 c.22 §52; 2011 c.505 §1]

87.007 Protection from construction liens perfected after sale of residential property completed; requirements; seller options; rules; delivery of form to purchaser; penalty; damages; defenses. (1) This section applies to a sale of the following residential property:

(a) A new single family residence or a single family residence where the sales price is \$50,000 or more for original construction or the contract price is \$50,000 or more for improvements to the residence completed within three months before the date the property is sold.

(b) A new condominium unit or a condominium unit where the sales price is \$50,000 or more for original construction or the contract price is \$50,000 or more for improvements to the condominium unit completed within three months before the date the property is sold. As used in this paragraph, "condominium unit" has the meaning given that term in ORS 100.005.

(c) A new residential building or a residential building where the sales price is \$50,000 or more for original construction or the contract price is \$50,000 or more for improvements to the residential building completed within three months before the date the property is sold. As used in this paragraph, "residential building" means a building or structure that contains not more than four dwelling units capable of use as residences or homes.

(2) An owner of record at the time the owner of record sells residential property to a purchaser shall protect the purchaser from claims of lien that arise before the date on which the sale is complete but that may become perfected under ORS 87.035 after the date on which the sale is complete by one of the following methods:

(a) Purchase or otherwise provide title insurance on the purchaser's behalf by means of a policy issued:

(A) Without exception for filed and unfiled claims of construction lien that exist at the closing date of the purchase; and

(B) On forms and at rates filed with, but not disapproved by, the Director of the Department of Consumer and Business Services.

(b) Retain in escrow, as defined in ORS 696.505, an amount of funds that is not less than 25 percent of the sale price of the residential property. The funds must be maintained in or released from escrow in accordance with written instructions to the escrow agent from the purchaser and the owner that sold the property. The written instructions shall require the escrow agent to pay upon the purchaser's demand a claim of lien that is perfected after the date of the sale of the property and that the owner that sold the property has not paid. The escrow agent shall make the payment from the amount maintained in escrow. The escrow agent shall release the unused funds from escrow to the owner that sold the property if the escrow agent receives a request from the owner that sold the property and the owner that sold the property provides documentation from a title company that:

(A) A claim of lien has not been perfected against the property and 90 days have passed since the date that construction was completed; or

(B) A claim of lien has been perfected against the property, that 135 days have passed since the date that each such claim of lien was filed and that all perfected claims of lien have been released or waived.

(c) Maintain a bond or letter of credit in an amount that is not less than 25 percent of the sale price of the property. The Construction Contractors Board shall prescribe by rule the amount, terms and conditions of the bond or letter of credit to be maintained under this paragraph.

(d) Obtain written waivers from every person that claims or perfects a lien or liens under ORS 87.010 or 87.035 that, in an aggregate amount, exceed \$5,000 with respect to the property and provide copies of the waivers to the purchaser not later than the date the sale of the property is completed.

(e) Complete the sale of the residential property after the deadline for perfecting a claim of lien under ORS 87.035 with respect to the property.

(3) Not later than the date on which the sale of the residential property is completed, the owner who sold the property shall complete, sign and deliver to the purchaser a form that specifies the method that the owner has selected to comply with the requirements of subsection (2) of this section or that states that subsection (2) of this section does not apply to the sale of the property. The notice must be in a form the Construction Contractors Board designates by rule under ORS 701.235.

(4) A real estate licensee, as defined in ORS 696.010, acting in the professional capacity of a licensee is not liable in a criminal, civil or administrative proceeding that arises out of the failure of an owner of record to comply with subsection (2) or (3) of this section.

(5) Violation of subsection (3) of this section is a Class A violation.

(6) In addition to any other remedy or penalty provided by law, a purchaser may bring an action to recover up to twice the amount of actual damages caused by a violation of subsection (2) of this section. The court may award to the prevailing party, in addition to costs and disbursements, reasonable attorney fees. Any action brought under this subsection must be commenced not later than two years after the date on which the sale of the property is completed.

(7) For purposes of subsections (5) and (6) of this section and ORS 646.608:

(a) It is a defense to a violation of subsection (2) or (3) of this section that no enforcement or attempt to enforce a claim of lien against the property that is the subject of the sale occurred before the date the sale of the property was completed; and

(b) As to a claim of lien, it is a defense to a violation of subsection (2) or (3) of this section if the owner that sold the property:

(A) Proves that the claim of lien against the property that is the subject of the sale is invalid; or

(B) Satisfies the claim of lien or obtains a release from the claim of lien on the property that is the subject of the sale.

(8) A violation of subsection (2) or (3) of this section does not occur with respect to a lien described in ORS 87.010 during the period that the validity of the lien is disputed in a judicial proceeding or a proceeding described in ORS chapter 701.

(9) Nothing in this section requires the payment of a lien that is not otherwise valid. This section does not apply to claims of lien perfected by persons that furnish materials, equipment, services or labor at the request of the purchaser of the residential property. [2003 c.778 §2; 2010 c.77 §1]

87.010 Construction liens; who is entitled to

lien. (1) Any person performing labor upon, transporting or furnishing any material to be used in, or renting equipment used in the construction of any improvement shall have a lien upon the improvement for the labor, transportation or material furnished or equipment rented at the instance of the owner of the improvement or the construction agent of the owner.

(2) Any person who engages in or rents equipment for the preparation of a lot or parcel of land, or improves or rents equipment for the improvement of a street or road adjoining a lot or parcel of land at the request of the owner of the lot or parcel, shall have a lien upon the land for work done, materials furnished or equipment rented.

(3) A lien for rented equipment under subsection (1) or (2) of this section shall be limited to the reasonable rental value of the equipment notwithstanding the terms of the underlying rental agreement.

(4) Trustees of an employee benefit plan shall have a lien upon the improvement for the amount of contributions, due to labor performed on that improvement, required to be paid by agreement or otherwise into a fund of the employee benefit plan.

(5) An architect, landscape architect, land surveyor or registered engineer who, at the request of the owner or an agent of the owner, prepares plans, drawings or specifications that are intended for use in or to facilitate the construction of an improvement or who supervises the construction shall have a lien upon the land and structures necessary for the use of the plans, drawings or specifications so provided or supervision performed.

(6) A landscape architect, land surveyor or other person who prepares plans, drawings, surveys or specifications that are used for the landscaping or preparation of a lot or parcel of land or who supervises the landscaping or preparation shall have a lien upon the land for the plans, drawings, surveys or specifications used or supervision performed. [Amended by 1957 c.651 §2; 1973 c.671 §2; 1975 c.466 §3; 1977 c.596 §2; 1981 c.757 §1]

87.015 Land and interests therein subject to lien; leaseholds. (1) The site together with the land that may be required for the convenient use and occupation of the improvement constructed on the site, to be determined by the court at the time of the foreclosure of the lien, shall also be subject to the liens created under ORS 87.010 (1), (4) and (5) if, at the time of the commencement of the improvement, the person who caused the improvement to be constructed was the owner of that site and land. If the person owned less than a fee-simple estate in the site and land, then only the interest of the person therein shall be subject to the lien.

(2) If a lien created under ORS 87.010 (1), (4) and (5) is claimed against a unit as defined in ORS 100.005 to 100.910, the Oregon Condominium Act, the common elements appertaining to that unit are also subject to the lien.

(3) When the interest of the person who caused the improvement to be constructed is a leasehold interest, and that person has forfeited the rights of the person thereto, the purchaser of the improvement and leasehold term at any sale under the provisions of ORS 87.001 to 87.060 and 87.075 to 87.093, is deemed to be the assignee of the leasehold term, and may pay the lessor all arrears of rent or other money and costs due under the lease. If the lessor regains possession of the property, or obtains judgment for the possession thereof prior to the commencement of construction of the improvement, the purchaser may remove the improvement within 30 days after the purchaser purchases it, and the owner of the land shall receive the rent due the owner, payable out of the proceeds of the sale, according to the terms of the lease, down to the

time of removal. [Amended by 1975 c.466 §4]

87.018 Delivery of notices. (1) Except as provided in ORS 87.093, all notices required under ORS 87.001 to 87.060 and 87.075 to 87.093 must be in writing and be delivered in person or by registered or certified mail.

(2) A notice that must be given under ORS 87.001 to 87.060 or 87.075 to 87.093 to a mortgagee must be delivered to the mortgagee only if the name and address of the mortgagee appear in a mortgage of record or a trust deed of record as required under ORS 205.234 (1)(b) or in the instrument that assigns a mortgage or trust deed as required under ORS 205.234 (1)(g). [1975 c.466 §5; 1981 c.757 §2; 2007 c.648 §15; 2011 c.505 §2]

87.020 [Amended by 1965 c.446 §1; 1967 c.600 §1; 1967 c.602 §1; repealed by 1975 c.466 §6 (87.021 enacted in lieu of 87.020)]

87.021 Notice to owners; notice from owner to original contractor; effect of failure to give notice.

(1) Except when material, equipment, services or labor described in ORS 87.010 (1) to (3), (5) and (6) is furnished at the request of the owner, a person furnishing any materials, equipment, services or labor described in ORS 87.010 (1) to (3), (5) and (6) for which a lien may be perfected under ORS 87.035 shall give a notice of right to a lien to the owner of the site. The notice of right to a lien may be given at any time during the progress of the improvement, but the notice only protects the right to perfect a lien for materials, equipment and labor or services provided after a date which is eight days, not including Saturdays, Sundays and other holidays as defined in ORS 187.010, before the notice is delivered or mailed. However, no lien is created under ORS 87.010 (5) or (6) for any services provided for an owner-occupied residence at the request of an agent of the owner.

(2) The notice required by subsection (1) of this section shall be substantially in the form set forth in ORS 87.023.

(3)(a) Except as provided in paragraph (b) of this subsection, a lien created under ORS 87.010 (1) to (3), (5) or (6) may be perfected under ORS 87.035 only to the extent that the notice required by subsection (1) of this section is given.

(b) A person who performs labor upon a commercial improvement or provides labor and material for a commercial improvement or who rents equipment used in the construction of a commercial improvement need not give the notice required by subsection (1) of this section in order to perfect a lien created under ORS 87.010. As used in this paragraph:

(A) "Commercial improvement" means any structure or building not used or intended to be used as a residential building, or other improvements to a site on which such a structure or building is to be located.

MORTGAGES AND LIENS

(B) "Residential building" means a building or structure that is or will be occupied by the owner as a residence and that contains not more than four units capable of being used as residences or homes.

(4) Unless otherwise agreed or the lien claimant who is required to give the notice under subsection (1) of this section is in privity with the original contractor, when a provision in an agreement for the construction of a commercial improvement requires the original contractor to hold an owner harmless or to indemnify an owner for a lien created under ORS 87.010 and perfected under ORS 87.035, that provision is not enforceable as to any lien which requires that a notice under this section be given to the owner unless a copy of the notice is delivered pursuant to ORS 87.018 to the original contractor not later than 10 days after its receipt by the owner. [1975 c.466 §7 (enacted in lieu of 87.020); 1981 c.757 §3; 1983 c.674 §1; 1983 c.757 §1; 1987 c.662 §1; 2001 c.311 §1; 2002 s.s.1 c.6 §§1,4; 2003 c.778 §10]

87.023 Notice of right to lien; form of notice.

The notice of right to a lien required under ORS 87.021 shall include, but not be limited to, the following information and shall be substantially in the following form:

NOTICE OF RIGHT TO A LIEN. WARNING: READ THIS NOTICE. PROTECT YOURSELF FROM PAYING ANY CONTRACTOR OR SUPPLIER TWICE FOR THE SAME SERVICE.

To: _____ Date of mailing: _____
Owner
Owner's address

This is to inform you that _____ has begun to provide _____ (description of materials, equipment, labor or services) ordered by _____ for improvements to property you own. The property is located at _____.

A lien may be claimed for all materials, equipment, labor and services furnished after a date that is eight days, not including Saturdays, Sundays and other holidays, as defined in ORS 187.010, before this notice was mailed to you.

Even if you or your mortgage lender have made full payment to the contractor who ordered these materials or services, your property may still be subject to a lien unless the supplier providing this notice is paid.

THIS IS NOT A LIEN. It is a notice sent to you for your protection in compliance with the construction lien laws of the State of Oregon.

This notice has been sent to you by:

NAME: _____
ADDRESS: _____
TELEPHONE: _____

IF YOU HAVE ANY QUESTIONS ABOUT THIS NOTICE, FEEL FREE TO CALL US. IMPORTANT INFORMATION ON REVERSE SIDE

IMPORTANT INFORMATION FOR YOUR PROTECTION

Under Oregon's laws, those who work on your property or provide labor, equipment, services or materials and are not paid have a right to enforce their claim for payment against your property. This claim is known as a construction lien.

If your contractor fails to pay subcontractors, material suppliers, rental equipment suppliers, service providers or laborers or neglects to make other legally required payments, the people who are owed money can look to your property for payment, even if you have paid your contractor in full.

The law states that all people hired by a contractor to provide you with materials, equipment, labor or services must give you a notice of right to a lien to let you know what they have provided.

WAYS TO PROTECT YOURSELF ARE:

- RECOGNIZE that this notice of right to a lien may result in a lien against your property unless all those supplying a notice of right to a lien have been paid.
- LEARN more about the lien laws and the meaning of this notice by contacting the Construction Contractors Board, an attorney or the firm sending this notice.
- ASK for a statement of the labor, equipment, services or materials provided to your property from each party that sends you a notice of right to a lien.
- WHEN PAYING your contractor for materials, equipment, labor or services, you may make checks payable jointly to the contractor and the firm furnishing materials, equipment, labor or services for which you have received a notice of right to a lien.
- OR use one of the methods suggested by the "Information Notice to Owners." If you have not received such a notice, contact the Construction Contractors Board.
- GET EVIDENCE that all firms from whom you have received a notice of right to a lien have been paid or have waived the right to claim a lien against your property.
- CONSULT an attorney, a professional escrow company or your mortgage lender.

[1981 c.757 §5; 1983 c.757 §2; 1987 c.662 §2]

87.025 Priority of perfected liens; right to sell improvements separately from land; notice to mortgagee; list of materials or supplies. (1) A lien created under ORS 87.010 (2) or (6) and perfected under ORS 87.035 upon any lot or parcel of land shall be preferred to any lien, mortgage or other encumbrance which attached to the land after or was unrecorded at the time of commencement of the improvement.

(2) Except as provided in subsections (3) and (6) of this section, a lien created under ORS 87.010 (1), (4) or (5) and perfected under ORS 87.035 upon any improvement shall be preferred to all prior liens, mortgages or other encumbrances upon the land upon which the improvement was constructed. To enforce such lien the improvement may be sold separately from the land; and the purchaser may remove the improvement within a reasonable time thereafter, not to exceed 30 days, upon the payment to the owner of the land of a reasonable rent for its use from the date of its purchase to the time of removal. If such removal is prevented by legal proceedings, the 30 days shall not begin to run until the final determination of such proceedings in the court of first resort or the appellate court if appeal is taken.

(3) No lien for materials or supplies shall have priority over any recorded mortgage or trust deed on either the land or improvement unless the person furnishing the material or supplies, not later than eight days, not including Saturdays, Sundays and other holidays as defined in ORS 187.010, after the date of delivery of material or supplies for which a lien may be claimed delivers to the mortgagee either a copy of the notice given to the owner under ORS 87.021 to protect the right to claim a lien on the material or supplies or a notice in any form that provides substantially the same information as the form set forth in ORS 87.023.

(4) A mortgagee who has received notice of delivery of materials or supplies in accordance with the provisions of subsection (3) of this section, may demand a list of those materials or supplies including a statement of the amount due by reason of delivery thereof. The list of materials or supplies shall be delivered to the mortgagee within 15 days, not including Saturdays, Sundays and other holidays as defined in ORS 187.010, of receipt of demand, as evidenced by a receipt or a receipt of delivery of a registered or certified letter containing the demand. Failure to furnish the list or the amount due by the person giving notice of delivery of the materials or supplies shall constitute a waiver of the preference provided in subsections (1) and (2) of this section.

(5) Upon payment and acceptance of the amount due to the supplier of materials or supplies, and upon demand of the person making payment, the supplier shall execute a waiver of all lien rights as to materials or supplies for which payment has been made.

(6) Unless the mortgage or trust deed is given to secure a loan made to finance the alteration or repair, a lien created under ORS 87.010 and perfected under ORS 87.035 for the alteration and repair of an improvement commenced and made subsequent to the date of record of a duly executed and recorded mortgage or trust deed on that improvement or on the site shall not take precedence over the mortgage or trust deed.

(7) The perfection of a lien under ORS 87.035 relates to the date of commencement of the improvement as defined in ORS 87.005. Except as provided in subsection (3) of this section, the date of creation of the lien under ORS 87.010 and the date of perfection of the lien under ORS 87.035 do not affect the priorities under this section, the equal priority of perfected lien claimants, or the distribution of proceeds to perfected lien claimants under ORS 87.060 (6). [Amended by 1965 c.446 §2; 1967 c.602 §2; 1975 c.466 §8; 1981 c.757 §6; 1983 c.513 §1; 1983 c.674 §3; 1985 c.513 §1; 1987 c.662 §3]

87.027 Right of owner to demand list of services, materials, equipment and labor; penalty for failure to provide list. An owner who receives a notice of right to a lien in accordance with the provisions of ORS 87.021 may demand, in writing, from the person providing materials, equipment, services or labor a list of materials or equipment or description of labor or services supplied or a statement of the contractual basis for supplying the materials, equipment, services or labor, including the percentage of the contract completed, and the charge therefor to the date of the demand. The supplier's statement shall be delivered to the owner within 15 days, not including Saturdays, Sundays and other holidays as defined in ORS 187.010, of receipt of the owner's written demand, as evidenced by a receipt or a receipt of delivery of a certified or registered letter containing the demand. Failure of the supplier to furnish the information requested constitutes a loss of attorney fees and costs otherwise allowable in a suit to foreclose a lien. [1981 c.757 §8; 1985 c.513 §2; 1987 c.662 §4]

87.030 Effect of owner's knowledge of improvement; notice of nonresponsibility. (1) Every improvement except an improvement made by a person other than the landowner in drilling or boring for oil or gas, constructed upon lands with the knowledge of the owner shall be deemed constructed at the instance of the owner, and the interest owned shall be subject to any lien perfected pursuant to the provisions of ORS 87.001 to 87.060 and 87.075 to 87.093, unless the owner shall, within three days after the owner obtains knowledge of the construction, give notice that the owner will not be responsible for the same by posting a notice in writing to that effect in some conspicuous place upon the land or the improvement situated thereon.

(2) Subsection (1) of this section does not apply to a lien prohibited under ORS 87.037. [Amended by 1975 c.466 §9; 1987 c.662 §5; 2007 c.648 §9]

87.035 Perfecting lien; filing claim of lien; contents of claim. (1) Every person claiming a lien created under ORS 87.010 (1) or (2) shall perfect the lien not later than 75 days after the person has ceased to provide labor, rent equipment or furnish materials or 75 days after completion of construction, whichever is earlier. Every other person claiming a lien created under ORS 87.010 shall perfect the lien not later than 75 days after the completion of construction. All liens claimed shall be perfected as provided by subsections (2) to (4) of this section.

(2) A lien created under ORS 87.010 shall be perfected by filing a claim of lien with the recording officer of the county or counties in which the improvement, or some part thereof, is situated.

(3) A claim of lien shall contain:

(a) A true statement of demand, after deducting all just credits and offsets;

(b) The name of the owner, or reputed owner, if known;

(c) The name of the person by whom the claimant was employed or to whom the claimant furnished the materials or rented the equipment or by whom contributions are owed; and

(d) A description of the property to be charged with the lien sufficient for identification, including the address if known.

(4) The claim of lien shall be verified by the oath of the person filing or of some other person having knowledge of the facts, subject to the criminal penalties for false swearing provided under ORS 162.075. [Amended by 1961 c.609 §1; 1973 c.671 §3; 1975 c.466 §10; 1983 c.517 §1; 1985 c.596 §1; 1987 c.662 §6]

87.036 Subcontractor's perfection of claim of lien; notice; fee; rules. (1) A subcontractor or a person that provides labor, materials or equipment for a project to renovate, remodel, repair or otherwise alter an existing owner-occupied residence may not perfect a claim of lien against the owner's property under ORS 87.035 if the subcontractor or the person provided or contracted to provide services, labor, materials or equipment to a contractor that was unlicensed at the earlier of the following times:

(a) The time the subcontractor or the person first contracted with the contractor for the project; or

(b) The time the person first delivered labor, materials or equipment to the project site.

(2) Subsection (1) of this section does not apply if the services, labor, materials or equipment is purchased with cash or consumer credit.

(3) The Construction Contractors Board may notify a person at the person's request of the status of a contractor's license using any means the board uses to

notify a contractor of the contractor's license status. The board may charge the person a fee in an amount the board specifies by rule for the cost of providing the notice to the person. [2010 c.77 §3]

Note: 87.036 was added to and made a part of the Construction Lien Law by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

87.037 Prohibition against claim of lien. An original contractor may not claim a lien arising from the improvement of real property if a written contract for the work is required by ORS 701.305 and the contractor does not have a written contract. [2007 c.648 §5]

Note: 87.037 was added to and made a part of 87.001 to 87.060 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

87.039 Notice of filing claim of lien; effect of failure to give notice. (1) A person filing a claim of lien pursuant to ORS 87.035 shall mail to the owner and to the mortgagee a notice in writing that the claim has been filed. A copy of the claim of lien shall be attached to the notice. The notice shall be mailed not later than 20 days after the date of filing. Notice mailed to the owner who received the notice of right to a lien as provided by ORS 87.021 shall be deemed in compliance with the requirement of this subsection, unless the person giving notice has actual knowledge of changed ownership. Notice mailed by any person to the mortgagee who received the notice required under ORS 87.025 shall be deemed in compliance with this subsection unless the person giving the notice has actual knowledge of a change of mortgagee.

(2) No costs, disbursements or attorney fees otherwise allowable as provided by ORS 87.060 shall be allowed to any party failing to comply with subsection (1) of this section. [1975 c.466 §14; 1983 c.674 §4; 1985 c.513 §3; 1987 c.662 §7]

87.040 [Repealed by 1975 c.466 §25]

87.045 Completion date of improvement; notice of completion, abandonment or nonabandonment; contents of notice. (1) The completion of construction of an improvement shall occur when:

(a) The improvement is substantially complete;

(b) A completion notice is posted and recorded as provided by subsections (2) and (3) of this section; or

(c) The improvement is abandoned as provided by subsection (5) of this section.

(2) When all original contractors employed on the construction of an improvement have substantially performed their contracts, any original contractor, the owner or mortgagee, or an agent of any of them may post and record a completion notice. The completion notice shall state in substance the following:

Notice hereby is given that the building, structure or other improvement on the following described premises, (insert the legal description of the property including the street address, if known) has been completed.

All persons claiming a lien upon the same under the Construction Lien Law hereby are notified to file a claim of lien as required by ORS 87.035.

Dated _____, 2__

Original Contractor, Owner or Mortgagee

P. O. Address: _____

(3) Any notice provided for in this section shall be posted on the date it bears in some conspicuous place upon the land or upon the improvement situated thereon. Within five days from the date of posting the notice, the party posting it or the agent of the party shall record with the recording officer of the county in which the property, or some part thereof, is situated, a copy of the notice, together with an affidavit indorsed thereon or attached thereto, made by the person posting the notice, stating the date, place and manner of posting the notice. The recording officer shall indorse upon the notice the date of the filing thereof and record and index the notice in the statutory lien record as required by ORS 87.050.

(4) Anyone claiming a lien created under ORS 87.010 on the premises described in a completion or abandonment notice for labor or services performed and materials or equipment used prior to the date of the notice shall perfect the lien pursuant to ORS 87.035.

(5) Except as provided in subsection (6) of this section, an improvement is abandoned:

(a) On the 75th day after work on the construction of the improvement ceases; or

(b) When the owner or mortgagee of the improvement or an agent of either posts and records an abandonment notice in writing signed by either the owner or the mortgagee.

(6) When work on the construction of an improvement ceases, if the owner or mortgagee of the improvement intends to resume construction and does not want abandonment to occur, the owner or mortgagee or an agent of either shall post and record a nonabandonment notice in writing signed by either the owner or mortgagee. The notice of nonabandonment shall be posted and recorded not later than the 74th day after work on the construction ceases. The notice of nonabandonment may be renewed at intervals of 150 days by rerecording the notice.

(7) The notices of abandonment or nonabandonment described in subsections (5) and (6) of this section shall state in substance:

(a) That the improvement is either abandoned or not abandoned.

(b) The legal description of the property, including the street address if known, on which the improvement is located.

(c) In the case of an abandonment notice, that all persons claiming a lien on the improvement should file a claim of lien pursuant to ORS 87.035.

(d) In the case of a nonabandonment notice, the reasons for the delay in construction.

(e) The date of the notice.

(f) The address of the person who signs the notice. [Amended by 1975 c.466 §11; 1985 c.596 §2; 1987 c.662 §8; 2001 c.577 §6; 2005 c.22 §53]

87.050 Recording. The recording officer of each county shall record all notices and claims of lien required to be filed by the provisions of ORS 87.001 to 87.060 and 87.075 to 87.093 in the statutory lien record. The notices and claims recorded in the statutory lien record shall be indexed as deeds and other conveyances are required by law to be indexed and shall constitute a public record of the county. [Amended by 1975 c.466 §12; 1987 c.662 §9; 2001 c.577 §2]

87.055 Duration of lien; when suit to enforce lien commences. No lien created under ORS 87.010 shall bind any improvement for a longer period than 120 days after the claim of lien is filed unless suit is brought in a proper court within that time to enforce the lien, or if extended payment is provided and the terms thereof are stated in the claim of lien, then 120 days after the expiration of such extended payment, but no lien shall be continued in force for a longer time than two years from the time the claim of lien is filed under ORS 87.035 by any agreement to extend payment. For purposes of this section:

(1) Subject to subsection (2) of this section, a suit to enforce the lien shall be deemed commenced as provided in ORS 12.020.

(2) With regard to other parties who are construction lien claimants under ORS 87.035, a suit to enforce the lien shall be deemed to commence when the complaint is filed, whether or not summons or service with regard to such parties is completed within the time required by ORS 12.020. [Amended by 1975 c.466 §13; 1985 c.341 §1; 1985 c.513 §4; 1987 c.662 §10]

87.057 Notice of intent to foreclose; list of materials furnished and statement of prices; effect of failure to give notice. (1) A person intending to foreclose a lien shall deliver to the owner of the property upon which the lien is claimed and to the mortgagee a notice in writing not later than 10 days prior to commencement of the suit stating that such person, or others, intends to commence suit to foreclose the lien. Notice delivered to the mortgagee

who received the notice required by ORS 87.025 shall be deemed in compliance with this subsection, unless the person giving notice has actual knowledge of a change of mortgagee.

(2) Where a notice of intent to foreclose a lien has been given as provided by subsection (1) of this section, the sender of the notice upon demand of the owner shall furnish to the owner within five days after the demand a list of the materials and supplies with the charge therefor, or a statement of a contractual basis for the owner's obligation, for which a claim will be made in the suit to foreclose.

(3) A plaintiff or cross-complainant seeking to foreclose a lien in a suit to foreclose shall plead and prove compliance with subsections (1) and (2) of this section. No costs, disbursements or attorney fees otherwise allowable as provided by ORS 87.060 shall be allowed to any party failing to comply with the provisions of this section. [1975 c.466 §15; 1987 c.662 §11]

87.058 [1981 c.618 §16; 1987 c.662 §12; 1991 c.181 §15; 2001 c.197 §8; 2007 c.793 §2; repealed by 2011 c.630 §53]

87.059 Stay in proceedings to enforce lien; requirements; procedure; dissolution of stay. (1) As used in this section:

(a) Notwithstanding ORS 87.005, "contractor" has the meaning given that term in ORS 701.005.

(b) "Board" means the Construction Contractors Board established in ORS 701.205.

(2) If a person files a suit to enforce a lien perfected under ORS 87.035 and the owner of the structure subject to that lien files a complaint that is being processed by the board under ORS 701.145 against a contractor who performed work on the structure, the owner may obtain a stay of proceedings on the suit to enforce the lien if:

(a) The owner already has paid the contractor for that contractor's work that is subject to this chapter on the structure;

(b) The person suing to enforce the lien perfected under ORS 87.035:

(A) Performed work that is subject to ORS chapter 701 on the structure for the contractor who has been paid by the owner;

(B) Furnished labor, services or materials or rented or supplied equipment used on the structure to the contractor who has been paid by the owner; or

(C) Otherwise acquired the lien as a result of a contribution toward completion of the structure for which the contractor has been paid by the owner; and

(c) The continued existence of the lien on which the suit is pending is attributable to the failure of the contractor who has been paid by the owner to pay the person suing for that person's contribution toward completion of the structure.

(3) The owner may petition for the stay of proceedings described in subsection (2) of this section by filing the following papers in the circuit court in which the suit on the lien is pending:

(a) A certified copy of the complaint filed for processing by the board under ORS 701.145; and

(b) An affidavit signed by the owner that contains:

(A) A description of the structure;

(B) The street address of the structure;

(C) A statement that the structure is the structure upon which the suit to enforce the lien is pending; and

(D) A statement that the petitioner is the owner of the structure.

(4) Upon receipt of a complete petition described in subsection (3) of this section, the circuit court shall stay proceedings on the suit to enforce the lien.

(5) After the board order on the complaint becomes final and the board issues any required notice for payment against the contractor's bond or deposit, the circuit court shall dissolve the stay ordered under subsection (4) of this section. [2011 c.630 §56]

Note: 87.059 becomes operative July 1, 2017, and applies to complaints filed on or after July 1, 2017. See section 73, chapter 630, Oregon Laws 2011.

Note: 87.059 was added to and made a part of 87.001 to 87.060 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

87.060 Foreclosure; right to jury trial; distribution of proceeds of foreclosure sale. (1) A suit to enforce a lien perfected under ORS 87.035 shall be brought in circuit court, and the pleadings, process, practice and other proceedings shall be the same as in other cases.

(2) In a suit to enforce a lien perfected under ORS 87.035, evidence of the actual costs of the labor, equipment, services and material provided by the lien claimant establishes a rebuttable presumption that those costs are the reasonable value of that labor, equipment, services and material.

(3) In a suit to enforce a lien perfected under ORS 87.035, the court shall allow or disallow the lien. If the lien is allowed, the court shall proceed with the foreclosure of the lien and resolve all other pleaded issues. If the lien is disallowed, and a party has made a demand for a jury trial as provided for in subsection (4) of this section, the court shall impanel a jury to decide any issues triable of right by a jury. All other issues in the suit shall be tried by the court.

(4) A party may demand a trial by jury of any issue triable of right by a jury after the lien is disallowed, if that party serves a demand therefor in writing upon the other parties at any time prior to commencement of the trial to foreclose the lien. The demand shall be filed with the court. The failure of a party to serve a demand as required by this subsection shall constitute a waiver by the party of trial by jury. A

demand for trial by jury made as provided in this subsection may not be withdrawn without the consent of the parties.

(5) When notice of intent to foreclose the lien has been given, pleaded and proven as provided for in ORS 87.057, the court, upon entering judgment for the lien claimant, shall allow as part of the costs all moneys paid for the filing or recording of the lien and all moneys paid for title reports required for preparing and foreclosing the lien. In a suit to enforce a lien perfected under ORS 87.035 the court shall allow a reasonable amount as attorney fees at trial and on appeal to the party who prevails on the issues of the validity and foreclosure of the lien.

(6) In case the proceeds of any sale under ORS 87.001 to 87.060 and 87.075 to 87.093 are insufficient to pay all lienholders claiming under such statutes, the liens of all persons shall be paid pro rata. Each claimant is entitled to execution for any balance due the claimant after the distribution of the proceeds, and that execution shall be issued by the clerk of the court, upon demand, after the return of the sheriff or other officer making the sale showing the balance due.

(7) All suits to enforce any lien perfected under ORS 87.035 shall have preference on the calendar of the court over every civil suit, except suits to which the state is a party, and shall be tried by the court without unnecessary delay. In such a suit, all persons personally liable, and all lienholders whose claims have been filed for record pursuant to ORS 87.035, shall, and all other persons interested in the matter in controversy, or in the property sought to be charged with the lien, may be made parties; but persons not made parties are not bound by the proceedings. The proceedings upon the foreclosure of the liens perfected under ORS 87.035 shall, as nearly as possible, conform to the proceedings of a foreclosure of a mortgage lien upon real property. [Amended by 1975 c.466 §16; 1981 c.897 §20; 1981 c.898 §44; 1983 c.517 §2; 1987 c.662 §13]

87.065 [Amended by 1961 c.609 §2; repealed by 1975 c.466 §25]

87.070 Amount of recovery by contractor; respective rights of contractor and owner. Any contractor may recover, upon a lien perfected by the contractor, only the amount due to the contractor according to the terms of the contract, after deducting all claims of other parties for work done and materials furnished for which a lien is perfected under ORS 87.035. Where a claim of lien is filed pursuant to ORS 87.035 for work done or material or equipment furnished to any contractor, the contractor shall defend any action brought thereupon at the expense of the contractor, and during the pendency of such action the owner may withhold from the contractor the amount of money for which such claim of lien is filed. In case of judgment against the owner or the property of the

owner upon the lien, the owner may deduct from any amount due or to become due by the owner to the contractor the amount of such judgment and costs; and if the amount of the judgment and costs exceeds the amount due by the owner to the contractor, or if the owner has settled with the contractors in full, the owner may recover back from the contractor any amount so paid in excess of the contract price, and for which the contractor was originally the party liable. [Amended by 1987 c.662 §14]

87.075 Exemption of building materials from attachment by third persons. When a person furnishes or procures materials for use in the construction of an improvement, those materials are not subject to attachment, execution or other legal process to enforce any debt due by the purchaser of the materials, except a debt due for the purchase money thereof, so long as in good faith the materials are about to be applied to the construction of the improvement. [Amended by 1975 c.466 §23]

87.076 Bond or deposit of money; amount; demand for release of lien; effect. (1) The owner of an improvement or land against which a lien perfected under ORS 87.035 is claimed, or an interested person, may file with the recording officer of the county in whose office the claim of lien is filed a bond executed by a corporation authorized to issue surety bonds in the State of Oregon to the effect that the principal or principals on the bond shall pay the amount of the claim and all costs and attorney fees that are awarded against the improvement or land on account of the lien. The bond shall be in an amount not less than 150 percent of the amount claimed under the lien, or in the amount of \$1,000, whichever is greater.

(2)(a) In lieu of the surety bond provided for in subsection (1) of this section, the owner of an improvement or land against which a lien perfected under ORS 87.035 is claimed, or an interested person, may deposit with the treasurer of the county in which the claim of lien is filed a sum of money or the equivalent of money equal in value to 150 percent of the amount claimed under the lien, or in the amount of \$1,000, whichever is greater.

(b) A person who makes a deposit under paragraph (a) of this subsection is entitled to any investment income. The treasurer shall pay the investment income to the person who makes the deposit at the time the treasurer, in accordance with ORS 87.083, distributes the money deposited under this subsection. The person who makes the deposit bears the risk for a loss that results from an investment of the money deposited.

(3) A person may file a bond or deposit money under subsection (1) or (2) of this section at any time after the claim of lien is filed under ORS 87.035.

(4)(a) A person entitled to post a bond under subsection (1) of this section or a cash deposit under

subsection (2) of this section may deliver pursuant to ORS 87.018 a written demand to the lien claimant that a lien perfected under ORS 87.035 be released and a notice that if the lien is not released the person may recover the actual costs the person incurred in complying with this section and ORS 87.078 and 87.081 or the sum of \$500, whichever is greater. If the lien is not released within 10 days after the demand and notice is delivered and the lien claimant or an assignor of the lien claimant does not bring a suit to foreclose the lien within the time provided in ORS 87.055, and if the person who made the demand has complied with this section and ORS 87.078 and 87.081, then the lien claimant or assignor of the lien claimant who fails to release or foreclose the lien is liable to the person for the actual costs the person incurred in complying with this section and ORS 87.078 and 87.081 or the sum of \$500, whichever is greater, in addition to any other remedy provided by law or equity.

(b) In an action to recover damages under this subsection in which the plaintiff prevails, the court, at trial and on appeal, shall allow and fix a reasonable amount for attorney fees for prosecution of the action, if the court finds that a written demand for payment of the claim was made on the defendant not less than 20 days before commencement of the action. However, the court may not allow attorney fees to the plaintiff, but shall allow attorney fees to the defendant, if the court finds that the defendant tendered to the plaintiff prior to commencement of the action an amount not less than the damages awarded to the plaintiff.

(c) If a lien claimant or an assignor of the lien claimant is served with a demand under paragraph (a) of this subsection and is a prevailing party in the suit to foreclose the lien, then in addition to other costs and attorney fees to which the lien claimant or the assignor of the lien claimant is entitled, the court shall allow the actual costs incurred in addressing the demand or the sum of \$500, whichever is greater. [1975 c.466 §17; 1983 c.513 §3; 1987 c.662 §15; 1999 c.845 §1; 2009 c.513 §1]

87.078 Notice of filing bond or depositing money; contents of notice; effect of failure to give notice. (1) A person who files a bond or deposits money under ORS 87.076 shall cause to be served upon the lien claimant a notice of the filing or deposit and, if a bond, a copy thereof, not later than 20 days after the filing or deposit. The notice shall state the location and time of the filing or deposit.

(2) If a person does not notify the lien claimant as required by subsection (1) of this section, the filing of the bond or the deposit of money is of no effect and the provisions of ORS 87.083 shall not apply in a suit to foreclose the lien for which the filing or deposit is made. [1975 c.466 §18]

87.080 [Amended by 1967 c.407 §3; repealed by 1975 c.648 §72]

87.081 Filing affidavit with county officer. (1) When a person files a bond with the recording officer of the county under ORS 87.076 and serves notice of the filing upon the lien claimant, the person shall file with the same recording officer an affidavit stating that such notice was served.

(2) When a person deposits money with the treasurer of a county under ORS 87.076 and serves notice of the deposit upon the lien claimant, the person shall file with the recording officer of the same county an affidavit stating that the deposit was made and notice was served. [1975 c.466 §19; 2005 c.22 §54]

87.082 [1967 c.407 §§1,2; repealed by 1975 c.648 §72]

87.083 Foreclosure after filing of bond or deposit of money; effect of filing or deposit; disposition of bond or money. (1) A suit to foreclose a lien pursuant to ORS 87.060 that is commenced or pending after a bond is filed or money deposited under ORS 87.076 shall proceed as if no filing or deposit was made except that the lien shall attach to the bond or money upon the filing or deposit and the service of notice thereof upon the lien claimant. The property described in the claim of lien is thereafter entirely free of the lien and is not involved in subsequent proceedings.

(2) The county or an officer or employee of the county may not be named or otherwise made a party to a suit described in subsection (1) of this section.

(3) When a bond is filed or money is deposited, if, in a suit to enforce the lien for which the filing or deposit is made, the court allows the lien, the lien must be satisfied out of the bond or money. The court shall include as part of the court's judgment an order that specifies the amount the treasurer must release to the judgment creditor and the amount of the remaining balance that the treasurer must release to the person who deposited the money.

(4) When a bond is filed or money is deposited, if, in a suit to enforce the lien for which the filing or deposit is made, the court disallows the lien, the court shall include as part of the court's judgment an order to return the bond or money to the person who filed the bond or deposited the money.

(5) Notwithstanding an order from the court under subsection (3) or (4) of this section or an order or notice under ORS 87.088, if the county treasurer is not certain about how to distribute money deposited under ORS 87.076, the treasurer shall notify the lien claimant and the person who deposited the money of how the treasurer intends to distribute the money. If within 10 days after the date of the treasurer's notice a party to the suit to foreclose the lien objects to the notice, the treasurer may:

(a) Hold the money until the court or a stipulation of the parties provides further direction; or

(b) Commence an interpleader proceeding under ORCP 31. [1975 c.466 §20; 1987 c.662 §16; 2005 c.22 §55; 2009 c.513 §2]

87.085 [Repealed by 1975 c.648 §72]

87.086 Determination of adequacy of bond. If a lien claimant considers the bond filed with a recording officer of a county inadequate to protect the claim of the lien claimant for some reason other than the amount of the bond, the lien claimant shall, within 10 days of receipt of the notice of filing, petition the court in which the suit to foreclose the lien may be brought for a determination of the adequacy of the bond. The lien claimant shall state in detail the reasons for the inadequacy. Not later than two days after the filing of the petition with the court, the lien claimant shall send a notice of the filing and a copy of the petition by registered or certified mail to the person who filed the bond. After a hearing, if the court determines that the bond is inadequate for one or more of the reasons stated by the lien claimant, the court shall order such action as shall make the bond adequate to protect the claim of lien. [1975 c.466 §21; 1987 c.662 §17]

87.088 Release of lien or return of money. The county recording officer shall record a written release of the lien or the county treasurer in whose office money is deposited under ORS 87.076 shall return the money to the person who made the deposit if:

(1) The person who filed the bond or deposited the money under ORS 87.076 notifies the lien claimant and the treasurer in writing and by certified mail that a suit to foreclose the lien was not commenced within the time specified by ORS 87.055. The notice shall provide that the lien claimant has 15 calendar days in which to object to the release of the lien and the return of the money and to provide documentation that demonstrates that a suit was timely commenced or that the time for commencement has not expired. If the treasurer receives an objection, the treasurer may decide how to distribute the money or may commence an interpleader proceeding under ORCP 31.

(2) The person who filed the bond or deposited the money presents a certified copy of a court's order for the release of the bond or all or some of the money to the person.

(3) The person who filed the bond or deposited the money presents a written release of lien signed by the lien claimant. [1975 c.466 §22; 1999 c.654 §5; 2009 c.513 §3]

87.089 Limitations on actions. The provisions of ORS 87.076, 87.083 and 87.088 do not create a cause of action and may not be asserted as a basis for a per se negligence action. [2009 c.513 §5]

87.090 [Repealed by 1975 c.648 §72]

87.091 [2003 c.778 §9; repealed by 2010 c.77 §9]

87.093 Information Notice to Owner; rules; contents; when notice must be delivered; effect of failure to deliver notice; penalty. (1) The Construction Contractors Board shall adopt by rule a form entitled "Information Notice to Owner" which shall describe, in nontechnical language and in a clear and coherent manner using words in their common and everyday meanings, the pertinent provisions of the Construction Lien Law of this state and the rights and responsibilities of an owner of property and an original contractor under that law. The "Information Notice to Owner" shall include signature lines for the contractor and the property owner. The rights and responsibilities described in the form shall include, but not be limited to:

(a) Methods by which an owner may avoid multiple payments for the same materials and labor;

(b) The right to file a complaint against a licensed contractor with the board and, if appropriate, to be reimbursed from the contractor's bond filed under ORS chapter 701; and

(c) The right to receive, upon written request therefor, a statement of the reasonable value of materials, equipment, services or labor provided from the persons providing the materials, equipment, services or labor at the request of an original contractor and who have also provided notices of right to a lien.

(2) Each original contractor shall deliver a copy of the "Information Notice to Owner" adopted by the board under this section to:

(a) The first purchaser of residential property constructed by the contractor and sold before or within the 75-day period immediately following the completion of construction; and

(b) The owner or an agent of the owner, other than an original contractor, at the time of signing a residential construction or improvement contract with the owner.

(3) The contractor shall deliver the "Information Notice to Owner" personally, by registered or certified mail or by first class mail with certificate of mailing.

(4) This section applies only to a residential construction or improvement contract for which the aggregate contract price exceeds \$2,000. If the price of a residential construction or improvement contract was initially less than \$2,000, but during the course of the performance of the contract exceeds that amount, the original contractor shall mail or otherwise deliver the "Information Notice to Owner" not later than five days after the contractor knows or should reasonably know that the contract price will exceed \$2,000.

(5) Notwithstanding subsections (2) and (4) of this section, the original contractor need not send the owner an "Information Notice to Owner" if the owner is a contractor licensed with the board under ORS chapter 701.

(6) Notwithstanding ORS 87.010 and 87.030, if an original contractor does not deliver an owner or

agent with an “Information Notice to Owner” as required under subsections (2) to (4) of this section, the original contractor may not claim any lien created under ORS 87.010 upon any improvement, lot or parcel of land of the owner for labor, services or materials supplied under the residential construction or improvement contract for which the original contractor failed to deliver the required “Information Notice to Owner”.

(7) If an original contractor does not deliver an “Information Notice to Owner” to an owner or agent as required under subsection (2) of this section, the board may suspend the license of the original contractor for any period of time that the board considers appropriate or impose a civil penalty of not more than \$5,000 upon the original contractor as provided in ORS 701.992.

(8) As used in this section:

(a) “Residential construction or improvement” means the original construction of residential property and the repair, replacement, remodeling, alteration or improvement of residential property.

(b) “Residential construction or improvement contract” means a written agreement between an original contractor and an owner for the performance of a residential construction or improvement and all labor, services and materials furnished and performed under the agreement.

(c) “Residential property” includes, but is not limited to, a residential dwelling and the driveways, swimming pools, terraces, patios, fences, porches, garages, basements, other structures and land that are adjacent or appurtenant to a residential dwelling. [1981 c.757 §9; 1983 c.757 §3; 1985 c.596 §3; 1987 c.662 §18; 1991 c.67 §14; 1995 c.771 §7; 1999 c.402 §1; 2007 c.648 §16; 2007 c.793 §3; 2009 c.408 §1]

87.095 [Repealed by 1975 c.648 §72]

87.100 [Amended by 1973 c.54 §1; repealed by 1975 c.648 §72]

87.105 [Repealed by 1975 c.648 §72]

87.110 [Repealed by 1975 c.648 §72]

87.115 [Repealed by 1975 c.648 §72]

87.120 [Repealed by 1975 c.648 §72]

87.122 [1955 c.438 §§1,2; repealed by 1975 c.648 §72]

87.125 [Amended by 1967 c.327 §1; 1973 c.307 §1; repealed by 1975 c.648 §72]

87.130 [Amended by 1961 c.519 §1; repealed by 1975 c.648 §72]

87.135 [Repealed by 1975 c.648 §72]

87.140 [Repealed by 1975 c.648 §72]

GENERAL PROVISIONS

279C.005 Definitions. ORS 279A.010 (1) contains general definitions applicable throughout this chapter. [2003 c.794 §88]

279C.010 Applicability. Except as provided in ORS 279C.320, public contracting under this chapter is subject to ORS chapter 279A, but not ORS chapter 279B. [2003 c.794 §88a; 2005 c.103 §9]

279C.365 Requirements for solicitation documents and bids and proposals. (1) A contracting agency that prepares solicitation documents for a public improvement contract shall, at a minimum, include in the solicitation documents:

- (a) A designation for or description of the public improvement project;
- (b) The office where the specifications for the project may be reviewed;
- (c) The date that prequalification applications must be filed under ORS 279C.430 and the class or classes of work for which bidders must be prequalified if prequalification is a requirement;
- (d) The date and time after which bids will not be received, which must be at least five days after the date of the last publication of the advertisement, and may, in the sole discretion of the contracting agency, direct or permit bidders to submit and the contracting agency to receive bids by electronic means;
- (e) The name and title of the person designated to receive bids;
- (f) The date on which and the time and place at which the contracting agency will publicly open the bids;
- (g) A statement that, if the contract is for a public works project subject to the state prevailing rates of wage under ORS 279C.800 to 279C.870, the federal prevailing rates of wage under the Davis-Bacon Act (40 U.S.C. 3141 et seq.) or both the state and federal prevailing rates of wage, the contracting agency will not receive or consider a bid unless the bid contains a statement by the bidder that the bidder will comply with ORS 279C.838 or 279C.840 or 40 U.S.C. 3141 et seq.;
- (h) A statement that each bid must identify whether the bidder is a resident bidder, as defined in ORS 279A.120;
- (i) A statement that the contracting agency may reject a bid that does not comply with prescribed public contracting procedures and requirements, including the requirement to demonstrate the bidder's responsibility under ORS 279C.375 (3)(b), and that the contracting agency may reject for good cause all bids after finding that doing so is in the public interest;
- (j) Information addressing whether a contractor or subcontractor must be licensed under ORS 468A.720; and
- (k) A statement that the contracting agency may

not receive or consider a bid for a public improvement contract unless the bidder is licensed by the Construction Contractors Board or the State Landscape Contractors Board.

(2) A contracting agency may provide solicitation documents by electronic means.

(3) A bid made to the contracting agency under ORS 279C.335 or 279C.400 must be:

- (a) In writing;
- (b) Filed with the person the contracting agency designates to receive bids; and
- (c) Opened publicly by the contracting agency immediately after the deadline for submitting bids.

(4) After the contracting agency opens the bids, the contracting agency shall make the bids available for public inspection.

(5) A bidder shall submit or post a surety bond, irrevocable letter of credit issued by an insured institution as defined in ORS 706.008, cashier's check or certified check for all bids as bid security unless the contracting agency has exempted the contract for which the bidder submits a bid from this requirement under ORS 279C.390. The security may not exceed 10 percent of the amount bid for the contract.

(6) Subsection (5) of this section applies only to public improvement contracts with a value, estimated by the contracting agency, of more than \$100,000 or, in the case of contracts for highways, bridges and other transportation projects, more than \$50,000. [2003 c.794 §115; 2005 c.103 §15; 2007 c.764 §25; 2007 c.844 §2; 2009 c.368 §1]

279C.370 First-tier subcontractor disclosure.

(1)(a) Within two working hours after the date and time of the deadline when bids are due to a contracting agency for a public improvement contract, a bidder shall submit to the contracting agency a disclosure of the first-tier subcontractors that:

(A) Will be furnishing labor or will be furnishing labor and materials in connection with the public improvement contract; and

(B) Will have a contract value that is equal to or greater than five percent of the total project bid or \$15,000, whichever is greater, or \$350,000 regardless of the percentage of the total project bid.

(b) For each contract to which this subsection applies, the contracting agency shall designate a deadline for submission of bids that has a date on a Tuesday, Wednesday or Thursday and a time between 2 p.m. and 5 p.m., except that this paragraph does not apply to public contracts for maintenance or construction of highways, bridges or other transportation facilities.

(c) This subsection applies only to public improvement contracts with a value, estimated by the contracting agency, of more than \$100,000.

(d) This subsection does not apply to public improvement contracts that have been exempted from

competitive bidding requirements under ORS 279C.335 (2).

(2) The disclosure of first-tier subcontractors under subsection (1) of this section must include the name of each subcontractor, the category of work that each subcontractor will perform and the dollar value of each subcontract. The information shall be disclosed in substantially the following form:

FIRST-TIER SUBCONTRACTOR DISCLOSURE FORM

PROJECT NAME: _____
BID #: _____
BID CLOSING: Date: ____ Time: ____

This form must be submitted at the location specified in the Invitation to Bid on the advertised bid closing date and within two working hours after the advertised bid closing time.

List below the name of each subcontractor that will be furnishing labor or will be furnishing labor and materials and that is required to be disclosed, the category of work that the subcontractor will be performing and the dollar value of the subcontract. Enter "NONE" if there are no subcontractors that need to be disclosed. (ATTACH ADDITIONAL SHEETS IF NEEDED.)

Table with 3 columns: NAME, DOLLAR VALUE, CATEGORY OF WORK. Rows 1-4 with blank lines for entry.

Failure to submit this form by the disclosure deadline will result in a nonresponsive bid. A nonresponsive bid will not be considered for award.

Form submitted by (bidder name): _____
Contact name: _____
Phone no.: _____

(3) A contracting agency shall accept the subcontractor disclosure. The contracting agency shall consider the bid of any contractor that does not submit a subcontractor disclosure to the contracting agency to be a nonresponsive bid and may not award the contract

to the contractor. A contracting agency is not required to determine the accuracy or the completeness of the subcontractor disclosure.

(4) After the bids are opened, the subcontractor disclosures must be made available for public inspection.

(5) A contractor may substitute a first-tier subcontractor under the provisions of ORS 279C.585.

(6) A subcontractor may file a complaint under ORS 279C.590 based on the disclosure requirements of subsection (1) of this section. [2003 c.794 §116; 2005 c.103 §16]

279C.375 Award and execution of contract; determination of responsibility of bidder; bonds; impermissible exclusions. (1) After a contracting agency has opened bids and determined that the contracting agency will award a public improvement contract, the contracting agency shall award the contract to the lowest responsible bidder.

(2) At least seven days before awarding a public improvement contract, unless the contracting agency determines that seven days is impractical under rules adopted under ORS 279A.065, the contracting agency shall issue to each bidder or post, electronically or otherwise, a notice of the contracting agency's intent to award a contract. This subsection does not apply to a contract to which competitive bidding does not apply under ORS 279C.335 (1)(c) or (d). The notice and the manner in which the notice is posted or issued must conform to rules adopted under ORS 279A.065.

(3) In determining the lowest responsible bidder, a contracting agency shall do all of the following:

(a) Check the list created by the Construction Contractors Board under ORS 701.227 for bidders who are not qualified to hold a public improvement contract.

(b) Determine whether the bidder is responsible. A responsible bidder must demonstrate to the contracting agency that the bidder:

(A) Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or has the ability to obtain the resources and expertise, necessary to meet all contractual responsibilities.

(B) Holds current licenses that businesses or service professionals operating in this state must hold in order to undertake or perform the work specified in the contract.

(C) Is covered by liability insurance and other insurance in amounts the contracting agency requires in the solicitation documents.

(D) Qualifies as a carrier-insured employer or a self-insured employer under ORS 656.407 or has elected coverage under ORS 656.128.

(E) Has made the disclosure required under ORS 279C.370.

(F) Completed previous contracts of a similar nature with a satisfactory record of performance. For purposes of this subparagraph, a satisfactory record of performance means that to the extent that the costs associated with and time available to perform a previous contract remained within the bidder’s control, the bidder stayed within the time and budget allotted for the procurement and otherwise performed the contract in a satisfactory manner. The contracting agency shall document the bidder’s record of performance if the contracting agency finds under this subparagraph that the bidder is not responsible.

(G) Has a satisfactory record of integrity. The contracting agency in evaluating the bidder’s record of integrity may consider, among other things, whether the bidder has previous criminal convictions for offenses related to obtaining or attempting to obtain a contract or subcontract or in connection with the bidder’s performance of a contract or subcontract. The contracting agency shall document the bidder’s record of integrity if the contracting agency finds under this subparagraph that the bidder is not responsible.

(H) Is legally qualified to contract with the contracting agency.

(I) Supplied all necessary information in connection with the inquiry concerning responsibility. If a bidder fails to promptly supply information concerning responsibility that the contracting agency requests, the contracting agency shall determine the bidder’s responsibility based on available information, or may find that the bidder is not responsible.

(c) Document the contracting agency’s compliance with the requirements of paragraphs (a) and (b) of this subsection in substantially the following form:

RESPONSIBILITY DETERMINATION FORM

Project Name: _____
Bid Number: _____
Business Entity Name: _____
CCB License Number: _____
Form Submitted By (Contracting Agency): _____
Form Submitted By (Contracting Agency Representative’s Name): _____
Title: _____
Date: _____

(The contracting agency must submit this form with attachments, if any, to the Construction Contractors Board within 30 days after the date of contract award.)

The contracting agency has (check all of the following):

Checked the list created by the Construction Contractors Board under ORS 701.227 for bidders who are not qualified to hold a public improvement contract.

Determined whether the bidder has met the standards of responsibility. In so doing, the contracting agency has found that the bidder demonstrated that the bidder:

Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or the ability to obtain the resources and expertise, necessary to meet all contractual responsibilities.

Holds current licenses that businesses or service professionals operating in this state must hold in order to undertake or perform the work specified in the contract.

Is covered by liability insurance and other insurance in amounts required in the solicitation documents.

Qualifies as a carrier-insured employer or a self-insured employer under ORS 656.407 or has elected coverage under ORS 656.128.

Has disclosed the bidder’s first-tier subcontractors in accordance with ORS 279C.370.

Has a satisfactory record of performance.

Has a satisfactory record of integrity.

Is legally qualified to contract with the contracting agency.

Has supplied all necessary information in connection with the inquiry concerning responsibility.

Determined the bidder to be (check one of the following):

Responsible under ORS 279C.375 (3)(a) and (b).

Not responsible under ORS 279C.375 (3)(a) and (b).

(Attach documentation if the contracting agency finds the bidder not to be responsible.)

(d) Submit the form described in paragraph (c) of this subsection, with any attachments, to the Construction Contractors Board within 30 days after the date the contracting agency awards the contract.

(4) The successful bidder shall:

(a) Promptly execute a formal contract; and

(b) Execute and deliver to the contracting agency a performance bond and a payment bond when required under ORS 279C.380.

(5) Based on competitive bids, a contracting agency may award a public improvement contract or may award multiple public improvement contracts when specified in the invitation to bid.

(6) A contracting agency may not exclude a commercial contractor from competing for a public contract on the basis that the license issued by the Construction Contractors Board is endorsed as a level 1 or level 2 license. As used in this section, “commercial contractor” has the meaning given that term in ORS 701.005. [2003 c.794 §117; 2005 c.103 §§17,18; 2005

c.376 §1; 2007 c.764 §§26,27; 2007 c.836 §§42,43; 2009 c.880 §§9,9a]

(Subcontractors)

Effective 2/27/12, Operative 5/28/12

279C.580. (1) A contractor may not request payment from the contracting agency of any amount withheld or retained in accordance with subsection (5) of this section until the contractor has determined and certified to the contracting agency that the subcontractor has determined and certified to the contracting agency that the subcontractor is entitled to the payment .

(2) A dispute between a contractor and first-tier subcontractor relating to the amount or entitlement of a first-tier subcontractor to a payment or a late payment interest penalty under a clause included in the subcontract under subsection (3) or (4) of this section does not constitute a dispute to which the contracting agency is a party. The contracting agency may not be included as a party in any administrative or judicial proceeding involving such a dispute.

(3) Each public improvement contract awarded by a contracting agency must include a clause that requires the contractor to include in each subcontract for property or services the contractor enters into with a first-tier subcontractor, including a material supplier, for the purpose of performing a construction contract:

(a) A payment clause that obligates the contractor to pay the first-tier subcontractor for satisfactory performance under the subcontract within 10 days out of amounts the contracting agency pays to the contractor under the public improvement contract.

(b) A clause that requires the contractor to provide a first-tier subcontractor with a standard form that the first-tier subcontractor may use as an application for payment or as another method by which the subcontractor may claim a payment due from the contractor.

(c) A clause that requires the contractor, except as otherwise provided in this paragraph, to use the same form and regular administrative procedures for processing payments during the entire term of the subcontract. A contractor may change the form or the regular administrative procedures the contractor uses for processing payments if the contractor:

(A) Notifies the subcontractor in writing at least 45 days before the date on which the contractor makes the change; and

(B) Includes with the written notice a copy of the new or changed form or a description of the new or changed procedure.

(d) An interest penalty clause that obligates the contractor, if the contractor does not pay the first-tier subcontractor within 30 days after receiving payment from the contracting agency, to pay the first-tier subcontractor an interest penalty on amounts due in

each payment the contractor does not make in accordance with the payment clause included in the subcontract under paragraph (a) of this subsection. A contractor or first-tier subcontractor is not obligated to pay an interest penalty if the only reason that the contractor or first-tier subcontractor did not make payment when payment was due is that the contractor or first-tier subcontractor did not receive payment from the contracting agency or contractor when payment was due. The interest penalty:

(A) Applies to the period that begins on the day after the required payment date and that ends on the date on which the amount due is paid; and

(B) Is computed at the rate specified in ORS 279C.515 (2).

(4) A public improvement contract that the contracting agency awards shall obligate the contractor, in each of the contractor's subcontracts, to require the first-tier subcontractor to include a payment clause and an interest penalty clause that conforms to the standards of subsection (3) of this section in each of the first-tier subcontractor's subcontracts and to require each of the first-tier subcontractor's subcontractors to include such clauses in the first-tier subcontractors' subcontracts with each lower-tier subcontractor or supplier.

(5)(a) The clauses required by subsections (3) and (4) of this section do not impair the right of a contractor or a subcontractor at any tier to negotiate, and to include in the subcontract, provisions that:

(A) Permit the contractor or a subcontractor to retain, in the event of a good faith dispute, an amount not to exceed 150 percent of the amount in dispute from the amount due a subcontractor under the subcontract without incurring any obligation to pay a late payment interest penalty, in accordance with terms and conditions the parties to the subcontract agree upon, giving such recognition as the parties consider appropriate to the ability of a subcontractor to furnish a performance bond and a payment bond;

(B) Permit the contractor or subcontractor to make a determination that part or all of the subcontractor's request for payment may be withheld in accordance with the subcontract; and

(C) Permit such withholdings without incurring any obligation to pay a late payment interest penalty if:

(i) A notice that conforms to the standards of subsection (8) of this section has been previously furnished to the subcontractor; and

(ii) A copy of any notice a contractor issues under sub-subparagraph (i) of this subparagraph has been furnished to the contracting agency.

(b) As used in this subsection, "good faith dispute" means a documented dispute concerning:

(A) Unsatisfactory job progress.

(B) Defective work not remedied.

(C) Third-party claims filed or reasonable evidence that claims will be filed.

(D) Failure to make timely payments for labor, equipment and materials.

(E) Damage to the contractor or subcontractor.

(F) Reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum.

(6) If, after applying to a contracting agency for payment under a public improvement contract but before paying a subcontractor for the subcontractor's performance covered by the application, a contractor discovers that all or a portion of the payment otherwise due the subcontractor is subject to withholding from the subcontractor in accordance with the subcontract, the contractor shall:

(a) Furnish to the subcontractor a notice conforming to the standards of subsection (8) of this section as soon as practicable after ascertaining the cause for the withholding, but before the due date for payment to the subcontractor;

(b) Furnish to the contracting agency, as soon as practicable, a copy of the notice furnished to the subcontractor under paragraph (a) of this subsection;

(c) Reduce the progress payment to the subcontractor by an amount not to exceed the amount specified in the notice of withholding furnished under paragraph (a) of this subsection;

(d) Pay the subcontractor as soon as practicable after the correction of the identified subcontract performance deficiency;

(e) Make such payment within:

(A) Seven days after correction of the identified subcontract performance deficiency unless the funds for the payment must be recovered from the contracting agency because of a reduction under paragraph (f)(A) of this subsection; or

(B) Seven days after the contractor recovers the funds from the contracting agency;

(f) Notify the contracting agency upon:

(A) Reduction of the amount of any subsequent certified application for payment; or

(B) Payment to the subcontractor of any withheld amounts of a progress payment, specifying:

(i) The amounts of the progress payments withheld under paragraph (a) of this subsection; and

(ii) The dates on which the withholding began and ended; and

(g) Be obligated to pay to the contracting agency an amount equal to interest on the withheld payments computed in the manner provided in ORS 279C.570 from the 11th day after receiving the withheld amounts from the contracting agency until:

(A) The day the identified subcontractor performance deficiency is corrected; or

(B) The date that any subsequent payment is reduced under paragraph (f)(A) of this subsection.

(7)(a) If a contractor, after paying a first-tier subcontractor, receives from a supplier or subcontractor of the first-tier subcontractor a written

notice asserting a deficiency in the first-tier subcontractor's performance under the public improvement contract for which the contractor may be ultimately liable and the contractor determines that all or a portion of future payments otherwise due the first-tier subcontractor is subject to withholding in accordance with the subcontract, the contractor may, without incurring an obligation to pay a late payment interest penalty under subsection (6)(e) of this section:

(A) Furnish to the first-tier subcontractor a notice that conforms to the standards of subsection (8) of this section as soon as practicable after making the determination; and

(B) Withhold from the first-tier subcontractor's next available progress payment or payments an amount not to exceed the amount specified in the notice of withholding furnished under subparagraph (A) of this paragraph.

(b) As soon as practicable, but not later than 10 days after receiving satisfactory written notice that the identified subcontract performance deficiency has been corrected, the contractor shall pay the amount withheld under paragraph (a)(B) of this subsection to the first-tier subcontractor, or shall incur an obligation to pay a late payment interest penalty to the first-tier subcontractor computed at the rate specified in ORS 279C.570.

(8) A written notice of any withholding must be issued to a subcontractor, with a copy to the contracting agency, that specifies:

(a) The amount to be withheld;

(b) The specified causes for the withholding under the terms of the subcontract; and

(c) The remedial actions the subcontractor must take in order to receive payment of the amounts withheld.

(9) Except as provided in subsection (2) of this section, this section does not limit or impair any contractual, administrative or judicial remedies otherwise available to a contractor or a subcontractor in the event of a dispute involving a contractor's late payment or nonpayment or a subcontractor's deficient performance or nonperformance.

(10) A contractor's obligation to pay a late payment interest penalty to a subcontractor under the clause included in a subcontract under subsection (3) or (4) of this section is not an obligation of the contracting agency. A contract modification may not be made for the purpose of providing reimbursement of a late payment interest penalty. A cost reimbursement claim may not include any amount for reimbursement of a late payment interest penalty.

[2003 c.794 §151; 2005 c.103 §34; 2012 c.4 §2]

Note: The amendments to 279C.580 by section 2, chapter 4, Oregon Laws 2012, become effective upon the Governor's signature on February 27, 2012, and becomes operative 91 days later, May 28, 2012. The text that is operative until May 28, 2012, is set forth for the user's convenience.

279C.580 Contractor's relations with subcontractors. (1) A contractor may not request payment from the contracting agency of any amount withheld or retained in accordance with subsection (5) of this section until such time as the contractor has determined and certified to the contracting agency that the subcontractor has determined and certified to the contracting agency that the subcontractor is entitled to the payment of such amount.

(2) A dispute between a contractor and first-tier subcontractor relating to the amount or entitlement of a first-tier subcontractor to a payment or a late payment interest penalty under a clause included in the subcontract under subsection (3) or (4) of this section does not constitute a dispute to which the contracting agency is a party. The contracting agency may not be included as a party in any administrative or judicial proceeding involving such a dispute.

(3) Each public improvement contract awarded by a contracting agency shall include a clause that requires the contractor to include in each subcontract for property or services entered into by the contractor and a first-tier subcontractor, including a material supplier, for the purpose of performing a construction contract:

(a) A payment clause that obligates the contractor to pay the first-tier subcontractor for satisfactory performance under its subcontract within 10 days out of such amounts as are paid to the contractor by the contracting agency under the contract; and

(b) An interest penalty clause that obligates the contractor, if payment is not made within 30 days after receipt of payment from the contracting agency, to pay to the first-tier subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the subcontract under paragraph (a) of this subsection. A contractor or first-tier subcontractor may not be obligated to pay an interest penalty if the only reason that the contractor or first-tier subcontractor did not make payment when payment was due is that the contractor or first-tier subcontractor did not receive payment from the contracting agency or contractor when payment was due. The interest penalty shall be:

(A) For the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and

(B) Computed at the rate specified in ORS 279C.515 (2).

(4) The contract awarded by the contracting agency shall require the contractor to include in each of the contractor's subcontracts, for the purpose of performance of such contract condition, a provision requiring the first-tier subcontractor to include a payment clause and an interest penalty clause conforming to the standards of subsection (3) of this section in each of the first-tier subcontractor's subcontracts and to require each of the first-tier subcontractor's subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

(5)(a) The clauses required by subsections (3) and (4) of this section are not intended to impair the right of a contractor or a subcontractor at any tier to negotiate, and to include in the subcontract, provisions that:

(A) Permit the contractor or a subcontractor to retain, in the event of a good faith dispute, an amount not to exceed 150 percent of the amount in dispute from the amount due a subcontractor under the subcontract without incurring any obligation to pay a late payment interest penalty, in accordance with terms and conditions agreed to by the parties to the subcontract, giving such recognition as the parties consider appropriate to the ability of a subcontractor to furnish a performance bond and a payment bond;

(B) Permit the contractor or subcontractor to make a determination that part or all of the subcontractor's request for payment may be withheld in accordance with the subcontract agreement; and

(C) Permit such withholdings without incurring any obligation to pay a late payment interest penalty if:

(i) A notice conforming to the standards of subsection (8) of this section has been previously furnished to the subcontractor; and

(ii) A copy of any notice issued by a contractor under subparagraph (i) of this subparagraph has been furnished to the contracting agency.

(b) As used in this subsection, "good faith dispute" means a documented dispute concerning:

(A) Unsatisfactory job progress.

(B) Defective work not remedied.

(C) Third-party claims filed or reasonable evidence that claims will be filed.

(D) Failure to make timely payments for labor, equipment and materials.

(E) Damage to the prime contractor or subcontractor.

(F) Reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum.

(6) If, after making application to a contracting agency for payment under a contract but before making a payment to a subcontractor for the subcontractor's performance covered by such application, a contractor discovers that all or a portion of the payment otherwise due the subcontractor is subject to withholding from the subcontractor in accordance with the subcontract agreement, the contractor shall:

(a) Furnish to the subcontractor a notice conforming to the standards of subsection (8) of this section as soon as practicable upon ascertaining the cause giving rise to a withholding, but prior to the due date for subcontractor payment;

(b) Furnish to the contracting agency, as soon as practicable, a copy of the notice furnished to the subcontractor under paragraph (a) of this subsection;

(c) Reduce the subcontractor's progress payment by an amount not to exceed the amount specified in the notice of withholding furnished under paragraph (a) of this subsection;

(d) Pay the subcontractor as soon as practicable after the correction of the identified subcontract performance deficiency;

(e) Make such payment within:

(A) Seven days after correction of the identified subcontract performance deficiency unless the funds therefor must be recovered from the contracting agency because of a reduction under paragraph (f)(A) of this subsection; or

(B) Seven days after the contractor recovers such funds from the contracting agency;

(f) Notify the contracting agency upon:

(A) Reduction of the amount of any subsequent certified application for payment; or

(B) Payment to the subcontractor of any withheld amounts of a progress payment, specifying:

(i) The amounts of the progress payments withheld under paragraph (a) of this subsection; and

(ii) The dates that such withholding began and ended; and

(g) Be obligated to pay to the contracting agency an amount equal to interest on the withheld payments computed in the manner provided in ORS 279C.570 from the 11th day after receipt of the withheld amounts from the contracting agency until:

(A) The day the identified subcontractor performance deficiency is corrected; or

(B) The date that any subsequent payment is reduced under paragraph (f)(A) of this subsection.

(7)(a) If a contractor, after making payment to a first-tier subcontractor, receives from a supplier or subcontractor of the first-tier subcontractor a written notice asserting a deficiency in such first-tier subcontractor's performance under the contract for which the contractor may be ultimately liable and the contractor determines that all or a portion of future payments otherwise due such first-tier subcontractor is subject to withholding in accordance with the subcontract agreement, the contractor may, without incurring an obligation to pay a late payment interest penalty under subsection (6)(e) of this section:

(A) Furnish to the first-tier subcontractor a notice conforming to the standards of subsection (8) of this section as soon as practicable upon making such determination; and

(B) Withhold from the first-tier subcontractor's next available progress payment or payments an amount not to exceed the amount specified in the notice of withholding furnished under subparagraph (A) of this paragraph.

(b) As soon as practicable, but not later than 10 days after receipt of satisfactory written notification that the identified

subcontract performance deficiency has been corrected, the contractor shall pay the amount withheld under paragraph (a)(B) of this subsection to such first-tier subcontractor, or shall incur an obligation to pay a late payment interest penalty to such first-tier subcontractor computed at the rate specified in ORS 279C.570.

(8) A written notice of any withholding shall be issued to a subcontractor, with a copy to the contracting agency of any such notice issued by a contractor, specifying:

(a) The amount to be withheld;

(b) The specified causes for the withholding under the terms of the subcontract; and

(c) The remedial actions to be taken by the subcontractor in order to receive payment of the amounts withheld.

(9) Except as provided in subsection (2) of this section, this section does not limit or impair any contractual, administrative or judicial remedies otherwise available to a contractor or a subcontractor in the event of a dispute involving late payment or nonpayment by a contractor or deficient performance or nonperformance by a subcontractor.

(10) A contractor's obligation to pay a late payment interest penalty to a subcontractor under the clause included in a subcontract under subsection (3) or (4) of this section is not intended to be an obligation of the contracting agency. A contract modification may not be made for the purpose of providing reimbursement of such late payment interest penalty. A cost reimbursement claim may not include any amount for reimbursement of such late payment interest penalty. [2003 c.794 §151; 2005 c.103 §34]

279C.585 Authority to substitute undisclosed first-tier subcontractor; circumstances; rules. A contractor whose bid is accepted may substitute a first-tier subcontractor that was not disclosed under ORS 279C.370 by submitting the name of the new subcontractor and the reason for the substitution in writing to the contracting agency. A contractor may substitute a first-tier subcontractor under this section in the following circumstances:

(1) When the subcontractor disclosed under ORS 279C.370 fails or refuses to execute a written contract after having had a reasonable opportunity to do so after the written contract, which must be reasonably based upon the general terms, conditions, plans and specifications for the public improvement project or the terms of the subcontractor's written bid, is presented to the subcontractor by the contractor.

(2) When the disclosed subcontractor becomes bankrupt or insolvent.

(3) When the disclosed subcontractor fails or refuses to perform the subcontract.

(4) When the disclosed subcontractor fails or refuses to meet the bond requirements of the contractor that had been identified prior to the bid submittal.

(5) When the contractor demonstrates to the contracting agency that the subcontractor was disclosed as the result of an inadvertent clerical error.

(6) When the disclosed subcontractor does not hold a license from, or has a license that is not properly endorsed by, the Construction Contractors Board and is required to be licensed by the board.

(7) When the contractor determines that the work performed by the disclosed subcontractor is substantially unsatisfactory and not in substantial accordance with the plans and specifications or that the

subcontractor is substantially delaying or disrupting the progress of the work.

(8) When the disclosed subcontractor is ineligible to work on a public improvement contract under applicable statutory provisions.

(9) When the substitution is for good cause. The Construction Contractors Board shall define "good cause" by rule. "Good cause" includes but is not limited to the financial instability of a subcontractor. The definition of "good cause" must reflect the least-cost policy for public improvements established in ORS 279C.305.

(10) When the substitution is reasonably based on the contract alternates chosen by the contracting agency. [2003 c.794 §152; 2007 c.836 §45]

279C.590 Complaint process for substitutions of subcontractors; civil penalties. (1)(a) A subcontractor disclosed under ORS 279C.370 may file a complaint based on the subcontractor disclosure requirements under ORS 279C.370 with the Construction Contractors Board about a contractor if the contractor has substituted another subcontractor for the complaining subcontractor.

(b) If more than one subcontractor files a complaint with the board under paragraph (a) of this subsection relating to a single subcontractor disclosure, the board shall consolidate the complaints into one proceeding. If the board imposes a civil penalty under this section against a contractor, the amount collected by the board shall be divided evenly among all of the complaining subcontractors.

(c) Each subcontractor filing a complaint under paragraph (a) of this subsection shall post a deposit of \$500 with the board upon filing the complaint.

(d) If the board determines that a contractor's substitution was not in compliance with ORS 279C.585, the board shall return the full amount of the deposit posted under paragraph (c) of this subsection to the complaining subcontractor.

(e) If the board determines that a contractor has not substituted a subcontractor or that the contractor's substitution was in compliance with ORS 279C.585, the board shall award the contractor \$250 of the deposit and shall retain the other \$250, which may be expended by the board.

(2) Upon receipt of a complaint under subsection (1) of this section, the board shall investigate the complaint. If the board determines that a contractor has substituted a subcontractor in a manner not in compliance with ORS 279C.585, the board may impose a civil penalty against the contractor under subsections (3) to (5) of this section. Civil penalties under this section shall be imposed in the manner provided under ORS 183.745.

(3) If the board imposes a civil penalty under subsection (2) of this section and it is the first time the board has imposed a civil penalty under subsection (2)

of this section against the contractor during a three-year period, the board shall:

(a) Impose a civil penalty on the contractor of up to 10 percent of the amount of the subcontract bid submitted by the complaining subcontractor to the contractor or \$15,000, whichever is less. Amounts collected by the board under this paragraph shall be awarded to the complaining subcontractor or subcontractors; and

(b) Impose a civil penalty on the contractor of up to \$1,000. Amounts collected by the board under this paragraph shall be retained by the board and may be expended by the board.

(4) If the board imposes a civil penalty under subsection (2) of this section and it is the second time the board has imposed a civil penalty under subsection (2) of this section against the contractor during a three-year period, the board may:

(a) Impose a civil penalty on the contractor of up to 10 percent of the amount of the subcontract bid submitted by the complaining subcontractor to the contractor or \$15,000, whichever is less. Amounts collected by the board under this paragraph shall be awarded to the complaining subcontractor or subcontractors; and

(b) Impose a civil penalty on the contractor of up to \$1,000 and shall place the contractor on the list established under ORS 701.227 for up to six months. Amounts collected by the board under this paragraph shall be retained by the board and may be expended by the board.

(5) If the board imposes a civil penalty under subsection (2) of this section and the board has imposed a civil penalty under subsection (2) of this section against the contractor three or more times during a three-year period, the board may:

(a) Impose a civil penalty on the contractor of up to 10 percent of the amount of the subcontract bid submitted by the complaining subcontractor to the contractor or \$15,000, whichever is less. Amounts collected by the board under this paragraph shall be awarded to the complaining subcontractor or subcontractors; and

(b) Impose a civil penalty on the contractor of up to \$1,000 and shall place the contractor on the list established under ORS 701.227 for up to one year. Amounts collected by the board under this paragraph shall be retained by the board and may be expended by the board.

(6) Within 10 working days after receiving a complaint under subsection (1) of this section, the board shall notify, in writing, any contracting agency that is a party to the contract for which the complaint has been filed that the complaint has been filed. [2003 c.794 §153]

(Action on Payment Bonds and Public Works Bonds)

279C.600 Right of action on payment bond or public works bond of contractor or subcontractor; notice of claim. (1) A person claiming to have supplied labor or materials for the performance of the work provided for in a public contract, including any person having a direct contractual relationship with the contractor furnishing the payment bond or a direct contractual relationship with any subcontractor, or an assignee of such person, or a person claiming moneys due the State Accident Insurance Fund Corporation, the Unemployment Compensation Trust Fund or the Department of Revenue in connection with the performance of the contract, has a right of action on the contractor's payment bond as provided for in ORS 279C.380 and 279C.400 only if:

(a) The person or the assignee of the person has not been paid in full; and

(b) The person gives written notice of claim, as prescribed in ORS 279C.605, to the contractor and the contracting agency.

(2) When, upon investigation, the Commissioner of the Bureau of Labor and Industries has received information indicating that one or more workers providing labor on a public works have not been paid in full at the prevailing rate of wage or overtime wages, the commissioner has a right of action first on the contractor's public works bond required under ORS 279C.836 and then, for any amount of a claim not satisfied by the public works bond, on the contractor's payment bond, as provided in ORS 279C.380 and 279C.400. When an investigation indicates that a subcontractor's workers have not been paid in full at the prevailing rate of wage or overtime wages, the commissioner has a right of action first on the subcontractor's public works bond and then, for any amount of a claim not satisfied by the subcontractor's public works bond, on the contractor's payment bond. The commissioner's right of action exists without necessity of an assignment and extends to workers on the project who are not identified when the written notice of claim is given, but for whom the commissioner has received information indicating that the workers have provided labor on the public works and have not been paid in full. The commissioner shall give written notice of the claim, as prescribed in ORS 279C.605, to the contracting agency, the Construction Contractors Board, the contractor and, if applicable, the subcontractor. The commissioner may not make a claim for the same unpaid wages against more than one bond under this section. [2003 c.794 §154; 2005 c.360 §3]

279C.605 Notice of claim. (1) The notice of claim required by ORS 279C.600 must be sent by registered or certified mail or hand delivered no later than 180

days after the day the person last provided labor or furnished materials or 180 days after the worker listed in the notice of claim by the Commissioner of the Bureau of Labor and Industries last provided labor. The notice may be sent or delivered to the contractor or subcontractor at any place the contractor or subcontractor maintains an office or conducts business or at the residence of the contractor or subcontractor.

(2) Notwithstanding subsection (1) of this section, if the claim is for a required contribution to a fund of an employee benefit plan, the notice required by ORS 279C.600 must be sent or delivered within 200 days after the employee last provided labor or materials.

(3) The notice must be in writing substantially as follows:

To (here insert the name of the contractor or subcontractor and the name of the public body):

Notice hereby is given that the undersigned (here insert the name of the claimant) has a claim for (here insert a brief description of the labor or materials performed or furnished and the person by whom performed or furnished; if the claim is for other than labor or materials, insert a brief description of the claim) in the sum of (here insert the amount) dollars against the (here insert public works bond or payment bond, as applicable) taken from (here insert the name of the principal and, if known, the surety or sureties upon the public works bond or payment bond) for the work of (here insert a brief description of the work concerning which the public works bond or payment bond was taken). Such material or labor was supplied to (here insert the name of the contractor or subcontractor).

(here to be signed)

(4) When notice of claim is given by the commissioner and if the claim includes a worker who is then unidentified, the commissioner shall include in the notice a statement that the claim includes an unidentified worker for whom the commissioner has received information indicating that the worker has not been paid in full at the prevailing rate of wage required by ORS 279C.840 or overtime wages required by ORS 279C.540.

(5) The person making the claim or giving the notice shall sign the notice. [2003 c.794 §155; 2005 c.360 §4; 2009 c.160 §1]

279C.610 Action on contractor’s public works bond or payment bond; time limitation. (1) The Commissioner of the Bureau of Labor and Industries or a person who has a right of action on the public works bond or the payment bond under ORS 279C.600 and, where required, who has filed and served the notice or

notices of claim, as required under ORS 279C.600 and 279C.605, or that person’s assignee, may institute an action on the contractor’s public works bond or payment bond in a circuit court of this state or the federal district court of the district.

(2) The action shall be on the relation of the commissioner, the claimant, or that person’s assignee, as the case may be, and shall be in the name of the contracting agency that let the contract or, when applicable, the public agency or agencies for whose benefit the contract was let. It may be prosecuted to final judgment and execution for the use and benefit of the commissioner or the claimant, or that person’s assignee, as the fact may appear.

(3) The action shall be instituted no later than two years after the person last provided labor or materials or two years after the worker listed in the commissioner’s notice of claim last provided labor. [2003 c.794 §156; 2005 c.360 §5]

PREVAILING WAGE RATE

279C.800 Definitions for ORS 279C.800 to 279C.870. As used in ORS 279C.800 to 279C.870:

(1) “Fringe benefits” means the amount of:

(a) The rate of contribution a contractor or subcontractor makes irrevocably to a trustee or to a third person under a plan, fund or program; and

(b) The rate of costs to the contractor or subcontractor that may be reasonably anticipated in providing the following items, except for items that federal, state or local law requires the contractor or subcontractor to provide:

(A) Benefits to workers pursuant to an enforceable written commitment to the workers to carry out a financially responsible plan or program for:

(i) Medical or hospital care;

(ii) Pensions on retirement or death; or

(iii) Compensation for injuries or illness that result from occupational activity;

(B) Insurance to provide the benefits described in subparagraph (A) of this paragraph;

(C) Unemployment benefits;

(D) Life insurance;

(E) Disability and sickness insurance or accident insurance;

(F) Vacation and holiday pay;

(G) Costs of apprenticeship or other similar programs; or

(H) Other bona fide fringe benefits.

(2) “Housing” has the meaning given that term in ORS 456.055.

(3) “Locality” means the following district in which the public works, or the major portion thereof, is to be performed:

(a) District 1, composed of Clatsop, Columbia and Tillamook Counties;

(b) District 2, composed of Clackamas, Multnomah and Washington Counties;

(c) District 3, composed of Marion, Polk and Yamhill Counties;

(d) District 4, composed of Benton, Lincoln and Linn Counties;

(e) District 5, composed of Lane County;

(f) District 6, composed of Douglas County;

(g) District 7, composed of Coos and Curry Counties;

(h) District 8, composed of Jackson and Josephine Counties;

(i) District 9, composed of Hood River, Sherman and Wasco Counties;

(j) District 10, composed of Crook, Deschutes and Jefferson Counties;

(k) District 11, composed of Klamath and Lake Counties;

(L) District 12, composed of Gilliam, Grant, Morrow, Umatilla and Wheeler Counties;

(m) District 13, composed of Baker, Union and Wallowa Counties; and

(n) District 14, composed of Harney and Malheur Counties.

(4) “Prevailing rate of wage” means the rate of hourly wage, including all fringe benefits, that the Commissioner of the Bureau of Labor and Industries determines is paid in the locality to the majority of workers employed on projects of a similar character in the same trade or occupation.

(5) “Public agency” means the State of Oregon or a political subdivision of the State of Oregon, or a county, city, district, authority, public corporation or public entity organized and existing under law or charter or an instrumentality of the county, city, district, authority, public corporation or public entity.

(6)(a) “Public works” includes, but is not limited to:

(A) Roads, highways, buildings, structures and improvements of all types, the construction, reconstruction, major renovation or painting of which is carried on or contracted for by any public agency to serve the public interest;

(B) A project that uses funds of a private entity and \$750,000 or more of funds of a public agency for constructing, reconstructing, painting or performing a major renovation on a privately owned road, highway, building, structure or improvement of any type;

(C) A project that uses funds of a private entity for constructing a privately owned road, highway, building, structure or improvement of any type in which a public agency will use or occupy 25 percent or more of the square footage of the completed project; or

(D) Notwithstanding the provisions of ORS 279C.810 (2)(a), (b) and (c), a device, structure or mechanism, or a combination of devices, structures or mechanisms, that:

(i) Uses solar radiation as a source for generating heat, cooling or electrical energy; and

(ii) Is constructed or installed, with or without using funds of a public agency, on land, premises, structures or buildings that a public body, as defined in ORS 174.109, owns.

(E) Notwithstanding paragraph (b)(A) of this subsection and ORS 279C.810 (2)(b) and (c), construction, reconstruction, painting or major renovation of a road, highway, building, structure or improvement of any type that occurs, with or without using funds of a public agency, on real property that the Oregon University System owns.

(b) “Public works” does not include:

(A) The reconstruction or renovation of privately owned property that a public agency leases; or

(B) The renovation of publicly owned real property that is more than 75 years old by a private nonprofit entity if:

(i) The real property is leased to the private nonprofit entity for more than 25 years;

(ii) Funds of a public agency used in the renovation do not exceed 15 percent of the total cost of the renovation; and

(iii) Contracts for the renovation were advertised or, if not advertised, were entered into before July 1, 2003, but the renovation has not been completed on or before July 13, 2007. [2003 c.794 §165; 2007 c.764 §34; 2010 c.45 §; 2013 c.203 §1]

279C.805 Policy. The Legislative Assembly declares that the purposes of the prevailing rate of wage law are:

(1) To ensure that contractors compete on the ability to perform work competently and efficiently while maintaining community-established compensation standards.

(2) To recognize that local participation in publicly financed construction and family wage income and benefits are essential to the protection of community standards.

(3) To encourage training and education of workers to industry skills standards.

(4) To encourage employers to use funds allocated for employee fringe benefits for the actual purchase of those benefits. [2003 c.794 §166]

279C.807 Workforce diversity for public works projects. (1) The Bureau of Labor and Industries shall develop and adopt a plan to increase diversity statewide among workers employed on projects subject to ORS 279C.800 to 279C.870. The bureau shall develop the plan after conducting a statewide public process to solicit proposals to increase diversity and shall adopt the plan after considering proposals submitted to the bureau.

(2) The bureau shall report each year to the Legislative Assembly or to the appropriate legislative interim committee concerning progress that results from the plan adopted under this section and may submit recommendations for legislation or other

measures that will improve diversity among workers employed on projects subject to ORS 279C.800 to 279C.870. The bureau shall submit the first report no later than January 1, 2009. [2007 c.844 §9]

Note: 279C.807 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 279C or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

279C.808 Rules. In accordance with applicable provisions of ORS chapter 183, the Commissioner of the Bureau of Labor and Industries shall adopt rules necessary to administer ORS 279C.800 to 279C.870. [2007 c.764 §45]

279C.810 Exemptions; rules. (1) As used in this section:

(a) “Funds of a public agency” does not include:

(A) Funds provided in the form of a government grant to a nonprofit organization, unless the government grant is issued for the purpose of construction, reconstruction, major renovation or painting;

(B) Building and development permit fees paid or waived by the public agency;

(C) Tax credits or tax abatements;

(D) Land that a public agency sells to a private entity at fair market value;

(E) The difference between:

(i) The value of land that a public agency sells to a private entity as determined at the time of the sale after taking into account any plan, requirement, covenant, condition, restriction or other limitation, exclusive of zoning or land use regulations, that the public agency imposes on the development or use of the land; and

(ii) The fair market value of the land if the land is not subject to the limitations described in subparagraph (i) of this subparagraph;

(F) Staff resources of the public agency used to manage a project or to provide a principal source of supervision, coordination or oversight of a project;

(G) Staff resources of the public agency used to design or inspect one or more components of a project;

(H) Moneys derived from the sale of bonds that are loaned by a state agency to a private entity, unless the moneys will be used for a public improvement;

(I) Value added to land as a consequence of a public agency’s site preparation, demolition of real property or remediation or removal of environmental contamination, except for value added in excess of the expenses the public agency incurred in the site preparation, demolition or remediation or removal when the land is sold for use in a project otherwise subject to ORS 279C.800 to 279C.870; or

(J) Bonds, or loans from the proceeds of bonds, issued in accordance with ORS chapter 289 or ORS 441.525 to 441.595, unless the bonds or loans will be used for a public improvement.

(b) “Nonprofit organization” means an organization or group of organizations described in section 501(c)(3) of the Internal Revenue Code that is exempt from income tax under section 501(a) of the Internal Revenue Code.

(2) ORS 279C.800 to 279C.870 do not apply to:

(a) Projects for which the contract price does not exceed \$50,000. In determining the price of a project, a public agency:

(A) May not include the value of donated materials or work performed on the project by individuals volunteering to the public agency without pay; and

(B) Shall include the value of work performed by every person paid by a contractor or subcontractor in any manner for the person’s work on the project.

(b) Projects for which no funds of a public agency are directly or indirectly used. In accordance with ORS chapter 183, the Commissioner of the Bureau of Labor and Industries shall adopt rules to carry out the provisions of this paragraph.

(c) Projects:

(A) That are privately owned;

(B) That use funds of a private entity;

(C) In which less than 25 percent of the square footage of a completed project will be occupied or used by a public agency; and

(D) For which less than \$750,000 of funds of a public agency are used.

(d) Projects for residential construction that are privately owned and that predominantly provide affordable housing. As used in this paragraph:

(A) “Affordable housing” means housing that serves occupants whose incomes are no greater than 60 percent of the area median income or, if the occupants are owners, whose incomes are no greater than 80 percent of the area median income.

(B) “Predominantly” means 60 percent or more.

(C) “Privately owned” includes:

(i) Affordable housing provided on real property owned by a public agency if the real property and related structures are leased to a private entity for 50 or more years; and

(ii) Affordable housing owned by a partnership, nonprofit corporation or limited liability company in which a housing authority, as defined in ORS 456.005, is a general partner, director or managing member and the housing authority is not a majority owner in the partnership, nonprofit corporation or limited liability company.

(D) “Residential construction” includes the construction, reconstruction, major renovation or painting of single-family houses or apartment buildings not more than four stories in height and all incidental items, such as site work, parking areas, utilities, streets and sidewalks, pursuant to the United States Department of Labor’s “All Agency Memorandum No. 130: Application of the Standard of Comparison “Projects of a Character Similar” Under Davis-Bacon

and Related Acts,” dated March 17, 1978. However, the commissioner may consider different definitions of residential construction in determining whether a project is a residential construction project for purposes of this paragraph, including definitions that:

- (i) Exist in local ordinances or codes; or
- (ii) Differ, in the prevailing practice of a particular trade or occupation, from the United States Department of Labor’s description of residential construction.

[2003 c.794 §172; 2005 c.153 §1; 2005 c.360 §8; 2007 c.764 §35]

279C.815 Determination of prevailing wage; sources of information; comparison of state and federal prevailing wage; other powers of commissioner. (1) As used in this section, “person” means an employer, a labor organization or an official representative of an employee or employer association.

(2)(a) The Commissioner of the Bureau of Labor and Industries at least once each year shall determine the prevailing rate of wage for workers in each trade or occupation in each locality described in ORS 279C.800 by means of an independent wage survey and shall make this information available at least twice each year. The commissioner may amend the rate at any time.

(b) If the data derived only from the survey described in paragraph (a) of this subsection appear to the commissioner to be insufficient to determine the prevailing rate of wage, the commissioner shall consider additional information such as collective bargaining agreements, other independent wage surveys and the prevailing rates of wage determined by appropriate federal agencies or agencies of adjoining states. If there is not a majority in the same trade or occupation paid at the same rate, the average rate of hourly wage, including all fringe benefits, paid in the locality to workers in the same trade or occupation is the prevailing rate. If the wage a contractor or subcontractor pays to workers on a public works is based on a period of time other than an hour, the hourly wage must be mathematically determined by the number of hours worked in that period of time.

(3) A person shall make reports and returns to the Bureau of Labor and Industries that the commissioner requires to determine the prevailing rates of wage, using forms the bureau provides and within the time the commissioner prescribes. The person or an authorized representative of the person shall certify to the accuracy of the reports and returns.

(4) Notwithstanding ORS 192.410 to 192.505, reports and returns or other information provided to the commissioner under this section are confidential and not available for inspection by the public.

(5) The commissioner may enter into a contract with a public or private party to obtain data and information the commissioner needs to determine the prevailing rate of wage. The contract may provide for

the manner and extent of the market review of affected trades and occupations and for other requirements regarding timelines of reports, accuracy of data and information and supervision and review as the commissioner prescribes. [2003 c.794 §173; 2005 c.360 §9; 2007 c.764 §36; 2007 c.844 §3; 2011 c.265 §1]

279C.817 Determination of applicability of prevailing wage rate; time limitation; hearing; rules. (1) The Commissioner of the Bureau of Labor and Industries shall, upon the request of a public agency or other interested person, make a determination about whether a project or proposed project is or would be a public works on which payment of the prevailing rate of wage is or would be required under ORS 279C.840.

(2) The requester shall provide the commissioner with information necessary to enable the commissioner to make the determination.

(3) The commissioner shall make the determination within 60 days after receiving the request or 60 days after the requester has provided the commissioner with the information necessary to enable the commissioner to make the determination, whichever is later. The commissioner may take additional time to make the determination if the commissioner and the requester mutually agree that the commissioner may do so.

(4) The commissioner shall afford the requester or a person adversely affected or aggrieved by the commissioner’s determination a hearing in accordance with ORS 183.413 to 183.470. An order the commissioner issues under ORS 183.413 to 183.470 is subject to judicial review as provided in ORS 183.482.

(5) The commissioner shall adopt rules establishing the process for requesting and making the determinations described in this section. [2007 c.764 §43]

279C.820 Advisory committee to assist commissioner. (1) The Commissioner of the Bureau of Labor and Industries shall appoint an advisory committee to assist the commissioner in the administration of ORS 279C.800 to 279C.870.

(2) The advisory committee must include equal representation of members from management and labor in the building and construction industry who perform work on public works contracts and such other interested parties as the commissioner shall appoint. [2003 c.794 §179]

279C.825 Fees; rules. (1)(a) The Commissioner of the Bureau of Labor and Industries, by order, shall establish a fee to be paid by the public agency that awards a public works contract subject to ORS 279C.800 to 279C.870. The commissioner shall use the fee to pay the costs of:

(A) Surveys to determine the prevailing rates of wage;

(B) Administering and providing investigations under and enforcement of ORS 279C.800 to 279C.870; and

(C) Providing educational programs on public contracting law under the Public Contracting Code.

(b) The commissioner shall establish the fee at 0.1 percent of the contract price. However, in no event may a fee be charged and collected that is less than \$250 or more than \$7,500.

(2) The commissioner shall pay moneys received under this section into the State Treasury. The moneys shall be credited to the Prevailing Wage Education and Enforcement Account created by ORS 651.185.

(3) The public agency shall pay the fee at the time the public agency notifies the commissioner under ORS 279C.835 a contract subject to the provisions of ORS 279C.800 to 279C.870 has been awarded. [2003 c.794 §178; 2007 c.844 §7; 2009 c.161 §1; 2009 c.788 §1]

279C.827 Division of public works project; applicability of prevailing wage rate to divided projects. (1)(a) A public agency may not divide a public works project into more than one contract for the purpose of avoiding compliance with ORS 279C.800 to 279C.870.

(b) When the Commissioner of the Bureau of Labor and Industries determines that a public agency has divided a public works project into more than one contract for the purpose of avoiding compliance with ORS 279C.800 to 279C.870, the commissioner shall issue an order compelling compliance.

(c) In making determinations under this subsection, the commissioner shall consider:

(A) The physical separation of the project structures;

(B) The timing of the work on project phases or structures;

(C) The continuity of project contractors and subcontractors working on project parts or phases;

(D) The manner in which the public agency and the contractors administer and implement the project;

(E) Whether a single public works project includes several types of improvements or structures; and

(F) Whether the combined improvements or structures have an overall purpose or function.

(2) If a project is a public works of the type described in ORS 279C.800 (6)(a)(B) or (C), the commissioner shall divide the project, if appropriate, after applying the considerations set forth in subsection (1)(c) of this section to separate the parts of the project that include funds of a public agency or that will be occupied or used by a public agency from the parts of the project that do not include funds of a public agency and that will not be occupied or used by a public agency. If the commissioner divides the project, any

part of the project that does not include funds of a public agency and that will not be occupied or used by a public agency is not subject to ORS 279C.800 to 279C.870.

(3) If a project includes parts that are owned by a public agency and parts that are owned by a private entity, the commissioner shall divide the project, if appropriate, after applying the considerations set forth in subsections (1)(c) and (2) of this section to separate the parts of the project that are public works from the parts of the project that are not public works. If the commissioner divides the project, parts of the project that are not public works are not subject to ORS 279C.800 to 279C.870. [2007 c.764 §44]

279C.829 Agreement with other state to pay less than prevailing rate of wage. Notwithstanding any other provision of law, a contracting agency may not enter into an agreement with another state or a political subdivision or agency of another state in which the contracting agency agrees that a contractor or subcontractor may pay less than the prevailing rate of wage determined in accordance with ORS 279C.815 under the terms of a contract for public works to which the contracting agency is a party or of which the contracting agency is a beneficiary. [2009 c.322 §2]

279C.830 Provisions concerning prevailing rate of wage in specifications, contracts and subcontracts; applicability of prevailing wage; bond. (1)(a) Except as provided in paragraph (e) of this subsection, the specifications for every contract for public works must contain a provision that states the existing state prevailing rate of wage and, if applicable, the federal prevailing rate of wage required under the Davis-Bacon Act (40 U.S.C. 3141 et seq.) that must be paid to workers in each trade or occupation that the contractor or subcontractor or other person who is a party to the contract uses in performing all or part of the contract. If the prevailing rates of wage are available electronically or are accessible on the Internet, the rates may be incorporated into the specifications by referring to the electronically accessible or Internet-accessible rates and by providing adequate information about how to access the rates.

(b) If a public agency under paragraph (a) of this subsection must include the state and federal prevailing rates of wage in the specifications, the public agency shall also require the contractor to pay the higher of the applicable state or federal prevailing rate of wage to all workers on the public works.

(c) Every contract and subcontract must provide that the workers must be paid not less than the specified minimum hourly rate of wage in accordance with ORS 279C.838 and 279C.840.

(d) If a public works project is subject both to ORS 279C.800 to 279C.870 and to the Davis-Bacon Act, every contract and subcontract must provide that workers on the public works must be paid not less than

the higher of the applicable state or federal prevailing rate of wage.

(e) A public works project described in ORS 279C.800 (6)(a)(B) or (C) is subject to the existing state prevailing rate of wage or, if applicable, the federal prevailing rate of wage required under the Davis-Bacon Act that is in effect at the time a public agency enters into an agreement with a private entity for the project. After that time, the specifications for a contract for the public works must include the applicable prevailing rate of wage.

(2) The specifications for a contract for public works must provide that the contractor and every subcontractor must have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt under ORS 279C.836 (4), (7), (8) or (9). Every contract that a contracting agency awards must require the contractor to:

(a) Have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt under ORS 279C.836 (4), (7), (8) or (9).

(b) Require, in every subcontract, that the subcontractor have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt under ORS 279C.836 (4), (7), (8) or (9). [2003 c.794 §168; 2005 c.360 §10; 2007 c.415 §2; 2007 c.764 §37; 2007 c.844 §4; 2009 c.161 §2; 2011 c.265 §2]

279C.835 Notifying commissioner of public works contract subject to prevailing wage; payment of fee. Public agencies shall notify the Commissioner of the Bureau of Labor and Industries in writing, on a form prescribed by the commissioner, whenever a contract subject to the provisions of ORS 279C.800 to 279C.870 has been awarded. The notification shall be made within 30 days of the date that the contract is awarded. The notification shall include payment of the fee required under ORS 279C.825 and a copy of the disclosure of first-tier subcontractors that was submitted under ORS 279C.370. [2003 c.794 §175; 2009 c.161 §3]

279C.836 Public works bond; rules. (1) Except as provided in subsection (4), (7), (8) or (9) of this section, before starting work on a contract or subcontract for a public works project, a contractor or subcontractor shall file with the Construction Contractors Board a public works bond with a corporate surety authorized to do business in this state in the amount of \$30,000. The bond must provide that the contractor or subcontractor will pay claims ordered by the Bureau of Labor and Industries to workers performing labor upon public works projects. The bond must be a continuing obligation, and the surety's liability for the aggregate of claims that may be payable from the bond may not exceed the penal sum

of the bond. The bond must remain in effect continuously until depleted by claims paid under this section, unless the surety sooner cancels the bond. The surety may cancel the bond by giving 30 days' written notice to the contractor or subcontractor, to the board and to the Bureau of Labor and Industries. When the bond is canceled, the surety is relieved of further liability for work performed on contracts entered into after the cancellation. The cancellation does not limit the surety's liability for work performed on contracts entered into before the cancellation.

(2) Before permitting a subcontractor to start work on a public works project, the contractor shall verify that the subcontractor has filed a public works bond as required under this section, has elected not to file a public works bond under subsection (7) or (8) of this section or is exempt under subsection (4) or (9) of this section.

(3) A contractor or subcontractor is not required under this section to file a separate public works bond for each public works project for which the contractor or subcontractor has a contract.

(4) A person that is not required under ORS 279C.800 to 279C.870 to pay prevailing rates of wage on a public works project is not required to file a public works bond under this section.

(5) A public works bond required by this section is in addition to any other bond the contractor or subcontractor is required to obtain.

(6) The board may, by rule, require a contractor or subcontractor to obtain a new public works bond if a surety pays a claim out of an existing public works bond. The new bond must be in the amount of \$30,000. The board may allow a contractor or subcontractor to obtain, instead of a new bond, a certification that the surety remains liable for the full penal sum of the existing bond, notwithstanding payment by the surety on the claim.

(7)(a) A disadvantaged, minority, women or emerging small business enterprise certified under ORS 200.055 may, for up to four years after certification, elect not to file a public works bond as required under subsection (1) this section. If a business enterprise elects not to file a public works bond, the business enterprise shall give the board written verification of the certification and written notice that the business enterprise elects not to file the bond.

(b) A business enterprise that elects not to file a public works bond under this subsection shall notify the public agency for whose benefit the contract was awarded or, if the business enterprise is a subcontractor, the contractor of the election before starting work on a public works project. When a business enterprise elects not to file a public works bond under this subsection, a claim for unpaid wages may be made against the payment bond of the business enterprise or, if the business enterprise is a subcontractor, the payment bond of the contractor.

(c) An election not to file a public works bond expires four years after the date the business enterprise is certified. After an election has expired and before starting or continuing work on a contract or subcontract for a public works project, the business enterprise shall file a public works bond with the board as required under subsection (1) of this section.

(8) A contractor or subcontractor may elect not to file a public works bond as required under subsection (1) of this section for any public works project for which the contract price does not exceed \$100,000.

(9) In cases of emergency, or when the interest or property of the public agency for whose benefit the contract was awarded probably would suffer material injury by delay or other cause, the requirement for filing a public works bond may be excused, if a declaration of the emergency is made in accordance with rules adopted under ORS 279A.065.

(10) The board shall make available on a searchable public website information concerning public works bonds filed with the board, claims made on those bonds, elections made by certified business enterprises not to file those bonds and the expiration date of each election. The board may adopt rules necessary to perform the duties required of the board by this section.

(11) The Commissioner of the Bureau of Labor and Industries, with approval of the board, shall adopt rules that establish language for public works bonds. [2005 c.360 §2; 2007 c.415 §1; 2007 c.764 §38]

279C.838 Applicability of state and federal rates of wage; determination of site of project; determination of applicability of wage to transportation workers; waiver. When a public works project is subject to the Davis-Bacon Act (40 U.S.C. 3141 et seq.):

(1) If the state prevailing rate of wage is higher than the federal prevailing rate of wage, the contractor and every subcontractor on the project shall pay at least the state prevailing rate of wage as determined under ORS 279C.815;

(2) The Commissioner of the Bureau of Labor and Industries shall determine the site of the project in a manner consistent with the term “site of the work” as that term is used in federal law and in regulations adopted or guidelines issued in accordance with the Davis-Bacon Act;

(3) The commissioner shall determine in a manner that is consistent with federal law and regulations adopted or guidelines issued in accordance with the Davis-Bacon Act whether workers transporting materials and supplies to and from the site of the project are subject to the Davis-Bacon Act and are entitled to be paid the prevailing rate of wage;

(4) Except as provided in subsection (1) of this section, the commissioner, in consultation with the advisory committee appointed under ORS 279C.820,

may administer and enforce ORS 279C.800 to 279C.870 in a manner that is consistent with federal law and regulations adopted or guidelines issued in accordance with the Davis-Bacon Act. The commissioner may provide a waiver from a requirement set forth in ORS 279C.800 to 279C.870 if necessary to achieve consistency with the Davis-Bacon Act and to further the purposes of ORS 279C.805; and

(5) ORS 279C.800 to 279C.870 do not apply to workers enrolled in skill training programs that are certified by the United States Secretary of Transportation under the Federal-Aid Highway Act (23 U.S.C. 113(c)). [2005 c.360 §7; 2007 c.844 §5]

279C.840 Payment of prevailing rate of wage; posting of rates and fringe benefit plan provisions.

(1) The hourly rate of wage to be paid by any contractor or subcontractor to workers upon all public works shall be not less than the prevailing rate of wage for an hour’s work in the same trade or occupation in the locality where the labor is performed. The obligation of a contractor or subcontractor to pay the prevailing rate of wage may be discharged by making the payments in cash, by the making of contributions of a type referred to in ORS 279C.800 (1)(a), or by the assumption of an enforceable commitment to bear the costs of a plan or program of a type referred to in ORS 279C.800 (1)(b), or any combination thereof, where the aggregate of any such payments, contributions and costs is not less than the prevailing rate of wage. The contractor or subcontractor shall pay all wages due and owing to the contractor’s or subcontractor’s workers upon public works on the regular payday established and maintained under ORS 652.120.

(2) After a contract for public works is executed with any contractor or work is commenced upon any public works, the amount of the prevailing rate of wage is not subject to attack in any legal proceeding by any contractor or subcontractor in connection with that contract.

(3) It is not a defense in any legal proceeding that the prevailing rate of wage is less than the amount required to be in the specifications of a contract for public works, or that there was an agreement between the employee and the employer to work at less than the wage rates required to be paid under this section.

(4) Every contractor or subcontractor engaged on a project for which there is a contract for a public works shall keep the prevailing rates of wage for that project posted in a conspicuous and accessible place in or about the project. The Commissioner of the Bureau of Labor and Industries shall furnish without charge copies of the prevailing rates of wage to contractors and subcontractors.

(5) Every contractor or subcontractor engaged on a project for which there is a contract for a public works to which the prevailing wage requirements apply that also provides or contributes to a health and welfare

plan or a pension plan, or both, for the contractor or subcontractor's employees on the project shall post a notice describing the plan in a conspicuous and accessible place in or about the project. The notice preferably shall be posted in the same place as the notice required under subsection (4) of this section. In addition to the description of the plan, the notice shall contain information on how and where to make claims and where to obtain further information.

(6)(a) Except as provided in paragraph (c) of this subsection, no person other than the contractor or subcontractor may pay or contribute any portion of the prevailing rate of wage paid by the contractor or subcontractor to workers employed in the performance of a public works contract.

(b) For the purpose of this subsection, the prevailing rate of wage is the prevailing rate of wage specified in the contract.

(c) This subsection is not intended to prohibit payments to a worker who is enrolled in any government-subsidized training or retraining program.

(7) A person may not take any action that circumvents the payment of the prevailing rate of wage to workers employed on a public works contract, including, but not limited to, reducing an employee's regular rate of pay on any project not subject to ORS 279C.800 to 279C.870 in a manner that has the effect of offsetting the prevailing rate of wage on a public works project. [2003 c.794 §167; 2009 c.161 §4]

279C.845 Certified statements regarding payment of prevailing rates of wage; retainage. (1) The contractor or the contractor's surety and every subcontractor or the subcontractor's surety shall file certified statements with the public agency in writing, on a form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying:

(a) The hourly rate of wage paid each worker whom the contractor or the subcontractor has employed upon the public works; and

(b) That no worker employed upon the public works has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the contract.

(2) The certified statement shall be verified by the oath of the contractor or the contractor's surety or subcontractor or the subcontractor's surety that the contractor or subcontractor has read the certified statement, that the contractor or subcontractor knows the contents of the certified statement and that to the contractor or subcontractor's knowledge the certified statement is true.

(3) The certified statements shall set out accurately and completely the contractor's or subcontractor's payroll records, including the name and address of each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked and the

gross wages the worker earned upon the public works during each week identified in the certified statement.

(4) The contractor or subcontractor shall deliver or mail each certified statement required by subsection (1) of this section to the public agency. Certified statements for each week during which the contractor or subcontractor employs a worker upon the public works shall be submitted once a month, by the fifth business day of the following month. Information submitted on certified statements may be used only to ensure compliance with the provisions of ORS 279C.800 to 279C.870.

(5) Each contractor or subcontractor shall preserve the certified statements for a period of three years from the date of completion of the contract.

(6) Certified statements received by a public agency are public records subject to the provisions of ORS 192.410 to 192.505.

(7) Notwithstanding ORS 279C.555 or 279C.570 (7), if a contractor is required to file certified statements under this section, the public agency shall retain 25 percent of any amount earned by the contractor on the public works until the contractor has filed with the public agency certified statements as required by this section. The public agency shall pay the contractor the amount retained under this subsection within 14 days after the contractor files the certified statements as required by this section, regardless of whether a subcontractor has failed to file certified statements as required by this section. The public agency is not required to verify the truth of the contents of certified statements filed by the contractor under this section.

(8) Notwithstanding ORS 279C.555, the contractor shall retain 25 percent of any amount earned by a first-tier subcontractor on a public works until the subcontractor has filed with the public agency certified statements as required by this section. The contractor shall verify that the first-tier subcontractor has filed the certified statements before the contractor may pay the subcontractor any amount retained under this subsection. The contractor shall pay the first-tier subcontractor the amount retained under this subsection within 14 days after the subcontractor files the certified statements as required by this section. Neither the public agency nor the contractor is required to verify the truth of the contents of certified statements filed by a first-tier subcontractor under this section. [2003 c.794 §169; 2005 c.360 §11; 2009 c.7 §1]

279C.850 Inspection to determine whether prevailing rate of wage being paid; civil action for failure to pay prevailing rate of wage or overtime.

(1) At any reasonable time the Commissioner of the Bureau of Labor and Industries may enter the office or business establishment of any contractor or subcontractor performing public works and gather facts and information necessary to determine whether the

prevailing rate of wage is actually being paid by such contractor or subcontractor to workers upon public works.

(2) Upon request by the commissioner, every contractor or subcontractor performing work on public works shall make available to the commissioner for inspection during normal business hours any payroll or other records in the possession or under the control of the contractor or subcontractor that are deemed necessary by the commissioner to determine whether the prevailing rate of wage is actually being paid by such contractor or subcontractor to workers upon public works. The commissioner's request must be made a reasonable time in advance of the inspection.

(3) Notwithstanding ORS 192.410 to 192.505, any record obtained or made by the commissioner under this section is not open to inspection by the public.

(4) The commissioner may, without necessity of an assignment, initiate legal proceedings against employers to enjoin future failures to pay required prevailing rates of wage or overtime pay and to require the payment of prevailing rates of wage or overtime pay due employees. The commissioner is entitled to recover, in addition to other costs, such sum as the court or judge may determine reasonable as attorney fees. If the commissioner does not prevail in the action, the commissioner shall pay all costs and disbursements from the Bureau of Labor and Industries Account. [2003 c.794 §170]

279C.855 Liability for violations. (1) A contractor or subcontractor or contractor's or subcontractor's surety that violates the provisions of ORS 279C.840 is liable to the workers affected in the amount of the workers' unpaid minimum wages, including all fringe benefits, and in an additional amount equal to the unpaid wages as liquidated damages.

(2) Actions to enforce liability to workers under subsection (1) of this section may be brought as actions on contractors' bonds as provided for in ORS 279C.610.

(3) If a public agency fails to provide in the advertisement for bids, the request for bids, the contract specifications, the accepted bid or elsewhere in the contract documents that the contractor and any subcontractor must comply with ORS 279C.840, the liability of the public agency for unpaid minimum wages, as described in subsection (1) of this section, is joint and several with a contractor or subcontractor that had notice of the requirement to comply with ORS 279C.840.

(4) If a public works project is subject to the Davis-Bacon Act, 40 U.S.C. 3141 et seq., and a public agency fails to include the state and federal prevailing rates of wage in the specifications for the contract for public works as required under ORS 279C.830 (1)(a), or fails to provide in the contract that workers on the

public works must be paid not less than the higher of the applicable state or federal prevailing rate of wage as required under ORS 279C.830 (1)(d), the public agency is liable to each affected worker for:

(a) The worker's unpaid minimum wages, including fringe benefits, in an amount that equals, for each hour worked, the difference between the applicable higher rate of wage and the lower rate of wage; and

(b) An additional amount, equal to the amount of unpaid minimum wages due under paragraph (a) of this subsection, as liquidated damages.

(5) The Commissioner of the Bureau of Labor and Industries may enforce the provisions of subsections (3) and (4) of this section by a civil action under ORS 279C.850 (4), by a civil action on an assigned wage claim under ORS 652.330, or by an administrative proceeding on an assigned wage claim under ORS 652.332. [2003 c.794 §171; 2007 c.844 §6; 2011 c.265 §3]

279C.860 Ineligibility for public works contracts for failure to pay or post notice of prevailing rates of wage; certified payroll reports to commissioner.

(1) A contractor, subcontractor or any firm, corporation, partnership, limited liability company or association in which the contractor or subcontractor has a financial interest may not receive a contract or subcontract for public works for a period of three years after the date on which the Commissioner of the Bureau of Labor and Industries publishes the contractor's or subcontractor's name on the list described in subsection (2) of this section. The commissioner shall add a contractor's or subcontractor's name to the list after determining, in accordance with ORS chapter 183, that:

(a) The contractor or subcontractor has intentionally failed or refused to pay the prevailing rate of wage to workers employed upon public works;

(b) The subcontractor has failed to pay to the subcontractor's employees amounts required by ORS 279C.840 and the contractor has paid those amounts on the subcontractor's behalf;

(c) The contractor or subcontractor has intentionally failed or refused to post the prevailing rates of wage as required by ORS 279C.840 (4); or

(d) The contractor or subcontractor has intentionally falsified information in the certified statements the contractor or subcontractor submitted under ORS 279C.845.

(2) The commissioner shall maintain a written list of the names of those contractors and subcontractors the commissioner determines are ineligible under this section and the period of time for which they are ineligible. The commissioner shall publish the list, furnish a copy of the list upon request and make the list available to contracting agencies.

(3) If the contractor or subcontractor is a corporation or a limited liability company, the provisions of this section apply to any corporate officer or agent of the corporation or any member or manager of the limited liability company who is responsible for the failing or refusing to pay or post the prevailing rate of wage, failing to pay to a subcontractor's employees amounts required by ORS 279C.840 that the contractor pay on the subcontractor's behalf or the intentional falsification of information in the certified statements the contractor or subcontractor submits under ORS 279C.845.

(4) For good cause shown, the commissioner may direct the removal of the name of a contractor or subcontractor from the ineligible list.

(5) When a prevailing rate of wage claim is filed or the commissioner receives evidence indicating that a violation has occurred, a contractor or subcontractor required to pay the prevailing rate of wage to workers employed upon public works under ORS 279C.800 to 279C.870 shall send a certified copy of the payroll for workers employed upon public works when the commissioner requests the certified copy. [2003 c.794 §174; 2009 c.107 §1; 2013 c.239 §1]

279C.865 Civil penalties. (1) In addition to any other penalty provided by law, the Commissioner of the Bureau of Labor and Industries may assess a civil penalty not to exceed \$5,000 for each violation of any provision of ORS 279C.800 to 279C.870 or any rule of the commissioner adopted thereunder.

(2) Civil penalties under this section shall be imposed as provided in ORS 183.745.

(3) All moneys collected as penalties under this section shall be first applied toward reimbursement of costs incurred in determining violations, conducting hearings and assessing and collecting the penalties. The remainder, if any, of moneys collected as penalties under this section shall be paid into the State Treasury and credited to the General Fund and are available for general governmental expenses. [2003 c.794 §177]

279C.870 Civil action to enforce payment of prevailing rates of wage. (1) The Commissioner of the Bureau of Labor and Industries or any other person may bring a civil action in any court of competent jurisdiction to require a public agency under a public contract with a contractor to withhold twice the wages in dispute if it is shown that the contractor or subcontractor on the contract has intentionally failed or refused to pay the prevailing rate of wage to workers employed on that contract and to require the contractor to pay the prevailing rate of wage and any deficiencies that can be shown to exist because of improper wage payments already made. In addition to other relief, the court may also enjoin the contractor or subcontractor from committing future violations. The contractor or subcontractor involved shall be named as a party in all civil actions brought under this section. In addition to

other costs, the court may award the prevailing party reasonable attorney fees at the trial and on appeal. However, attorney fees may not be awarded against the commissioner under this section.

(2) The court shall require any party, other than the commissioner, that brings a civil action under this section to post a bond sufficient to cover the estimated attorney fees and costs to the public agency and to the contractor or subcontractor of any temporary restraining order, preliminary injunction or permanent injunction awarded in the action, in the event that the party bringing the action does not ultimately prevail.

(3) In addition to any other relief, the court in a civil action brought under this section may enjoin the public agency from contracting with the contractor or subcontractor if the court finds that the commissioner would be entitled to place the contractor or subcontractor on the ineligible list established under ORS 279C.860. If the court issues such an injunction, the commissioner shall place the contractor or subcontractor on the list for a period of three years, subject to the provision of ORS 279C.860 (4). [2003 c.794 §176; 2007 c.764 §39; 2009 c.107 §2]

(Home Energy Performance Score System)

469.703 Home energy performance score system; home energy assessors; reports; database; rules. (1) As used in this section:

(a) “Home energy assessor” has the meaning given that term in ORS 701.527.

(b) “Home energy audit” means the evaluation or testing of components or systems in a residential building for the purpose of identifying options for increasing energy conservation and energy efficiency.

(c) “Home energy performance score” has the meaning given that term in ORS 701.527.

(2) In consultation with the Public Utility Commission, the State Department of Energy shall adopt by rule a home energy performance score system by which a person may assign a residential building a home energy performance score for the purpose of evaluating the energy conservation and energy efficiency of the building.

(3) The department shall designate by rule programs for the training of home energy assessors. Programs designated by the department under this subsection must ensure competency in conducting home energy audits and assigning home energy performance scores.

(4) Subject to subsection (5) of this section, the department may adopt by rule requirements under which home energy assessors who are certified under ORS 701.532 must report to the department the home energy performance scores assigned by the home energy assessors. The department shall keep and maintain a database of information reported to the department under this subsection.

(5) Rules adopted under subsection (4) of this section may not allow for the reporting of individual addresses of residential structures or the names of individual homeowners, but may allow for the reporting of information regarding the jurisdiction in which a residential structure is located and the utility services provided, any specific energy efficiency features of the residential structure or other general information that allows the department to make any aggregated evaluations of savings attributable to energy efficiency. [2013 c.383 §12]

Note: 469.703 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 469 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

656.021 Person performing work under ORS chapter 701 as subject employer. Notwithstanding ORS 656.029 (1), a person who is licensed pursuant to an application under ORS 701.046 and is acting under a contract to perform work described by ORS chapter 701 shall be considered the subject employer for all individuals employed by that person. [1989 c.870 §13; 1999 c.402 §7; 2007 c.836 §48]

656.023 Who are subject employers. Every employer employing one or more subject workers in the state is subject to this chapter. [1965 c.285 §8]

656.025 Individuals engaged in commuter ridesharing not subject workers; conditions. (1) For the purpose of this chapter, an individual is not a subject worker while commuting in a voluntary commuter ridesharing arrangement unless:

- (a) The worker is reimbursed for travel expenses incurred therein;
- (b) The worker receives payment for commuting time from the employer; or
- (c) The employer makes an election to provide coverage for the worker pursuant to ORS 656.039.

(2) As used in this section “voluntary commuter ridesharing arrangement” means a carpool or vanpool arrangement in which participation is not required as a condition of employment and in which not more than 15 persons are transported to and from their places of employment, in a single daily round trip where the driver also is on the way to or from the driver’s place of employment. [1981 c.227 §4]

656.027 Who are subject workers. All workers are subject to this chapter except those nonsubject workers described in the following subsections:

(1) A worker employed as a domestic servant in or about a private home. For the purposes of this subsection “domestic servant” means any worker engaged in household domestic service by private employment contract, including, but not limited to, home health workers.

(2) A worker employed to do gardening, maintenance, repair, remodeling or similar work in or about the private home of the person employing the worker.

(3)(a) A worker whose employment is casual and either:

- (A) The employment is not in the course of the trade, business or profession of the employer; or
- (B) The employment is in the course of the trade, business or profession of a nonsubject employer.

(b) For the purpose of this subsection, “casual” refers only to employments where the work in any 30-day period, without regard to the number of workers employed, involves a total labor cost of less than \$500.

(4) A person for whom a rule of liability for injury or death arising out of and in the course of employment is provided by the laws of the United States.

(5) A worker engaged in the transportation in interstate commerce of goods, persons or property for hire by rail, water, aircraft or motor vehicle, and whose employer has no fixed place of business in this state.

(6) Firefighter and police employees of any city having a population of more than 200,000 that provides a disability and retirement system by ordinance or charter.

(7)(a) Sole proprietors, except those described in paragraph (b) of this subsection. When labor or services are performed under contract, the sole proprietor must qualify as an independent contractor.

(b) Sole proprietors actively licensed under ORS 671.525 or 701.021. When labor or services are performed under contract for remuneration, notwithstanding ORS 656.005 (30), the sole proprietor must qualify as an independent contractor. Any sole proprietor licensed under ORS 671.525 or 701.021 and involved in activities subject thereto is conclusively presumed to be an independent contractor.

(8) Except as provided in subsection (23) of this section, partners who are not engaged in work performed in direct connection with the construction, alteration, repair, improvement, moving or demolition of an improvement on real property or appurtenances thereto. When labor or services are performed under contract, the partnership must qualify as an independent contractor.

(9) Except as provided in subsection (25) of this section, members, including members who are managers, of limited liability companies, regardless of the nature of the work performed. However, members, including members who are managers, of limited liability companies with more than one member, while engaged in work performed in direct connection with the construction, alteration, repair, improvement, moving or demolition of an improvement on real property or appurtenances thereto, are subject workers. When labor or services are performed under contract, the limited liability company must qualify as an independent contractor.

(10) Except as provided in subsection (24) of this section, corporate officers who are directors of the corporation and who have a substantial ownership interest in the corporation, regardless of the nature of the work performed by such officers, subject to the following limitations:

(a) If the activities of the corporation are conducted on land that receives farm use tax assessment pursuant to ORS chapter 308A, corporate officer includes all individuals identified as directors in the corporate bylaws, regardless of ownership interest, and who are members of the same family, whether related by blood, marriage or adoption.

(b) If the activities of the corporation involve the commercial harvest of timber and all officers of the corporation are members of the same family and are parents, daughters or sons, daughters-in-law or sons-in-

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law or grandchildren, then all such officers may elect to be nonsubject workers. For all other corporations involving the commercial harvest of timber, the maximum number of exempt corporate officers for the corporation shall be whichever is the greater of the following:

(A) Two corporate officers; or

(B) One corporate officer for each 10 corporate employees.

(c) When labor or services are performed under contract, the corporation must qualify as an independent contractor.

(11) A person performing services primarily for board and lodging received from any religious, charitable or relief organization.

(12) A newspaper carrier utilized in compliance with the provisions of ORS 656.070 and 656.075.

(13) A person who has been declared an amateur athlete under the rules of the United States Olympic Committee or the Canadian Olympic Committee and who receives no remuneration for performance of services as an athlete other than board, room, rent, housing, lodging or other reasonable incidental subsistence allowance, or any amateur sports official who is certified by a recognized Oregon or national certifying authority, which requires or provides liability and accident insurance for such officials. A roster of recognized Oregon and national certifying authorities will be maintained by the Department of Consumer and Business Services, from lists of certifying organizations submitted by the Oregon School Activities Association and the Oregon Park and Recreation Society.

(14) Volunteer personnel participating in the ACTION programs, organized under the Domestic Volunteer Service Act of 1973, P.L. 93-113, known as the Foster Grandparent Program and the Senior Companion Program, whether or not the volunteers receive a stipend or nominal reimbursement for time and travel expenses.

(15) A person who has an ownership or leasehold interest in equipment and who furnishes, maintains and operates the equipment. As used in this subsection "equipment" means:

(a) A motor vehicle used in the transportation of logs, poles or piling.

(b) A motor vehicle used in the transportation of rocks, gravel, sand, dirt or asphalt concrete.

(c) A motor vehicle used in the transportation of property by a for-hire motor carrier that is required under ORS 825.100 or 825.104 to possess a certificate or permit or to be registered.

(16) A person engaged in the transportation of the public for recreational down-river boating activities on the waters of this state pursuant to a federal permit when the person furnishes the equipment necessary for the activity. As used in this subsection, "recreational down-river boating activities" means those boating

activities for the purpose of recreational fishing, swimming or sightseeing utilizing a float craft with oars or paddles as the primary source of power.

(17) A person who receives no wage other than ski passes or other noncash remuneration for performing volunteer:

(a) Ski patrol activities; or

(b) Ski area program activities sponsored by a ski area operator, as defined in ORS 30.970, or by a nonprofit corporation or organization.

(18) A person 19 years of age or older who contracts with a newspaper publishing company or independent newspaper dealer or contractor to distribute newspapers to the general public and perform or undertake any necessary or attendant functions related thereto.

(19) A person performing foster parent or adult foster care duties pursuant to ORS 412.001 to 412.161 and 412.991 or ORS chapter 411, 418, 430 or 443.

(20) A person performing services on a volunteer basis for a nonprofit, religious, charitable or relief organization, whether or not such person receives meals or lodging or nominal reimbursements or vouchers for meals, lodging or expenses.

(21) A person performing services under a property tax work-off program established under ORS 310.800.

(22) A person who performs service as a caddy at a golf course in an established program for the training and supervision of caddies under the direction of a person who is an employee of the golf course.

(23)(a) Partners who are actively licensed under ORS 671.525 or 701.021 and who have a substantial ownership interest in a partnership. If all partners are members of the same family and are parents, spouses, sisters, brothers, daughters or sons, daughters-in-law or sons-in-law or grandchildren, all such partners may elect to be nonsubject workers. For all other partnerships licensed under ORS 671.510 to 671.760 or 701.021, the maximum number of exempt partners shall be whichever is the greater of the following:

(A) Two partners; or

(B) One partner for each 10 partnership employees.

(b) When labor or services are performed under contract for remuneration, notwithstanding ORS 656.005 (30), the partnership qualifies as an independent contractor. Any partnership licensed under ORS 671.525 or 701.021 and involved in activities subject thereto is conclusively presumed to be an independent contractor.

(24)(a) Corporate officers who are directors of a corporation actively licensed under ORS 671.525 or 701.021 and who have a substantial ownership interest in the corporation, regardless of the nature of the work performed. If all officers of the corporation are members of the same family and are parents, spouses, sisters, brothers, daughters or sons, daughters-in-law or

sons-in-law or grandchildren, all such officers may elect to be nonsubject workers. For all other corporations licensed under ORS 671.510 to 671.760 or 701.021, the maximum number of exempt corporate officers shall be whichever is the greater of the following:

(A) Two corporate officers; or

(B) One corporate officer for each 10 corporate employees.

(b) When labor or services are performed under contract for remuneration, notwithstanding ORS 656.005 (30), the corporation qualifies as an independent contractor. Any corporation licensed under ORS 671.525 or 701.021 and involved in activities subject thereto is conclusively presumed to be an independent contractor.

(25)(a) Limited liability company members who are members of a company actively licensed under ORS 671.525 or 701.021 and who have a substantial ownership interest in the company, regardless of the nature of the work performed. If all members of the company are members of the same family and are parents, spouses, sisters, brothers, daughters or sons, daughters-in-law or sons-in-law or grandchildren, all such members may elect to be nonsubject workers. For all other companies licensed under ORS 671.510 to 671.760 or 701.021, the maximum number of exempt company members shall be whichever is the greater of the following:

(A) Two company members; or

(B) One company member for each 10 company employees.

(b) When labor or services are performed under contract for remuneration, notwithstanding ORS 656.005 (30), the company qualifies as an independent contractor. Any company licensed under ORS 671.525 or 701.021 and involved in activities subject thereto is conclusively presumed to be an independent contractor.

(26) A person serving as a referee or assistant referee in a youth or adult recreational soccer match whose services are retained on a match-by-match basis.

(27) A person performing language translator or interpreter services that are provided for others through an agent or broker.

(28) A person who operates, and who has an ownership or leasehold interest in, a passenger motor vehicle that is operated as a taxicab or for nonemergency medical transportation. As used in this subsection:

(a) "Lease" means a contract under which the lessor provides a vehicle to a lessee for consideration.

(b) "Leasehold" includes, but is not limited to, a lease for a shift or a longer period.

(c) "Passenger motor vehicle that is operated as a taxicab" means a vehicle that:

(A) Has a passenger seating capacity that does not exceed seven persons;

(B) Is transporting persons, property or both on a

route that begins or ends in Oregon; and

(C)(i) Carries passengers for hire when the destination and route traveled may be controlled by a passenger and the fare is calculated on the basis of any combination of an initial fee, distance traveled or waiting time; or

(ii) Is in use under a contract to provide specific service to a third party to transport designated passengers or to provide errand services to locations selected by the third party.

(d) "Passenger motor vehicle that is operated for nonemergency medical transportation" means a vehicle that:

(A) Has a passenger seating capacity that does not exceed seven persons;

(B) Is transporting persons, property or both on a route that begins or ends in Oregon; and

(C) Provides medical transportation services under contract with or on behalf of a mass transit or transportation district. [1965 c.285 §9; 1971 c.386 §1; 1977 c.683 §1; 1977 c.817 §2; 1977 c.835 §7; 1979 c.821 §1; 1981 c.225 §1; 1981 c.444 §1; 1981 c.535 §3; 1981 c.839 §1; 1983 c.341 §1; 1983 c.541 §1; 1983 c.579 §3; 1985 c.431 §1; 1985 c.706 §2; 1987 c.94 §168; 1987 c.414 §161; 1987 c.800 §2; 1989 c.762 §4; 1990 c.2 §4; 1991 c.469 §1; 1991 c.707 §1; 1993 c.18 §138a; 1993 c.494 §2; 1993 c.777 §10; 1995 c.93 §32; 1995 c.216 §§3,3a; 1995 c.332 §6; 1997 c.337 §1; 1999 c.314 §91; 1999 c.402 §8; 2001 c.363 §1; 2001 c.765 §4; 2003 c.677 §1; 2005 c.167 §1; 2007 c.465 §6; 2007 c.541 §9; 2007 c.721 §1; 2007 c.836 §49; 2008 c.32 §§2,3]

656.029 Obligation of person awarding contract to provide coverage for workers under contract; exceptions; effect of failure to provide coverage. (1)

If a person awards a contract involving the performance of labor where such labor is a normal and customary part or process of the person's trade or business, the person awarding the contract is responsible for providing workers' compensation insurance coverage for all individuals, other than those exempt under ORS 656.027, who perform labor under the contract unless the person to whom the contract is awarded provides such coverage for those individuals before labor under the contract commences. If an individual who performs labor under the contract incurs a compensable injury, and no workers' compensation insurance coverage is provided for that individual by the person who is charged with the responsibility for providing such coverage before labor under the contract commences, that person shall be treated as a noncomplying employer and benefits shall be paid to the injured worker in the manner provided in this chapter for the payment of benefits to the worker of a noncomplying employer.

(2) If a person to whom the contract is awarded is exempt from coverage under ORS 656.027, and that

person engages individuals who are not exempt under ORS 656.027 in the performance of the contract, that person shall provide workers' compensation insurance coverage for all such individuals. If an individual who performs labor under the contract incurs a compensable injury, and no workers' compensation insurance coverage is provided for that individual by the person to whom the contract is awarded, that person shall be treated as a noncomplying employer and benefits shall be paid to the injured worker in the manner provided in this chapter for the payment of benefits to the worker of a noncomplying employer.

(3) As used in this section:

(a) "Person" includes partnerships, joint ventures, associations, corporations, limited liability companies, governmental agencies and sole proprietorships.

(b) "Sole proprietorship" means a business entity or individual who performs labor without the assistance of others. [1979 c.864 §2; 1981 c.725 §1; 1981 c.854 §4; 1983 c.397 §1; 1983 c.579 §2a; 1985 c.706 §1; 1989 c.762 §5; 1995 c.93 §34; 1995 c.332 §6a]

656.128 Sole proprietors, limited liability company members, partners, independent contractors may elect coverage by insurer; cancellation. (1) Any person who is a sole proprietor, or a member, including a member who is a manager, of a limited liability company, or a member of a partnership, or an independent contractor pursuant to ORS 670.600, may make written application to an insurer to become entitled as a subject worker to compensation benefits. Thereupon, the insurer may accept such application and fix a classification and an assumed monthly wage at which such person shall be carried on the payroll as a worker for purposes of computations under this chapter.

(2) When the application is accepted, such person thereupon is subject to the provisions and entitled to the benefits of this chapter. The person shall promptly notify the insurer whenever the status of the person as an employer of subject workers changes. Any subject worker employed by such a person after the effective date of the election of the person shall, upon being employed, be considered covered automatically by the same workers' compensation insurance policy that covers such person.

(3) No claim shall be allowed or paid under this section, except upon corroborative evidence in addition to the evidence of the claimant.

(4) Any person subject to this chapter as a worker as provided in this section may cancel such election by giving written notice to the insurer. The cancellation shall become effective at 12 midnight ending the day of filing the notice with the insurer. [Amended by 1957 c.440 §2; 1959 c.448 §12; 1965 c.285 §18; 1969 c.400 §1; 1975 c.556 §23; 1981 c.854 §9; 1981 c.876 §3; 1993 c.777 §11; 1995 c.93 §33; 1995 c.332 §11; 2007 c.241 §9]

EDUCATIONAL REQUIREMENTS

670.010 Waiver of educational requirement for admission to examination for license or certificate to practice profession, trade or calling. Any state board or commission that examines applicants for license or certification to practice a profession or engage in a trade or calling may, in its discretion, waive the educational requirement for admission to such examination, provided that the applicant furnishes evidence satisfactory to such state board or commission that the applicant is currently enrolled in a school, college or university approved by such state board or commission and will satisfy the educational requirement for admission to such examination on satisfactory completion of courses for which the applicant is currently enrolled and that this educational requirement will be met not later than four calendar months from the first day of the month following the month in which the examination is given. [1953 c.103 §1; 1975 c.429 §5; 1977 c.47 §1]

670.020 Filing evidence of complete educational requirement after taking examination. (1) Evidence of completion of the educational requirement waived as provided in ORS 670.010 shall be filed with such state board or commission not later than four calendar months from the first day of the month following the month in which the examination is taken. State boards and commissions shall withhold official certification of the successful completion of the examination until such evidence is furnished. The affidavit of the registrar or administrative head of the school, college or university shall be deemed satisfactory evidence.

(2) If any candidate admitted to an examination as provided in ORS 670.010 shall fail or neglect within said period to complete the educational requirement for such examination, then the completion of the examination by such candidate shall be null and void, and of no effect. The state board or commission which examined the candidate, however, shall retain any examination fee paid by the candidate. [1953 c.103 §2; 1975 c.429 §6; 1981 c.89 §19]

**LICENSING ADMINISTRATION
(Generally)**

670.275 Policy statement. In enacting chapter 753, Oregon Laws 1971, it is the intention of the Legislative Assembly to provide for the more effective coordination of the administrative functions of boards charged with responsibility for protecting the public through the licensing and regulating of certain professions practiced in this state. Further, it is the intention of the Legislative Assembly to retain responsibility for decisions on qualifications, standards of practice, licensing, discipline and other discretionary functions relating to professional activities in the professional licensing boards, members of which are

qualified by education, training and experience to make the necessary judgments. [Formerly 184.575]

Note: Legislative Counsel has substituted "chapter 753, Oregon Laws 1971," for the words "this Act" in section 1, chapter 753, Oregon Laws 1971, compiled as 670.275 [Formerly 184.575]. Specific ORS references have not been substituted pursuant to 173.160. These sections may be determined by referring to the 1971 Comparative Section Table located in Volume 20 of ORS.

670.280 Denial, suspension or revocation of license based on criminal conviction; denial of license or imposition of discipline for conduct substantially related to fitness and ability of applicant or licensee. (1) As used in this section:

(a) "License" includes a registration, certification or permit.

(b) "Licensee" includes a registrant or a holder of a certification or permit.

(2) Except as provided in ORS 342.143 (3) or 342.175 (3), a licensing board, commission or agency may not deny, suspend or revoke an occupational or professional license solely for the reason that the applicant or licensee has been convicted of a crime, but it may consider the relationship of the facts which support the conviction and all intervening circumstances to the specific occupational or professional standards in determining the fitness of the person to receive or hold the license.

(3) Except as provided in ORS 342.143 (3) and 342.175 (3), a licensing board, commission or agency may deny an occupational or professional license or impose discipline on a licensee based on conduct that is not undertaken directly in the course of the licensed activity, but that is substantially related to the fitness and ability of the applicant or licensee to engage in the activity for which the license is required. In determining whether the conduct is substantially related to the fitness and ability of the applicant or licensee to engage in the activity for which the license is required, the licensing board, commission or agency shall consider the relationship of the facts with respect to the conduct and all intervening circumstances to the specific occupational or professional standards. [1973 c.359 §1; 1991 c.662 §6a; 2003 c.749 §13; 2009 c.386 §5]

670.283 Power of state agency to suspend license includes power to reinstate. If a state agency, board or commission has the power to issue any license, certification or registration necessary to practice any profession or engage in any trade or calling, any statute granting the state agency, board or commission the power to suspend the license, certification or registration includes the power to reinstate:

(1) At a time certain; or

(2) When the person subject to suspension fulfills conditions for reinstatement set by the agency, board or

commission. [1979 c.201 §1]

670.285 [1975 c.759 §10; renumbered 183.435]

670.290 Prohibited uses of juvenile records in employment, licensing or admission. It shall be unlawful for any state agency or licensing board, including the Oregon State Bar, to:

(1) Require that an applicant for employment, licensing or admission answer any questions regarding the existence or contents of a juvenile record that has been expunged pursuant to ORS 419A.260 and 419A.262;

(2) Bar or discharge from employment or refuse to hire or employ such individual because of the existence or contents of a juvenile record that has been expunged pursuant to ORS 419A.260 and 419A.262; or

(3) Deny, revoke or suspend a license because of the existence or contents of a juvenile record that has been expunged pursuant to ORS 419A.260 and 419A.262. [1977 c.801 §2; 1983 c.820 §16; 1993 c.33 §360]

670.300 Licensing and advisory board officers; quorum and meeting requirements; compensation and expenses of members. (1) Except as otherwise provided by law, each professional licensing and advisory board shall select annually one of its members as chairperson and another as vice chairperson, with such powers and duties necessary for the performance of the functions of such offices as the board shall determine.

(2) The majority of the members of the board constitutes a quorum for the transaction of business.

(3) The board shall meet at least once a year, not later than July 1, at a place, day and hour determined by the board. The board shall also meet at such other times and places as are specified by the call of the chairperson or a majority of the members of the board.

(4) Members of the board are entitled to compensation and expenses as provided in ORS 292.495. [1971 c.753 §8; 1987 c.414 §95]

670.304 Application of ORS 670.300 to 670.380. Except as otherwise specifically provided, ORS 670.300 to 670.380 apply to the following professional licensing and advisory boards:

(1) Professional licensing and advisory boards established in the Office of the Secretary of State.

(2) The Oregon Board of Maritime Pilots.

(3) The Board of Cosmetology, in the Oregon Health Licensing Office.

(4) The State Board of Architect Examiners.

(5) The State Landscape Contractors Board.

(6) The State Board of Examiners for Engineering and Land Surveying.

(7) The State Landscape Architect Board.

(8) The State Board of Geologist Examiners.

(9) The State Board of Tax Practitioners.

(10) The Oregon Board of Accountancy.

(11) The Construction Contractors Board. [1987 c.414 §94; 1991 c.67 §176; 1993 c.744 §241; 1997 c.3 §2; 1997 c.21 §1; 1999 c.425 §28; 1999 c.885 §19; 2001 c.160 §1; 2005 c.648 §49; 2007 c.71 §219; 2007 c.768 §66; 2013 c.568 §10]

Note: The amendments to 670.304 by section 10, chapter 568, Oregon Laws 2013, become operative July 1, 2014. See section 142, chapter 568, Oregon Laws 2013, as amended by section 146, chapter 568, Oregon Laws 2013. The text that is operative until July 1, 2014, is set forth for the user's convenience.

670.304 Application of ORS 670.300 to 670.380. Except as otherwise specifically provided, ORS 670.300 to 670.380 apply to the following professional licensing and advisory boards:

(1) Professional licensing and advisory boards established in the Office of the Secretary of State.

(2) The Oregon Board of Maritime Pilots.

(3) The Board of Cosmetology, in the Oregon Health Licensing Agency.

(4) The State Board of Architect Examiners.

(5) The State Landscape Contractors Board.

(6) The State Board of Examiners for Engineering and Land Surveying.

(7) The State Landscape Architect Board.

(8) The State Board of Geologist Examiners.

(9) The State Board of Tax Practitioners.

(10) The Oregon Board of Accountancy.

(11) The Construction Contractors Board.

670.305 [1971 c.753 §9; repealed by 1973 c.659 §1 (670.306 enacted in lieu of 670.305)]

670.306 Administrative officers for boards; other employees. (1) Subsections (2) and (3) of this section shall apply only to the following professional licensing boards:

(a) State Board of Architect Examiners.

(b) Construction Contractors Board.

(c) State Board of Examiners for Engineering and Land Surveying.

(d) State Landscape Architect Board.

(e) State Landscape Contractors Board.

(f) Oregon Board of Accountancy.

(g) State Board of Tax Practitioners.

(2) A board shall fix the qualifications of and appoint an administrative officer. The determination of qualifications and appointment of an administrative officer shall be made after consultation with the Governor.

(3) An administrative officer of a board shall not be a member of that board.

(4) Subject to the applicable rules of the State Personnel Relations Law, the board shall fix the compensation of its administrator, who shall be in the unclassified service.

(5) Subject to applicable rules of the State Personnel Relations Law, the administrative officer shall appoint all subordinate employees, prescribe their duties and fix their compensation. [1973 c.659 §2 (enacted in lieu of 670.305); 1975 c.429 §7; 1975 c.464

§1; 1981 c.821 §2; 1987 c.414 §96; 1993 c.744 §242; 1995 c.79 §338; 1997 c.3 §3; 1997 c.21 §2; 1999 c.59 §199; 1999 c.322 §41; 2007 c.768 §67]

670.310 Rulemaking authority; board seal. (1)

Except as otherwise provided by law and in accordance with any applicable provisions of ORS chapter 183, each professional licensing board and advisory board may make such rules as are necessary or proper for the administration of the laws such board is charged with administering.

(2) Each professional licensing board and advisory board may adopt a seal. [1971 c.753 §10; 1987 c.414 §97]

670.315 Administration of oaths; obtaining and taking evidence at board proceedings; effect of failure to obey board subpoena. (1)

Except as otherwise provided by law, each professional licensing board or advisory board, acting through its chairperson or vice chairperson or an administrative law judge, may administer oaths, take depositions and issue subpoenas to compel the attendance of witnesses and the production of books, papers, records, memoranda or other information necessary to the carrying out of the laws the board is charged with administering.

(2) If any person fails to comply with a subpoena issued under this section or refuses to testify on any matters on which the person may be lawfully interrogated, the procedure provided in ORS 183.440 shall be followed to compel obedience. [1971 c.753 §11; 1987 c.414 §98; 2003 c.75 §107]

670.320 [1971 c.753 §12; repealed by 1987 c.414 §172]

670.325 Proceedings on denial of license; restraining violations; authority of administrative law judge; record of proceedings. (1)

All proceedings for the refusal to issue, or the suspension or revocation of any license, certificate of registration or other evidence of authority required to practice any profession subject to the authority of a professional licensing or advisory board shall be conducted pursuant to the procedure for contested cases required or authorized by ORS chapter 183.

(2) If a professional licensing or advisory board decides that any person has or is about to engage in any activity that is or will be a violation of law the board is charged with enforcing, the board may institute a proceeding in an appropriate circuit court to restrain the activity or proposed activity. An injunction may be issued without proof of actual damages, but does not relieve the defendant of any criminal liability.

(3) Any administrative law judge conducting a hearing for a professional licensing board is vested with full authority of the board to schedule and conduct hearings on behalf and in the name of the board on all matters referred to the administrative law judge for hearing by the board, including proceedings for placing

persons registered or licensed by the board on probation and for suspension and revocation of registration or licenses, and shall cause to be prepared and furnished to the board, for decision thereon by the board, a complete written transcript of the record of the hearing. The transcript shall contain all evidence introduced at the hearing and all pleas, motions and objections and all rulings of the administrative law judge. Each administrative law judge may administer oaths and issue summonses, notices and subpoenas, but may not place any registrant or licensee on probation or issue, refuse, suspend or revoke a registration or license. [1971 c.753 §13; 1987 c.414 §99; 1999 c.849 §155; 2003 c.75 §108]

670.330 [1971 c.753 §14; renumbered 456.757 in 1987]

670.335 Disposition of fees received by boards; procedure for payment of board expenses.

Except as otherwise provided by law, all fees or other funds received by a professional licensing or advisory board shall be paid into the State Treasury monthly. Such payments shall be credited to separate accounts in the General Fund for each board, and any such payments shall constitute a continuous appropriation of such amounts from the General Fund for the purpose of carrying out the functions of the board making the payment. All necessary expenses of each board shall be paid from the amounts paid by such board in the same manner as other claims against the state are paid, after approval thereof by the chairperson or administrator of the board. [1971 c.753 §15; 1987 c.414 §101; 1993 c.744 §242a]

670.340 [1971 c.753 §16; renumbered 456.762 in 1987]

670.345 Procedure for filling vacancies on board.

At least 60 days before a vacancy is to occur on a professional licensing or advisory board, the professional organizations representing persons subject to licensing or other regulation by the board may nominate at least three qualified persons for each vacancy, and shall certify its nominees to the appointing officer or body who shall consider these nominees in selecting successors to retiring board members. This section does not apply to appointment of public members. [1971 c.753 §17; 1987 c.414 §103]

670.350 Administration of professional qualification examinations.

Each professional licensing and advisory board that is authorized or required by law to administer an examination as part of its determination of professional qualifications shall administer such examinations at least once each year at such time and place as the board shall designate. [1971 c.753 §18; 1987 c.414 §104]

(Reciprocal Agreements)

670.380 When reciprocal licensing or registration agreements authorized; termination. (1) If the administrator determines that the standards, qualifications and examinations for licensing or registration of building trades and mechanical and specialty skills of another state are substantially similar to the standards, qualifications and examinations required under applicable Oregon statutes and rules administered by the agency as specified in ORS 455.100, the administrator with approval of the designated examining or advisory board may, when it is in the best interest of the economy of the State of Oregon, enter into a reciprocal agreement with such other state to issue without examination licenses or certificate of registration upon proof of licensing or registration in such other state and upon payment of appropriate fees.

(2) Reciprocal agreements may be terminated by the administrator with approval of the designated examining or advisory board, upon a determination that the other party is not maintaining and enforcing standards, qualifications and examinations substantially similar to those of Oregon. [1974 c.47 §§1,2; 1987 c.414 §105; 2003 c.14 §411]

670.410 [1977 c.873 §27; 1979 c.107 §1; 1981 c.821 §3; 1987 c.414 §106; repealed by 2005 c.76 §3]

INDEPENDENT CONTRACTORS

670.600 Independent contractor defined. (1) As used in this section:

- (a) "Individual" means a natural person.
- (b) "Person" has the meaning given that term in ORS 174.100.
- (c) "Services" means labor or services.

(2) As used in ORS chapters 316, 656, 657, 671 and 701, "independent contractor" means a person who provides services for remuneration and who, in the provision of the services:

(a) Is free from direction and control over the means and manner of providing the services, subject only to the right of the person for whom the services are provided to specify the desired results;

(b) Except as provided in subsection (4) of this section, is customarily engaged in an independently established business;

(c) Is licensed under ORS chapter 671 or 701 if the person provides services for which a license is required under ORS chapter 671 or 701; and

(d) Is responsible for obtaining other licenses or certificates necessary to provide the services.

(3) For purposes of subsection (2)(b) of this section, a person is considered to be customarily engaged in an independently established business if any three of the following requirements are met:

- (a) The person maintains a business location:
 - (A) That is separate from the business or work location of the person for whom the services are

provided; or

(B) That is in a portion of the person's residence and that portion is used primarily for the business.

(b) The person bears the risk of loss related to the business or the provision of services as shown by factors such as:

(A) The person enters into fixed-price contracts;

(B) The person is required to correct defective work;

(C) The person warrants the services provided; or

(D) The person negotiates indemnification agreements or purchases liability insurance, performance bonds or errors and omissions insurance.

(c) The person provides contracted services for two or more different persons within a 12-month period, or the person routinely engages in business advertising, solicitation or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.

(d) The person makes a significant investment in the business, through means such as:

(A) Purchasing tools or equipment necessary to provide the services;

(B) Paying for the premises or facilities where the services are provided; or

(C) Paying for licenses, certificates or specialized training required to provide the services.

(e) The person has the authority to hire other persons to provide or to assist in providing the services and has the authority to fire those persons.

(4) Subsection (2)(b) of this section does not apply if the person files a Schedule F as part of an income tax return and the person provides farm labor or farm services that are reportable on Schedule C of an income tax return.

(5) For purposes of determining whether an individual provides services as an independent contractor:

(a) The creation or use of a business entity, such as a corporation or a limited liability company, by an individual for the purpose of providing services does not, by itself, establish that the individual provides services as an independent contractor.

(b) When the individual provides services through a business entity, such as a corporation or a limited liability company, the provisions in subsection (2), (3) or (4) of this section may be satisfied by the individual or the business entity. [Formerly 701.025; 1997 c.398 §2; 1999 c.402 §9; 2003 c.704 §5; 2005 c.533 §§1,2]

670.605 Rules for application of definition of independent contractor. (1) In accordance with ORS chapter 183, those agencies responsible for the administration of ORS 671.510 to 671.760 and ORS chapters 316, 656, 657 and 701 jointly shall adopt rules to carry out the provisions of ORS 670.600.

(2) The agencies responsible for the administration of ORS 671.510 to 671.760 and ORS chapters 316,

656, 657 and 701 shall cooperate as necessary in their compliance and enforcement activities to ensure among the agencies the consistent interpretation and application of ORS 670.600. [Formerly 701.030; 2001 c.409 §4; 2005 c.94 §115; 2005 c.533 §3a]

670.610 Referees in recreational soccer matches considered independent contractors. Notwithstanding ORS 670.600, for purposes of ORS chapter 653, a person serving as a referee or assistant referee in a youth or adult recreational soccer match shall be considered to be an independent contractor. [2001 c.765 §3; 2005 c.94 §116]