

# GOING TO COURT: CCB COMPLAINANTS OR RESPONDENTS

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## Complaints against Residential Contractors ORS 701.145

If you and your contractor, subcontractor, or material suppliers do not resolve a CCB complaint through mediation, you will need to go to court, unless your contract requires arbitration or, you decide to not pursue the complaint.

If your contract requires arbitration for disputes, you must comply with that provision. If a party receives an award, they will still have to go to court to convert the arbitration award to a judgment that can be presented to the CCB in order to access the bond.

**Note: This information is not legal advice. It does not substitute for seeking advice from an attorney.**

This publication addresses only complaints filed against a *residential* contractor. A residential contractor may work on residential or small commercial structures.

### **Small Claims Court: Claims for \$10,000 or Less**

If the person filing the lawsuit intends to seek \$10,000 or less, they may file their lawsuit in Small Claims Court. If you intend to seek less than \$750, you *must* file in Small Claims Court (ORS 46.405). They must file their lawsuit in the county where the work was performed or contracted to be performed or in the county either the complainant or contractor lives (ORS 46.560). Small Claims Court allows cases to be decided quickly and economically in a more informal setting. You do not have to have a lawyer. In fact, you must have special permission from the judge to bring a lawyer with you to Small Claims Court.

#### ***Effort to Settle the Claim***

When a claim is filed, a statement must be signed that a bona fide effort to collect the claim before filing in Small Claims Court was made. This requirement is satisfied by taking part in the CCB's mediation process. Even if a settlement is not reached, the CCB mediation demonstrates the effort was made to settle the claim.

#### ***Mediation Services***

Small Claims Court may give you an opportunity to mediate your dispute with a volunteer court mediator. This generally happens on the same day as the scheduled hearing. If you mediate and do not reach an agreement, or do not want to mediate, you and the contractor will appear before the Small Claims Court judge. The judge will allow each party to present their side of the story and then render a decision in the case.

### *How the CCB Can Help*

The CCB cannot represent or advise you on your court case. If the CCB mediation report contains facts that could help your case, you may request a certified copy of the mediation report. You should send a written request (by email, mail or fax) to the CCB Dispute Analyst handling your complaint. We will provide one certified copy of the mediation report free of charge that you can use as part of your court filing.

### *Judgments in Small Claims Court*

After the hearing, the judge will provide a document called a “Judgment.” The judgment identifies the prevailing party and any monetary award.

### *Using the Judgment to Collect from the Contractor’s Bond*

A Small Claims Court judgment is final when it is issued. Parties may not appeal a Small Claims Court judgment. In order to access a contractor’s surety bond, the complainant needs to file a timely complaint with the CCB. You can do this before or after you go to court. The complaint must be filed within the time required by law (ORS 701.143). In general, this is *one year* from the completion of work, substantial completion or occupancy in most cases.

The final **certified** court judgment will need to be submitted to the CCB. The CCB Dispute Analyst will determine how much of the judgment can be paid from the bond.

***The bond will not pay attorney fees, even if they are included as part of the judgment.***

The CCB will send its determination to the bonding company after allowing the contractor an opportunity to satisfy the judgment. If there are other people who have claims against the same contractor’s bond, you may have to wait for those claims to be resolved. Depending on the amount owed to you and the amounts owed to other people, you may receive less than full payment from the bond. If the contractor’s surety bond does not pay the claim in full, there are other remedies to seek the balance from.

## **Circuit Court: Claims for More than \$10,000**

The lawsuit must be filed in the Circuit Court of the county where the work was performed. (ORS 14.080)

- Most Circuit Court cases are handled by attorneys.
- Your attorney may advise you of additional costs or other fees.

### ***Judgements in Circuit Court***

After the arbitration or trial, the arbitrator or judge will prepare a document called a “Judgment.” The judgment identifies the prevailing party and any monetary award.

### ***Using the Judgment to Collect on the Contractor’s Bond***

A judgment is “final” when any appropriate appeal periods have been exhausted. In order to access a contractor’s surety bond, the complainant needs to file a timely complaint with the CCB. You can do this before or after you go to court. The complaint must be filed within the time required by law (ORS 701.143). Generally this is ***one year*** from the completion of work, substantial completion or occupancy in most cases.

A **certified** copy of the court judgment will need to be submitted to the CCB after the judgement has been issued. The CCB will determine how much of the judgment can be paid from the bond.

***The bond will not pay attorney fees, even if they are included as part of the judgment.***

The CCB will send its determination to the bonding company after allowing the contractor an opportunity to satisfy the judgment. If there are other people who have claims against the same contractor’s bond, you may have to wait for those claims to be resolved. Depending on the amount owed to you and the amounts owed to other people, you may receive less than full payment from the bond. If the contractor’s surety bond does not pay the claim in full, there are other remedies to seek the balance from.