



Oregon Landscape Contractors Board Laws, Rules & Business Practices Guide Released 2019



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Introduction

The information in this guide will help prepare you for the examination that you are required to take in order to obtain your landscape construction professional license or to own or be the managing employee of a landscape contracting business. The information in this guide is current as of the date of this guide. Once you have successfully moved into owning or managing a landscape contracting business you must verify the current information you need in order to conduct business in Oregon and not rely upon the contents of this guide as they could have changed.

By owning and licensing a landscape contracting business in Oregon, you need to know that you must comply with all the laws that relate to landscaping work as well as the other laws that relate to conducting business in Oregon.

The Landscape Contractors Board wants you to succeed and wishes you the best in prosperity as you work in this wonderful and creative field of landscape construction.

LCB MISSION

The Landscape Contractors Board of Oregon is a state agency that protects customers by regulating landscape contracting businesses. The LCB has a strong commitment to serving and representing licensees, consumers and the public. The board promotes consumer protection and contractor competency in the Oregon landscape contracting industry through five major program areas: Examination, Licensing, Enforcement, Claims/Dispute Resolution and Education.



CAUTION!

The material in this guide is for informational purposes only. It should not be considered to be legal or tax advice. The LCB strongly advises you to consult an attorney and/or a Certified Public Accountant when making decisions about the type of business you should form.

Chapter 1: Licensing

What work requires a license?

The following landscaping work for compensation or with the intent to be compensated requires licensing:

- Prepare property and plan or install lawns, shrubs, vines, trees, or nursery stock. This includes artificial turf under 30,000 sq ft;
- Install, maintain or repair ornamental water features and landscape drainage systems;
- Maintain irrigation systems with the use of compressed air;
- Install, design, plan or repair irrigation systems;
- Plan, install, maintain or repair fences, decks, arbors, patios, landscape edging, driveways, walkways, or retaining walls;
- Install low voltage lighting;
- Install irrigation backflow devices.

In order to bid on, advertise for, or perform landscaping work in Oregon, **TWO LICENSES ARE REQUIRED**. Both of these licenses are obtained through the Landscape Contractors Board (LCB).

There is an individual license (Landscape Construction Professional) who must pass examinations and there is a business entity license (Landscape Contracting Business) that carries the bonding, insurance and worker compensation.

What is the difference between the two licenses?

- The landscape construction professional (LCP) license:
A person that supervises all landscaping work performed by unlicensed employees of a landscape contracting business. The LCP license is obtained after passing exams showing minimal competency required to perform and supervise landscaping work in Oregon.
- The landscape contracting business license:
The business carries the bond, liability insurance, workers compensation and enters into the contract with the consumer. The landscape contracting business must either be owned by or must employ a licensed LCP.

LANDSCAPE CONSTRUCTION PROFESSIONAL LICENSE

How can I qualify to take the exam?

To qualify for the exam, you must meet at least one of the following requirements. If you are qualifying by your experience with a landscape contracting business or in a landscape related field (rather than a degree or education) the experience must be within 10 years prior to the date of the application.

1. **Employed by a licensed landscape contracting business for a total of 2 years.**
To document your employment with a licensed landscape contracting business, complete the employment verification form. This form must be submitted with your application.
2. **Submit documentation to verify two years of related landscaping experience (nursery work, landscape maintenance work, etc).**
To document experience in landscape related work, submit a completed landscape maintenance verification form documenting 5 customers/projects per year for a 2-year period or the employment verification form if you were an employee of a company performing landscape related work.
3. **Have obtained an Associates, Bachelors or Master's Degree in horticulture or related field which includes cooperative work experience (if no cooperative work experience, documentation showing 6 months of related landscape experience may be substituted).**
To verify a degree in horticulture or a related field, submit a copy of your transcripts.
4. **Hold a certificate in horticulture or other related field from an accredited school or college that requires a minimum of 72 credit hours, which includes cooperative work experience in landscaping (if no cooperative work experience, documentation showing 6 months of related landscape experience may be substituted).**
To verify this certificate, submit a copy of certificate and a copy of transcripts with your application.
5. **Hold a current certification with the International Society of Arboriculture (ISA) as a Certified Arborist.**
To verify you hold this certification, submit a copy of your certificate with your application.
6. **Successfully completed the Landscape Industry Certification program administered by OLCA or another entity licensed to the Professional Landcare Network (PLANET), now known as the National Association of Landscape Professionals (NALP).**
To verify you have completed this program, submit a copy of your signed certificate with your application.
7. **Hold a current membership as a Certified Professional Member of the Association of Professional Landscape Designers (APLD).**
To verify you hold this certification, submit a copy of your certificate with your application.

8. Hold a current Oregon Backflow Assembly Tester Certification or complete a Backflow Assembly Tester 5-day course approved by the Oregon Drinking Water Program.

To verify, submit a copy of certification or course completion with your application.

9. Other landscaping related certified membership on an individual basis to be determined by the LCB.

If you have other experience that you feel would qualify you to take the exam, submit documentation and a letter of explanation. You will be contacted if any further documentation is needed.

EXCEPTIONS TO THE ABOVE REQUIREMENTS

Probationary All Phase License

This license does not require any qualifications, but you must pass all sections of the exam within 12 months from the first test date (see below for restrictions for this license).

Modified License

This license only requires one year of landscape relate experience (see below for restrictions for this license).

LICENSE PHASES

There are several phases of licenses:

- All Phases plus Backflow: All landscaping work
- Standard License: All landscaping work excluding irrigation and backflow
- Irrigation Only plus Backflow: Irrigation and backflow only
- Planting Only: planting only
- Planting and Irrigation Only plus Backflow: Planting and irrigation and backflow
- Modified – see description below
- Probationary All Phase plus Backflow: see description below

MODIFIED LICENSE

The modified license allows for a limited amount of landscape work to be performed with reduced qualification requirements and testing.

Requirements

- One-year landscape related experience within the last ten (10) years
- Pass the Laws, Rules and Business Practice section of the exam
- No piercing of the dwelling is allowed
- Subcontracting is allowed (within the job limits listed below)

Allowed

A modified license holder may contract for up to \$5,000 of allowed landscape work listed below per job site, per customer, per year. An increase to \$6,500 may be allowed after 12 months without a claim filed or civil penalty issued.

- Planting (lawns, shrubs, vines, trees, or nursery stock)
- Preparing the property for planting
- Fences
- Decks (when no permit is required)
- Arbors
- Patios
- Landscape edging
- Driveways
- Walkways
- Grading (with allowed landscaping, not to exceed 5 cubic yards)

NOT Allowed

- Drainage
- Ornamental water features
- Irrigation
- Backflow
- Low voltage lighting (allowed after 12 months without a claim filed or civil penalty issued)
- Retaining walls

PROBATIONARY LICENSE

The probationary license is an "All Phase plus Backflow" license that can be obtained by an individual who passes all six sections of the exam within one year of taking the first section but who has not met the experience and/or education requirements.

Limitations for the probationary license include:

- \$15,000 job limit (per job site, per customer, per year); and
- \$15,000 surety bond on file with the LCB.

For the license to become a full license, the individual must be:

- employed by a licensed landscape contracting business for 24 months under the direct supervision of a non-probationary landscape construction professional; or
- employed by a licensed landscape contracting business for 24 months and is supervising the unlicensed employees; or
- the owner of a landscape contracting business for 24 months, or
- actively licensed as a construction contractor under ORS 701 for a period of at least 24 months after the probationary license is obtained.

RESPONSIBILITIES OF THE LANDSCAPE CONSTRUCTION PROFESSIONAL

Supervision of unlicensed Employees:

The LCP is required to supervise the landscape operations of the business, which includes directly supervising all unlicensed employees employed by the landscape contracting business. See Chapter 4 of this publication for detailed information.

Continuing Education Hour (CEH) Requirements

Landscape construction professionals wishing to renew their licenses must participate in continuing education. A summary of the current process is:

- Continuing Education Hours (CEH) are required every two years to renew the license.
- Sixteen (16) hours are required if the licensee has been licensed less than six years. Eight (8) hours are required if the licensee has been licensed more than six years.
- Reporting is required at time of renewal and is based on license number. LCP numbers ending in an even number are required to report in even numbered years. LCP numbers ending in an odd number are required to report in odd numbered years.
- Audits will be performed on a randomly selected number of licensees. The audit will only consider education for the two-year CEH reporting period.
- Licensees can earn credit for teaching and volunteer work.
 - Teaching credit is allowed for each 50-minute period completed as an instructor who has at least 5 years of landscape related experience. Preparation and research credits are allowed for the first time teaching of a course with 2 hours of preparation and research time for every hour of

instruction. Licensees can earn a maximum of half the CEH requirement as credit for teaching during the 2-year CEH reporting period.

- Volunteer credit is earned by providing volunteer service for non-profit organizations and to local or state entities for landscape related work. Volunteer credit can also be earned for serving on industry related boards, commissions or committees. Three hours of volunteer work earn 1 hour of CEH credit, up to a total of 4 hours per two-year reporting period. Approval of volunteer time must be submitted on a form provided by the board.
- The LCP must keep certificates of attendance provided by the course providers to submit in the event he/she is audited.
- If a course is NOT pre-approved by the board, the LCP can submit the course approval form and required documentation in order to receive CEH credit.
- If a licensee does not meet the continuing education requirement before the expiration date of the license, the license will be subject to suspension or refusal to renew. The LCB may also assess civil penalties for failure to comply with the requirements.

Landscape Contracting Business License

The landscape contracting business is a separate entity from the LCP, even if the business is set up as a sole proprietorship. Licensing for the business has different requirements than the LCP license. The landscape contracting business is the entity that contracts for landscaping work and has the responsibility of the work performed in Oregon.

Steps for obtaining a landscape contracting business license:

1. Set up the business entity. Consider speaking with an accountant or a lawyer regarding the best choice when choosing the entity of your business. This decision can affect taxes and personal property.
2. Set up accounts with the IRS and Oregon Department of Revenue, if necessary.
3. Register the business entity and/or any assumed business name with the Secretary of State.
4. Obtain liability insurance, bond and if your business will have employees, workers compensation insurance.
5. Fill out the business application and submit all required documentation to the LCB (if applicable).

Choosing your business type has many long-term consequences for how your business operates. The LCB strongly advises you to consult an attorney when setting up your

business. A small investment on professional advice while setting up your business may result in significant cost savings in taxes, legal fees and professional liability later.

The landscape contracting business' phase of license is based upon the phase of license or combination of the LCP(s). If any part of the business license is based upon a probationary landscape construction professional, the business is also considered probationary.

- **Registering a Business Name**

The main reason to register the business name is to inform the public and other businesses as to who is doing business under that name. You must register a business name with the Secretary of State, Corporation Division, Business Registry. A corporation, limited liability company, limited liability partnership or limited partnership does not need to register its name as an assumed business name, unless the entity wants to use the name without the entity type designation (LLC, LLP, Corp, Partnership).

- **Insurance Requirements**

To protect third parties, such as customers, a licensed landscape contracting business must maintain insurance that provides coverage for public liability, personal injury, and property damage; covering the work of the business in an amount not less than \$500,000.

It is the landscape contracting business' responsibility for ensuring that a current certificate is on file with the LCB. Failure to have a current certificate on file with the LCB may result in the immediate suspension of the landscape contracting business license.

- **Surety Bond**

A surety bond is a promise by a bonding agency to provide limited restitution if a landscape contracting business fails to pay an order or arbitration award. If the LCB or a court orders a landscape contracting business to pay money to a person who filed a complaint and the landscape contracting business does not pay, the bonding company will pay the money owed up to the amount of the bond. The bonding company will then seek reimbursement from the landscape contracting business.

When a landscaping project exceeds the charge limitations of the current bond, it is the business' responsibility to obtain the increased surety amount before work continues on that project. The business must obtain the correct bond amount before bidding on a project that will exceed their current bonding restrictions.

A surety bond or assignment of savings is based on the landscape job charges and required in the amount of:

- \$3,000 if the business charges \$10,000 or less.
- \$10,000 if the business charges more than \$10,000, but less than \$25,000 or if hardscaping work will be done without other landscaping work.
- \$15,000 if the business charges \$25,000, but less than \$50,000.

- \$20,000 if the business charges \$50,000 or greater.

Failure to have a current certificate on file with the LCB may result in the immediate suspension of the landscape contracting business license.

- **LCP on the Payroll**

A landscape contracting business must either be owned by or must employ an LCP.

- The LCP must:
 - be on the payroll every hour the landscape contracting business performs landscaping work;
 - directly supervise the unlicensed employees (see the Supervision chapter of this guide for more details); and
 - install all backflow devices and be sure a permit has been obtained (unlicensed employees cannot install these devices).
- The landscape contracting business must:
 - pay the LCP every hour the landscape contracting business performs landscaping work; and
 - require the LCP to directly supervise the unlicensed employees (see the Supervision chapter of this guide for more details).

- **Managing Owner or Managing Employee**

A landscape contracting business must designate a managing owner or a managing employee. If this person is **not** an LCP, this person must complete a required course and pass the Laws, Rules and Business Practices examination in order to manage the business. If this person is an LCP, they would not be required to take the course.

The course is available through approved providers, and the examination is administered on a regular basis. This guide is part of the study material for the course.

An "owner" means the individual:

- has an ownership interest in the landscape contracting business;
- is a general partner in a limited partnership;
- is a majority stockholder in a limited partnership;
- is a manager in a manager-managed limited liability company;
- is a member in a member-managed limited liability company; or
- is a person who has a financial interest in a business and manages or shares in the management of the business.

"Manages or shares in the management" means that the owner has a position in the business that's accountable for exercising delegated authority over the human and financial resources to accomplish the objectives of the business. These objectives may include, but are not limited to: planning, directing, implementing, organizing, evaluating, supervising, and/or administering the operations of the business.

A "managing employee" is any individual, including a general manager, business manager, or administrator, employed by a landscape contracting business, who manages or shares in the management of the landscape contracting business.

Note: An individual can only be a managing employee of one landscape contracting business.

Items Required to Obtain the Business License

- The application fee
- The license fee
- The business name registration, if required
- A surety bond or assignment of savings
- A certificate of insurance in the minimum amount of \$500,000 naming the LCB as a certificate holder
- A certificate of Workers Compensation coverage (if there are employees) naming the LCB as a certificate holder
- Verification that the business will be operating as an independent contractor and meets the requirements of this status. (Requirements are found in ORS 670.600.)
- A notarized verification for each supervising LCP and managing employee/owner
- A list of all unpaid arbitration awards or judgments anywhere in the United States as a result of the performance of landscaping work
- The signature of the owner/officer/member

Items Necessary to Renew the Business License

- The license fee
- Verification of all LCP's employed by the business
- Current certificates of insurance and worker's compensation on file
- Active business name registration, if required
- The signature of the owner/officer/member

OTHER LCB REQUIREMENTS

Written Advertising

All written advertising must include the landscape contracting business license number.

Advertising includes:

- Newsprint classified advertising and newsprint display advertising landscaping work;
- Telephone or internet directory space ads or display ads;
- Business cards;
- Business flyers;
- Business letterhead;
- Business signs at construction sites;
- Contracts and/or proposals;
- Vehicles and trailers with signage; and
- Websites (the number must be at least on the homepage, the footer of each page or the contact page).

Exemptions include:

- Telephone line listing;
- Internet directory line listings; and
- Uniforms.

A landscape contracting business may only advertise for the scope of work covered by the license. For example, if the business holds an Irrigation plus Backflow phase of license, that business may only advertise those services. All licensed landscape contracting businesses can advertise for work that does not require a license.

Change of Address

It is the responsibility of the LCP and the landscape contracting business to notify the LCB of a change of address within 30 days of that change. This requirement remains in place for one year after the license expires. Failure to notify the LCB of a change of address within 30 days will result in a civil penalty issued by the LCB.

Change in Partners or Corporate Officers

A landscape contracting business licensed as a partnership or corporation must notify the LCB immediately upon any change in partners or corporate owners or in the percentage of an ownership interest in these business types. A new license with the LCB must be obtained for a change in partners.

Landscaping Debts

All court judgments or board orders that are not paid in full must be reported to the LCB at the time of renewal of the landscape contracting business. If an owner or officer has a landscaping debt that has not been paid in full, the LCB may refuse to issue or renew the landscaping contracting business license.

MISCELLANEOUS

- **Irrigation Systems**

Installation of irrigation systems includes, but is not limited to:

- trenching,
- installation of pipe, valves, sprinkler heads, nozzles, emitters, filters or controllers & wires or other elements of an irrigation system;
- positioning and piping of pumps;
- altering an existing system; and
- backfilling

Maintenance of irrigation systems that requires a license is:

- with the use of compressed air (blowouts);
- replacing debris screens in nozzles and drip irrigation;
- any project that includes cutting, raising and changing the irrigation head grade more than four inches; or
- replacement of irrigation heads.

Repair of irrigation systems that requires a license is:

- replacing any irrigation water line; and
- replacing, butting, patching, fixing, refurbishing, altering or renovating any parts of an existing irrigation system.

- **Backflow Devices**

The **installation** of backflow devices for irrigation or water features can only be performed by:

- an LCP who has the backflow phase of license; or
- a licensed plumber.

The **repair** of backflow devices for irrigation or water features can only be performed by:

- an LCP who has the backflow phase of license with the LCB and has a testers certificate from the Oregon Health Authority; or
- a licensed plumber.

An unlicensed employee of a landscape contracting business CANNOT install or repair the backflow devices for that business. Permits must be obtained prior to the installation of the backflow device.

- **Low Voltage Wiring**

Any employee of a landscape contracting business can install low voltage wiring for that business when installing the fixtures. This is only for landscape irrigation control wiring and outdoor landscape lighting involving a Class II or Class III system that does not exceed 30 volts and 750 volt-amperes. This type of wiring must be installed according to the electrical specialty code.

The employee installing the wiring is required to carry an identification card with the name of the employee, the business name and the business license number. There is no exam for this type of installation nor does the LCP have to be on the job site.

OTHER LICENSES

Local City and County

The license with the LCB allows the business to perform business anywhere within the State of Oregon. However, you should also check with the local city and county government wherever you want to do landscaping work to see if they require a local business license and/or permit(s) to perform landscape construction in the city, or county or both. For example, if the business is in Portland, both the City of Portland and Multnomah County have operating requirements.

Note: Any local licensing fees or requirements are in addition to the licensing requirements for the State of Oregon.

Pesticide License

Landscape construction frequently requires the application of pesticides in the preparation of the property for landscaping work and in maintaining the landscape after the installation.

If your business is going to apply pesticides, licensing with the Department of Agriculture may be required.

Contact the Department of Agriculture
(503) 986-4550
Oregon.gov/ODA

Backflow Tester Certification

If you want to test or repair backflow devices for irrigation systems, you will also need a backflow testers certification.

Contact the Oregon Health Authority
(971) 673-1220
Oregon.gov/OHA

EXEMPTIONS FROM LICENSURE

There are several exemptions from the license requirements. For a complete listing, see ORS 671.540. These are only the most common exemptions:

- An owner of the property*
- Employees of an owner of the property*
- A person that has a legal interest in the property*
- Landscape maintenance businesses who meet all the following requirements:
 - Performing landscaping work for a customer that in a calendar year receives

- primarily landscape maintenance services from that business; and
- The value of all labor, materials or other items supplied does not exceed \$500 in a calendar year; and
- The work is casual, minor or inconsequential defined as:
 - Replacement of lawns, trees, shrubs and nursery stock;
 - Planting of annuals, perennials and bulbs in existing beds and outdoor pots and containers that are part of a structure or require power equipment to be placed when empty or filled;
 - Replacement of non-concrete landscape edging; and
 - Replacement of three or fewer malfunctioning irrigation heads with heads of the same or of a similar type and hydraulic equivalence without raising the grade by cutting or lengthening the existing head to lateral piping more than four inches.
- Installation of fences, decks, arbors, driveways, walkways, retaining walls, landscape edging or patios if performed by a CCB licensee.
- A residential general contractor who meets all the following requirements:
 - Under contract to build; and
 - It must be a residential dwelling; and
 - The landscaping is less than a specific value that is amended every five years (as of the writing of this guide that amount is \$3,850.00); and
 - This does not include irrigation (planting only).
- A person (designer) engaged in making plans or drawings for the selection, placement or use of plants or other site features. These plans or drawings cannot contain construction details and specifications.

*This exemption does not apply to a person who is flipping houses for resale

Chapter 2: Employment Law

What Is an Employee?

An employee is a person that the employer has the right to tell when, where, how and provides the necessary tools for the job.

The LCB defines an employee as any individual working for compensation who does not meet the requirements of an independent contractor in ORS 670.600. An employee does not include a subcontractor or a leased or temporary employee.

Further definitions for what constitute an employee and an employer-employee relationship in Oregon are defined in ORS Chapters 654 (Oregon Safety Laws), 656 (Workers Compensation Laws), 657 (Unemployment Laws), and state and federal wage and hour laws.

What Is an Independent Contractor?

An independent contractor is a separate business. If you hire an individual to perform work for your business and this person does not have their own business, they are not an independent contractor and you can be held liable for employment taxes.

- A licensed landscape contracting business is an independent contractor.
- A licensed landscape construction professional is NOT an independent contractor.
- Anyone you hire to work for your company is NOT an independent contractor.
- If you subcontract work to another company, that other company is an independent contractor.
- If you hire your unlicensed employees through a worker leasing company, those workers are not your employees and the leasing company is an independent contractor.

An independent contractor is defined by law in ORS 670.600. An independent contractor must:

- Be free from direction and control over the manner & means of providing the work.
- Be engaged in an independently established business that obtains the required business licenses, furnishes necessary tools and equipment, has the authority to hire and fire employees, files appropriate business tax returns.
- Be licensed under ORS 671 or 701 (State Landscape Architect Board, State Landscape Contractors Board, State Board of Architect Examiners, or Construction Contractors Board), if required for the service.

According to ORS 670.600, a business is an independently established business if it meets at least three of the five following standards:

- Maintains a business location that is separate from the business or work location of the person getting the service, or in a part of your home that is used mainly for business.
- Bears the risk of loss. For example, the business:
 - Enters into fixed price contracts;
 - Corrects poor work;
 - Warrants the service;

- Negotiates indemnification agreements or buys liability insurance, performance bonds, or errors-and-omissions insurance.
- Provides services on contracts for two or more people within 12 months, or advertises or promotes the business to get new contracts so it can do the same work for others.
- Invests in the business by:
 - Buying tools or equipment needed to provide the services; or
 - Paying for licenses, certificates, or special training.
- Has the right to hire and fire workers.

Independent Contractor or Employee?

The above requirements must be met for the person to qualify as an independent contractor. As a result, it is not uncommon for employers to mistakenly treat an employee as an independent contractor.

When an employer has the right to tell the worker when, where, how and provides the necessary tools for the job, the worker is an employee, not an independent contractor. You need to take great care to assess a workers' true employment status.

Care must be taken that someone hired as an independent contractor meets the criteria for acting as an independent contractor. If the court determines that someone hired as an independent contractor does not meet the requirements, the court may deem them an "employee". The issue is that some employers hire workers and call them "independent contractors" to avoid paying the taxes on the worker's income. That decision can have negative consequences. Misclassification of an employee may result in penalties or fines against the employer for failure to pay payroll taxes and failure to make the appropriate tax reporting disclosures.

The law grants the LCB the authority to sanction a landscape contracting business that does not conform to the employment laws.

Employee Claims for Wages

If the employer does not pay an employee wages to which he or she is entitled, the employee may file a claim with BOLI and the LCB. See Chapter 5: Claims & Dispute Resolution.

Workers' Compensation (Exempt vs Non-Exempt)

Workers' compensation is a form of insurance providing wage replacement and medical benefits to employees injured in the course of employment. Workers' compensation also provides death benefits to dependents if an employee dies as a result of occupational injury or disease. It is considered no-fault insurance.

Every licensed landscape contracting business that employs one or more subject workers must provide workers' compensation insurance coverage. The Workers' Compensation Division (WCD) oversees the administration of workers' compensation insurance.

Exempt vs Non-Exempt (No Employees vs Employees)

Oregon law requires a landscape contracting business to register with the LCB as either exempt or non-exempt.

- **Exempt** means your business has no employees
- **Non-Exempt** means your business has one or more employees

If the landscape contracting business employs a worker while registered with the LCB as exempt (no employees), the business can have its license immediately suspended.

Exceptions from Workers' Compensation Coverage (ORS Chapter 656)

All workers are subject workers with a few exceptions as noted in workers' compensation law ORS Chapter 656. Here are some common exceptions:

- **Sole Proprietors.** If you are a sole proprietor, you are not required to have workers' compensation on yourself. You must have coverage for your subject workers. This coverage must include your family members.
- **Partners.** In the landscape contracting industry in Oregon, two partners may be exempt (more if all are members of the immediate family). The partners must each have substantial ownership.
- **Corporate Officers or Limited Liability Company Members.** Two (more if all are members of the immediate family) corporate officers or limited liability members/managers who are also substantial owners and directors.
- **Out-of-State Employees.** If an employer from out of state brings employees into Oregon, the workers' compensation coverage from the home state will usually satisfy Oregon's requirement for those workers temporarily in Oregon. To be sure, you need to check with the Workers' Compensation Division.

Worker Leasing Companies

For workers' compensation for leased employees, the leasing company will handle payroll, workers' compensation and most other paperwork for those employees. Worker leasing companies must be licensed with Worker's Compensation Division to do business in Oregon.

An employee of a worker leasing company may perform landscaping work:

- Only for a licensed landscape contracting business;
- When directly supervised by an LCP; and
- Being paid at least minimum wage.

An employee of a worker leasing company may NOT perform landscaping work while being paid directly by a homeowner.

Employment Law Resources

Who is responsible for payroll taxes, workers' compensation premiums and unemployment insurance?

The landscape contracting business is responsible for these payments. Even if the employees pay is unreported to the Employment Department.

OREGON EMPLOYMENT DEPARTMENT

The Oregon Employment Department supplies statewide employment information.

Oregon Employment Department
875 Union St. NE
Salem, OR 97311
800-237-3710
Oregon.gov/EMPLOY

OREGON BUREAU OF LABOR & INDUSTRIES

The Oregon Bureau of Labor & Industries (BOLI), Wage and Hour Division serves Oregon wage earners by enforcing laws covering state minimum wage and overtime requirements, working conditions, child labor, farm and forest labor contracting, and wage collection. The division also enforces the payment of prevailing wage rates required to be paid to construction workers on public works projects. BOLI determines and publishes prevailing wage rates based on an annual construction industry survey.

Oregon BOLI
800 NE Oregon St., Suite 1045
Portland, OR 97232
(971) 673-0844
Oregon.gov/BOLI/WHD

Chapter 3: Contracts

The landscape contracting business is the entity that is allowed to contract for landscape work in Oregon. Landscape contracting businesses that perform maintenance work are not required to have a contract for maintenance only work.

What Is a Contract?

Contracts are the way a business communicates with a client. A contract specifies the obligations or duties for the contracting parties to do or not to do. Specifying "what, when, sometimes how, and for how much" protects both the consumer and the landscape contracting business. In the event there is a claim or complaint filed against a landscape contracting business, the terms of the contract are the basis for determining whether there is a breach of contract or negligent or improper work. Having a well-written and easily understandable contract protects both the consumer and landscape contracting business.

Required Elements of a Contract

Landscape contracting work performed in Oregon over \$2,000 is to be done with a written contract and is to contain certain elements that the LCB has stipulated.

Elements that need to be included in the contract for landscaping work:

1. Landscape contracting business name, license number, business address and telephone number;
2. Consumer's name and address;
3. Address or location of work to be performed, if different from the consumer's address;
4. General description of the work to be performed and materials to be installed;
5. Estimated time for completion or estimated completion date;
6. Price and payment schedule;
7. Description of guarantee; if no guarantee such a statement shall be included;
8. Signatures of the authorized business representative and consumer;
9. Statement that the business is licensed by the LCB and the current address and phone number of the LCB (LCB information is on the cover of this guide);
10. A statement, if subcontracts will be used; and
11. If the contract contains an arbitration clause or binding arbitration clause, language explaining that if the consumer signs the contract, they may be waiving their right to access the LCB claims process and may not have access to the landscape contracting business' bond.

Note: These elements do not constitute a complete contract.

These elements must be included for the written contract to be enforceable by a landscape contracting business in any court or other proceedings within Oregon. Failure to include any one of these elements may lead to the inability for the landscape contracting business to collect payment on the work performed. Additionally, incomplete contracts or failure to have a written contract for job charges over \$2,000 will result in a civil penalty issued by the LCB.

Written contracts or subcontracts with another licensed contractor do not need to include:

- the statement of licensure,
- if subcontractors will be used; or
- the arbitration clause.

Contract Price and Payment Schedule

A written contract must state the contract price and indicate a payment schedule. It is important for the landscape contracting business to negotiate the payment schedule with an eye toward the cash-flow needs of the business. This includes the financial obligations incurred from performance of the project such as paying direct job costs, business overhead and profit. Different types of landscape contracts may involve different calculations of progress payment due amounts. If you do not charge enough to cover all your costs (materials, labor, gas, etc) do not expect the homeowner to pay you more than you contracted for to cover these expenses. Be clear as to when payments are due.

Scope of Work

To avoid uncertainty and help prevent disputes, the scope of work to be performed should be detailed in the contract. This will show the intent of the parties at the time the contract was formed. In defining the scope of work, the landscape contracting business may reference plans and specifications used in preparing the contract price, or identify such plans and specifications as an exhibit to the contract.

Negotiation

As soon as a landscape contracting business sees that a problem might arise, or discovers an unforeseen problem, the landscape contracting business should start immediate negotiations with the property owner, architect, and/or subcontractor (s) to resolve the problem with minimal cost and disruption of the project. If an agreement is worked out, it should be in writing and signed by all the parties.

Contract Relationships in Landscape Construction

The landscape contracting business is a party to a contract with the owner of the property.

Subcontractors are parties to contracts with the landscape contracting business but not the property owner.

Landscape contracting businesses and subcontractors are always obligated to perform their contractual duties. Who has the right to enforce performance of those duties varies depending on the parties to the contract. When a landscape contracting business subcontracts out portions of the landscaping work to other licensed landscape contracting businesses the originating business is responsible for the work performed by the subcontractors. The originating business is obligated to provide accountability to the homeowner for the work being performed. When work is subcontracted, the contractor must verify that the subcontractor is licensed to perform the work.

The general contractor on a project is usually the only contractor in a direct contract relationship with the owner and the responsibilities of the general contractor to the owner are to provide for completion of the entire project. The general contractor can subcontract landscaping work out to licensed landscape contracting businesses.

Suppliers furnish materials and equipment, in contrast to labor and services. Suppliers may have a contract with a subcontractor, the landscape contracting business, and in some cases, with the owner of the property.

In the performance of their duties, landscape contracting businesses, subcontractors, and suppliers are held to a standard of performance equivalent to the generally accepted standards and practices of the industry in the geographic area where the work is being performed.

Change Orders

Change orders or amendments to landscaping contracts and subcontracts are required and are legal documents that are supplemental to the initial contract.

A change order needs to identify the scope of the change or amendment, be agreed to by both parties and be in writing. This does not require signatures by both parties, but does require a written agreement. An email or a text message from both parties stating agreement is acceptable. A change order is required before the work can be started.

Billing

The LCB has the authority to make requirements on billings (invoices) for landscaping work performed in Oregon to help consumers know what they are paying for and the costs associated with the billed work. All billings by a licensed landscape contracting business must include the following:

- name, address and telephone number of the licensed landscape contracting business;
- name and address of the consumer;
- total contract price and amount paid to date; and
- the amount now due and the work performed for the amount due.

Customer Relations and Expectations

Most problems arise between clients and contractors because of a lack of communication. Contracts and liens pertain to customer relations. Good customer relations and management practices can prevent problems that can lead to having claims filed against the business or liens filed against the homeowner. The following checklists are provided to help the landscape contracting business manage customer relations and are not legal advice.

Pre-contract Phase Checklist

1. Determine customers objectives.
2. Determine customers budget.
3. Prepare plans for the work.
4. Determine your capacity to handle the job (skill and labor needed).
5. Discuss the following with the customer:
 - A. Time expectations
 - B. Payment
 - C. Project management
 - D. Customer/landscape contracting business communication
 - E. Quality of work
 - F. Post installation maintenance
 - G. Determine the availability of materials and supplies
 - H. Make sure you have accurate take-offs
 - I. Contact subcontractors and get firm quotes, if appropriate

Contract Phase Checklist

1. Use a written contract (it is a requirement for jobs over \$2,000).
2. Review terms with the customer.
3. Explain the change order process.
4. Explain maintenance obligations.
5. Get a down payment on the contract price.
6. Introduce the licensed supervisor for the work.
7. Review the plans.
8. Confirm time expectations.
9. Firm up subcontracts.
10. Confirm warranty terms.

Performance Phase Checklist

1. Obtain all required permits.
2. Schedule work.
3. Order materials and supplies.
4. Staff up.
5. Coordinate all subcontractors.
6. Review plans with foreman and crew.
7. Lay out job; review with customer.
8. Review plant material with customer on site.
9. Review any other major materials such as brick, wood, rock, etc.
10. Monitor daily work, both quality and progress.
11. Address unknowns immediately after discovery and inform the customer.
12. Follow plans strictly.
13. Obtain change orders BEFORE new work starts.
14. Send progress statements or billings.
15. Meet time expectations.
16. Train customer for maintenance.
17. Manage the site.

Follow-through Phase Checklist

1. Do final inspection with customer.
2. Perform necessary tests.
3. Prepare and deliver written maintenance instructions to customer.
4. Have customer sign acceptance and completion statement.
5. Collect unpaid fees.
6. Visit site a week after completion.
7. Follow up with maintenance proposal.
8. Perform all warranty or guaranty obligations.
9. Ask for customer feed-back (prepare a form in advance).

Chapter 4: Supervision of Unlicensed Employees

Supervision Requirements

An unlicensed person must be employed by a licensed landscape contracting business and must be directly supervised by an LCP in the phase of work being performed. The unlicensed employee cannot be a 1099 employee.

An LCP can perform work and supervise work within the phase of license that he or she is licensed, provided they are an owner of, or are employed by, a licensed landscape contracting business. If an LCP is not licensed in one phase of landscaping, they must be directly supervised by an LCP in that phase of landscaping.

What is Direct Supervision?

Direct supervision means that a licensed LCP supervises any unlicensed employee who performs landscaping work such that the employee:

- has had instruction on the project from the landscape construction professional, verbally or in writing;
- knows the landscape construction professional by name;
- knows how to contact the landscape construction professional; and
- can communicate with the landscape construction professional within an hour, and, if unavailable, that landscape construction professional will return the call by end of the day to the employee.

Failure of a landscape contracting business to require this type of supervision may result in monetary penalties for the business and the licensed LCP.

Chapter 5: Claims and Dispute Resolution

LCB Claims and Dispute Resolution Program

As part of the services offered by the LCB for consumer protection, the LCB provides a unique process for resolving disputes between licensed landscape contracting businesses and consumers. This process is free to the consumer and is paid from the application and licensing fees collected by the LCB. There are a set of laws that govern this process.

Informing clients that this process is available to them as a method to hold landscape contracting businesses accountable and keep both parties out of court is a significant advantage for the consumer to contract with a licensed business instead of an unlicensed business.

How to Avoid Problems

Every year the board processes complaints against landscape contracting businesses that could have been avoided. Claims are usually a breakdown in communication between the two parties. The following suggestions may help you avoid problems with your future customers.

- Stay legal with the board.
 - Maintain an active license.
 - Work in the correct license phase (subcontract what your license does not cover).
 - Make sure you have the appropriate bond amount required for the job.
 - If you have employees, make sure you have workers compensation coverage.

- Prevent disputes.
 - Only bid on jobs you have the expertise to do or get training.
 - Pay attention to your gut instincts. If you get the feeling that this job is going to be more trouble than it's worth, don't do it.
 - Start with a clear understanding of your client's expectations and the extent and quality of work that will be required to meet those expectations.
 - Don't avoid conversations about potential problems for fear of losing the job. It's better to lose the job up front than to take it and lose money in the end.

- Think twice before doing work for friends and family.
 - Friends and relatives often expect more for less. If a dispute arises, you risk losing much more than money.

- Use a written contract and make it complete. Put everything in writing!
 - The law requires a written contract if the contract amount is \$2,000 or more. If the contract amount starts out less than \$2,000 but goes over for any reason, you must have a written contract at that time.
 - If you fail to use a written contract when required, you may lose your right to claim a lien.
 - Make sure that your contracts include all elements required by the board.

- Use drawings and precise specifications of the job.
- Maintain a paper trail of every contact and phone call with the customer, including text messages and emails.
- Talk to your customers throughout the project.
 - Maintain good & regular communication.
 - Return customer calls. It is tempting to ignore a phone call from an angry customer, but return it anyway. The problem won't go away and could get worse the longer you wait.
- Follow the manufacturer's instructions.
- Follow through: Do what you agreed to do.
- Build a good, healthy profit into your jobs. Don't try to "upcharge" later in a job.
- When you find a good subcontractor, keep them.
- Obtain any required permits in a timely manner (backflow permits must be obtained prior to installation).
- Walk through the final project and do a signed punch list.
- If you make a mistake, admit it and correct the problem.

Bonds

Every licensed landscaping business must file a surety bond, assignment of savings, or irrevocable letter of credit with the LCB. The bonding requirements are based on each project as follows:

- \$3,000 if the business charges \$10,000 or less.
- \$10,000 if the business charges more than \$10,000, but less than \$25,000 or if hardscaping work will be done without other landscaping work.
- \$15,000 if the business charges \$25,000, but less than \$50,000.
- \$20,000 if the business charges \$50,000 or greater.

When a landscaping project exceeds the charge limitations of the current bond, it is the business' responsibility to obtain the increased surety amount before work continues on that project. The business must obtain the correct bond amount before bidding on a project that will exceed their current bonding restrictions.

Access to the bond is administered by the LCB in case the business breaches a contract, performs negligent or improper work, fails to pay taxes, fails to pay employees or fails to pay a supplier of materials or labor. The person who entered into the contract with the landscape contracting business can file a claim with the LCB, which then starts a legal process to resolve the problem. The court process is another option for all parties to the dispute.

If a surety bond or assignment of savings is canceled or reduced, the landscape contracting business must file a replacement bond or deposit or surrender the license.

Types of Claims

- **Breach of Contract:** A claim for amounts due from a landscape contracting business as a result of a breach of contract in performing landscape contracting work.
- **Material or Equipment:** A claim for unpaid materials or renting or supplying equipment to a landscape contracting business.
- **Employee:** A claim for unpaid wages or benefits filed by an employee of a landscape contracting business for work performed by the employee.
- **Negligent or Improper Work:** A claim as a result of negligent or improper landscape contracting work. Negligent is defined by the LCB as a failure to exercise the care of a reasonably prudent person in like circumstances. Improper is defined by the LCB as not suited to the circumstances, design or given job site.
- **State Tax and Contribution:** A claim filed by the State of Oregon for amounts due for taxes and contributions due to the State of Oregon.
- **Subcontractor:** A claim arising out of a contract between the subcontractor and the landscape contracting business either for nonpayment to a subcontractor or for breach of contract or negligent or improper work performed by the subcontractor.
- **Lien:** A claim filed by a property owner to discharge or to recoup funds expended in discharging a construction lien.

Time Limits for Filing Claims

- Breach of contract and negligent or improper work claims must be filed within one year following the date the work was completed.
- Material, equipment rental and employee claims must be filed with the LCB within one year after the delivery date of the material, equipment or labor.
- State tax and contributions claims must be filed within one year of the due date of the tax or contribution.

What the LCB Does When It Receives a Claim

A consumer (claimant) must fill out a Statement of Claim form. All written contracts between the parties must also be submitted.

Once the LCB has received a claim, it examines the claim to make sure that the LCB has jurisdiction over the claim based on conditions for acceptance (see below) and information provided by the claimant. If the LCB determines they do not have jurisdiction, the LCB does not accept the claim. If the LCB determines they do have jurisdiction, the LCB furnishes the landscape contracting business with a copy of the claim and requests both parties submit a written agreement to mediation or not. The landscape contracting business is also requested to respond to the items stated in the claim so both sides of the story can be reviewed by the LCB.

Claims can be suspended due to bankruptcy or court issues, but once those issues are settled the claim process will continue.

Conditions for Acceptance of Claims by the LCB

There are several conditions for a claim to be accepted by the LCB. The statutes and rules state:

- The LCB may only process a claim that is filed for negligent or improper work within one year following the date the work was completed.
- "Date work completed" is the date when all the provisions of the contract were substantially fulfilled, excluding warranty work; or the date the landscape contracting business ceased work, if the business failed to substantially fulfill the provisions of the contract.
- The landscape contracting business against which the claim is filed must have been licensed during all or part of the work period.
- The work must have been performed within the boundaries of the State of Oregon, or be for materials or equipment supplied for installation on property located within the boundaries of the state of Oregon. Material or equipment claims may not include non-payment for tools or equipment sold to a landscape contracting business that is not incorporated into the job site, for interest or service charges on an account or for materials purchased as stock items.
- The work has to be landscaping work, not landscape maintenance.
- Material claims, where one or more invoices involve material delivered in Oregon while the business was licensed. (Damages will be awarded only for material delivered within the period time that the business was actively licensed.)
- Lien claim where the property owner paid to discharge a lien.

Contractual Elements that Affect the Processing of a Claim

Conditions in the contract can affect how the LCB proceeds with a claim. For example, if the contract contains an agreement to mediate or arbitrate disputes arising out of the contract by a specific provider, the terms of the agreement replaces LCB rules. In such a case, the LCB informs both parties that the LCB will close the claim in 60 days unless a written waiver of outside mediation or arbitration is signed by both parties or receives evidence that outside mediation or arbitration have been initiated.

If mediation or arbitration is initiated by either party, the LCB will suspend processing of the claim until the mediation or arbitration is complete. If both parties do not respond, the LCB must close the claim.

On-Site Mediation or Investigation Meeting

As part of the claim process, the LCB will assist the parties in resolving the claim reducing the time and money both parties and the LCB must spend to get the claim resolved. The on-site mediation is part of the procedure the LCB uses to achieve this goal. At the mediation:

- An LCB mediator will assist both parties to settle the dispute with a written settlement agreement.
- If the parties can't reach a settlement, the LCB mediator will conduct an investigation and submit a report to the LCB.

During mediation discussions, the LCB mediator may request to meet with each party in private. Mediation discussions are often aided by private discussions, which allow the mediator to provide a candid assessment of the strength or weakness of a party's position. Do not be surprised if the mediator focuses on the weakness of your position. There is a natural tendency for a person to overemphasize the strengths of his or her position and minimize the weaknesses. The LCB mediator will try to balance this tendency with an assessment of the downside of your position. Be assured that he or she is taking the same approach with the other side.

Requirements for Claimant:

- The claimant or an agent of the claimant must attend the on-site meeting. If an agent attends, they must have the authority to enter into a settlement;
- The claimant must allow access to the property that is the subject of the claim and allow the landscape contracting business to be present or the claim will be closed; and
- Respond to all LCB requests or the claim will be closed.

Requirements for Respondent (landscape contracting business)

- The LCP must attend any on-site meetings; and
- The representative that attends the meeting must have the authority to enter into settlement negotiations and sign an agreement.

Written Settlement Agreements

The LCB mediator will record your agreement in writing at the mediation. This agreement will include deadline dates. A settlement agreement is a legally binding document. Do not sign the settlement agreement unless you fully understand it and you feel it is in your best interest. The mediator will not hold your refusal to enter into a settlement against you.

If you and the other party settle the claim you will usually receive a copy of the settlement agreement at the mediation. If the respondent agrees to do repair work or make payments, the LCB will keep the claim open until the repair work or payments are completed.

What if the parties do not reach a settlement?

If an authorized representative from the licensed landscape contracting business does not attend the on-site meeting or a settlement agreement by both parties is not reached, or either parties does not agree to mediation, the mediator/investigator will review the claim items and write a report for the LCB.

The investigation is not a hearing, nor is it an arbitration. The investigator will not attempt to resolve factual differences in the parties' positions. However, the investigator may base his report on an opinion on which position is more likely to be true if there is a basis for that opinion.

Proposed Orders

If a settlement is not reached, the claimant must submit one or more estimates from a licensed landscape contracting business for the cost of correction or completion of each claim item and a Monetary Damages Sought form listing each item.

The LCB may issue a proposed order for payment if the LCB determines the claimant suffered damages caused by respondent and the monetary value of those damages is substantiated by the claimant on the record.

The LCB may issue an order proposing dismissal of the claim if the monetary value of the damages sustained is less than an amount due to the respondent from the claimant under the contract or the LCB determines the respondent did not perform negligent or improper work or breach the contract.

Either party to the claim may request a hearing within 21 days after a proposed order is issued to be determined by an Administrative Law Judge (ALJ). The hearing will be held by telephone before an ALJ from the Office of Administrative Hearings. These proceedings are presided over by the ALJ who:

- Hears evidence from witnesses who are under oath and subject to cross-examination.
- Will not visit the job site.
- Makes a decision based on all of the evidence presented at the hearing.

Some parties must be represented by an attorney at a hearing. If you are a party to a large or complex claim, you should consider hiring an attorney to assist you at the hearing.

Final Order for Damages

Once a determination for a monetary amount is made and the time to request a hearing has passed, the order becomes final and the landscape contracting business has 30 days to pay the claimant the amount due, if any.

If the amount due is not paid by the landscape contracting business, the LCB will request the amount be paid by the bond company. Determining how the bond company pays for multiple claims against the same business within 90-day increments is a process the bonding company deals with when distributing the funds to the claimants.

Chapter 6: Lien Law



CAUTION!

The material in this chapter is provided as a resource for study for the LCB exam and is for informational purposes only. It should not be considered to be legal advice. The LCB strongly advises you to consult an attorney for specific legal advice on filing or enforcing liens.

Contractors needing assistance providing notices, filing liens, or obtaining lien priority, should consult an attorney. Some attorneys specialize in construction law and may offer classes or publications relating to liens. To find a construction law attorney, contractors may contact construction industry associations, or the Oregon State Bar Attorney Referral Service at 1-800- 452-7636 or www.osbar.org/public.

EXPLANATION OF CONSTRUCTION LIENS

What is a construction lien?

Construction liens have been a part of Oregon's law for over 100 years. Under this law, anyone who constructs improvements to property, supplies materials, rents equipment, or provides services for improvements has a right to collect payment from the property if they are not paid. If the contractor is not paid or does not pay the subcontractors, laborers, material suppliers, or equipment rental companies, those persons may claim a lien against the property.

What is the purpose of the construction lien law?

The purpose of the law is to ensure that people are paid for value that they add to someone's property. A bank can reclaim a car if payments are not made. Work done to real estate, however, is permanent and cannot be reclaimed. The lien laws protect those persons working on the property who do not have a contract directly with the property owner (who contracted only with the general contractor).

REQUIRED NOTICES

Information Notice to Owner about Construction Liens

If a contractor fails to deliver the notice as required under the law, the contractor loses the right to claim a lien against the property. The notice must be given if the construction contract is for more than \$2,000 or when the job charges go over \$2,000. If the contractor fails to provide it to the property owner, the contractor loses lien rights. Note: "residential property" may include property not occupied by the owner.

Notice of Right to a Lien

Subcontractors, employees, material suppliers, and equipment rental companies usually must provide a Notice of Right to a Lien to property owners in order to claim a valid lien if they are not paid. A Notice of Right to a Lien lets the property owner know of the possibility that a lien could be placed on their property by subcontractors, employees, material suppliers, and equipment rental companies who are not paid.

Who sends what notice to property owners?

- If you contract directly with an owner of residential property, you must provide the Information Notice to Owner about Construction Liens.
- If you have no direct contract with an owner of property, and you wish to have a right to file a lien, you must send a Notice of Right to a Lien to the property owner. There are some exceptions.

Where can I get copies of the Information Notice to Owner About Construction Liens?

Licensed contractors may download and print copies from the CCB website, or call the CCB and request a copy. **LCB licensees must use these forms.**

FILING LIENS

How do I go about filing a lien?

Consult an attorney. A lien involves a notary, legal description, recording fee, several deadlines, and extensive paperwork. If anything in the process is not done correctly, the lien may be invalid, or you could lose your right to collect attorney fees should you have to foreclose on the lien.

What is the deadline for filing a lien? What if I file the lien after that deadline?

You have 75 days to file a lien from:

1. The date you last worked or delivered materials to the property, or
2. The date of substantial completion of the construction, whichever date came first.

The lien will be invalid and cannot be enforced if it is filed more than 75 days after the above dates.

The requirements for pursuing a lien are so strict. Why?

Foreclosure of a lien is a serious matter – someone can lose his or her property. The strict requirements are also intended to prevent abuses which may result in homeowners having to pay twice for the same materials, equipment, services, or labor.

Where are liens filed?

Liens are filed with the recording officer of the county where the work was performed.

In summary, what are the most important things for a contractor to do in order to file a valid residential lien?

1. The contractor must be licensed with the LCB, and
2. The contractor must give the property owner an Information Notice to Owner About Construction Liens if it is required, and
3. The lien must be filed within 75 days of the last day labor was provided or materials furnished.

In summary, what is important for a subcontractor, material supplier, or equipment rental company to do in order to file a valid residential lien claim?

Send the Notice of Right to a Lien by registered or certified mail, or deliver it in person within eight working days of starting the work or providing the materials or equipment.

Where can I get more information about Oregon's lien laws?

You may wish to contact an attorney or review Oregon's Lien Law, found in ORS Chapter 87.

Chapter 7: Safety and Hazard Communication

See Oregon Occupational Health & Safety Division pamphlet.
This pamphlet is provided at no charge and is available on the
LCB website.

Chapter 8: Building Codes and Permits

There are no installation codes for installing lawns, trees, shrubs and other nursery stock. The city or county may have requirements for specific types of trees that may be installed. However, the LCB does not have codes or guidelines.

There may be local zoning ordinances, private covenants, conditions and easements or Homeowners Association Design Review criteria you will need to follow. Be sure to check!

The Building Codes Division

The Building Code Division (BCD) works to ensure safe building construction and develops the statewide building code. Most permit and inspection services are provided by local city or county building departments or in some areas by the State Building Codes Division. These services are essential in building safe and effective structures in Oregon.

Most landscaping work does not have codes in Oregon. However, when landscape contracting businesses perform construction work subject to the BCD, the codes must be adhered to and it is the responsibility of the landscape contracting business to check for those permit requirements.

Codes Used in Oregon

Refer to BCD's website at www.bcd.oregon.gov for the codes used in Oregon and changes to those codes.

Permits

Permits are required for most new construction and alterations or additions to existing buildings, including structural, plumbing, mechanical, and electrical work. Individual city and county jurisdictions may have additional permit requirements based on local geographic, seismic, and climatic conditions. As a landscape contracting business owner or managing employee, you must make sure to obtain the required permits before the work is performed and to have the work inspected after the work is completed. Some of the required permits are:

- **Backflow Assemblies.** Backflow assemblies are for irrigation systems and water features. These plumbing fixtures may be required to be tested after installation and inspected before the permit is finalized.
- **Retaining Walls.** Depending on the requirements of the jurisdiction the business is performing work in, a retaining wall above a certain height may require a permit, engineering, and inspection.
- **Driveways.** A driveway for entering from a street onto a property may require a permit.
- **Decks.** Decks that are a certain height off the ground or attached to a structure may require a permit.

- **Low Voltage.** Low voltage wiring for irrigation systems and low voltage lighting may require a permit in many local areas.

There may be property owners who do not want a landscape contracting business to obtain a building permit even though they want the landscape contracting business to perform work. If a licensed landscape contracting business works without a required permit, the LCB may revoke or suspend the landscape contracting business license and assess a penalty.

Applying for a Permit

Landscape contracting businesses must apply for a required permit at the local city and county offices that has jurisdiction in the area where the landscape construction work will be performed or in some areas by the State Building Codes Division. To find the appropriate building department, call the nearest city hall, give the address of the construction project or installation, and ask for contact information of the building jurisdiction that issues the permit. Be sure to provide the job site address and the type of work being performed. Contact the building official in the local jurisdiction if there are code or permit questions. There is a list of local building departments on the BCD's website: www.bcd.oregon.gov.

Contact the jurisdiction in your area about the permit fee.

Sources of Building Codes

To purchase a code book, refer to BCD's website: www.bcd.oregon.gov



CAUTION!

Never assume that you don't need a permit! Always check with the local building codes official **BEFORE** installing a landscape. Failure to comply with permit requirements may result in civil penalties.

Chapter 9: Estimating

Estimating is an important aspect of landscaping. You will use estimating to calculate the markup on goods, labor costs and profit margins as an example. Estimating is defined as: a) to judge tentatively or approximately the value, worth, or significance of; b) to determine roughly the size, extent, or nature of; and c) to produce a statement of the approximate cost.

Markup

Markup is the amount added to the cost of goods to cover overhead and profit. It is expressed as a percentage above the cost. In other words, it is the added price over the total cost of the goods or services that provides the seller with a profit. It is important to remember that markup and profit margin are not the same. There are many great resources on the internet that can assist you in calculating both markup and profit margin.

Example

John is the owner of a company that specializes in the manufacturing of office computers and printers. He recently received a large order from a company for 30 computers and 5 printers. In addition, the company tasked John with installing software into each of the computers.

The cost per computer is \$500 and the cost per printer is \$100. The cost of installing the software to run on all the computers is \$2,000. If John wants the markup to be 20% for the order, what would be the price charged by John?

Step 1: Calculate the total cost of the order (computers + printers + installation of software). $(\$500 \times 30) + (\$100 \times 5) + \$2,000 = \$17,500$ (total cost).

Step 2: Determine the selling price by using the desired percentage of 20%.
 $\$17,500 \times 1.20 = \$21,000$

Therefore, for John to achieve the desired markup percentage of 20%, John would need to charge the company \$21,000.

Discount

Discount means reducing the price or value of an object or item. If there is an additional discount, they are calculated separately.

Example

John has decided to provide a discount to a customer who is purchasing equipment for \$21,000. What would the total price be with an 8% discount for placing the order plus an additional 3% for paying within 30 days.

Step 1: Covert 8% to a decimal by dividing by 100: $8/100 = 0.08$

Step 2: Multiply the original price by the decimal to find the 8% discount amount:
 $\$21,000 \times 0.08 = \$1,680$

Step 3: Subtract the discount from the original price:
 $\$21,000 - \$1,680 = \$19,320$ (this is the 8% discounted price)

Step 4: Covert 3% to a decimal by dividing by 100: $3/100 = 0.03$

Step 5: Multiple the 8% discounted price by the decimal to find the 3% discount amount:

$$\$19,320 \times 0.03 = \$579.60$$

Step 6: Subtract the 3% discount from the 8% discounted price:
 $\$19,320 - \$579.60 = \$1,874.04$

Profit Margin

The profit margin on a product or service you sell is the difference between your cost (materials and labor) and the selling price.

In pricing an item or service there is a common mistake most people make. They'd like to have a 40% profit and usually take the cost, (let's say that's \$90.00), and simply multiply it by 40% and add that figure to the \$90 which is then assigned as the retail price of \$126. This is how you would calculate markup, not profit margin. Based on that, most believe they've set the retail price appropriately to make a 40% profit, but they have actually cut into their profits!

If you take \$126.00 and multiply it by your target profit of 40%, you'll get an answer of \$50.40 (i.e. $\$126.00 \times 40\% = \50.40 .) Now subtract \$50.40 from the \$126.00 and you have only \$75.60 where your cost was \$90.00. If it's below the \$90.00, you've cut into your profits!

Here are the correct calculations:

- Your targeted profit % is 40.
- Take 100 minus 40% and you get 60%.

- Take your cost of \$90.00 divided by 60% (or .60 which is just another way to write 60%) and you get \$150.00.
That would be the correct selling price to assign for a 40% profit margin.

You can then double check to ensure you have your 40% profit margin:

- Take your set retail price of \$150.00 and subtract your targeted profit %.
(\$150.00 – 40% = \$90.00.)
NOW THAT'S A 40% PROFIT MARGIN!

Simple math, but usually a bit misunderstood. You need to practice it until you can arrive easily at any profit margin you wish. If you want a 30% profit, divide the cost by .70. If you want a 60% profit, divide the cost by .40. If you want a 20% profit, divide the cost by .80, etc.

Labor Costs

Labor costs is defined as the sum of all wages paid to employees, as well as the cost of employee benefits and payroll taxes paid by an employer.

Example

Labor costs including overhead are \$32.50 per hour, and it takes a crew member 9 minutes to load, move and spread a 6-cubic foot wheelbarrow load, what will the labor cost be to spread 25 cubic yards of gravel?

Step 1: Determine the labor costs per minute:

Divide \$32.50 by 60 (minutes in an hour) = \$.542 per minute (rounded).

Step 2: Determine how many 6 cubic foot wheelbarrow loads it will take to move the 25 cubic yards of bark:

1 cubic yard = 27 cubic feet.

Multiply 25 cubic yards by 27 cubic feet = 675 cubic feet.

Divide 675 cubic feet by the 6 cubic feet per wheelbarrow load = 112.5 loads

Step 3: Determine cost by wheelbarrow load:

Multiply 112.5 wheelbarrow loads by 9 minutes per load = 1,012.5 minutes.

Multiple the 1,012.5 minutes by \$.542 per minute = \$548.78

Total labor costs to spread the gravel will be \$548.78.