

Chapter 701

2003 EDITION

Construction Contractors and Contracts

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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 18 of ORS.

701.005 Definitions. As used in this chapter:

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

(2) "Contractor" means a person who, 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, any building, highway, road, railroad, excavation or other structure, project, development or improvement attached to real estate or to do any part thereof. "Contractor" includes general contractors, residential-only contractors and specialty contractors as defined in this section.

(3) "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. "General contractor" does not include specialty contractors or limited contractors, as described in ORS 701.085.

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

(5) "Inspector" means a contractor registered with the board who inspects or otherwise provides services to a property owner or other contractor but does not substantively add to or subtract from a structure. "Inspector" includes but is not limited to a home inspector certified or licensed under ORS 701.350, a lead-based paint inspector licensed under ORS 701.515 and a cross connection and backflow prevention device inspector certified under ORS 448.279. "Inspector" does not include city or county in-

spectors acting under ORS 701.225 or an inspector as defined in ORS 455.715.

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

(7) "Licensed developer" means a contractor who owns property or an interest in property and arranges for construction work, if the contractor:

(a) Engages in the business of arranging for construction work and performing other activities associated with the improvement of real property, with the intent to sell the property;

(b) Acts in association with one or more licensed general contractors and the general contractor or combination of general contractors have sole responsibility for overseeing all phases of construction activity on the property; and

(c) Does not perform any construction work on the property.

(8) "Residential-only contractor" means a general contractor or specialty contractor who performs work exclusively in connection with residential structures and small commercial structures, and the appurtenances thereto. "Residential-only contractor" includes, but is not limited to:

(a) A person who 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;

(b) 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;

(c) 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; or

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

(9) "Residential structure" means a residence, including a site-built home, modular home constructed off-site, floating home as defined in ORS 830.700, condominium unit, manufactured dwelling or duplex, or a multi-unit residential building consisting of four

units or less that is not part of a multistructure complex of buildings.

(10) "Small commercial structure" means a nonresidential structure that has a ground area of 4,000 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.

(11) "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 chapter 446. [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]

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 Construction Contractors 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 \$500 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 be-

fore, 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) 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.

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

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

(b) A registered professional engineer licensed 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 landscaping business licensed under ORS 671.510 to 671.710 that constructs fences, decks, arbors, driveways, walkways or retaining walls when:

(A) Performed in conjunction with landscaping work; or

(B) Not performed in conjunction with landscaping work and that has filed a bond under ORS 671.690 (1)(b).

(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 by the Appraiser Certification and Licensure Board.

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

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

(10) 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.

(11) A commercial lending institution or surety company that arranges for the completion, repair or remodeling of a structure. 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.

(12) A real estate licensee 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.

(13) Units of government other than those specified in ORS 701.005 (8)(b) and (c).

(14) 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.

(15) A business that supplies personnel to a licensed contractor for the performance of work under the direction and supervision of the contractor. [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]

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 and landscape 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 and landscape contractors to secure from the metropolitan service district one business license that will permit the conduct of business by such 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 contractors engaged in the building trades and crafts and to landscape contractors without regard to any subsequent expansion of the jurisdiction of the Construction Contractors Board or State Landscape Contractors Board over other trades and crafts. It is declared to be the policy of this state that, to the maximum ex-

tent 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]

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; application to landscape contractors; distribution of fees. (1) A contractor or landscape 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 or the landscape contractor is within the city; or

(b) The principal place of business of the contractor or the landscape contractor is not within the city but the contractor or landscape 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 or landscape 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 or landscape 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 or landscape 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 or landscape 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 or landscape contractor, the city shall waive such payment upon presentation of proof by the contractor or landscape contractor that the contractor or landscape contractor has a business license issued by the metropolitan service district. Possession by the contractor or landscape 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 or landscape contractor when:

(a) The contractor or landscape contractor presents proof to the district that the contractor or landscape contractor has paid the business license tax imposed by each city within the boundaries of the district to which the contractor or landscape contractor must directly pay a business license tax under subsection (1) of this section; and

(b) The contractor or landscape 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) "Landscape contractor" means a person or business who is licensed under ORS 671.510 to 671.710 as a landscape contractor.

(d) "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]

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.

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

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

LICENSING

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 licenses:

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

(A) Sole proprietorships, partnerships, corporations, limited liability companies with one or more employees; and

(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. All partnerships, corporations and limited liability companies must have an identification number issued for federal tax purposes.

(3) If a person who qualifies for a license under subsection (2)(b) of this section hires one or more employees 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. 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 701.055 and 701.060. [1989 c.870 §4; 1995 c.216 §1; 1999 c.402 §13]

701.055 Valid license for work required; notice of change in licensed partners or corporate officers; issuance of building permits to unlicensed contractor prohibited; information notice to property owners about construction responsibilities; evidence of activity; contractor duties; rules. (1) A person may not undertake, offer to undertake or submit a bid to do work as a contractor unless that person has a current, valid license issued by the Construction Contractors Board. A partnership, corporation or joint venture may not undertake, offer to undertake or submit a bid to do work as a contractor unless that partnership, corporation or joint venture is licensed under this chapter. A partnership or joint venture is licensed for the purpose of offering to undertake work as a contractor on a structure if any of the partners or joint venturers whose name appears in the business name of the partnership or joint venture is licensed under this chapter.

(2) A licensed partnership or corporation shall notify the board immediately upon any change in licensed partners or corporate officers. If a partnership no longer has a licensed partner, the partnership may not conduct activities that require a license under this chapter.

(3) A city, county or the State of Oregon shall not issue a building permit to any person required to be licensed under this chapter that does not have a current, valid license. A county, city or state agency that requires the issuance of a permit as a condition precedent to construction, alteration, improvement, demolition, movement or repair of any building or structure or the appurtenances to the structure shall, as a condition for issuing the permit, require that the applicant for a permit file a written statement, subscribed by the applicant. The statement must affirm that the applicant is licensed under this chapter, give the license number and state that the license is in full force and effect, or, if the applicant is exempt from licensing under this chapter, list the basis for the exemption. The city, county or state agency shall list the contractor's license number on the permit obtained by that contractor.

(4) If the applicant for a building permit is exempt from licensure under ORS 701.010 (6), the city, county or state shall supply the applicant with an Information Notice to Property Owners About Construction Responsibilities. The city, county or state shall 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 general contractor is _____, Construction Contractors Board license no. _____, license expiration date _____. I will instruct my general contractor that all subcontractors who work on this dwelling must be licensed with the Construction Contractors Board; 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 general contractor and, if I hire subcontractors, I will hire only subcontractors licensed with the Construction Contractors Board.

(e) If I change my mind and do hire a general contractor, I will contract with a general contractor who is licensed with the Construction Contractors Board and I will immediately notify the office issuing this building permit of the name of the general contractor _____.

(5) The board shall adopt by rule a form entitled "Information Notice to Property Owners About Construction Responsibilities" that shall describe, in non-technical language and in a clear and coherent manner using words in their common and everyday meaning, the responsibilities property owners are undertaking by acting as their own general 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.

(6) 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.

(7) 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.

(8) It is prima facie evidence of doing business as a contractor if a 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 any work described in ORS 701.005 (2) if within any 36-month period that person offers for sale two or more newly built structures on which that work was performed.

(9) Licensure under this chapter is prima facie evidence that the licensee conducts a separate, independent business.

(10) 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 limit or abridge the authority of any city or county 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 or county;

(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 service of the contractor; or

(c) Regulate a contractor that is not required to be licensed under this chapter.

(11)(a) A contractor shall maintain a list that includes the following information about all subcontractors or other contractors performing work on a project for that contractor:

(A) Names and addresses.

(B) License numbers.

(b) The contractor must deliver the list referred to in paragraph (a) of this subsection to the board within 72 hours after a board request made during reasonable working hours.

(12) A contractor shall not hire any subcontractor or other contractor to perform work unless the subcontractor or contractor is licensed under this chapter or exempt from licensure under ORS 701.010.

(13) A consumer notification form designed to specifically inform a property owner what the property owner should do to protect themselves in a residential repair, remodel or construction project shall be prepared by the board and provided at no cost to all licensed contractors. The contractor shall deliver the form to the property owner when the contractor submits a bid or pro-

posal for work on a residential structure. The form shall include an explanation of the meaning of licensure, including a statement that licensure is not an endorsement of a contractor's work, and an explanation of the bond and insurance levels required of contractors for the benefit of property owners. The form must not be larger than one side of a sheet of paper that is 8-1/2 inches by 11 inches. The contractor may reproduce the form on the contractor's bid proposal.

(14) A contractor may not perform work subject to this section for an owner of a residential structure without a written contract if the aggregate contract price exceeds \$2,500. If the price of a contract was initially less than \$2,500, but during the course of performance the contract exceeds that amount, the contractor shall mail or otherwise deliver a written contract to the owner not later than five days after the contractor knows or should reasonably know that the contract price will exceed \$2,500. Failure to have a written contract will not void the contract.

(15) 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. [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]

701.058 Licensed developers. The Construction Contractors Board shall develop a separate class of contractor license for contractors who are licensed developers. [2003 c.675 §68]

701.060 Licensing in another category; fee. (1) Any contractor licensed under this chapter may at any time apply for a license in another category. The Construction Contractors Board may charge a transfer fee not to exceed \$20 for each additional license.

(2) If a contractor applies for a license pursuant to subsection (1) of this section all construction, alteration, improvement, moving over public highways, roads or streets, demolition or repair performed by that contractor on buildings of all types shall be subject to the provisions of this chapter and to regulation by the board. Such licensure shall be exclusive as provided in ORS 701.055 (10). [1977 c.426 §2; 1981 c.618 §11; 1983 c.616 §7; 1989 c.430 §2; 1989 c.928 §5; 1999 c.402 §15]

701.065 License required to obtain judicial or administrative remedy; exception. (1) Except as provided in subsection (2) of this section, a contractor may not perfect a claim of a construction lien, or commence a claim with the Construction Contractors Board, in arbitration or in any 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:

(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 shall not apply the provisions of subsection (1) of this section to a lien or claim if the board, arbitrator or court determines that:

(a) The contractor either did not have a valid license at any time required under subsection (1) of this section, or had an initial issuance thereof, and:

(A) The contractor was not aware of the requirement that the contractor be licensed, 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 claim of a construction lien or commenced any other claim subject to the provisions of subsection (1) of this section, the contractor was licensed by the board; 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 such 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 claim of a construction lien and a suit to foreclose the lien, at the time the contractor commenced any other claim subject to the provisions of subsection (1) of this section the contractor's license was renewed under ORS 701.115 to include the entire time period for which a license was required under subsection (1) of this section; and

(C) For perfection of a claim of a construction lien and a suit to foreclose the lien, the contractor's license was renewed under ORS 701.115 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;

(c)(A) The contractor is a licensed developer and did not have a valid license during

all or part of the period described in subsection (1) of this section;

(B) The licensed developer was unaware of the license requirement and obtained a license within a time established by the board, not to exceed 90 days after the licensed developer learned of the requirement;

(C) The licensed developer was licensed at the time the licensed developer perfected the lien or commenced the claim; and

(D) Enforcement of subsection (1) of this section would result in substantial injustice to the licensed developer; or

(d) The claim:

(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) If a contractor falsely swears to information provided under ORS 701.075 or knowingly violates the provisions of ORS 656.029, 670.600 or 701.075, the contractor may not perfect a claim of a construction lien, or commence a claim with the board, in arbitration or in any 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. [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]

Note: Section 72, chapter 675, Oregon Laws 2003, provides:

Sec. 72. Notwithstanding ORS 701.065, a contractor is not barred from commencing a claim described in ORS 701.065 (2)(d) with the Construction Contractors Board, in arbitration or in a court, for construction work performed in whole or in part prior to April 1, 2004, if the contractor obtains a license as a licensed developer prior to April 1, 2004, and at the time of the work the contractor:

(1) Owns the property or an interest in the property associated with the construction work;

(2) Arranges for the construction work;

(3) Is engaged in the business of arranging for construction work and performing other activities associated with the improvement of real property, with the intent to sell the property;

(4) Acts in association with one or more licensed general contractors and the general contractor or combination of general contractors have sole responsibility for overseeing all phases of construction activity on the property; and

(5) Does not perform any construction work on the property. [2003 c.675 §72]

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

Note: 701.067 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.

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

701.075 License application; business staffing by licensed or exempt person; rules. (1) 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, at least the following information regarding the applicant:

(a) Classification of the license being sought.

(b) A list of unsatisfied judgments resulting from bond claims and litigation involving the applicant or its principals within the prior five years.

(c) Social Security number.

(d) Workers' compensation insurance account number if help is hired or traded.

(e) Unemployment insurance account number if help is hired.

(f) State withholding tax account number if help is hired.

(g) Federal employer identification number, if help is hired or if self-employed and participating in a retirement plan.

(h) The name and address of:

(A) Each partner, venturer or member, if the applicant is a partnership, joint venture or limited liability company.

(B) The owner, if the applicant is an individual proprietorship.

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

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

(3) The board shall adopt by rule an application form that requires an applicant to indicate, as set forth in ORS 670.600, the ba-

sis under which the applicant qualifies as an independent contractor.

(4) Prior to licensure, an applicant must demonstrate compliance with the licensure education requirements described in ORS 701.280 (1) and pass an examination based on the requirements.

(5) Prior to licensure, an applicant shall submit proof satisfactory to the board that the applicant has the legal capacity to contract.

(6) Notwithstanding subsection (4) of this section, the examination requirement for licensure does not apply to a person registered with the board prior to July 1, 2000, unless the person's license has lapsed more than two years prior to the application date.

(7) A business licensed under this chapter must at all times have at least one owner or employee who:

(a) Has passed an examination under subsection (4) of this section; or

(b) Is exempt under subsection (6) of this section from examination and was, at any time prior to July 1, 2000, an owner of the business or an employee designated by an owner to exercise management or supervisory authority over the construction activities of the business.

(8) Subsections (4), (6) and (7) of this section do not apply to a licensed developer. [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]

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

701.085 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 subsec-

tions (2) to (5) of this section. The surety bond must provide that the applicant, with regard to work subject to this chapter, will pay claims ordered paid by the board under ORS 701.145 or 701.146. Bonds filed under this subsection shall remain in effect for at least one year or until depleted by claims paid under ORS 701.150, 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 (6) of this section, the aggregate liability of the surety under the bond for claims against the bond may not exceed the penal sum of the bond no matter how many years the bond is in force. Except as provided in subsection (6) of this section, an extension by continuation certificate, reinstatement, reissue or renewal of the bond may not increase the liability of the surety.

(2) A general contractor or licensed developer shall obtain a surety bond in the amount of \$15,000.

(3) A specialty contractor shall obtain a surety bond in the amount of \$10,000.

(4) An inspector shall obtain a surety bond in the amount of \$10,000.

(5) The board may reduce the amount of the surety bond required by this section to \$5,000 for a contractor upon a showing that the contractor does not perform work as a contractor exceeding \$40,000 in gross annual volume and does not enter into contracts that exceed \$5,000. The board shall designate the contractor as a limited contractor.

(6) The board, by rule, may require a licensee to obtain a new surety bond if, pursuant to a board order for payment of a claim described in ORS 701.140, the surety pays a claim out of the bond of the licensee. The new surety bond must be in the amount set forth in subsections (2) to (5) of this section unless a higher amount is required by a board condition or rule described in subsection (7) or (8) 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 claim.

(7) If the amount the licensee must pay against the bond under 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 this section.

(8) 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 this section. 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.

(9) 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.

(10) Upon determination under ORS 701.145 or 701.146 of a claim 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 claims upon which a final order has been issued.

(11) A suit or 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 claim.

(12) In any action against a surety on a bond under this section that is based on the failure of the surety to pay a claim or on the denial of a claim by the surety, 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 claim, if the surety arbitrarily and capriciously refused to pay upon order of the board. [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]

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

701.100 Sanction for failure to comply with certain laws. (1) The failure of a contractor to comply with the provisions of this section and ORS 87.007 (2), 656.021, 657.665, 670.600, 701.035, 701.065, 701.067, 701.075, 701.135, 701.240 and 701.250 or to be in conformance with the provisions of ORS chapter 316, 656 or 657 or ORS chapter 455 and the rules adopted thereunder is a basis for suspension of the contractor's license, revocation of the contractor's license, refusal to issue or reissue a contractor's license, assessment of a civil penalty as set forth in

ORS 701.992 or a combination of these sanctions.

(2) Any action against a contractor under this section shall be conducted in conformance with the provisions of ORS 183.413 to 183.497. [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]

701.102 Sanction for past unresolved activity; rules defining ownership of business; probation. (1) The Construction Contractors Board may suspend the license of or refuse to license a person if the person, or the owner or holder of a direct or indirect interest in the person, is a business or the owner or holder of a direct or indirect interest in a business that:

(a) Owes any amount pursuant to a final order or arbitration award of the board;

(b) Owes any amount under final judgment of a court or civil penalty arising from construction business activities in Oregon or any other state of the United States; or

(c) Has had a license to operate as a construction contractor revoked by a construction contractor licensing agency of any state.

(2) The board may hold the suspension or refusal of a license under subsection (1) of this section in abeyance if the person is adhering to a board-approved plan for restitution of the amount owed.

(3) The board shall adopt rules defining the ownership or holding of a direct or indirect interest for purposes of subsection (1) of this section. The rules may not define direct or indirect interest in a manner that includes the interest of an investor who has no right to manage a business, including but not limited to, the interest of:

(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.

(4) The board may place a contractor on probation if a total of three or more claims are filed with the board within a 12-month period against the contractor or a former licensed construction company 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 claimants. 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 claims. The board may require a contractor that is placed on probation to take any education and training described under ORS 701.280 and to pass an examination on subjects relating to business practices and laws affecting construction contractors. 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]

701.103 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 claim described in ORS 701.140. [2001 c.850 §2]

701.105 Insurance required of licensed contractors; alternative form of security; rules. (1) Except as provided in subsection (2) of this section, 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, for an amount not less than:

(a) \$500,000 for a general contractor or licensed developer.

(b) \$300,000 for a residential-only specialty contractor.

(c) \$500,000 for all other specialty contractors.

(d) \$100,000 for a limited contractor.

(e) \$300,000 for an inspector.

(2) The Construction Contractors Board by rule, in consultation with the Department of Consumer and Business Services, may allow a general or specialty contractor that is a residential-only contractor to provide an alternative form of security approved by the board instead of procuring a public liability, personal injury and property damage insurance policy. The board may approve an alternative form of security if the board determines that the alternative form of security provides protection to the public equivalent to the protection provided by an insurance policy in the amounts otherwise applicable to the residential-only contractor under subsection (1) of this section. A board-approved alternative form of security may consist of a combination of financial resources.

(3) A residential-only contractor who provides a board-approved alternative form

of security under subsection (2) of this section is considered for purposes of this chapter to have obtained insurance described in subsection (1) of this section. This subsection does not subject to regulation as an insurer a person who issues all or part of an alternative form of security, unless the alternative form of security otherwise qualifies as an insurance product.

(4) The contractor shall provide satisfactory evidence to the board at the time of licensure and renewal that the insurance policy or board-approved alternative form of security required by this section has been procured and is in effect. [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]

Note: The amendments to 701.105 by section 2, chapter 766, Oregon Laws 2003, become operative January 2, 2008. See section 3, chapter 766, Oregon Laws 2003. The text that is operative on and after January 2, 2008, is set forth for the user's convenience.

701.105. (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, for an amount not less than:

- (a) \$500,000 for a general contractor or licensed developer.
- (b) \$300,000 for a residential-only specialty contractor.
- (c) \$500,000 for all other specialty contractors.
- (d) \$100,000 for a limited contractor.
- (e) \$300,000 for an inspector.

(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.

701.115 Term of license; renewal; license identification card; inactive status.

(1) A license is valid for two years or four years, at the discretion of the applicant, from the date of issuance unless the license is revoked or suspended as set forth in ORS 701.135. Upon application, a license may be renewed by the same procedure provided for an original license if the applicant:

(a) Submits any additional supplemental information or completes any required education as the Construction Contractors Board may require by rule; and

(b) Passes the examination required in ORS 701.075 (4), if the applicant has not previously satisfied the examination requirement and is not exempt under ORS 701.075 (6) or (8).

(2) The board shall issue a pocket-card certificate of licensure to a contractor licensed under this chapter indicating the type of license.

(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 renewal fee.

(4) If a contractor applies for renewal not more than one year after the contractor's license lapses, upon the contractor's compliance with the requirements of subsection (1) 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 fees, but is not subject to the bonding requirement of ORS 701.085 or the insurance requirement of ORS 701.105. 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 period. [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]

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.

701.125 Licensing fee. (1) Each applicant shall pay to the Construction Contractors Board:

(a) For the original application for or renewal of a contractor license, a fee as determined by the board under ORS 701.130.

(b) A fee for all changes in the contractor license, as prescribed by the board, other than those due to clerical errors.

(2) The board shall set the fees referred to in subsection (1) of this section so that the moneys received are adequate to administer the provisions of this chapter pursuant to ORS 701.130. [1971 c.740 §14; 1973 c.832 §57; 1975 c.721 §6; 1983 c.180 §3; 1999 c.402 §26]

701.130 Determination of licensing fee; rules. (1) Before July 1 of each year, the Construction Contractors Board shall determine the amount of the fee an applicant must pay for a contractor license or renewal of contractor license under ORS 701.125. The fees shall be subject to prior approval of the Oregon Department of Administrative Services and a report to the Emergency Board prior to adopting the fees and shall be within the budget authorized by the Legislative Assembly as that budget may be modified by the Emergency Board. The fees and charges established under this section shall not exceed the cost of administering the regulatory program of the board pertaining to the purpose for which the fee or charge is established, as authorized by the Legislative Assembly within the board's budget, as the budget may be modified by the Emergency Board.

(2) The amount of the fee determined by the board under subsection (1) of this section shall be effective as set by rule. [1983 c.180 §2;

1989 c.624 §5; 1989 c.928 §14; 1991 c.703 §38; 1999 c.402 §27]

701.135 Grounds for discipline; rules; hearing; civil penalty; injunctions. (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 it determines after notice and opportunity for hearing:

(a) That the licensee or applicant has violated ORS 701.055.

(b) That the licensee or applicant has failed to pay in full any final judgment on claims adjudged by the board or by a court of competent jurisdiction referred to in ORS 701.102.

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

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

(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 such permit is required and such work resulted in a claim filed with the board. 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 licensed 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 has been convicted of one of the following crimes:

(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 claims 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.

(2)(a) The administrator of the board, in accordance with administrative rules adopted by the board and after setting forth specific reasons for such 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 701.085;

(B) Lack of liability insurance required by ORS 701.105;

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

(D) Conduct as a construction contractor that is dishonest or fraudulent.

(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 an order pursuant to the hearing as required by ORS chapter 183 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.

(3) In addition to all other remedies, when it appears to the board that a person has engaged in, or is engaging in, any act, practice or transaction which 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 shall not issue for failure to maintain the list provided for in ORS 701.055 (11) unless the court determines that the failure is intentional.

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

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 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 and category;

(b) The applicable bonding and liability coverage; and

(c) The statement described in ORS 701.055 (3).

(3) Any person licensed under ORS 701.055 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. [1991 c.598 §§1,2,5; 1999 c.402 §29; 1999 c.551 §15]

Note: 701.138 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.

CLAIMS

701.139 Disputes as claims against bond; resolution processes. Except as provided in ORS 701.148 (2), the Construction Contractors Board may resolve a dispute against a licensed contractor only if a claim is made against the contractor's surety bond required by ORS 701.085. In order to have access to the bond, a person must file a claim of a type described in ORS 701.140 within the applicable time limitation described in ORS 701.143. The claim must be filed and resolved as follows:

(1) A claim that involves work on a residential structure or an appurtenance to the structure must be resolved as provided under ORS 701.145.

(2) A claim that involves work on a small commercial structure or an appurtenance thereto may be resolved as provided in ORS 701.145 or 701.146.

(3) Except as provided in subsections (4) and (5) of this section, a claim that involves work on a large commercial structure or an appurtenance thereto must be resolved as provided in ORS 701.146.

(4) A claim by an owner that involves work on a large commercial structure or an appurtenance thereto when the total contract involved in the claim is \$25,000 or less may be resolved as provided in ORS 701.145 or 701.146.

(5) Notwithstanding subsections (1) to (4) of this section, with prior agreement of the claimant and the licensed contractor, a claim may be resolved by the board through binding arbitration under ORS 701.148. [2001 c.197 §3; 2001 c.414 §5a]

701.140 Types of allowable claims; restriction on processing claim for recoupment of lien. A claim made against a licensed contractor's bond required by ORS 701.085 must arise from the performance, or a contract for the performance, of work that is subject to this chapter. The claim must be of one or more of the following types:

(1) A claim 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 claim 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 claim is processed under ORS 701.145, the Construction Contractors Board may reduce a claim by any amount the claimant owes the contractor. The board shall process claims 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; and

(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.

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

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

(4) A claim by a person furnishing labor to a contractor.

(5) A claim, 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 shall not exceed \$150.

(6) A claim 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]

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

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

(3) Regardless of whether the claim involves a new or existing structure, if the owner of the structure files the claim and the licensed contractor failed to begin the work, the board must receive the claim no later than one year after the date the parties entered into the contract.

(4) Regardless of whether the claim involves a new or existing structure, if the owner of the structure files the claim and the licensed contractor failed to substantially complete the work, the board must receive the claim 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 claim against the licensed contractor performing work as a subcontractor on a new

structure, the board must receive the claim 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 claim against the licensed contractor performing work as a subcontractor on an existing structure, the board must receive the claim no later than 14 months after the date the work on the structure was substantially completed.

(7) If a licensed contractor files the claim 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 claim 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 claim, the board must receive the claim no later than one year after the date the contractor incurred the indebtedness. [2001 c.197 §2 and 2001 c.414 §2]

701.145 Residential structure claims; small commercial structure claims not resolved under ORS 701.146; large commercial structure small contract claims not resolved under ORS 701.146. For a claim described in ORS 701.139 (1) involving work on a residential structure or an appurtenance thereto, a claim described in ORS 701.139 (2) involving work on a small commercial structure or an appurtenance thereto that is not resolved under ORS 701.146 or an owner's claim described in ORS 701.139 (4) involving work on a large commercial structure or an appurtenance thereto that is not resolved under ORS 701.146:

(1) The person having the claim must file with the Construction Contractors Board a statement of the claim in a form prescribed by the board.

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

(a) The same facts and issues involved in the claim 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 claim is such that a court is the appropriate forum for the adjudication of the claim.

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

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

(b) The board determines that the contractor against whom the claim is filed is capable of complying with recommendations made by the board relative to the claim, but the claimant does not permit the contractor to comply with the recommendations. The board may refuse to accept or further process a claim 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.

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

(4) Upon acceptance of the statement of claim, the board shall give notice to the contractor against whom the claim is made and shall initiate proceedings to determine the validity of the claim. 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 claimant. If the contractor performs accordingly, the board shall give that fact due consideration in any subsequent disciplinary proceeding brought by the board. If a claim is for less than \$1,000, the board may process the claim without conducting an on-site investigation.

(5) Subject to ORS 701.148, if the board is unable to resolve the claim 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 183.415 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 701.085. [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]

701.146 Large commercial structure claims; small commercial structure claims not resolved under ORS 701.145; optional procedure for large commercial

structure small contract claims not resolved under ORS 701.145. For a claim described in ORS 701.139 (3) involving work on a large commercial structure or an appurtenance thereto, a claim described in ORS 701.139 (2) involving work on a small commercial structure or an appurtenance thereto that is not resolved under ORS 701.145 or an owner's claim described in ORS 701.139 (4) involving work on a large commercial structure or an appurtenance thereto that is not resolved under ORS 701.145:

(1) The person seeking to file the claim must:

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

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

(2) The claimant must file the claim with the Construction Contractors Board by delivering to the board a copy of the complaint or the demand for arbitration or other document necessary to initiate arbitration. The claimant must also give notice to the surety on the bond by delivering to the surety a copy of the complaint or the demand for arbitration or other document necessary to initiate arbitration. 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 the complaint, demand or other document was filed or made;

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

(c) The 30th day before:

(A) The court issues a judgment on the complaint; or

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

(3) Filing the claim with the board under subsection (2) of this section constitutes filing the claim for purposes of establishing timeliness of the claim under ORS 701.143 and priority of the claim under ORS 701.150.

(4) Except as provided in this subsection and subsection (7) of this section, if the claimant properly gives notice of the claim 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 claimant delivers notice of the claim 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 claimant or the claimant'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 claimant may not join a surety as a party to an action or arbitration unless the claimant 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 complaint or the demand or other document necessary to initiate arbitration. 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 claim described in subsection (1) of this section, the claimant 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 retain a claim against the bond. The entry of a final judgment against the contractor concludes the contractor's involvement in any proceedings to determine whether the bond is subject to payment of the claim. The claimant 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 claim is limited to whether the claim 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 claimant. 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 claim 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 claim is for work subject to this chapter.

(d) The extent of the surety's liability to the claimant. [2001 c.197 §4; 2003 c.294 §1; 2003 c.598 §50]

701.147 Processing of claim; status reports of court actions; administrative law judge for arbitration or contested case hearing; alternative dispute resolution; fees; notice of intent to file claim; rules.

(1) If a party to a claim under ORS 701.145 requests a contested case hearing, the Construction Contractors Board shall schedule the hearing.

(2) If the claim is submitted for determination by a court, the board may require that the claimant provide status reports on the pending action. The board may dismiss or close a claim filed under ORS 701.139 if the claimant fails to submit status reports on a pending action.

(3) An arbitration conducted under ORS 701.148 (1) or (2) must be held before an administrative law judge acting as arbitrator. The administrative law judge assigned to act as arbitrator of the case on behalf of the board must be from the Office of Administrative Hearings established under ORS 183.605. 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.

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

(5) ORS 183.600 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 claims against contractors filed under ORS 701.143.

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

(7) The board by rule may impose a processing fee for claims filed under ORS 701.139. The fee amount may not exceed the amount of the filing fee provided by ORS 21.110 (1) for a plaintiff filing a civil action

in circuit court. The board may impose different processing fees for claims processed under ORS 701.145 than for claims processed under ORS 701.146.

(8) If the board adopts rules under subsection (7) of this section, the rules:

(a) Except as provided in paragraph (b) of this subsection, must provide that a prevailing claimant 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 claim 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 claimant, assets and liabilities of the claimant and any other information required by board rule.

(9) Before filing a claim under ORS 701.139, a person must send notice to the contractor that the person intends to file the claim. The person must send the notice at least 30 days before filing the claim. 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 specify the manner in which the person may show compliance with this subsection at the time of filing the claim.

(10) If the notice described in subsection (9) of this section is mailed to the contractor less than 45 days before expiration of the time limitation under ORS 701.143 for the board to receive the claim, the time limitation for the board to receive the claim does not expire until 60 days after the notice is mailed. [2001 c.414 §5; 2001 c.414 §§5b,7b; 2003 c.75 §61; 2003 c.294 §§2,3]

701.148 Binding arbitration requirement; applicability; rules for arbitration; avoidance of arbitration; rules limiting contested case availability; board refusal of dispute.

(1) Subject to subsection (4) of this section, if the resolution of a claim 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 claim 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, including but not limited to parties to a claim that is subject to ORS 701.146.

(3) Except as provided in this subsection, rules adopted by the board to regulate arbi-

tration 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 claim 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 claim resolved through a contested case hearing or files a complaint in a court. A party making a request or filing a complaint under this subsection is subject to the following provisions:

(a) If the party requests to have a claim 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 complaint in court, the party must, within the time specified in paragraph (c) of this subsection, deliver a copy of the complaint to the board and to all parties entitled by board rule to receive a copy of the complaint. If the party filing the complaint is the claimant, the claimant must allege all elements of the claim in the complaint. If the complaint is filed by the contractor against whom a claim is alleged, the complaint may be a complaint for damages, a complaint for declaratory judgment or other complaint that allows the claimant to file a response alleging the elements of the claim. The claimant has the burden of proving the elements of the claim in any action described in this paragraph.

(c) A party that is subject to paragraph (a) or (b) of this subsection must deliver a request or complaint 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 hear-

ing has been scheduled. Failure to timely deliver a request or complaint 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 complaint in compliance with paragraph (b) of this subsection, the filing of the complaint 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 claim of 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 complaint.

(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. [2001 c.414 §4; 2001 c.414 §4a; 2003 c.598 §51]

701.150 Order of board as judgment; priority of satisfying claims from bond or deposit. (1) If a Construction Contractors Board final order is not paid by the contractor, the board shall notify the surety on the bond. The surety may not pay a claim until the surety receives notice from the board that the claim is ready for payment.

(2) If an order of the board that determines a claim 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 claimant may file the order with the county clerk in any county of this state.

(3) 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.

(4) Payments from the surety bond of a contractor pursuant to board order and notice are satisfied in the following priority in any 90-day period. A 90-day period begins on the date the first claim is filed with the board. Subsequent 90-day periods begin on the date the first claim is filed with the

board after the close of the preceding 90-day period. Within a 90-day period:

(a) Board orders as a result of claims against a 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 claims.

(b) If the claims described in paragraph (a) of this subsection do not exhaust the bond, then amounts due as a result of all other types of residential or small commercial structure claims filed within that 90-day period may be satisfied from the bond, except that the total amount paid from any one bond to nonowner claimants may not exceed \$3,000.

(c) If payments involving residential and small commercial structures do not exhaust the bond, board orders and notice involving large commercial structure claims are satisfied in the following priority, except that the total amount paid from any one bond to nonowner claimants may not exceed \$3,000:

(A) Labor, including employee benefits.

(B) All other claims involving large commercial structures except costs, interest and attorney fees.

(C) Any costs, interest and attorney fees the plaintiff may be entitled to recover.

(d) If the total claims filed with the board against a contractor within 90 days after the board receives notice of the first claim against the contractor exceed the amount of the bond available for those claims, the bond shall be apportioned as the board determines, subject to the priorities established under this section.

(e) If the total amounts due as a result of claims filed with the board within 90 days after the first claim is filed do not exceed the amount of the bond available for those claims, all amounts due as a result of claims filed within the 90-day period shall have priority over all claims subsequently filed until the amount of the bond available for the payment of claims is exhausted.

(5) Notwithstanding subsection (4) of this section, a bond is not subject to payment for a claim 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 claim was completed or abandoned; or

(b) The date that the surety canceled the bond.

(6) The total amount paid from any one bond for costs, interest and attorney fees may not exceed \$3,000. [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]

Note: Section 2, chapter 427, Oregon Laws 2001, provides:

Sec. 2. The amendments to ORS 701.150 by section 1a of this 2001 Act shall not apply to a determination by the Construction Contractors Board, an arbitration award or a judgment against the surety bond of a contractor if:

(1) The determination, award or judgment resulted from a claim filed with the board prior to the effective date of this 2001 Act [January 1, 2002]; or

(2) The board notified the surety under ORS 701.145 prior to the effective date of this 2001 Act that payment was due from the bond that is available for satisfaction of the determination, award or judgment. [2001 c.427 §2; 2001 c.427 §3]

701.155 [1973 c.832 §59; repealed by 1981 c.618 §18]

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 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 claim 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. [2001 c.850 §3]

701.180 Waiver of mediation or arbitration. 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 claim under ORS 701.145 is a waiver by the contractor of any contractual right to mediation or arbitration. [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]

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 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 general contractors who primarily work on large commercial structures, and one shall be a specialty contractor who primarily works on large commercial structures or a 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. [Subsection (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]

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 not be considered 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 279.445.

(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 not to be 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 from the date when the board received the information under subsection (1) of this section.

(3) If the board determines that the claim made against a contractor or subcontractor was made in bad faith or was false, the person filing the bad faith or false claim shall be placed on the list of persons who have been determined not to be 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 not to be qualified to hold or participate in a public contract for a public improvement under subsection (2) of this section. 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]

Note: The amendments to 701.227 by section 318, chapter 794, Oregon Laws 2003, become operative March 1, 2005, and apply only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 336 and 337, chapter 794, Oregon Laws 2003. The text that is operative on and after March 1, 2005, is set forth for the user's convenience.

701.227. (1) The Construction Contractors Board shall begin an action to determine whether a contractor or a subcontractor shall not be considered 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 not to be 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 from the date when the board received the information under subsection (1) of this section.

(3) If the board determines that the claim made against a contractor or subcontractor was made in bad faith or was false, the person filing the bad faith or false claim shall be placed on the list of persons who have been determined not to be 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 not to be qualified to hold or participate in a public contract for a public improvement under subsection (2) of this section. 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.

701.230 Board to provide names of unlicensed 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 to act in violation of this chapter. [1983 c.616 §2; 1989 c.928 §27; 1999 c.402 §35]

701.235 Rulemaking; rules to substitute letter of credit for bond. (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 claims described in this chapter;

(c) Limit whether a claim may be processed by the board if there is no direct contractual relationship between the claimant and the contractor;

(d) Notwithstanding ORS 701.146 (7) and 701.150 (4) and subject to ORS 701.150 (6), exclude or limit recovery from the contractor's bond required by ORS 701.085, of damages awarded by a court or arbitrator for interest, service charges, costs and attorney fees arising from filing and proving the claim; 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 701.085. [1971 c.740 §19; 1989 c.928 §28; 1991 c.181 §13; 2001 c.197 §19; 2003 c.778 §6]

701.240 Board to provide names of licensed contractors 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 department or division may by rule require. [1989 c.870 §6; 1999 c.402 §36]

701.245 [1971 c.740 §23; 1975 c.721 §10; repealed by 1979 c.31 §1]

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 Board to maintain record of grievances against licensed contractors. The Construction Contractors Board shall maintain and make available to the public a record of grievances made to the board against contractors that are licensed under this chapter. The board shall separately record:

(1) Inquiries for which no investigation has taken place;

(2) Claims that are being processed but upon which action has not been completed;

(3) Claims that have been voluntarily settled by the contractor and the claimant;

(4) Claims that have resulted in a final order of the board to dismiss the claim; and

(5) Claims that have resulted in a final order of the board to require payment to the claimant. [1999 c.174 §2; 2001 c.104 §281]

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]

701.270 [1989 c.928 §25; repealed by 1993 c.470 §5 and 1993 c.742 §11]

701.280 Rules for continuing education; competency testing of home inspectors. (1) The Construction Contractors Board shall require by rule that applicants for licensure under this chapter provide evidence of completion of up to 16 hours of education in subjects relating to business practices and laws that affect contractors.

(2) In adopting rules pursuant to this section, the Construction Contractors Board shall take into consideration the availability of training programs in areas of the state and shall encourage training providers to use the most up-to-date technology. The board shall not prohibit private organizations from providing the training services required under this section, provided the training meets any educational standards established by the board. The board periodically shall review

the qualifications of private training organizations and instructors to determine compliance with the educational standards. The board shall develop and make available to the public a list of public and private training providers that the board deems qualified to provide the training required under this section.

(3) As a requirement for renewing a license, the Construction Contractors Board shall require by rule that contractors who have been licensed with the board for fewer than two years provide evidence of completion of up to 16 hours of education in subjects relating to business practices and laws that affect contractors.

(4) In addition to the requirements of subsection (1) of this section, the Construction Contractors Board shall require competency testing substantially similar to nationally recognized certification programs for any person applying for certification as a home inspector under ORS 701.350. The board shall also adopt continuing education requirements for individuals certified as home inspectors.

(5) A person who has complied with the licensing requirements of ORS 446.395 is exempt from requirements specified pursuant to subsections (1) and (3) of this section.

(6) If a contractor suspended for violation of ORS 701.135 (1)(h) has not completed the educational requirements of this section, the suspended licensee must complete those requirements before being reinstated. [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]

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]

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 entity shall not undertake, offer to undertake or submit a bid to do work

as a home inspector unless the business entity is licensed by the Construction Contractors Board under this chapter and has an owner or an employee who is certified as a home inspector under this section.

(3) The Construction Contractors Board shall adopt education, training and examination requirements for certification of home inspectors.

(4) The Construction Contractors Board by rule shall adopt procedures for the issuance, renewal and revocation of home inspector certification.

(5) The board by rule may adopt fees necessary for the administration of this section. The fees shall not exceed the following:

- (a) \$50 for application;
- (b) \$50 for examination; and
- (c) \$75 for annual license renewal.

(6) This section does not apply to a person acting within the scope of a license or certificate 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]

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 entity licensed as a home inspector with the Construction Contractors Board under this chapter may not 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 entity within the 12 months following the inspection. [1997 c.814 §7; 2001 c.196 §11]

RETAINAGE

701.410 Definitions. As used in ORS 279.400, 279.435, 701.410, 701.420, 701.430, 701.435 and 701.440, unless the context otherwise requires:

(1) "Construction" includes:

(a) Excavating, landscaping, demolition and detachment of existing structures, leveling, filling in and other preparation of land for the making and placement of 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" includes a person who contracts with an owner on predetermined terms to be responsible for the performance of all or part of a job of construction in accordance with established specifications or plans, retaining control of means, method and manner of accomplishing the desired result.

(3) "Owner" includes a person who 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 who enters into an agreement with a contractor for the construction.

(4) "Retainage" means the difference between the amount earned by a contractor or subcontractor under a construction contract and the amount paid on the contract by the owner or, in the case of a subcontractor, by a contractor or another subcontractor.

(5) "Subcontractor" includes a person who contracts with a contractor or another subcontractor on predetermined terms to be responsible for the performance of all or part of a job of construction in accordance with established specifications or plans. [1975 c.772 §1; 1987 c.158 §148; 1999 c.59 §209]

Note: The amendments to 701.410 by section 319, chapter 794, Oregon Laws 2003, become operative March 1, 2005, and apply only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 336 and 337, chapter 794, Oregon Laws 2003. The text that is operative on and after March 1, 2005, is set forth for the user's convenience.

701.410. (1) As used in ORS 279C.555, 279C.570, 701.410, 701.420, 701.430, 701.435 and 701.440, unless the context otherwise requires:

(a) "Construction" includes:

(A) Excavating, landscaping, demolition and detachment of existing structures, leveling, filling in and other preparation of land for the making and placement of 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.

(b) "Contractor" includes a person who contracts with an owner on predetermined terms to be responsible for the performance of all or part of a job of construction in accordance with established specifications or plans, retaining control of means, method and manner of accomplishing the desired result.

(c) "Owner" includes a person who 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 who enters into an agreement with a contractor for the construction.

(d) "Subcontractor" includes a person who contracts with a contractor or another subcontractor on predetermined terms to be responsible for the performance of 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 earned by a contractor or subcontractor under a construction contract and the amount paid on

the contract by the owner or, in the case of a subcontractor, by a contractor or another subcontractor.

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 shall be allowed and made on contracts for construction. Except as provided in ORS 701.430 (2), an amount equal to not more than five percent of the contract price of the work completed may be withheld by an owner, contractor or subcontractor as retainage. Partial payment allowed under this subsection shall not be construed as acceptance or approval of some of the work or as a waiver of any defects therein.

(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. Except as provided in ORS 701.430 (2), the interest shall commence 30 days after the work under the contract for construction for which the final payment is due has been completed and accepted and shall run until the date when final payment is tendered to the contractor or subcontractor. The contractor or subcontractor shall notify the party to whom the contractor or subcontractor is responsible for the performance of construction work under the contract when the contractor or subcontractor considers the work that the contractor or subcontractor contracted to perform to be complete and that 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 on the contract. If the party to whom the contractor or subcontractor is responsible for the performance of construction work under the contract 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 withheld as retainage, the owner with whom that contractor has the contract shall pay the contractor, out of the amount that is withheld by the owner from that 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]

Note: See note under 701.410.

701.430 Performance bond; terms; effect of not obtaining bond. (1) Except as provided in subsection (2) of this section, 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 required under this subsection shall 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 shall include, but not be limited to, provisions to the effect that:

(a) The obligations of the contract shall be faithfully performed;

(b) Payment shall promptly be made to all persons supplying labor or materials to the contractor or subcontractor for prosecution of the work provided in the contract;

(c) All contributions due the Industrial Accident Fund and the State Unemployment Compensation Fund from the contractor or subcontractor in connection with the performance of the contract shall promptly be made; and

(d) 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, shall be paid over to the Department of Revenue.

(2) When a contractor or subcontractor does not obtain the bond required under subsection (1) of this section, the owner, contractor or subcontractor may withhold that percentage of the contract price of the work completed as retainage that is agreed to by the parties to the contract. The owner, contractor or subcontractor shall pay interest at the rate of one percent per month on the final payment due a contractor or subcontractor who was unable to obtain the bond required under subsection (1) of this section. The interest shall commence 10 days after the date on which claims of lien or notices of other encumbrances based on the construction performed under the contract must be properly filed under applicable law. For purposes of this subsection, "final pay-

ment due a contractor or subcontractor” means the amount withheld as retainage minus the total dollar amount of liens and other encumbrances resulting from the failure of the contractor or subcontractor to faithfully perform the obligations of the contract and properly filed within the time allowed under applicable law. [1975 c.772 §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 or securities under ORS 279.420 (3), 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 or securities with the contractor or in any bank or trust company to be held in lieu of cash retainage for the benefit of the contractor. In such event the contractor shall reduce the retainage in an amount equal to the value of the bonds and securities and pay the amount of the reduction to the subcontractor in accordance with ORS 701.420 and 701.430. Interest on such bonds or securities 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 279.420 (4), 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 that election. A subcontractor’s share of the total amount of interest earnings under this subsection shall be determined by the proportion which 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 the options described in subsections (1) and (2) of this section, the contractor may recover such costs from the subcontractor by reduction of the final payment. As work on the

subcontract progresses, the contractor shall, upon demand, inform the subcontractor of all accrued additional costs.

(4) Bonds and securities deposited or acquired in lieu of retainage, as permitted by this section, shall 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 its agencies.

(c) Obligations of any corporation wholly owned by the federal government.

(d) Indebtedness of the Federal National Mortgage Association. [1977 c.767 §2; 1983 c.690 §16]

Note: The amendments to 701.435 by section 320, chapter 794, Oregon Laws 2003, become operative March 1, 2005, and apply only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 336 and 337, chapter 794, Oregon Laws 2003. The text that is operative on and after March 1, 2005, is set forth for the user’s convenience.

701.435. (1) When a contractor on a public contract deposits bonds or securities under ORS 279C.560 (3), 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 or securities with the contractor or in any bank or trust company to be held in lieu of cash retainage for the benefit of the contractor. In such event the contractor shall reduce the retainage in an amount equal to the value of the bonds and securities and pay the amount of the reduction to the subcontractor in accordance with ORS 701.420 and 701.430. Interest on such bonds or securities 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 (4), 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 that election. A subcontractor’s share of the total amount of interest earnings under this subsection shall be determined by the proportion which 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 the options described in subsections (1) and (2) of this section, the contractor may recover such costs from the subcontractor by reduction of the final payment. As work on the subcontract progresses, the contractor shall, upon demand, inform the subcontractor of all accrued additional costs.

(4) Bonds and securities deposited or acquired in lieu of retainage, as permitted by this section, shall 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 its agencies.

(c) Obligations of any corporation wholly owned by the federal government.

(d) Indebtedness of the Federal National Mortgage Association.

Note: See note under 701.410.

701.440 Applicability to federal projects. ORS 279.400, 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]

Note: The amendments to 701.440 by section 321, chapter 794, Oregon Laws 2003, become operative March 1, 2005, and apply only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 336 and 337, chapter 794, Oregon Laws 2003. The text that is operative on and after March 1, 2005, is set forth for the user's convenience.

701.440. 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.

Note: See note under 701.410.

LEAD POISONING AND HAZARD REDUCTION

701.500 Legislative findings. The Legislative Assembly finds that:

(1) The federal government regulates lead poisoning and lead hazard reduction through:

(a)(A) The Lead-Based Paint Poisoning Prevention Act;

(B) The Lead Contamination Control Act of 1988;

(C) The Safe Drinking Water Act;

(D) The Resource Conservation and Recovery Act of 1976; and

(E) The Residential Lead-Based Paint Hazard Reduction Act of 1992; and

(b) Implementing regulations of:

(A) The Department of Housing and Urban Development;

(B) The Environmental Protection Agency;

(C) The Occupational Safety and Health Administration; and

(D) The Centers for Disease Control.

(2) In 1992, Congress passed the federal Residential Lead-Based Paint Hazard Reduction Act, which requires that:

(a) States provide for the accreditation of lead-based paint activities training pro-

grams, the certification of persons completing such training programs and the licensing of lead-based paint activities contractors pursuant to standards to be developed by the Environmental Protection Agency.

(b) Effective October 28, 1995, sellers and landlords of residential housing constructed before 1978 notify buyers and tenants of known lead-based paint hazards.

(3) Lead affects every system of the body. It is harmful to individuals of all ages and is especially harmful to children, fetuses and women of childbearing age. Lead poisoning is one of the most common and preventable pediatric health problems today. [1995 c.795 §2]

701.505 Definitions for ORS 431.920 and 701.500 to 701.515. For the purposes of ORS 431.920 and 701.500 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 701.500.

(2) "Accredited Training Program" means a training program that has been accredited by the Department of Human Services to provide training for individuals engaged in lead-based paint activities.

(3) "Certified" means an action by the Department of Human Services verifying the successful completion of a training program accredited by the department and any other requirements.

(4) "Discipline" means a specific type or category of lead-based paint activity.

(5) "Evaluation" has the meaning given that term in P.L. 102-550, section 1004, and as further defined pursuant to the authorities described in ORS 701.500.

(6) "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 701.500.

(7) "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 701.500.

(8) "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 701.500.

(9) "Lead-based paint hazard" means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces or impact surfaces that would result in adverse human health effects as established by the appropriate federal agency.

(10) "Licensed" means a person who has been certified by the Department of Human Services in one or more disciplines and has completed the requirements of the Construction Contractors Board.

(11) "Registered" means a person or business that has met the requirements for registration under this chapter. [1995 c.795 §3]

701.510 License required to engage in lead-based paint activity. (1) A person may not perform lead-based paint activities in this state unless the person is licensed in the appropriate lead-based paint discipline under ORS 701.515.

(2) A person required by subsection (1) of this section to obtain a license must comply with the provisions of ORS 431.920 and 701.500 to 701.515 or any rules adopted pursuant thereto.

(3) A person registered to conduct a lead-based paint activities business may not employ any individual to perform lead-based paint activities unless the person is licensed in the appropriate lead-based paint discipline under ORS 701.515.

(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]

701.515 Licensing and business registration system; fees; rules. (1) In accordance with any applicable provisions of ORS chapter 183, the Construction Contractors Board by rule shall establish a system to license persons and individuals in lead-based paint disciplines required to be licensed under ORS 701.510. Such licensing shall include disciplines and requirements described in 40 C.F.R. 745.225. Such a system shall include but not be limited to provisions:

(a) Prescribing the form and content of the times and procedures for submitting applications for license issuance or renewal.

(b) Prescribing the fees for original issuance and renewal of the license in amounts that do not exceed the cost of administering the program.

(c) Prescribing those actions or circumstances that constitute failure to achieve or maintain licensing requirements, or that otherwise are contrary to the public interest, for which the agency may refuse to issue or renew or may suspend or revoke a license.

(2) In accordance with any applicable provisions of ORS chapter 183, the Con-

struction Contractors Board by rule shall establish a system to register businesses that employ persons or individuals in lead-based paint disciplines required to be licensed under ORS 701.510. Such registration shall include the requirements described in 40 C.F.R. 745.226. Such a system shall include but not be limited to provisions:

(a) Prescribing the form and content of the times and procedures for submitting applications for registration or renewal.

(b) Prescribing the fees for original registration and renewal of the registration in amounts that do not exceed the cost of administering the program.

(c) Prescribing those actions or circumstances that constitute failure to achieve or maintain licensing requirements, or that otherwise are contrary to the public interest, for which the agency may refuse to issue or renew or may suspend or revoke a license.

(3) The Construction Contractors 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; and

(e) Lead worker, up to \$25 per year. [1995 c.795 §5]

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]

NOTICES OF DEFECT IN RESIDENCE

701.560 Definitions for ORS 701.560 to 701.595. As used in ORS 701.560 to 701.595:

(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 701.600 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) 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 pro-

vided in this section and has complied with ORS 701.575.

(2) An owner must send a notice of defect by registered 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]

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 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 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 acknowledgement 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]

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 con-

tractor, 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 Contractor delivery of notification of procedure. (1) A contractor shall deliver a notice of the procedure contained in ORS 701.565 to 701.580 to an owner along with the consumer notification form required to be delivered to an owner under ORS 701.055 (13). The notice must be conspicuous and may be included as part of the underlying contract.

(2) The notice required by subsection (1) of this section must be in substantially the following form:

OREGON LAW CONTAINS IMPORTANT REQUIREMENTS YOU MUST FOLLOW BEFORE YOU MAY COMMENCE ARBITRATION OR A COURT ACTION AGAINST ANY CONTRACTOR, SUBCONTRACTOR OR SUPPLIER FOR CONSTRUCTION DEFECTS. BEFORE YOU COMMENCE ARBITRATION OR A COURT ACTION YOU MUST DELIVER A WRITTEN NOTICE OF ANY CONDITIONS YOU ALLEGE ARE DEFECTIVE TO THE CONTRACTOR, SUBCONTRACTOR OR SUPPLIER YOU BELIEVE IS RESPONSIBLE FOR THE ALLEGED DEFECT AND PROVIDE THE CONTRACTOR, SUBCONTRACTOR OR SUPPLIER THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR PAY FOR THE DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY THE CONTRACTOR, SUBCONTRACTOR

OR SUPPLIER. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER STATE LAW. FAILURE TO MEET THOSE DEADLINES OR FOLLOW THOSE PROCEDURES WILL AFFECT YOUR ABILITY TO COMMENCE ARBITRATION OR A COURT ACTION.

[2003 c.660 §7]

Note: See note under 701.560.

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. ORS 701.560 to 701.595 do not apply:

- (1) To personal injury or death claims.
- (2) To claims filed pursuant to ORS 671.703 or 701.139.
- (3) To claims against a person licensed under ORS 671.010 to 671.220. [2003 c.660 §9]

Note: See note under 701.560.

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 plans, 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 any contractual means

including oral authorization, written contract, purchase order, price agreement or rental agreement.

(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]

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.

Note: Section 60, chapter 675, Oregon Laws 2003, provides:

Sec. 60. The provisions of sections 54 to 58 of this 2003 Act [701.620 to 701.640] apply to construction contracts for which the plans and specifications are first published on or after January 1, 2004. [2003 c.675 §60]

701.625 Progress payments; alternative billing cycle; certification of billing or estimate; payment in full; prohibited agreements. (1) By mutual agreement with an original contractor, an owner may make progress payments to the original contractor on a construction contract that is anticipated to last less than 60 days. An owner shall make progress payments to the original contractor on all other construction contracts. Progress payments shall be made on the basis of a certified billing or estimate for the work performed and the materials or products supplied during the preceding 30-day billing cycle, or an alternate billing cycle as stated in the construction contract. If billings or estimates are to be submitted in alternate, rather than 30-day billing cycles, the construction contract shall specify the alternate billing cycles in a clear and conspicuous manner as prescribed in subsection (2) of this section. Except as provided in subsection (3) of this section, the owner shall make progress payments to the original contractor within 14 days after the date the billing is submitted pursuant to subsection (4) of this section.

(2) A construction contract may provide for an alternate billing cycle if the plans and specifications specifically set forth that there is an alternate billing cycle and the owner provides for each page of plans and specifications a statement substantially similar to the following statement:

Notice of Alternate Billing Cycle

The contract will allow the owner to require the submission of billings or estimates in billing cycles other than 30-day cycles. Billings or estimates for the contract shall be submitted as follows:

(3) An owner may make progress payments later than 14 days after the date the billing or estimate is submitted if:

(a) The owner is responsible for providing plans and specifications that expressly allow in a clear and conspicuous manner an extended payment, defined by a specified number of days after the billing or estimate is submitted; and

(b) The owner provides for each page of plans and specifications a statement substantially similar to the following statement:

Notice of Extended Payment Provision

The contract will allow the owner to make payment within _____ days after the date a billing or estimate is submitted.

(4) The owner is deemed to have received the billing or estimate when the billing or estimate is submitted to 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 for:

- (a) Unsatisfactory work progress;
- (b) Defective construction work, materials or products not remedied;
- (c) Disputed work, materials or products, not to exceed 150 percent of the amount in dispute;
- (d) Failure to comply with other material provisions of the construction contract;
- (e) Third party claims filed or reasonable evidence that such a 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 contract terms and conditions.

(5) 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 set forth in writing pursuant to subsection (4) of this section. The owner may also withhold a reasonable amount as retainage as defined in ORS 701.410.

(6) An owner may extend the period within which the billing or estimate may be certified if:

(a) The owner is responsible for providing plans 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 plans and specifications, including bid plans and construction plans, a statement substantially similar to the following statement:

Notice of
Extended Certification Period Provision

The contract will allow the owner to certify billings and estimates within _____ days after the billings and estimates are received from the original contractor.

(7) 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 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. Any original contractor, subcontractor or material supplier that does not provide written consent to the change will continue to be paid as indicated in the plans and specifications.

(8) 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 within seven days. When an original contractor completes and an owner approves all work under a portion of a construction contract for which the 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 issue described in subsection (4) of this section or ORS 701.630 (4).

(9) Payment is not required under this section unless the original contractor provides the owner with a billing or estimate for the work performed or the materials or products supplied in accordance with the terms of the construction contract between the parties.

(10) A construction contract may not alter the right of any original contractor, subcontractor or material supplier to receive prompt and timely progress payments as provided under this section.

(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 within 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 within five days after the owner makes the final payment to the original contractor on the construction contract.

(13) In any action, claim or arbitration brought to collect payments or interest pursuant to this section, the prevailing party shall be awarded reasonable costs and attorney fees.

(14) If the owner and original contractor are a single entity, that entity shall pay subcontractors and material suppliers within 14 days after the billing or estimate is received unless the deadlines for certification or payment have been modified pursuant to subsection (3) or (6) of this section. [2003 c.675 §55]

Note: See notes under 701.620.

701.630 Payments to subcontractors and material suppliers; failure to pay; omission of payment; board discipline. (1) Performance by an original contractor, subcontractor or material supplier in accordance with the provisions of a construction contract entitles the original contractor, subcontractor or material supplier to payment from the party with whom the original contractor, subcontractor or material supplier contracts.

(2) If a subcontractor or material supplier has performed in accordance with the provisions of a construction contract, the original contractor shall pay to the subcontractor or material supplier, and each

subcontractor shall pay to its subcontractors or material suppliers, the full amount received for such subcontractor's work and for materials and products supplied based on the subcontract or purchase order terms and conditions within seven days of receipt by the original contractor or subcontractor of a progress payment or final payment. 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 mechanic's or materialman's lien 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 701.135.

(4) Nothing in this section prevents an original contractor when submitting a bill or estimate to an owner, or a subcontractor when submitting a bill or estimate to the original contractor, from omitting from the bill estimate amounts withheld from payment to a subcontractor or material supplier for:

- (a) Unsatisfactory work progress;
- (b) Defective construction work, materials or products not remedied;
- (c) Disputed work, materials or products, not to exceed 150 percent of the amount in dispute;
- (d) Failure to comply with other material provisions of the construction contract;
- (e) Third party claims filed or reasonable evidence that such a 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;
- (i) A reasonable amount for retainage, as defined in ORS 701.410, that does not exceed the actual percentage allowed by the subcontract or purchase order; or
- (j) Other items as allowed under the subcontract or purchase order terms and conditions.

(5) 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) 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.

(6) In any action, claim or arbitration brought to collect payments or interest under this section, the prevailing party shall be awarded reasonable costs and attorney fees. [2003 c.675 §56]

Note: See notes under 701.620.

701.635 Suspension of performance. (1)

An original contractor may suspend performance under a construction contract, or terminate a construction contract if performance is suspended for longer than 30 days, for failure by the owner 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 contract, unless a shorter notice period is prescribed in the 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 terminate a construction contract if performance is suspended for longer than 30 days, for failure by the owner to make timely payment of amounts certified under ORS 701.625 or the subcontractor fails to 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 contract, unless a shorter notice period is prescribed in the contract. A subcontractor may not be deemed in breach of a construction contract for suspending performance or terminating a 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 terminate a construction contract if performance is suspended for longer than 30

days, 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 contract, unless a shorter notice period is prescribed in the contract. A subcontractor may not be deemed in breach of a construction contract for suspending performance or terminating a 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 terminate a construction contract if performance is suspended for longer than 30 days, if the owner fails to approve portions of the contractor's billing or estimate under ORS 701.625 for that subcontractor's work but the reasons for that failure 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 contract, unless a shorter notice period is prescribed in the contract. A subcontractor may not be deemed in breach of a construction contract for suspending performance or terminating a 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 is not required to furnish further labor, materials, products or services until the original contractor or subcontractor is paid the amount that was certified under ORS 701.625, together with 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 reasonable costs and 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]

Note: See notes 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 contract subject to the laws of another state or that requires any litigation, arbitration or other dispute resolution proceeding arising from the contract to be conducted in another state; or

(b) States that a party to the contract cannot suspend performance under the contract or terminate the contract if another party to the contract fails to make prompt payments under the 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]

Note: See notes 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 chapter 279; 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]

Note: The amendments to 701.645 by section 331d, chapter 794, Oregon Laws 2003, become operative March 1, 2005, and apply only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005. See sections 336 and 337, chapter 794, Oregon Laws 2003. The text that is operative on and after March 1, 2005, is set forth for the user's convenience.

701.645. 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 chapter 279, 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.

Note: See first 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 701.055 (1) 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]

701.992 Civil penalties and other sanctions; enforcement; rules. (1) Except as provided in subsections (4) and (7) of this section, any person who violates any provision of this chapter or any rule adopted thereunder shall forfeit and pay into the General Fund of the State Treasury a civil penalty in an amount determined by the Construction Contractors 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) Civil penalties shall be imposed for violation of ORS 701.135 (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; and

(d) Revocation of the person's license for three years for a fourth offense.

(5) The board shall provide by rule a process and criteria that must be met for restoration of a license that has been revoked.

(6) If at any time following restoration of a license of a person who has violated ORS 701.135 (1)(h), the person is found to have again violated ORS 701.135 (1)(h), the person's license shall be permanently revoked.

(7) 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]

OCCUPATIONS AND PROFESSIONS
